



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

NAVAS CASTILLO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Isavella Maria Vasilogeorgi, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 102 (NY/2023) dated 10 October 2023, the Tribunal ordered, by 16 October 2023:

a. Each of the parties to confirm whether the Tribunal may proceed with reviewing the present case on the basis of the English translation of the investigation report appended as Annex 2 to the reply.

b. The Applicant to submit whether he requested a hearing to be held, and if so, indicate the purported purpose of such hearing. If the Applicant wished to hear any witnesses, he was to state (a) the identity of the witness(es) and (b) what disputed fact(s) each of these witnesses is requested to give testimony about. If the Applicant did not wish a hearing to be held, the Tribunal would proceed to close the proceedings as soon as the issue of translation of the investigation report was resolved.

2. On 16 October 2023, the Applicant filed his submissions in response to Order No. 102 (NY/2023) in which he: (a) requested an official translation of the investigation report instead of the unofficial version appended as Annex 2 to the reply, and (b) requested a hearing to be held and the following witnesses be heard: JF, MA and P (names redacted for privacy reasons).

3. On 16 October 2023, the Respondent filed his submission as per Order No. 102 (NY/2023) in which he argued that (a) the English translation of the investigation report already on file should be used for adjudication of the case and that the Applicant had not shown any error in it, and (b) if a hearing were to be held, BP and SL (names redacted for privacy reasons) should be heard as witnesses.

4. On 16 October 2023, the Tribunal instructed the Registry to produce an official translation of the investigation report.

5. On 17 October 2023, the Respondent filed an objection against the witnesses proposed by the Applicant.

6. On 15 February 2024, after the official translation of the investigation report had been completed, the Registry notified the parties that it was available to them on the Tribunal's eFiling portal.

Consideration

Translation of the investigation report

7. The English translation of the investigation report, appended as Annex 2 to the reply, was an unofficial version prepared by a "CDT Officer" (assumedly, meaning a Conduct and Discipline Team officer) working in the Mission, where the Applicant served.

8. The Tribunal considered the Respondent's objection against the Applicant's request for an official translation, but found that in the interest of justice, the case record should be acceptable to both parties. A translation was therefore ordered, and it has now been made available to the parties. Based thereon, the case is now ready to proceed.

Witnesses

The Applicant's proposed witnesses

9. In the Applicant's 16 October 2023 submission, he argued in favour of hearing his proposed witnesses (none of whom were interviewed during the investigation) as follows:

- a. JF—"would testify to [his] respective knowledge of the [Field Technology Service ("FTS")] chain of command before and after the recruitment of [ME (name redacted for privacy reasons)]; as well as the recruitment of other staff with zero knowledge of english and the recruitment from IC to Trygin process";

b. PS—“to clarify the fact that [the Applicant] was on Sick Leave since February 2022, nevertheless, respondent [did] not respect and care about the fact that [he] was suffering and being treated of Mental Health issues as depression and anxiety derivated [*sic.*] of such situation and final solution was given during applicant's sick leave period”;

c. MA—“to clarify that [the Applicant] was not aware of [ME’s] behavior and that [he has] shared accommodation with other females that does not implicates that [he] was having precisely a romantic relationship as per indicated by respondent and the fact that many other staff in FTS did not have knowledge of English and experience in some areas in FTS at all but still they were recruited”.

10. The Tribunal notes that, as also submitted by the Respondent, it is not clear concerning what disputed facts the Applicant wishes any of the proposed witnesses to testify about. On 26 September 2023, the parties submitted a consolidated list of disputed facts, but the Applicant has made no reference to this list regarding any of the proposed witnesses. Alternatively, the Tribunal cannot perceive from the suggested topics of the testimonies of his proposed witnesses what facts stated in the factual background of the contested decision, as set out in the sanction letter dated 19 July 2022, they are supposed to contradict (see Order No. 102 (NY/2023), paras. 5 and 6).

11. The Tribunal recalls that the Appeals Tribunal has prohibited a so-called “fishing expedition”, whereby one party requests the other party to produce evidence in “the most general terms” (see the Appeals Tribunal in *Rangel* Order No. 256 (2016)). A party requesting certain evidence must therefore be able to provide a degree of specificity to his request.

The Respondent’s proposed witnesses

12. The Tribunal is inclined to approve the hearing of BP and SL as witnesses as they both have material knowledge of disputed facts according to the 26

September 2023 list thereon. At the same time, the Tribunal is mindful of art. 9.4 of its Statute, which provides as follows:

... In hearing an application to appeal an administrative decision imposing a disciplinary measure, the Dispute Tribunal shall pass judgment on the application by conducting a judicial review. In conducting a judicial review, the Dispute Tribunal shall consider the record assembled by the Secretary-General and may admit other evidence to make an assessment on whether the facts on which the disciplinary measure was based have been established by evidence; whether the established facts legally amount to misconduct; whether the applicant's due process rights were observed; and whether the disciplinary measure imposed was proportionate to the offence.

13. In light of BP's and SL's interview statements appended to the investigation report, the Tribunal will therefore instruct the parties to provide their comments on how the proposed testimonies of BP and SL would be able to further assist the Tribunal in its judicial review. This includes the Applicant stating whether he would like to cross-examine BP and SL considering the fact that he was not present when the investigative panel interviewed BP and SL.

Other possible witnesses

14. The Tribunal notes that neither of the parties has proposed either the Applicant or ME to appear as witnesses before the Tribunal even if both their testimonies could be relevant to the adjudication of the case. The Tribunal notes the above instructions concerning art. 9.4 of its Statute would also apply to the Applicant and ME.

Spanish/English interpretation of witness testimonies

15. When the Tribunal has decided on what witnesses to hear, the parties will be ordered to inform the Tribunal whether Spanish/English interpretation is requested of each of the relevant witnesses. It is noted that the Dispute Tribunal in New York does not have its own interpretation staff and facilities and will therefore need time to organise this.

16. In light of the above,

IT IS ORDERED THAT:

17. By **4:00 p.m. on Friday, 23 February 2024**, the Applicant is to file a submission concerning:

a. What disputed fact(s) each of his proposed witnesses (JA, PS and MA) are to testify about;

b. In case the Respondent does not want to call BP and/or SL as witnesses but solely refer to their interview statements to the investigation as per art. 9.4 of the Dispute Tribunal's Statute, whether he still wants to cross-examine BP and/or SL;

c. Whether he wants to call himself (examination-in-chief) and/or ME (cross-examination) as witnesses, and if so, state the necessity of their testimonies as per art. 9.4 of the Dispute Tribunal's Statute in light of their interview statements appended to the investigation report.

18. By **4:00 p.m. on Friday, 23 February 2024**, the Respondent is to file a submission concerning,

a. The necessity of BP's and SL's testimonies as per art. 9.4 of the Dispute Tribunal's Statute in light of their interview statements appended to the investigation report;

b. Whether he wants to call the Applicant (in cross-examination) and ME (examination-in-chief) as witnesses, and if so, state the necessity of their testimonies as per art. 9.4 of the Dispute Tribunal's Statute in light of their interview statements appended to the investigation report.

19. By **4:00 p.m. on Wednesday, 28 February 2024**, each party is to provide his comments, if any, to the other party's 23 February 2024 filing.

(Signed)

Judge Joelle Adda

Dated this 16th day of February 2024

Entered in the Register on this 16th day of February 2024

(Signed)

Isaac Endeley, Registrar, New York