



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/014
Order No.: 022 (NY/2024)
Date: 22 February 2024
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

DE MELO CABRAL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Christopher Bollen

Counsel for Respondent:

Miryoung An, DAS/ALD/OHR

Isavella Maria Vasilogeorgi, DAS/ALD/OHR

Introduction

1. On 5 April 2022, the Applicant, a former staff member of the Office of the Special Adviser on Africa (“OSAA”), filed an application contesting the decision to impose on him a disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.

2. The Respondent filed a reply on 5 May 2022 submitting that the contested decision was lawful.

3. On 28 July 2023, the Tribunal issued Order No. 062 (NY/2023) directing the parties to, *inter alia*, submit a joint submission of consolidated list of the agreed and disputed facts. The Tribunal additionally directed the parties to submit whether either party requests to adduce any additional evidence, and if so, state: (a) what additional documentation it requests to be disclosed, also indicating what fact(s) this is intended to substantiate; and (b) the identity of the witness(es) the party wishes to call, if any, and what disputed fact(s) each of these witnesses is to give testimony about, also setting out the proposed witness’s testimony in writing. This written witness statement could also be adopted as the examination-in-chief at a potential hearing if the party leading the witness should wish to do so.

4. The parties subsequently requested an extension of time to comply with Order No. 062 (NY/2023), which was granted by the Tribunal.

5. On 14 November 2023, the parties filed their joint submission pursuant to Order No. 062 (NY/2023).

6. On 14 November 2023, the Applicant filed his submission on evidence pursuant to Order No. 062 (NY/2023) stating “[...] there is no additional evidence to be adduced in relation with the decisions to impose and extend his [administrative leave without pay]. [...]” and he “requests the instant Tribunal that it convene a hearing in accordance with Article 16 of its Rules of Procedure. This hearing would address all of the agreed

and disputed facts and provide the Tribunal with an opportunity to hear the witnesses relevant to these facts.”

7. On 17 November 2023, the Respondent filed his submission on evidence pursuant to Order No. 062 (NY2023) in which he stated “that he has no additional evidence to adduce to the case file” and concluded “that no oral hearing on the merits is necessary”. The Respondent stated that “in case the Tribunal determines that an oral hearing is required to elucidate the facts”, he submits the name of eight possible witnesses, three of them being no longer staff members of the United Nations.

8. On 8 December 2023, the Tribunal issued Order No. 139 (NY/2023) noting that the Applicant in his submission dated 14 November 2023 had neither mentioned the witnesses that he wanted to call nor what facts they would support, and directing the Applicant to make a further submission on whether he requests to adduce any additional evidence. The Tribunal further reiterated the instruction for him to state the identity of the witness(es) he wishes to call, if any, and what disputed fact(s) each of these witnesses is to give testimony about, also setting out the proposed witness’s testimony in writing, noting that this written witness statement could also be adopted as the examination-in-chief at a potential hearing if the party leading the witness should wish to do so.

9. The Applicant subsequently requested extension of time to comply with Order No. 139 (NY/2023), which was granted by the Tribunal.

10. On 18 January 2024, the Applicant filed his further submission on evidence which included a list of “additional documentation to be disclosed and added to the case file” and a list of 15 witnesses whom the Applicant sought to call for a hearing. In respect of each intended witness, the Applicant referred to several paragraphs in the joint statement on disputed facts and set out the facts each witness would support.

11. On 23 January 2024, the Respondent filed a motion for leave to respond to the Applicant’s 18 January 2024 submission. In his motion, the Respondent noted that the Applicant has failed to provide the individuals’ written testimony, and the Applicant

proposed that their written testimony be adopted at the time of a hearing, and therefore the Applicant failed to comply with Orders No. 062 (NY/2023) and No. 139 (NY/2024). The Respondent submitted that the Applicant's requested documentation is mostly irrelevant to the facts in issue and that the Respondent "objects to admitting additional evidence, including hearing individuals, on matters that are not relevant to the facts in issue".

Considerations

12. The Tribunal notes that the Applicant has failed to properly adhere to directions in Order No. 062 (NY/2023) regarding additional evidence and it is therefore necessary to direct the Applicant to make a further submission.

13. Having reviewed the parties' submissions, the Tribunal agrees with the Respondent that the parties' joint statement dated 14 November 2023 establishes that the disputed facts in this case do not amount to material factual disagreement between the parties. The Tribunal additionally notes that the issues arising out of the disputed facts mainly concern a disagreement as to the appropriate legal qualification to be attached to the facts at issue, namely whether the facts established constitute misconduct.

14. The Tribunal notes that among the Applicant's 15 proposed witnesses, 11 individuals were interviewed by the Office of Internal Oversight Services ("OIOS") and the oral testimony of each of the 11 witnesses has been captured in audio-recordings in the case file. The Tribunal considers that the four remaining proposed witnesses (T.K., M.L.R.V, K. B., and P. G) are not relevant to the facts in issue.

15. As for the additional documentation the Applicant requests to be disclosed, the Tribunal finds appropriate to grant the Respondent's motion, dated 23 January 2024, for leave to respond in writing to the Applicant's submission to adduce additional evidence that did not constitute part of the case file.

16. Having considered the entire case record, as required under art. 9.4 of the Statute of the Dispute Tribunal (as amended by General Assembly resolution 78/248) and art. 19 of the Rules of Procedure of the Dispute Tribunal,

IT IS ORDERED THAT:

17. The Respondent's motion dated 23 January 2024 is granted.

18. By **4:00 p.m. on Thursday, 7 March 2024**, the Respondent is to submit a response to the Applicant's submission dated 18 January 2024.

19. Upon receipt of the above-referred submissions, the Tribunal will issue the relevant instructions for further case management.



Judge Joelle Adda

Dated this 22nd day of February 2024

Entered in the Register on this 22nd day of February 2024



Isaac Endeley, Registrar, New York