



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/017

Order No.: 025 (NY/2024)

Date: 1 March 2024

Original: English

Before: Joelle Adda

Registry: New York

Registrar: Isaac Endeley

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Sètondji Roland Adjovi
Anthony Kreil Wilson

Counsel for Respondent:

Elizabeth Brown, UNHCR
Francisco Navarro, UNHCR

Introduction

1. By Order No. 088 (NY/2023) dated 21 September 2023, the Duty Judge ordered that (a) the Applicant's name in Order No. 088 (NY/2023) was to be preliminarily anonymized until the Tribunal has made a final determination on the question of anonymization, and (b) the Applicant shall file a rejoinder to the Respondent's reply.
2. On 15 October 2023, the Applicant duly filed the rejoinder.
3. On 26 October 2023, the Respondent filed a motion for leave to respond to the Applicant's rejoinder.
4. On 27 December 2023, the case was assigned to the undersigned Judge.

Consideration

5. In the Respondent's 26 October 2023 motion, he states that:
 - ... In his Rejoinder, the Applicant submits, among other things, that the Respondent made false statements in his Reply (para. 7)
 - ... The Respondent respectfully requests leave of the Honourable Tribunal to respond to the Applicant's Rejoinder and set the record straight.
 - ... The Respondent respectfully submits that granting such leave is consistent with the principle *audi alteram partem* and that the Respondent's response will assist the Honourable Tribunal with the fair and expeditious adjudication of the case.
6. The Tribunal will allow the Respondent's request to file a response to the Applicant's 15 October 2023 rejoinder. In this regard, the Respondent is instructed to address the issue on who filed the official complaint against the Applicant for sexual harassment and file relevant documentation for this.

7. Regarding the Applicant's request to call himself and JJ (the alleged victim, name redacted for privacy reasons), the Tribunal further notes that it is inclined to grant this request in order to shed light on the nature of the WhatsApp communications between the Applicant and JJ: (a) was it in the "proper context" expressions of "banter and informal exchanges" where JJ "clearly had set the communication level of the bar very low with his constant unsolicited sexual innuendos and sexually charged language" and "a history of joke conversations" between two friends as submitted by the Applicant, or (b) did the Applicant's messages, as set out in the disciplinary decision dated 29 March 2023, amount to sexual harassment as argued by the Respondent?

8. The Tribunal is mindful of art. 9.4 of the Dispute Tribunal's Statute, but is of the opinion that hearing the Applicant and JJ might add important additional information that cannot be found in the interview statements appended to the investigation report. Before making a final determination, the Tribunal will allow the Respondent to further comment on this.

The Applicant's request for anonymity

9. The Tribunal notes that the Appeals Tribunal in *AAE 2023-UNAT-1332* set the current applicable standard for anonymizing judgments issued by the Dispute and Appeals Tribunals. In this Judgment, the Appeals Tribunal upheld the administrative decision to separate the Applicant from service for serious misconduct for sexual assault, including rape, but granted his request for anonymity, holding that (see para. 155 and 156, references to footnotes omitted):

... Absent any order directing otherwise, the usual or standard position has been that the names of the parties are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability and that names should be redacted "in only the most sensitive of cases". The Appeals Tribunal has also previously held that "personal embarrassment and discomfort are not sufficient grounds" for redaction. However, there continues to be concerns raised regarding the privacy of individuals contained in judgments which are increasingly published and accessible online. In

our digital age, such publication ensures that individuals' personal details are available online, worldwide, and in perpetuity. There are increasing calls for the privacy of individuals and parties to be protected in judgments.

... The Majority of the Appeals Tribunal Judges agree that good cause has been shown in these circumstances as an exception to the general and established principle that parties' names should be included in the Judgment. The circumstances that support the exception include that: albeit extremely serious, the evidence is that this was a single act of established misconduct as opposed to a known pattern of misconduct, and that the Appellant otherwise had a long and unblemished career having worked in the Organization since 1992, there is no evidence that the Appellant will re-offend or needs to be deterred in the future, and the gravity of a finding of sexual assault or rape would undoubtedly have a negative impact on his family, who are blameless in this matter. We are also mindful that, in accordance with our jurisprudence, we have not decided this case on the basis of the criminal standard of beyond a reasonable doubt. Further, transparency and general deterrence can be achieved by way of the detailed reasons and outcomes of our judgments. In these circumstances, publication of the Appellant's name would be for more punitive purposes than for transparency. Therefore, after balancing the competing interests, we find that these circumstances support the anonymization of the Appellant's name in the Appeals Tribunal Judgment, and, notwithstanding our concerns about how the Dispute Tribunal proceeded in the issuance of Order No. 166, we affirm the anonymization of the Appellant in [the Dispute Tribunal's] judgments and orders.

10. The Respondent opposes the Applicant's request for anonymity. He submits that "when establishing the system for the administration of justice and in subsequent resolutions, the General Assembly consistently stated that the system must be transparent to ensure accountability and respect for the rights and obligations of staff members". With reference to the Appeals Tribunal's jurisprudence in *Ahmed* 2013-UNAT-132, *Mobanga* 2017-UNAT-741 and *Buff* 2016-UNAT-639, he contends that there "is no reason in this case to grant the Applicant anonymity other than to avoid the Applicant the personal embarrassment and discomfort brought about by his own misconduct, the occurrence of which he does not dispute". He further states that this "reason cannot justify anonymity considering applicable General Assembly resolutions, the jurisprudence of the Appeals Tribunal, and the need to maintain

transparency to ensure accountability”. He adds that “the fact that the case concerns sexual harassment is not sufficient grounds to anonymize the judgment, as the practice of the [United Nations] Tribunals shows”, and he makes reference to a number of judgments from 2012 and onwards until *Szvetko* 2023-UNAT-1311.

11. The Tribunal notes that all the case law to which the Respondent refers is older than *AAE*, which therefore must consider the current state of the law. Similar to *AAE*, the present case involves matters that might have a negative impact that goes beyond “personal embarrassment and discomfort are not sufficient grounds” and could raise serious concerns regarding “the privacy of individuals”, including the blameless family of the Applicant. The Tribunal notes that in the present case, among other matters, this involves the sexuality of the Applicant and acts of a sexual nature that could be considered reprehensive and offensive to some. Also, in the interview statement appended to the investigation report, the Applicant expressed remorse, and similar to *AAE*, “there is no evidence that the [Applicant] will re-offend or needs to be deterred in the future”, and publication of the Applicant’s name “would be for more punitive purposes than for transparency”.

12. Accordingly, the Tribunal will grant the Applicant’s request for anonymity.

13. In light of the above,

IT IS ORDERED THAT:

14. The Respondent’s 26 October 2023 motion to respond to the Applicant’s rejoinder is granted.

15. The Applicant’s request for anonymization of the present case is granted.

16. By **4:00 p.m. on Friday, 15 March 2023**, the Respondent is to file his response to the Applicant's 15 October 2023 rejoinder, in which he shall address: (a) the identity of the person who filed the official complaint against the Applicant in the present case and provide documentation for this, and (b) the possible hearing of the Applicant and JJ as witnesses in light of art. 9.4 of the Dispute Tribunal's Statute.

(Signed)

Judge Joelle Adda

Dated this 1st day of March 2024

Entered in the Register on this 1st day of March 2024

(Signed)

Isaac Endeley, Registrar, New York