



Before: Joelle Adda

Registry: New York

Registrar: Isaac Endeley

BARBULESCU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Lucienne Pierre, AS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 143 (NY/2023) dated 15 December 2023, the Duty Judge granted the Respondent's motion to have receivability decided as a preliminary matter and suspended the deadline for the Respondent to file his reply in accordance with art. 10.1 of the Dispute Tribunal's Rules of Procedure until the issue of receivability has been determined. The Duty Judge further ordered the Applicant to file a rejoinder responding to the Respondent's submissions regarding the non-receivability of the application by 19 January 2024. Finally, the Duty Judge reserved the decision on the Respondent's motion for summary judgement to the Dispute Tribunal Judge to whom the present case would be assigned.

2. On 27 December 2023, the case was assigned to the undersigned Judge.

3. On 19 January 2024, the Applicant filed her submissions regarding the Respondent's claim on the application not being receivable.

Consideration

Summary judgement

4. Pursuant to art. 9 of the Dispute Tribunal's Rules of Procedure regarding summary judgement, "[a] party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law". Also, "[t]he Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate".

5. In support of the Respondent's motion for summary judgement, he submits that under art. 9 of the Dispute Tribunal's Rules of Procedure, he "has a right to summary judgement on the Applicant's claim that the contested decision was unlawful" and that "[t]here is no dispute as to the material facts of the case, nor the applicable law".

6. In the Applicant's 19 January 2024 submissions, she objects to the motion, submitting, in essence, that: (a) the Respondent "is wrong in law in suggesting a request for exception is required for the [Dispute Tribunal] to adjudicate the non-grant of exception" under staff rule 12.3, (b) a "request for exception to the staff rules was made" in the present case, (c) the "position taken in the motion for summary judgement runs contrary to the position taken before [the Appeals Tribunal]", and (d) the "motion for summary judgement seeks to use procedure to block the clear interests of justice".

7. In light of the circumstances of the case, including the submission made by the Applicant on 19 January 2024, the Tribunal rejects the Respondent's motion for summary judgement as the Respondent has not established that "no dispute as to the material facts of the case" exists in the present case.

The Respondent's filing of a reply

8. After having considered the Applicant's 19 January 2024 submissions, the Tribunal amends Order No. 143 (NY/2023) as it now finds that, in accordance with art. 19 of the Dispute Tribunal's Rules of Procedure, for the fair and expeditious disposal of the case and to do justice to the parties, it will be most appropriate to determine the issue of receivability together with the merits of the case.

9. The Tribunal will therefore order the Respondent to file his reply. Subsequently, unless either of the parties objects thereto or otherwise ordered by the Tribunal, it will proceed to adjudicating the matters before it in a final judgement.

IT IS ORDERED THAT:

10. Order No. 143 (NY/2023) is amended and the issue of receivability is not to be decided as a preliminary matter.

11. By **4:00 p.m. on Friday, 15 March 2024**, the Respondent is to file his reply.

12. Subsequently, the case will be decided in a final judgement unless either of the parties objects thereto by **4:00 p.m. on Tuesday, 19 March 2024** or otherwise ordered by the Tribunal.

(Signed)

Judge Joelle Adda

Dated this 6th day of March 2024

Entered in the Register on this 6th day of March 2024

(Signed)

Isaac Endeley, Registrar, New York