



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/024
Order No.: 040 (NY/2024)
Date: 4 April 2024
Original: English

Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

HUNT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Steven Dietrich, DAS/ALD/OHR UN Secretariat
Miryoung An, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 109 (NY/2023) dated 19 October 2023, the Duty Judge instructed the parties to file (a) consolidated lists of agreed and contested facts and (b) separate submissions on whether they request additional, written and/or oral, evidence to be produced.
2. On 14 December 2023, the parties duly complied with Order No. 109 (NY/2023).
3. On 1 April 2024, the case was assigned to the undersigned Judge.
4. On 3 April 2024, a case management discussion (“CMD”) was held remotely via MS Teams to discuss the further proceedings.

Consideration

Additional written evidence

5. In the Applicant’s 14 December 23 submission, he requests the Respondent to produce the following documentation:
 - a. “The special review audit report carried out in March 2020 by OIOS/Audit in response to the Applicant's and his colleague's letter to the Secretary-General conveying their concerns about RSG Rajkumar's violation of investment guidelines”;
 - b. “The Draft Governance Audit Report (“Detailed Audit Results”), not the final amended version, which [the Complainant, name redacted for privacy reasons] viewed and commented upon in May 2020 to the new RSG, which is relevant to her motivation for filing her complaint on 9 June 2020”;
 - c. “Any interviews by [the Office of Internal Oversight Services] of [the Complainant] (in particular the one given on 16 June 2022) in which the Applicant is discussed since the statements she made concerning other

[name of the office redacted for privacy reasons] staff are relevant to her motivation”.

6. At the CMD, Counsel for the Applicant reiterated this request, highlighting the importance of the documentation to the determination of the case. In response, the Respondent objected to their relevancy.

7. Before deciding on the Applicant’s requests, the Tribunal will allow him the opportunity to further explain why the requested documents are relevant. The Respondent shall be allowed to comment thereon.

Witnesses

8. The Tribunal notes that arts. 16.1 and 16.2 of its Rules of Procedure provide that “[t]he judge hearing a case may hold oral hearings” and that “[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure” like the present one. At the same time, it is stated in the recently adopted art. 9.4 of its Statute (emphasis added):

... 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.

9. In the Applicant’s 14 December 2023 submission, and as subsequently repeated by his Counsel at the CMD, he requests the hearing of the following witnesses (names redacted for privacy reasons): the Applicant, PG, AR, MS, and MR.

10. In the Respondent’s 14 December 2023 submission, he objects to hearing any witnesses, submitting that the documentation already on record is sufficient to determine the case. At the CMD, his Counsel added that the Applicant has failed to state: (a) what disputed facts the proposed witnesses are to corroborate and/or

disprove, and (b) the relevancy of their testimony to the present case. Should the Tribunal, nevertheless, decide to hold a hearing, in the Respondent's 14 December 2023 submission, he requests the following witnesses to be heard (names redacted for privacy reasons): the Complainant, NH, HB. and RWL. The Applicant has not objected to the hearing of any of these witnesses.

11. Prior to deciding on the various witness requests, the Tribunal will allow the Applicant to present his further submissions on his proposed witnesses and subsequently provide the Respondent with the opportunity to comment thereon.

Hearing

12. In the Applicant's 14 December 2023 submission, the Applicant requested a hearing for his proposed witnesses to provide their testimonies. The Respondent expressed his objection to any such hearing in both his 14 December 2023 submission and at the CMD.

13. In case the Tribunal rejects the Applicant's requests for hearing any witnesses, it will, nevertheless, allow him to file his submissions on whether he wishes a hearing to be held for any other reasons as per arts. 16.1 and 16.2 of its Rules of Procedure. The Applicant could, for instance, wish to present his case orally to the Tribunal. Even if so, the Tribunal notes that, as a point of departure, the parties will also be ordered to file their written closing statements at the end of the proceedings. As relevant, the Respondent will subsequently be allowed to comment on the Applicant's possible submissions.

The proposed joinder of Applications.

14. At the CMD, Counsel for the Applicant mentioned that the facts of some other cases currently pending before the Dispute Tribunal are similar to those of the present case. He therefore proposed that the Tribunal consider whether, as a matter of judicial economy, it would be beneficial to join all these Applications. The Respondent, however, does not believe that this would be necessary given that the factual issues were different in the various cases.

15. The Respondent further stated that he was unaware as to what cases the Applicant was referring and that confidentiality concerns could impede hearing witnesses in different cases at the same time. In addition, the relevant cases might be at different stages.

16. Before making any determination on the possibility of joining the Applications, the Tribunal requests the Applicant to submit further information on (a) to which other cases he is referring and (b) the stages of the proceedings of these cases.

In light of the above,

IT IS ORDERED THAT:

17. By **4:00 p.m. on Thursday, 11 April 2024**, the Applicant should file submissions covering the following aspects:

- a. detailing the relevancy of the documents which he requests the Respondent to produce;
- b. explaining why a hearing is necessary;
- c. explaining the relevance of the evidence of each of the proposed witnesses;
- d. explaining why this Application should be joined with other three Applications whose particulars should be indicated, including the stages at which each of them is.

18. By **4:00 p.m. on Tuesday, 16 April 2024**, the Respondent is to file his comments, if any, on the Applicant's 11 April 2024 submission.

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19. The Tribunal will thereafter issue its further instructions to the parties in a written order.

(Signed)

Judge Margaret Tibulya

Dated this 4th day of April 2024

Entered in the Register on this 4th day of April 2024

(Signed)

Isaac Endeley, Registrar, New York