



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/006
Order No.: 120 (NY/2024)
Date: 4 December 2024
Original: English

Before: Judge Francis Belle

Registry: New York

Registrar: Isaac Endeley

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Miryoung An, DAS/ALD/OHR, UN Secretariat
Halil Göksan, DAS/ALD/OHR, UN Secretariat

Introduction

1. On 6 February 2024, the Applicant, a former Senior Investment Officer with the United Nations Joint Staff Pension Fund (“UNJSPF”), filed an application in which he challenges his “separation from service with compensation in lieu of notice and without termination indemnity”.
2. On 7 March 2024, the Respondent filed a reply in which he contends that the application is without merit.
3. On 9 May 2024, the Duty Judge issued Order No. 050 (NY/2024) by which the parties were ordered to file (a) a jointly signed submission in which they set out consolidated lists of agreed and disputed facts and (b) individual submissions on the need for adducing additional evidence by 27 June 2024. The Respondent was further ordered to file a submission in which he specified which of the allegations stated an allegations memorandum dated 31 July 2023 had been maintained in the contested decision, as stated in the letter dated 17 January 2024 from the the Assistant Secretary-General for Human Resources (“the ASG”) to the Applicant by 13 June 2024.
4. On 30 May 2024, the Applicant filed a motion for anonymity.
5. On 4 June 2024, the Respondent filed a submission in which he responded to (a) Order No. 050 (NY/2024) regarding the maintained allegations and (b) the Applicant’s 30 May 2024 motion for anonymity.
6. On 27 June 2024, the parties filed their other responses to Order No. 050 (NY/2024).
7. On 15 October 2024, the case was assigned to the undersigned Judge.

Consideration

Motion for anonymity

8. The Applicant requests that “his name be anonymized on all Orders and Judgments arising from this case” as his situation is “exceptional”. He submits that he is “a whistleblower whose separation from service is being contested on the grounds that it was an unjustified act of retaliation” and “still far from retirement with a family to support” but “presently without employment”. His efforts “have been made more difficult by the circumstances surrounding his leaving his former employment”. Orders “containing details of the alleged misconduct and the final Judgment are searchable on the internet”, and it “has been the accepted practice” of the Dispute Tribunal “to anonymize most disciplinary cases in light of the sensitive nature of the issues under discussion, consideration for the privacy of witnesses and concerns over the impact of publication on applicants, including possible reluctance to pursue recourse”. The “considerations” spelled out in AAC 2023-UNAT-1332, para. 155, “outweigh the general policy favouring full disclosure of the names of parties to the proceedings and warrant granting anonymity”.

9. The Respondent objects to the Applicant’s anonymity request, contending that he has “failed to demonstrate ‘greater need than any other litigant for confidentiality’ in order to have his name anonymized on all Orders and Judgments arising from his case” with reference to *Pirnea* 2014-UNAT-456, para. 20 and *Charot* 2017-UNAT-715, paras. 37-38. Also, “there are no exceptional circumstances warranting departure from the Tribunal’s established practice of publishing the names of litigants in judgments in furtherance of the need for transparency and accountability” as per *Utkina* 2015-UNAT-524, para. 17, *Lee* 2014-UNAT-481, para. 34, *Fedorchenko* 2015-UNAT-499, para. 29, and *Buff* 2016-UNAT-639, para. 21. Under *Jafar Hilmi Wakid* 2024-UNAT-1417, para. 62 quoting *Morsy* UNDT/2009/036, para. 50, “[t]o be exceptional, a circumstance or reason need not be unique or unprecedented or very rare, but it cannot be one which is regular or routinely or normally encountered”. The Applicant’s motion “lists very typical circumstances normally encountered by an applicant contesting separation for misconduct”.

10. The Respondent further submits that the Applicant’s reliance on *AAE* is “misplaced”. In *AAE*, the Appeals Tribunal “acknowledged that ‘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’”’. Also, “the conduct in *AAE* involved sexual assault or rape, which was taken into account in [the Appeals Tribunal’s] considerations of exceptional situations”.

11. The Tribunal notes that the Appeals Tribunal in its recent judgment in *Monasebian* 2024-UNAT-1476 recognized that “there have been increasing calls for greater privacy protections for individuals and parties in judgments in many jurisdictions, including in [the Dispute and Appeals Tribunals], given increased access to judgments online and that requests for anonymity must be balanced against the interests of transparency and accountability. Whereas the Appeals Tribunal have “previously found that personal embarrassment and discomfort are not sufficient grounds for redaction, with redaction only to occur in the most sensitive of cases”, it held in *Monasebian* that “[w]hat is required is that an individual put up sufficient material to show that there is a need for anonymization which justifies a departure from the ordinary rule” (references to footnotes omitted). (See para. 47).

12. In *Monasebian*, the Appeals Tribunal further held that a “decision to anonymize entails balancing competing factors” such as: (a) “the nature and extent of the misconduct”; (b) “the position and employment record of the staff member”; (c) “the impact of the decision on the staff member”; (d) “the impact of such decision on the complainants”; (e) “the impact of the decision on transparency”, (f) “general deterrence”, and (g) “future and past conduct, both of the staff member and others”. (See para. 47).

13. Considering the Applicant’s special circumstances, in particular his undisputed difficulties in gaining new employment subsequent to the contested decision and resultant economic challenges, the Tribunal will grant the Applicant’s motion for anonymity in accordance with *Monasebian*.

Additional written documentation

14. In the Applicant's 27 June 2024 submission, he requests the productions of (a) "[t]he special review/ audit report carried out in March 2020 by [the Office of Internal Oversight Services]/Audit", and (b) "[t]he Second (Special Review 2)". The Respondent submits in his 27 June 2024 submission that he has "no additional evidence to adduce to the case file" and that "[t]he testimonial evidence on the record was given under oath and captured in audio-recordings which are now part of the case record".

15. To resolve any potential disagreement, the Tribunal will call the parties to a Case Management Discussion ("CMD") to discuss the Applicant's disclosure requests.

Oral evidence (witnesses)

16. In the Applicant's 27 June 2024 submission, he proposes himself and MR to provide oral evidence as witnesses at a hearing. The Respondent submits that no hearing is necessary with reference to art. 9.4 of the Statute of the Dispute Tribunal and that he will await the Tribunal's further instructions before proposing any witnesses in case the Tribunal should, nevertheless, decide to hear witnesses.

17. At the CMD, the parties shall also discuss the possibility of holding a hearing, including date(s), and potential witnesses to be called. Prior to the CMD, the Respondent is therefore to present the witnesses who he may wish to call and state the disputed facts that the proposed witnesses are to corroborate and/or refute, including by specific reference to the consolidated list of disputed facts.

18. In light of the above,

IT IS ORDERED THAT:

19. The Applicant's motion for anonymity is granted.

20. By **4:00 p.m. on Wednesday, 11 December 2024**, the Respondent is to present the list of witnesses who he would like to call in case a hearing is to be held

and state the disputed facts that his witnesses are to corroborate and/or refute, including by specific reference to the consolidated list of disputed facts.

21. At **10:00 a.m. on Friday, 13 December 2024**, the parties are to attend a CMD to discuss (a) the Applicant's disclosure requests and (b) the possibility of calling a hearing, including possible witnesses and date(s). The CMD will be held virtually via MS Teams, and the Registry will provide the parties with the relevant link.

(Signed)

Judge Francis Belle

Dated this 4th day of December 2024

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

(Signed)

Isaac Endeley, Registrar, New York