



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/042
Order No.: 023 (NY/2022)
Date: 3 March 2022
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

George Irving

Counsel for Respondent:

Jonathan Croft, ALD/OHR, UN Secretariat
Lucienne Pierre, ALD/OHR, UN Secretariat

Introduction

1. On 24 September 2021, the Applicant filed an application in which she contests the decision to impose on her a disciplinary sanction of separation from service, with compensation in lieu of notice, and with termination indemnity. Together with her application, the Applicant filed a motion to be granted anonymity in the case.

2. On 28 October 2021, the Respondent duly filed the reply in which he submits that the application is without merit.

Consideration

Applicant's motion for anonymity

3. The Applicant requests anonymity in these proceedings “in light of the sensitive medical information pertinent to the case”.

4. The Respondent opposes the Applicant's motion for anonymity noting that the Appeals Tribunal has held that motions by applicants for anonymity or confidentiality are not entertained in the majority of cases. The Respondent states that the Applicant has identified no special circumstances which would warrant anonymization of this matter, given that the Applicant admits the conduct at issue.

5. The Tribunal notes that transparency and accountability are overarching principles of the United Nations and indeed their application promotes the reputation of the Organization. Any deviation from these principles can only be granted on an exceptional basis in light of compelling grounds. The Appeals Tribunal has affirmed that “the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability, and

personal embarrassment and discomfort are not sufficient grounds to grant confidentiality.” (see *Buff* 2016-UNAT-639).

6. In this case, the Tribunal considers that as the matter concerns the Applicant’s conduct during a recruitment process, there are no compelling grounds to grant the Applicant’s request for anonymity. Should there be any sensitive medical information pertinent to the case, the information can be appropriately redacted or kept confidential.

Case management

Agreed and disputed facts

7. The Applicant submits that the disciplinary decision against the Applicant was unlawful because (a) the facts on which the sanction is based have not been established; (b) the established facts do not qualify as misconduct under the Staff Regulations and Rules; (c) the sanction is not proportionate to the offence; and (d) due process was not respected throughout the process.

8. When studying the parties’ submissions on facts, it is, however, not clear to the Tribunal on what facts they actually agree and disagree. In this regard, the Appeals Tribunal has held that the Dispute Tribunal is not to make its own factual findings if the parties have agreed on certain facts (see *Ogorodnikov* 2015-UNAT-549). The Tribunal also notes that the very purpose of producing evidence—written or oral—is to substantiate the specific relevant facts on which the parties disagree. Accordingly, there is, in essence, only a need for evidence if a fact is relevant and disputed (in line herewith, see *Abdellaoui* 2019-UNAT-929, and *El-Awar* 2019-UNAT-931).

9. The Tribunal will therefore order the parties to produce a consolidated list of agreed and disagreed facts to be able to understand the factual issues at stake.

10. In light of the above,

IT IS ORDERED THAT:

11. The Applicant's motion for anonymity is denied;
12. By **4:00 p.m. on Monday, 21 March 2022**, the parties are to file a jointly-signed statement providing, under separate headings, the following information:
 - a. A consolidated list of the agreed facts. In chronological order, this list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning;
 - b. A consolidated list of the disputed facts. In chronological order, the list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning. If any documentary and/or oral evidence is relied upon to support a disputed fact, clear reference is to be made to the appropriate annex in the application or reply, as applicable. At the end of the disputed paragraph in square brackets, the party contesting the disputed fact shall set out the reason(s);
13. By **4:00 p.m. on Monday, 28 March 2022**, each party is to submit whether they request to adduce any additional evidence, and if so, state:
 - a. What additional documentation they request to be disclosed, also indicating what fact(s) this is intended to substantiate; and/or
 - b. The identity of the witness(es), who the party wishes to call, and what disputed fact(s) each of these witnesses are to give testimony about, also setting out the proposed witness's testimony in writing. This written witness statement may also be adopted as the examination-in-chief at a potential hearing if the party leading the witness should wish to do so.

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

(Signed)

Judge Joelle Adda

Dated this 3rd day of March 2022