



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/086
Order No.: 204 (NBI/2021)
Date: 23 September 2021
Original: English

Before: Judge Eleanor Donaldson-Honeywell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

OKWAKOL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for the Applicant:

Roland Adjovi, *Etudes Vihodé*

Counsel for the Respondent:

Jacob van de Velden, AAS/ALD/OHR, UN Secretariat

Introduction and Procedural History

1. The Applicant is the Chief Resident Auditor, with the Office of Internal Oversight Services (“OIOS”) at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), in Goma. He serves on a fixed-term appointment at the P-5 level.

2. On 21 October 2020, the Applicant filed an application on the merits challenging the Respondent’s decisions to place him on administrative leave without pay (“ALWOP”). Firstly, he challenges the Respondent’s 13 January 2020 decision to place him on ALWOP for not making a report on alleged sexual misconduct and meeting with others to negotiate a settlement with the alleged victim. Secondly, he challenges the 11 May 2020 decision to retroactively extend the ALWOP from 13 April 2020 for a further three months.

3. Subsequently, from 16 July 2021 the Applicant’s ALWOP was converted to administrative leave with pay. His position in the instant application is that the prior decisions to place him on administrative leave without pay were unlawful.

Facts

4. On 10 December 2019, the Applicant received an email from the OIOS informing him that he was the subject of an investigation regarding allegations that he did not report an allegation of sexual abuse and that he attempted to interfere with the investigation by seeking to negotiate payment to the alleged victim for her to withdraw her rape complaint. The Applicant was told that he was being investigated for “assisting in, or contributing to, the commission of a misconduct”.

5. On 13 January 2020, the Under-Secretary General for Management, Strategy, Policy and Compliance (“USG-MSPC”), placed the Applicant on ALWOP for a period

of three months pending completion of the investigation and any disciplinary process against the Applicant.

6. On 13 May 2020, the Applicant was notified that the USG-MSPC had decided to extend his ALWOP for an additional period of three months retroactively from 16 April 2020, or until the completion of the disciplinary process, whichever comes earlier.

7. On 22 June 2020, the Assistant Secretary-General for Human Resources (“ASG/OHR”) rescinded the decision to place the Applicant on ALWOP on a retroactive basis, that is, regarding the period from 16 April to 12 May 2020. The ASG/OHR advised MONUSCO to pay the Applicant his salary. On 23 June 2020, MONUSCO confirmed that the Applicant would be paid his salary from 16 April 2020 to 13 May 2020.

8. On 25 June 2020, the Applicant submitted a request for management evaluation of the 13 May ALWOP decision. On 29 June 2020, the Applicant filed an application with the Dispute Tribunal seeking suspension of the implementation of the 13 May ALWOP decision, pending management evaluation.

9. On 6 July 2020, the Dispute Tribunal issued Order No. 127 (NBI/2020) dismissing the Applicant’s 29 June 2020 application for suspension of action.

10. On 10 July 2020, the USG/OIOS decided to place the Applicant on administrative leave with pay (“ALWP”) from 16 July 2020 under staff rule 10.4 and section 11.3 of ST/AI/2017/1 (Unsatisfactory Conduct, Investigations and the Disciplinary Process) for an initial period of three months, pending a review by the

Department of Management Strategy, Policy and Compliance (“DMSPC”) of the OIOS investigation report into the Applicant’s conduct.

11. On 13 July 2020, the Applicant sought management evaluation of the decision to place him on leave with pay. He failed in a subsequent application to the Tribunal for suspension of action of the leave with pay decision as it was dismissed by Order No.141 (NBI/2020). At paragraph 13 of the Order, it was noted that the Respondent informed the Tribunal that the OIOS investigation report into the Applicant’s conduct had not been referred to the ASG/OHR for consideration of whether a disciplinary process should be pursued under section 7.2 of ST/AI/2017/1.

12. The application was docketed to the instant Judge on 1 September 2021 for determination on the merits. The Tribunal held a case management discussion (“CMD”) with the parties on 15 September 2021.

13. The Tribunal began by enquiring into whether the parties are amenable to *inter partes* settlement discussions. The Respondent informed the Tribunal that a sanction decision on the conduct of the Applicant is imminent, so that he was not in a position to engage in settlement discussions.

14. The Tribunal informed the parties that this matter will be adjudicated on the basis of their written submissions.

Order

15. Having heard the parties on their respective positions, the Tribunal made the following ORDERS:

- a) The Respondent **to disclose to the Applicant the tape/transcript of the interview and meetings which were discussed at the CMD by 20 September 2021.**

- b) Should the parties agree that these were admissible, a transcript was to be disclosed to the Tribunal by **27 September 2021**.
- c) Should the parties disagree, their submissions on admissibility are due on **27 September 2021**.
- d) The Tribunal will then rule on admissibility by **30 September 2021**.
- e) A schedule was also set for the filing of closing submissions as follows:
 - i. **13 October 2021** - Applicant to file;
 - ii. **20 October 2021** - Respondent to file;
 - iii. **27 October 2021** - Applicant's response to the Respondent's closing submissions.

(Signed)

Judge Eleanor Donaldson Honeywell

Dated this 23rd day of September 2021

Entered in the Register on this 23rd day of September 2021

(Signed)

Abena Kwakye-Berko, Registrar, UNDT, Nairobi