



Before: Judge Francis Belle

Registry: New York

Registrar: Pallavi Sekhri, Officer-in-Charge

DRAGNEA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Michael Horn, Archer & Greiner, PC

Counsel for Respondent:

Yehuda Goor, AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 17 November 2021, the Applicant, a staff member of the United Nations Department for Safety and Security (“UNDSS”), contests:
 - a. The issuance to her of a notice of reprimand (“Notice”);
 - b. The placement of said notice in her file;
 - c. Her placement under a performance improvement plan (“PIP”); and
 - d. The outcome of the Management Evaluation Unit’s (“MEU”) review of the above decisions.
2. In her application, the Applicant requested, *inter alia*,
 - a. an order for production of all evidence including a copy of all reports, CCTV recordings and telephone recordings in connection with the 29 March 2021 incident supporting the issuance of the Notice; and
 - b. an oral hearing.
3. On 26 November 2021, the Respondent filed a motion requesting the Tribunal to determine receivability as a preliminary matter and suspend the deadline for his reply.
4. By email dated 29 November 2021, the Tribunal granted the Respondent’s request to suspend the deadline for his reply.
5. On 2 December 2021 and 10 December 2021, the Applicant filed her opposition and supplemental opposition to the Respondent’s motion to have receivability determined as a preliminary matter.
6. On 1 July 2022, the present case was assigned to the undersigned Judge.
7. By Order No. 61 (NY/2022) of 14 July 2022, the Tribunal granted in part the Respondent’s motion to have receivability determined as a preliminary matter and instructed the Respondent to file his reply to the application which he did on 15 August 2022.

8. In his reply, the Respondent filed an annex on “Incident Report” from the Fellow Security Officer on an *ex parte* basis.

9. By Order No. 76 (NY/2022) of 17 August 2022, the Tribunal instructed the Respondent to file the following materials on an *ex parte* basis:

a. The investigation report (including its annexes) into the incident of 29 March 2021; and

b. The CCTV recordings of the incident of 29 March 2021.

10. On 18 August 2022, the Respondent filed the above-mentioned materials on an *ex parte* basis.

Consideration

Ex parte filings

11. The Tribunal recalls that art. 18.4 of its Rules of Procedure provides that it “may, at the request of either party, impose measures to preserve the confidentiality of evidence, where warranted by security interests or other exceptional circumstances”. This provision requires that the evidence submitted be confidential in nature.

12. Regarding the right to confidentiality of evidence, the Appeals Tribunal ruled in *Bertucci* 2011-UNAT-121 (see paras. 46 to 48) as follows:

46. [...] this Tribunal agrees with the International Labour Organization Administrative Tribunal (ILOAT) that “it is for the party making [the] claim [of confidentiality] to establish the grounds upon which the claim is based” (Judgment No. 2315 (2004), para. 28) and that “the staff member must, as a general rule, have access to all evidence on which the authority bases (or intends to base) its decision against him. Under normal circumstances, such evidence cannot be withheld on the grounds of confidentiality” (Judgment No. 2229 (2003), para. 3 (b)).

47. The documents relating to the process that led to the contested administrative decision are part of the case file. They must therefore, in principle, come under the Tribunal’s control, unless they are covered by a right to confidentiality by virtue of the internal law of the United Nations.

48. The exceptions to this principle, if they exist, must be interpreted strictly. In its resolution 63/253, the General Assembly chose to establish a new administration of justice system that was “transparent” and “consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike”. This is an overriding objective that prevails over claims of confidentiality that are not sufficiently specific and justified.

13. Having carefully reviewed the *ex parte* filings, the Tribunal notes that, as claimed by the Respondent, the CCTV recordings contain highly confidential security information. Accordingly, the Tribunal finds it appropriate not to disclose the CCTV recordings and its excerpts annexed to the investigation report.

14. Regarding statements provided by third parties other than the Applicant and the Fellow Security Officer who was involved in the altercation at issue, the Tribunal considers that the investigation report has reflected relevant statements. Moreover, it is within the investigation panel’s discretion to assess the relevance of the evidence and determine its weight. Considering that providing third parties’ investigation records to the Applicant in a non-disciplinary matter may cause prejudice to them, negatively affect existing working relationships, and jeopardize future investigations, the Tribunal finds it appropriate not to disclose these documents to the Applicant.

15. However, for the sake of fairness and transparency, the Tribunal finds it appropriate to disclose the investigation report and its annexes except the excerpts of CCTV recordings and third parties’ statements. Considering that the aforementioned documents may contain sensitive information, the Tribunal will instruct the Respondent to redact them and to refile them on an under-seal basis.

16. Upon receipt of the Respondent’s filings, the Applicant will be given an opportunity to submit a rejoinder.

17. In accordance with the principle of equality of arms, the Tribunal also gives the Respondent an equal opportunity to respond to the Applicant’s rejoinder.

The Applicant's request for an oral hearing

18. In relation to the Applicant's request for an oral hearing, the Tribunal recalls that arts. 16.1 and 16.2 of its Rules of Procedure provides that "[t]he judge hearing a case may hold oral hearings" and "[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure."

19. In this regard, the Tribunal notes that the present case does not concern an administrative decision imposing a disciplinary measure and that the Tribunal has discretionary authority as to whether to hold an oral hearing (*see, e.g., He* 2016-UNAT-686, para. 46; *Ross* 2020-UNAT-1000, para. 55).

20. Having reviewed the case file, the Tribunal is of the view that the case can be determined without holding a hearing. Accordingly, the Tribunal will reject the Applicant's request for an oral hearing.

Conclusion

21. In view of the foregoing, it is ORDERED THAT:

- a. By **Wednesday, 24 August 2022 (COB New York time)**, the Respondent shall redact the investigation report and its annexes and refile them on an under-seal basis, excepting the excerpts of CCTV recordings and third parties' statements;
- b. The Applicant shall not disclose, use, show, convey, disseminate, copy, reproduce or in any way communicate the disclosed documents—except for the filing of an appeal with the United Nations Appeals Tribunal—without prior authorization by this Tribunal;
- c. The CCTV recordings and its excerpts annexed to the investigation report, as well as third parties' statements shall remain *ex parte*;
- d. The Applicant shall file her rejoinder by **Thursday, 1 September 2022**;
and

- e. The Respondent may file his response to the Applicant's rejoinder by **Friday, 9 September 2022**; and
- f. The Applicant's request for an oral hearing is rejected.

(Signed)

Judge Francis Belle

Dated this 23rd day of August 2022