



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2012/065
Judgment No.: UNDT/2012/120
Date: 1 August 2012
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Duke Danquah, OSLA

Counsel for Respondent:

Not applicable

Introduction

1. The Applicant filed an *ex parte* motion seeking the Dispute Tribunal to direct a former United Nations consultant (“Complainant”), who made allegations of sexual harassment against the Applicant, to “cease planting news items in outside publications” about him. The Applicant has been disciplined based on the allegations made by the Complainant and is apparently preparing an appeal against that decision.

Applicant’s submissions

2. In his motion filed on 11 July 2012, the Applicant states that the Complainant has been making public allegations against him through news outlets since October 2011. The most recent of these news reports regarding the Applicant were published in June 2012. The Applicant contends that these allegations have been made in breach of the confidentiality requirements under sec. 5.2 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) and contrary to the caution issued by the investigation panel that those involved in the investigation should treat it with discretion and confidentiality. The Applicant submits that the confidentiality requirement continues to apply to the Complainant following the cessation of her contractual relationship with the Organization.

3. The Applicant submits that the news reports instigated by the Complainant contain false information and have caused him great consternation and distress and tarnished his otherwise unblemished reputation.

4. The Applicant has thus filed the present *ex parte* motion, seeking the Tribunal to (emphasis in original)

employ its plenary powers under [a]rt. 19 of the [Tribunal’s] Rules of Procedure to fashion a remedy in the form of a “cease and desist” order, or through a directive order to the Administration, to request [the Complainant] to cease planting news items in outside publications

about the present case, which is *sub judice*, on pain of facing a *contempt of court* citation or an appropriate legal measure.

5. The Applicant submits that, although the Complainant is a former consultant who is no longer affiliated with the Organization, his motion falls within the jurisdiction of the Dispute Tribunal. The Applicant explains that the Complainant “is seeking judicial action from the UN Administration and ultimately from the UN internal justice system” and thus “has voluntary placed herself under the authority and administrative power of the UN Organization so that she is the subject to the jurisdiction of the Tribunal and its orders”. (The Tribunal notes, however, that the Complainant has already sought action from the Administration by making the allegations against the Applicant, and that she has not and possibly cannot, seek any redress from the internal justice system due to the jurisdictional limitations imposed by the Tribunal’s Statute.)

Consideration

6. Article 2.1 of the Dispute Tribunal’s Statute states:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

(b) To appeal an administrative decision imposing a disciplinary measure;

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

7. Under the first part of art. 2.1 of the Statute, the Tribunal is competent to hear and pass judgment on an application filed, firstly, “against the Secretary-General as the Chief Administrative Officer” and, secondly, against “an administrative decision

that is alleged to be in non-compliance with the terms of appointment or the contract of employment”.

8. The present motion is fraught with several difficulties and is essentially not properly before the Tribunal for the following reasons.

9. Firstly, the Applicant requests a remedy restraining the Complainant, either by herself or through the Organization, from disseminating information about “the present case, which is *sub judice*, on pain of facing a *contempt of court* citation or an appropriate legal measure” (emphasis in original).

10. The *sub judice* rule restricts the publication of prejudicial information relating to proceedings that are current before a court or pending judicial consideration and determination. Publication of prejudicial information about a person will not attract liability for contempt if proceedings involving that person are not yet pending (although a publication in this situation may attract liability on other legal grounds, for example, a defamation action in the domestic courts). Publication of material on matters that are *sub judice* may result in contempt of court, punishable in many jurisdictions by a monetary fine or imprisonment.

11. Therefore, any citation for alleged contempt of court through the publication of alleged *sub judice* material must be premised on an existing matter before a court. In this instance, the Applicant has not filed any application challenging the finding of misconduct on his part or regarding the imposition of disciplinary measures. There are no legal proceedings pending before the Tribunal and there is no substantive case under consideration by a judge. Thus, contrary to what the Applicant states, there are no matters that are *sub judice*, the publication of which may give rise to contempt of court. This motion is therefore misguided and is not properly before the Tribunal and stands to be dismissed.

12. Secondly, the Applicant has failed to demonstrate that, at this time, there has been any administrative decision made by the Secretary-General, whether by action or inaction, in relation to the Complainant’s alleged conduct. The Organization has

not even been given an opportunity to attempt to redress the situation, if at all it has the power to do so, and thus there has been no administrative decision capable of review by the Tribunal with regard to this motion, as distinct from the disciplinary case that has not even been filed. The Applicant has not requested that the Respondent prevent any further harm to the Applicant by way of a public statement or by restraining the Complainant. This is, of course, if the Secretary-General even has the power to restrain the Complainant following the cessation of her consultancy contract and provided that the information she is allegedly disclosing to the press is proprietary information capable of protection as confidential material under the terms of her consultancy agreement that expired in December 2011.

13. Thirdly, if the Applicant were to make any separate appeals against actions or omissions of the Organization in relation to the Complainant's conduct, the Applicant would be appealing not the imposition of a disciplinary measure but a separate administrative decision. Thus, he would be required to first go through the management evaluation process before approaching the Tribunal.

14. Fourthly, if, by filing this motion, the Applicant is attempting to file a claim directly against the Complainant, it is doubtful that the Organization could be a party to this dispute. The Applicant's direct claims against the Complainant's reports to the press would constitute a private dispute between two parties—a current staff member and a former consultant. The Tribunal is not empowered to entertain such claims, and the Applicant's remedy may well lie in another forum, including domestic courts.

Ancillary matters

Respondent's reply

15. The present motion was filed *ex parte*, i.e., without service on the opposing party, for which no reasons were proffered by the Applicant. Absent any reason or justification for an *ex parte* motion, the Tribunal would ordinarily order that

the motion be brought on notice, and that service be effected on the other side. However, in view of the particular nature of the present motion and the findings herein, the Tribunal, in exercise of its authority under art. 19 of the Rules of Procedure found no reason for the matter to be filed on notice, nor did the Tribunal consider it necessary to seek the Secretary-General's reply to the motion prior to disposing of it.

Redaction of the Applicant's name

16. The Applicant seeks to avoid the publication of his name in the present ruling for “professional, personal, and sensitive reasons”, and in order to avoid “frustrat[ing] and prejudic[ing] any judicial action that the Tribunal may contemplate”.

17. Motions for confidentiality and redaction must be decided on a case-by-case basis as the granting of such motions without sufficient reasons has the potential to not only invite requests of this kind in every matter, but also to negate a key element of the new system of administration of justice—its transparency. It is essentially a question of weighing the public interest against the private interest of the applicant (*Yisma Order No. 63 (NY/2011)*).

18. The present judgment does not deal with any substantive matters pertaining to the disciplinary action taken against the Applicant. In view of the preliminary nature of the issues raised in this judgment, and in light of the peculiar facts herein, and seeing that there is patently no valid application before me, I see no justifiable reason to disclose any names in this judgment, including that of the Applicant.

19. Should the Applicant file an application on the merits under art. 2.1 of the Tribunal's Statute contesting substantive issues, he will be required to substantiate any renewed requests for the redaction of his name, which will then be considered by the Tribunal in due course.

Conclusion

20. There being no pending matter under art. 2.1 of the Dispute Tribunal's Statute, and in view of the statutory limitations on its jurisdiction, the present motion is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 1st day of August 2012

Entered in the Register on this 1st day of August 2012

(Signed)

Hafida Lahiouel, Registrar, New York