UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2015/035
UNDT/NY/2015/062
Order No.: 225 (NY/2016)
Date: 28 September 2016
Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

AUDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant has two separate but related applications registered under Case No. UNDT/NY/2015/035 and Case No. UNDT/NY/2015/062. By Order No. 213 (NY/2016) dated 8 September 2016, the two cases were consolidated into a combined proceeding.

Case management

2. On 27 September 2016, the Tribunal held a case management discussion ("CMD") in relation to these two cases. The Applicant and Counsel for the Respondent attended the CMD in person.

Report of the Second Fact-Finding Panel

3. The Applicant confirmed that he has not received a copy of the final report of the Second Fact-Finding Panel. By letter dated 8 September 2015, the Applicant was provided with a summary of the report. The Respondent stated at the CMD that, pursuant to sec. 5.18 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), the Applicant was not entitled to receive a full copy of the report.

4. Judicial proceedings are separate and distinct from the proceedings covered in sec. 5.18 of ST/SGB/2008/5. In order to enable the Applicant to fully present his case, the Tribunal considers it appropriate to direct the Respondent to provide to the Applicant a full unredacted copy of the report of the Second Fact-Finding Panel along with its annexes, also in an unredacted form.

5. The Applicant will be required to treat the report and its annexes with utmost confidentiality and to use the report and the annexes only for the purposes of the present proceedings. He shall not disclose the report or any of the annexes in any form or to any persons outside of the judicial proceedings. Any breach of this Order will be treated as contempt of court.

Hearing

6. In their joint submission dated 14 September 2016, the parties indicted that the only date on which both parties were available in the first half of October was Thursday, 6 October 2016. Accordingly, the hearing will take place on that day. The parties shall ensure the attendance of their witnesses.

Proposed witnesses

7. The Tribunal noted at the CMD that the Applicant proposed to call some witnesses to provide oral evidence on the settlement-related discussions that took place between him and the Administration, including the Management Evaluation Unit. Such discussions are not a matter for adjudication before the Tribunal. They have no probative value in relation to the substantive issues before the Tribunal as the purpose of any settlement is not to establish issues of liability but to find an amicable resolution to the dispute. Accordingly, the Tribunal will not allow any evidence pertaining to the settlement discussions and/or settlement offers that may have been made in relation to the Applicant's claims.

8. Further, the parties are reminded that in these types of cases the Dispute Tribunal is not expected to conduct a *de novo* review and assume the functions of an investigative body (see *Messinger* 2011-UNAT-123,

stating that "It is clear that the UNDT is not clothed with jurisdiction to investigate harassment complaints under Article 2 of the UNDT Statute").

9. In view of the above, the parties will be directed to file a joint submission with an agreed order of witnesses, bearing in mind that this case is set for a one-day hearing on 6 October 2016. In order to ensure that the hearing is carried out in the most efficient manner, the parties will also file, prior to the hearing, a signed statement of evidence from each witness with the witness's declaration as to its veracity. At the hearing, the witnesses will be invited to adopt their statements under oath and will then be crossed-examined by the opposing party on their evidence.

10. In view of the above, pursuant to art. 19 of the Dispute Tribunal's Rules of Procedure and in the interests of a fair and expeditious disposal of the case,

IT IS ORDERED THAT:

11. At **9:30 a.m.** on **Thursday, 6 October 2016**, the parties shall attend the hearing in Cases No. UNDT/NY/2015/035 and No. UNDT/NY/2015/062.

12. On or before **Thursday, 29 September 2016**, the Respondent shall disclose to the Applicant (by filing through the eFiling portal) an unredacted full copy of the report of the Second Fact-Finding Panel with the annexes, also in unredacted form.

13. The Applicant shall treat the report and its annexes with the utmost confidentiality and use the report and the annexes only for the purposes of the present proceedings. He shall not disclose the report or any of the

annexes in any form or to any persons outside of the judicial proceedings. Any breach of this Order will be treated as contempt of court.

14. On or before **Tuesday, 4 October 2016**, the parties shall file a joint submission with: (i) an agreed order of witnesses; (ii) a confirmation as to whether each witness will appear in person or via telephone or other means (in which case their contact information shall be provided); and (iii) a signed statement of evidence from each witness with the witness's declaration as to its veracity.

15. In the event either party intends to refer their witnesses to any documents, that party shall prepare a *paginated* bundle of documents it intends to refer to at the hearing. This bundle shall be filed through the eFiling portal at least one day prior to the hearing.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 28th day of September 2016