



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/008
Order No.: 8 (NY/2018)
Date: 19 January 2018
Original: English

Before: Judge Alexander W. Hunter, Jr.
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

NADASAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Ms. Miryoung An, ALS/OHRM, UN Secretariat
Ms. Susan Maddox, ALS/OHRM, UN Secretariat

Introduction

1. On 18 January 2017, the Applicant, a former Air Operations Assistant with the United Nations Stabilization Mission in Haiti (“MINUSTAH”), filed an application contesting the imposition of a disciplinary sanction consisting of separation from service with compensation in lieu of notice and with termination indemnity, under staff rule 10.2(a)(viii).

2. The sanction was based on a finding that the Applicant had sexually harassed Ms. X (name redacted), a staff member at the French Embassy in Liberia, and thereafter a staff member of the United Nations Children’s Fund (“UNICEF”) between the period January 2012 and October 2015.

3. On the same date (18 January 2017), the Registry acknowledged receipt of the application and, pursuant to art. 8.4 of the Rules of Procedure, transmitted it to the Respondent, instructing him to file a reply by 20 February 2017 in accordance with art. 10 of the Rules of Procedure.

4. On 20 February 2017, the Respondent filed a reply in which he contends that the application should be dismissed in its entirety. The Respondent submits, *inter alia*, that the grounds of the Applicant’s challenge to the disciplinary sanction are unclear in the application, and that the application itself clearly affirms the facts central to the case, namely that: (a) the Applicant knew that Ms. X did not want his advances; and (b) he continued his approaches, knowing that they would offend her. The Respondent further submits that the disciplinary measure imposed on the Applicant was proportionate and appropriate.

5. On 12 March 2017, the Applicant, without the leave of the Tribunal, filed two documents consisting of emails from the Applicant to unidentified staff members.

6. The present case was initially assigned to Judge Ebrahim-Carstens and it was reassigned to Judge Alexander W. Hunter, Jr. on 8 January 2018.

Case management

7. Article 16.2 of the Tribunal's Rules of Procedure states that "[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure."

8. However, following review of the parties' submissions the Tribunal is of the view that the Applicant does not dispute the material facts in this case, including Ms. X's text message to him in July 2012 stating that she had a boyfriend and that the Applicant should stop contacting her, and the subsequent 140 messages sent by the Applicant to Ms. X on Facebook, with, in the Applicant's own words, "potentially sexual connotations." Additionally, the Applicant notes at Section VII para. (7) and Section VIII para. 6 of his application that he took various measures in "revenge" and "retaliation" to Ms. X.

9. The Applicant appears to dispute whether the established facts legally amount to misconduct and he raises procedural errors with the investigation process, namely that he was deprived of access to his work emails in the middle of the disciplinary process and did not receive or answer the questions sent by the Office of Human Resources Management ("OHRM") on 26 July 2016.

10. It would appear that there is no need to hear any oral evidence as there is no dispute regarding the material facts that formed the basis for the finding of misconduct. Therefore, the parties need to state their views as to whether a hearing should be held in this case or whether the matter should be decided on the papers before the Tribunal. In the event the parties agree that this matter may be dealt with on the papers, they will be provided with an opportunity to file closing submissions, following which the Tribunal will render its judgment on the papers before it.

IT IS ORDERED THAT:

11. By **5:00 p.m., Wednesday, 24 January 2018**, the Applicant shall file a submission indicating the relevance of the documents filed by him on 12 March 2017, including details of the recipients to his emails;
12. By **5:00 p.m., Monday, 29 January 2018**, the Respondent shall file a response to the Applicant's submission dated 24 January 2018;
13. On or before **Thursday, 1 February 2018**, the parties shall confer to discuss whether a hearing should be held in this case;
14. By **5:00 p.m., Monday, 12 February 2018**, the parties shall file one of the following:
 - a. If the parties agree that this matter should be decided on the papers, they shall file their respective closing submissions; or
 - b. If either or both parties request a hearing, they shall file a joint submission listing the witnesses they intend to call, summarizing the oral evidence they intend to introduce, and proposing hearing date (or dates) in the period from 12 February to 2 March 2018.
15. Thereafter, the Tribunal will issue further orders as it deems appropriate.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 19th day of January 2018