



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

CARUSO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Daniel Trup, OSLA

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

Introduction

1. On 9 January 2017, the Applicant, a Director at the D-2 level, step 3, with the Department of Political Affairs (“DPA”) in the United Nations Secretariat, contested the decision not to renew her fixed-term appointment. As relief, the Applicant seeks that the impugned decision be rescinded or, in the alternative, that she receive compensation of 24 months of net base salary.

2. On the same date (9 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 8 February 2017 in accordance with art. 10 of the Rules of Procedure.

3. On 8 February 2017, the Respondent filed his reply in which he contends that the application is without merit as the decision not to renew the Applicant’s appointment was lawful and fully complied with the provisions of ST/AI/2010/5 (Performance Management and Development System).

4. On 19 January 2018, the Dispute Tribunal ordered the parties, in Order No. 9 (NY/2018), to file a joint submission by 26 January 2018, in which they should identify, *inter alia*:

- a. A consolidated list of agreed facts;
- b. A list of agreed legal issues;
- c. A list of document(s) the parties sought disclosure of and establishing whether the parties were of the view that this case could be determined on the papers or a hearing on the merits was required; and
- d. In case a hearing on the merits is requested, *inter alia*, reasons why a hearing was required, produce a bundle of the evidence to be relied upon and provide a list of witnesses, their relevance and a proposed date for the hearing in the period from 5 to 26 February 2018 and availability of each witness.

5. On 26 January 2018, the parties filed a joint submission in which they provided the requested information. Further, the Applicant requested to have a hearing on the merits of the case, with a proposed date of 13 February 2018, with a possibility for one witness to be heard on 14 February 2018, while the Respondent submitted that such hearing would not be necessary.

6. On 2 February 2018, the Applicant filed a request seeking to withdraw Ms. Ghilani as a proposed witness to be replaced by Ms. Paola Serrano Emerson, Chief of the Middle East and North Africa Section, Office for the Coordination of Humanitarian Affairs (“OCHA”).

7. On 5 February, by Order No. 28 (NY/2018), the Tribunal ordered that:

... **By 5:00 p.m., Monday, 12 February 2018;**

a. The parties shall file a joint submission in which they will select an alternative proposed date or dates (consecutive, back-to-back dates) for the hearing on the merits, as the Tribunal is holding another hearing on 13 February 2018;

b. The Applicant will state the proposed testimony to be proffered by a person external to the Department of Political Affairs where the Applicant served and why it is relevant to the subject United Nations internal performance improvement plan [“PIP”] processes under consideration;

c. The Applicant shall file a submission in which she will provide certain enumerated background information.

8. On 7 February 2018, the Respondent filed a request for leave to submit additional documents, said documents being appended to the request.

9. On 7 February 2018, the parties responded to Order No. 28 (NY/2018) by proposing that a hearing, if required, be scheduled for the afternoon of 13 February 2018 and 14 February 2018 with the Tribunal permitting Ms. Paola Serrano to give evidence during the morning of 14 February 2018. The Respondent recalls his position in para. 51 of the joint submission dated 26 January 2018 that a hearing is

not necessary and that the Tribunal may review the contested decision based on the papers before it.

10. On 8 February 2018 (incorrectly dated 12 February 2018), the Applicant responded to Order No. 28 (NY/2018) by providing additional background information and making the following offer of proof as to the relevancy of Ms. Paola Serrano's testimony:

Proposed Testimony of Ms Paola Serrano – The Applicant submits that the proposed testimony of Ms Serrano is relevant for the proceedings. Ms Serrano attended various meetings/working groups with the Applicant from June 2016 to December 2016 (the period of the Performance Improvement Plan). The meetings/working groups were related to the Middle East region and states that fell under the responsibility of the Applicant. Ms. Serrano would provide commentary on issues relating to the Applicant's communication and knowledge of the region that fell under her responsibility.

Consideration

11. The additional documents which were attached to the Respondent's request on 7 February 2018 will be received by the Tribunal.

12. This Tribunal is firmly of the opinion that the testimony of Ms. Serrano is not relevant in this case since she is a person external to the DPA where the Applicant served and was not considered during the subject United Nations PIP.

13. Similarly, considering the documentation on record, including the documents provided by the Respondent on 7 February 2018, the Tribunal does not find it necessary for the Applicant, Mr. Miroslav Jenča, Assistant Secretary-General for Political Affairs, or Mr. Jeffrey Feltman, the Under-Secretary-General for Political Affairs, to provide oral evidence.

14. As such, there being no material issues of fact that would require an evidentiary hearing, this Tribunal will decide this case on the papers that have been submitted.

IT IS ORDERED THAT:

15. The Applicant's request for a hearing is denied;
16. Before the Tribunal will proceed to decide the case on the papers before it, the parties are to file their closing submissions, if any, by **5:00 p.m. on Friday, 16 February 2018.**

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 9th day of February 2018