



Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR
CONFIDENTIALITY**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
ALD/OHR, UN Secretariat

Introduction

1. On 12 September 2019, the Applicant filed an application contesting the decision to impose on her a disciplinary sanction of loss of two steps in grade. The Applicant requested several confidentiality measures.

2. As directed by Judge Adda, the Registry emailed the Applicant and advised her to submit a motion for confidentiality setting out the specific confidentiality measures requested and providing justification.

3. On 30 September 2019, the Applicant filed a motion for confidentiality in which she requests that certain information be withheld from the public and that certain information and documents submitted in support of the application not be served on the Respondent. The Tribunal will address these requests in turn.

Considerations

Request for confidentiality with respect to the public

4. The Applicant requests that her name not be stated in the documents in these proceedings and that all documents pertaining to this case be filed confidentially, even after the completion of the proceedings.

5. The Applicant argues, *inter alia*, that the publicity of the proceedings would negatively impact her health. The medical documentation submitted indeed shows the Applicant's delicate health, likely caused by stress.

6. Article 11.6 of the Dispute Tribunal's Statute and art. 26 of its Rules of Procedure provide that the judgements of the Dispute Tribunal shall protect personal data and shall be available at the Registry of the Dispute Tribunal. The Appeals Tribunal has held in this regard that "the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and, indeed, accountability" (*Lee* 2014-UNAT-481). The Appeals

Tribunal's practice establishes that the principle of publicity can only be departed from where the applicant shows "greater need than any other litigant for confidentiality" (*Pirnea* 2014-UNAT-456) and that it is for the party making the claim of confidentiality to establish the grounds upon which the claim is based (*Bertucci* 2011-UNAT-121).

7. In the present case, the Tribunal is persuaded by the Applicant's contention that the publicity of the proceedings is likely to cause additional stress, thereby impacting her already delicate health condition. It therefore finds it reasonable to grant the motion for anonymity and confidentiality from the public on medical grounds.

Request for filing of documents and information ex parte from the Respondent

8. In support of her application, the Applicant submitted three types of documents which she requests be withheld from the Respondent: medical certificates and information related to the Applicant's health; documents pertaining to a criminal proceeding in the host State; and documents concerning the Applicant's professional achievements.

9. As a matter of principle, maintaining documents *ex parte* from the Respondent is contrary to the principle of adversarial proceedings and equality of arms. Therefore, the requesting party must show exigent reasons to justify this exceptional measure.

10. The Applicant submitted the documents in question to support her grounds of appeal against the contested administrative decision. The Applicant relies on the medical certificates to support her claim for damages; she relies on the documents pertaining to a criminal trial to support her claim that the disciplinary process was flawed; and she relies on the documents concerning her professional achievements to support her claim that she was imposed a harsher sanction than other staff members in similar circumstances.

11. The request for *ex parte* filing of documents must be denied because withholding this supporting material from the Respondent would undermine his ability to respond to the Applicant's case. All the documents in the case file will be served on the Respondent.

12. This notwithstanding, the Tribunal is aware that the documentation submitted is of a private nature. If the Applicant wishes to pursue these proceedings, the Tribunal will afford her the opportunity to withdraw from the case file any documents she does not wish to share with the Respondent. Any document that the Applicant decides to withdraw from the case file may not be relied upon by the Tribunal in its determination of the case.

13. Pursuant to art. 19 of the Dispute Tribunal's Rules of Procedure and for a fair disposal of the case,

IT IS ORDERED THAT:

14. The request for anonymity and confidentiality of the proceedings from the public is granted. The name of the Applicant will be replaced by the term "Applicant" in all submissions and judicial issuances throughout the proceedings. All documents pertaining to the present proceedings will be filed confidentially.

15. The request for the filing of documents *ex parte* from the Respondent is denied.

16. **By 4:00 p.m. on Friday, 18 October 2019**, the Applicant will inform the Tribunal of which documents she requests be removed from the case file;

17. **By 4:00 p.m. on Monday, 21 October 2019**, the application along with any document that the Applicant has not requested be removed from the case file, will be served on the Respondent.

(Signed)

Judge Joelle Adda

Dated this 11th day of October 2019