



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/015

Order No.: 050 (NY/2023)

Date: 5 July 2023

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

HAMAM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Setondji Roland Adjovi

Counsel for Respondent:

Miryoung An AS/ALD/OHR/UN Secretariat

Isavella Maria Vasilogeorgi, AS/ALD/OHR/UN Secretariat

Introduction

1. On 6 May 2022, the Applicant, a former staff member of the Office of Special Adviser on Africa (“OSAA”), filed an application contesting the decision to impose on him a disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.
2. The Respondent filed a reply on 3 June 2022 submitting that the contested decision was lawful.

Considerations

3. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal, the Tribunal may at any time issue an order or give any direction which appears to be appropriate for the fair and expeditious disposal of a case and to do justice to the parties.

On the motion for leave to exceed the page limits

4. The Tribunal notes the factual complexity of the case and grants the parties’ request to exceed the page limits for the application and reply respectively.

On the objection by the Respondent to admitting annex 7 of the Application

5. The Respondent objects to admitting annex 7 of the application, a 73-page document entitled “OSAA Investigations Analysis (PAG)” and its attachments at Annex 7(a), 7(b) and 7(c) on the grounds that the Applicant fails to identify who authored the document and in what capacity or on what basis he/she carried out the analysis and that the annex contains irrelevant information with no probative value. Upon the Tribunal’s review of annex 7, it is clear that the document was drafted, on request of the Applicant, by a former staff member. The Tribunal will not consider this document as evidence, but as a supplement to the Applicant’s argumentation in respect of matters relating to the Applicant’s request for protection

against retaliation, and on this basis annex 7 may remain in the case file.

On the authority of the author of the allegation of misconduct

6. In his application, the Applicant states that “[t]he 19 July 2021 charge letter was authored by [the Director of Administrative Law Division] without any delegation of authority to do so and as a result his due process rights were violated.” The Applicant raises a question as to the delegation of authority from the Assistant Secretary-General for Human Resources (“ASG/OHR”) to the Director of Administrative Law Division with respect to the decision as to whether to issue formal allegations of misconduct.

7. The Respondent responds that “in accordance with the applicable legal framework, the decision was made by the ASG/OHR. Following the ASG/OHR’s decision, the Director, on behalf of the ASG/OHR, signed the Allegations Memorandum”.

8. The Tribunal notes that no reference to the ASG/OHR is contained in the 19 July 2021 letter, nor to any delegated authority by the ASG/OHR to the Director, Administrative Law Division. The Tribunal directs the Respondent to provide the delegation of authority of the Director, Administrative Law Division, Office of Human Resources, who reports to the ASG/OHR.

On the motion for an order of production of evidence

9. The Applicant moves the Tribunal for an order compelling the Respondent to produce the investigation report into the conduct of the then-Under-Secretary-General (“USG”) and Special Adviser on Africa and the memo advising the USG of the managerial action being taken against her, which resulted in the 27 June 2020 memo to the Applicant by the ASG/OHR. In this regard, the Applicant shall also seek “the subpoenaing of the in-person testimony of [the ASG/OHR and USG]”.

The Applicant further requests production of the “Interview Guide”. In this regard, the Applicant shall also seek “the subpoenaing of the in person testimony of Mr. Dudley and the other investigators listed in para. 22 of Annex 7”.

10. On his part, the Respondent submits that the Applicant failed to specify what information would be relevant from the fact-finding panel’s report into the conduct of the USG and how it would vindicate his misconduct. This failure renders his request as an unwarranted fishing expedition, which should be rejected. The Tribunal agrees with the Respondent that there is no justification for compelling the Respondent to provide this report. It recalls that, under the applicable legal framework, namely ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) and ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), the Applicant, as a *complainant* rather than as the *subject* of this investigation about the conduct of the then-USG/OSAA, is not entitled to receive a confidential investigation report regarding the then-USG/OSAA.

11. In regard to the Applicant’s requests for production of the “Interview Guide”, the Applicant does not explain why this alleged guide would be useful for adjudicating the case.

12. As for the request by the Applicant for “the subpoenaing of the in person testimony of Mr. Dudley and the other investigators listed in para. 22 of Annex 7”, so far, the Applicant has not provided sufficient submissions on his allegation that “the investigators seriously breached the Applicant’s due process rights” to justify that the investigators be heard by the Tribunal. In due time, the Tribunal will decide whether a hearing is necessary and which witnesses to convoke for this hearing.

13. Based on the above, the Tribunal denies the Applicant’s request for an order of production of evidence.

14. The Tribunal also notes that on 2 July 2023, the Applicant filed a motion for leave to respond to the Respondent's reply. As the Applicant was not specifically instructed or authorized to make this submission, the Tribunal will not accept the filing.

IT IS ORDERED THAT:

15. The parties' respective requests for leave to exceed the page limits of the application and reply are granted.

16. The Respondent's request to strike annex 7 from the application is denied.

17. The Applicant's motion for an order of production of evidence is denied.

18. The Applicant's motion for leave to respond to the Respondent's reply is denied.

19. By **Wednesday, 19 July 2023**, the Respondent is to provide the delegation of authority of the Director, Administrative Law Division, Office of Human Resources.

20. By **Monday, 7 August 2023**, the parties are to file a jointly-signed statement providing, under separate headings, the following information:

a. A consolidated list of agreed facts. In chronological order, the list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning. If any documentary and/or oral evidence is relied upon to support a disputed fact, clear reference is to be made to the appropriate annex in the application or reply, as applicable. At the end of the disputed paragraph in square brackets, the party contesting the disputed fact shall set out the reason(s);

b. A consolidated list of disputed facts. In chronological order, the list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning. If any documentary and/or oral evidence is relied upon to support a disputed fact, clear reference is to be made to the appropriate annex in the application or reply, as applicable.

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At the end of the disputed paragraph in square brackets, the party contesting the disputed fact shall set out the reason(s).

(Signed)

Judge Joelle Adda

Dated this 5th day of July 2023

Entered in the Register on this 5th day of July 2023

(Signed)

Isaac Endeley, Registrar, New York