



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/012

Judgment No.: UNDT/2013/120

Introduction

1. On 4 February 2011, the Applicant filed an application contesting the decision to impose on him the disciplinary sanction of a written censure following conduct that was determined to not be in accordance with provisions of ST/SGB/2004/15 (Use of information and communication technology resources and data) as well as a motion for confidentiality in which he sought that “for the purposes of the proceedings initiated with his application, his identity be kept confidential”.
2. On 10 February 2011, the Tribunal (Judge Ebrahim-Carstens) issued Order No. 41 (NY/2011) providing the Respondent with an opportunity to respond to the Applicant’s motion. On 17 February 2011, the Respondent replied to the motion, stating that there were no exceptional circumstances to justify that the present proceedings be deemed confidential. On 25 February 2011, the Tribunal (Judge Ebrahim-Carstens) issued Order No. 59 (NY/2011) rejecting the Applicant’s request for confidentiality.
3. On 29 March 2011, the Respondent filed his reply requesting that the Tribunal reject the application.
4. On 22 May 2013, the undersigned Judge was assigned to this matter.
5. On 20 August 2013, the Tribunal issued Order No. 205 (NY/2013) directing the parties to submit a joint statement identifying the agreed facts and legal issues, as well as whether a judgment could be rendered on the papers before it. The parties filed their joint submission on 20 September 2013 and also informed the Tribunal that they did not require a hearing in the present case.
6. On 16 September 2013, the Applicant filed a motion for withdrawal in

the two cases, and a request for all the documents contained in each of their case files to be placed under seal upon the withdrawal of the applications. The Applicant stated that on 10 September 2013, the Respondent communicated, in writing, with the Applicant concerning these cases and stated that he did not object to the Applicant's request to place all the documents in the case files under seal upon the withdrawal of the Applicant's applications. The Applicant considers that any reference to these cases on the United Nations website, which is publicly accessible, would impose an unjustified additional punishment on him and his family.

Consideration

Request for joinder

7. On 7 September 2012, the Applicant filed an application, registered under number Case No. UNDT/NY/2012/070, contesting the decision of the Assistant Secretary-General of the Office of Human Resources Management not to grant him a permanent appointment.

8. Prior to 16 September 2013, the Applicant never requested that the present case and Case No. UNDT/NY/2012/070 be considered jointly. The Tribunal

Withdrawal

10.

Since there is no longer a dispute on the legality of the decision, the Tribunal's decision represents the final disposal of the case.

16. If an identical application is filed

no longer needs to make a determination on the merits (since the decision is no longer contested by the Applicant), the present decision represents for the parties a final disposal of the matter and the application is to be dismissed.

Under seal

22. The Tribunal notes that the withdrawal request was filed more than two years after the initial application during which time both parties filed submissions and evidence in response to the Tribunal's orders. As the Tribunal has already highlighted in Order No. 59 (NY/2011): "the parties' written pleadings before the Dispute Tribunal are generally not available to the public and that the Tribunal's case records are kept confidential and secure in its Registry". The parties have the obligation to maintain confidentiality and are therefore expected to ensure that all the written pleadings and documentation relating to their case are not disclosed to third parties.

23. There is no settlement in the present case which can be affected by the content of the file. Article 18(4) of the Tribunal's Ru

additional punishment or blemish on [his] professional reputation” and would also affect his family.

26. The right to the protection of private and family life is a fundamental human right protected by art. 12 of the Universal Declaration of Human Rights, art.17 of the International Covenant on Civil and political Rights, art. 8 of the European Convention on Human Rights and art.17 of the American Convention on Human Rights.

27. Taking into consideration the particular circumstances of this case, and in order to respect the Applicant’s good faith during the proceedings as well as to prevent any prejudice to his private and family life that might arise from the publication of the present decision, the Tribunal considers it appropriate for the Applicant’s name to be redacted from the judgment.

Conclusion

In the light of the above considerations, the Tribunal DECIDES:

28. The requests for the joinder of the present case with Case No. UNDT/NY/2012/070 and to place under seal all the documents filed in it upon its withdrawal are rejected.

29. The Applicant has withdrawn the matter in finality, including on the merits and this application is dismissed in its entirety without liberty to reinstate.

30. The Applicant's name is to be redacted from the present judgment.

(Signed)

Judge Alessandra Greceanu

Dated this 4th day of October 2013

Entered in the Register on this 4th day of October 2013

(Signed)

Hafida Lahiouel, Registrar, New York