

Case No.: UNDT/NBI/2024/013
Order No.: 150 (NBI/2024)
Date: 7 November 2024

Introduction

1. On 10 March 2024, the Applicant, a former staff member of the United

application. He did not raise racial discrimination in his application. The Application determines the scope of the judicial review. See, Dispute Tribunal Statute, articles 2.1 and 9.4. It is manifestly unfair to add allegations of racial discrimination on the eve of the hearing.

8. Second, it is essential to note that the racial discrimination described in the lawsuit is not alleged to have been committed by the Respondent or its agents. Nor do the lawsuits allege that any of the witnesses in this case had committed acts of racial discrimination. Instead, the lawsuit claims that the Canadian Armed Forces was negligent in addressing racial discrimination within its ranks. Indeed, Canada disputes this allegation, and the settlement agreement expressly provides that the proposed settlement “is not to be construed as an admission of liability by Canada.” *Id.*, para. 19.02.

9. Third, the Dispute Tribunal’s Rules of Procedure provide that documents and statements made in connection with “any informal conflict-resolution process” are confidential and may not be used before the Dispute Tribunal. *Id.*, Article 15.7. This rule is consistent with both the Canadian settlement agreement (see, para. 18.04) and rules common in many national jurisdictions. See, *e.g.*, *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37, [2013] 2 S.C.R. 623; *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35, [2014] 1 S.C.R. 800, at para. 31; and (United States) Fed.R.Evid 408.

10. Finally, the proffered evidence is not relevant to the issues in this case. The Applicant claims that he will use these websites to challenge the credibility of the “CAF personnel witnesses”. However, the Tribunal has not been able to see any mention of the witnesses in the referenced documents.

11. It would be the height of discriminatory stereotyping to presume that all white members of the Canadian military are racist. Yet that presumption underlies the Applicant’s argument regarding the use of this material. The Tribunal refuses to participate in that stereotyping.

12. Accordingly, the Applicant’s Submission Regarding Racial Discrimination in Canadian Armed Forces is rejected.

Conclusion

13. In view of the foregoing, the Tribunal REJECTS the Applicant's Submission Regarding Racial Discrimination in Canadian Armed Forces and the proposed use thereof.

(Signed)

Judge Sean Wallace

Dated this 7th day of November 2024

Entered in the Register on this 7th day of November 2024

(Signed)

Wanda L. Carter, Registrar, Nairobi