

Introduction

1. On 9 December 2020, the Applicant, a staff member with the Economic Commission for Latin America and the Caribbean (“ECLAC”), filed an application requesting, under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure, suspension of action pending management evaluation of the decision to put him on administrative leave with pay (“ALWP”) pursuant to staff rule 10.4.
2. Upon the instructions of the Tribunal, the Respondent filed his reply on 14 December 2020.
3. On 15 December 2020, the Applicant filed a motion for leave to file a rejoinder to the Respondent’s reply, along with a proposed rejoinder.

Factual background

4. By memorandum dated 21 November 2020, the Executive Secretary of ECLAC informed the Applicant that she “decided to place [him] on administrative leave with pay with immediate effect, pursuant to Staff Rule 10.4” as it had been brought to her attention “allegations of serious misconduct, specifically potential sexual abuse, committed by [the Applicant]”.
5. The 21 November 2020 memorandum notifying the Applicant of his placement on administrative leave states that:
 - a. “there is sufficient evidence suggesting that [the Applicant] ha[s] engaged in the alleged misconduct”;
 - b. “we have received in the past complaints of potential harassment against [the Applicant]”;

c. “the fact that [the Applicant] continue[s] to perform [his] duties as ECLAC staff member may have a negative impact on the preservation of a

process” and that such leave “may continue until the completion of the disciplinary process”. If a staff member is placed on administrative leave, then s/he shall be “given

18. The Applicant argues that since the Respondent has not provided any details or evidence substantiating alleged sexual harassment complaints filed against him, the Respondent has not shown that the contested decision followed an allegation of unsatisfactory conduct as required by sec. 11.1 of ST/AI/2017/1.

19. This claim is without merit. The Tribunal notes that the 21 November 2020 memorandum states that the allegations of serious misconduct were referred to the Office of Internal Oversight Services (“OIOS”). The Administration has no obligation to share details or evidence substantiating complaints filed against the Applicant to place him on ALWP. The available evidence will be disclosed to the Applicant in due course in accordance with ST/AI/2017/1.

20. The Tribunal agrees with the Applicant’s claim that two grounds mentioned for the contested decision, namely, whether there was sufficient evidence supporting the allegations and the Applicant’s alleged past conduct, are not one of the conditions set forth in sec. 11.3 of ST/AI/2017/1. Nevertheless, since sec. 11.3 only requires that one of the circumstances be met and the Tribunal found that sec. 11.3(c) and (d) were met, the Tribunal finds that the contested decision is lawful.

21. Accordingly, the Tribunal finds that the Applicant has not established that the contested administrative decision was *prima facie* unlawful.

Urgency and irreparable harm

22.

24. The Tribunal agrees with the Applicant’s submission and grants the motion.

Ex-parte filing of a criminal complaint

25. In accordance with art. 18.4 of the Dispute Tribunal’s Rules of Procedure, the Respondent requests leave to disclose a copy of a criminal complaint on an *ex parte* basis in view of an exceptional circumstance. The Respondent submits that it is not clear whether the Applicant has formally been notified of the complaint filed against him by the national authorities. The Respondent requests the Dispute Tribunal to “impose measures to preserve the confidentiality of evidence”.

26. Having reviewed a copy of a criminal complaint filed on an *ex parte* basis and considering the sensitive nature of the complaint,

confidentiality to establish the grounds upon which the claim is based (*Bertucci* 2011-UNAT-121).

29. In the present case, considering the sensitive nature of the allegations filed against the Applicant and the fact that investigations on allegations of misconduct are confidential, the Tribunal decides to grant the motion for anonymity.

Conclusion

30. In light of the above, the Tribunal orders that:

- a. The application for suspension of action is rejected;
- b. The Applicant's motion for leave to file a rejoinder to the Respondent's reply is granted;
- c. The Respondent's leave to disclose a criminal complaint on an *ex parte* basis is granted; and
- d. The Applicant's request for anonymity is granted.

(Signed)

Judge Joelle Adda

Dated this 16th day of December 2020