
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/003

Order No.: 097 (NY/2022)

Date: 26 October 2022

Original: English

Judge Joelle Adda

New York

Morten Albert Michelsen, Officer-in-Charge

PUMPYANSKAYA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

1. By Order No. 082 (NY/2022) dated 9 September 2022, the Tribunal ordered the parties as follows (emphasis in original):

... By

Case No. UNDT/NY/2022/003

Order No. 097 (NY/2022)

because she simply has no way to know about this. A certain leeway must therefore be given to the Applicant when intending to identify the relevant documentation.

8. In the Applicant's 10 October 2022 submission, she listed and summarized her disclosure requests as the following (all names redacted for privacy reasons):

- a. Unredacted reports to the Office of Internal Oversight Services against the Applicant for alleged misconduct ("OIOS") of 22 November 2019;
- b. Documents communicating "[the Applicant] misc" from NB, "Notes" by MD to EC, and email memo or other document memorializing onward communication to the USG;
- c. Means of onward communication from EC to the USG of "My responsibilities as Personal Assistant to [the Applicant]" from AJ, "Confidential—SCD Front Office experience" from JJ, and note to file from EC and FG on 16 September 2019;
- d. Disclosure relating to how testimonies [about the Applicant's conduct] were collected [and] how they were communicated to the USG;
- e. Full documentary record regarding how these various documents came into the possession of the Executive Office and how the USG's various decisions of 24 March 2020—to request access to the Applicant's ICT (information and communication technology) resources, to place the Applicant on Administrative Leave with Pay and to instruct a Panel to investigate—were triggered;
- f. All documentation relating to the selection of the Panel members;
- g. Folder entitled "EC" containing email exchanges on a number of issues;

h. Electronic versions of emails allegedly sent by AJ to the Executive Office, including attachments;

i. Communications by which the Panel's report was submitted on 30 June 2020, a copy of the original version of the report, any document or communication subsequently taking place with the Panel including concerning required revision of their report and their response to any such communication.

9. The Respondent objects to all the Applicant's disclosure requests. He submits they are "disproportional to the needs of the case and ... not relevant", "cast in the most general terms and constitute an impermissible 'fishing expedition'". Furthermore, the requests are only relevant with regard to the Applicant's submissions on alleged lack of due process during the investigation. In this regard, the requests pertain to actions taken before the investigation was launched, and while the Appeals Tribunal has "recognized that limited due process rights exist during the investigation phase and fuller due process rights exist during a disciplinary process, there has been no recognition of a right to due process prior to the initiation of an investigation".

10. The Respondent argues that the contested decision was "taken based upon evidence adduced by an independent investigation Panel" and that the "Panel's evidence was independently assessed, as part of the disciplinary process, by the Office of Human Resources (

11. The Respondent contends that “whether a staff member received due process in a disciplinary matter is.EMC 2ue pre pre pre pr

NB, MD, AJ and JJ. This led the USG to appoint an investigation panel comprised of LD and NG (names redacted for privacy reasons), who were retired former United Nations staff members. These facts appear to be undisputed by the parties.

15. As indicated by the Respondent, the Tribunal agrees that different due process rights apply during the various phases of the investigative process. The Tribunal, however, finds that as per sec. 4 of ST/AI/2017/1, this investigative process already begins with

18. As said, this does not mean that—even if the involvement of the USG and/or EC is deemed irregular—this will be relevant to the determination to the present case and possibly impact the lawfulness of the contested decision. In addition, as also stated by the Respondent, procedural safeguards are built into the investigative process to preserve its integrity, in particular by requiring the appointment of an independent, impartial and competent investigative panel (as relevant to the responsible official, see arts. 6.3 – 6.6 of ST/AI/2017/1), and later in the possible disciplinary process, by allocating the decision-making authority with another department (typically, OHR). A detected procedural irregularity prior to the investigation may therefore be cured by the investigative panel and/or during the disciplinary process.

19. Nevertheless, for the Tribunal to make this assessment, it needs to know about the circumstances surrounding the initial phase of the investigative process. Accordingly, the Tribunal will grant the disclosure requests (see also the Appeals Tribunal in *Applicant* 2022-UNAT-1210).

20. Regarding the two anonymous reports to OIOS concerning the Applicant, the Tribunal acknowledges that it is of paramount importance that a staff member can trust

~~that~~ ~~pr~~ ~~0.6]~~ ~~0.040]~~ ~~6-d]~~ ~~TH(2)~~ ~~606]~~ ~~W2 [(he)~~ ~~4 ()]~~ ~~TJ-0.02 (0 (f)-7pve)~~ ~~4 (sc 0 Tw 3.4c 6 0()]~~ ~~TJun0 Tw -~~

... Where evidence has been obtained in an improper or unfair manner it may still be admitted if its admission is in the interests of the proper administration of justice. It is only evidence gravely prejudicial, the admissibility of which is unconvincing, or whose probative value in relation to the principal issue is inconsequential, that should be excluded on the grounds of fairness ...

24. In the present case, as the Tribunal cannot rule out that the relevant document can be of relevance, it therefore sees no reason for not admitting it into evidence.

IT IS ORDERED THAT:

25. Annex R/12 filed by the Administration in the Applicant's Case No. UNDT/NY/2022/001 is admitted into the evidence;

26. By