
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/008
Order No.: 85 (NY/2021)
Date: 14 September 2021
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

FOSSE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Camila Nkwenti Fuomene, UNEP

Isabel Martinez, UNEP

Introduction

1. In Order No. 79 (NY/2021) of 27 August 2021, the Tribunal directed the Respondent to submit the investigation report relied on by the Ethics Office to come to its determination that no retaliation had been committed against the Applicant, along ~~with the~~ ~~cc~~

and the Ethics Office in regard to said investigation. The Tribunal allowed the Respondent to redact these documents before their disclosure to the Applicant in order to preserve the

6. The Respondent adds that the Ethics Office had expressed concerns that disclosing internal correspondence to the Applicant would create an adverse effect on witnesses agreeing to come forward during investigations on retaliation complaints, who might fear being retaliated against, should the outcome of the investigation be favorable to the Applicant. The Ethics Office explained that this is the reason why investigation reports are normally only made available to subjects of misconduct investigations in the context of disciplinary proceedings, but that such disclosure is not mandated by ST/SGB/201/7/2/Rev.1.

7. The Tribunal is fully aware of the need to protect the confidentiality of individuals cooperating with internal investigations and audits in the United Nations system. However, this need for confidentiality must be balanced with an applicant's right to due process under the adversarial internal justice system of the Organization.

8. [redacted] are safeguarded in this case, the Tribunal reviewed the documents already in the Applicant [redacted] along with the confidential documents disclosed *ex parte* to the Tribunal. The Tribunal is satisfied that, in particular, the Ethics Office memorandum to the Applicant of 19 November 2020 sufficiently details both the findings and the [redacted] sufficiently details

12. The Tribunal also notes that the Respondent requests the correction of typographical errors in Order No. 79 (NY/2021). The Tribunal takes note of this observation and will ensure that the concerned information is accurately reflected in the ensuing judgment.

13. In light thereof,

IT IS ORDERED THAT:

14. *ex*
parte on 13 September 2021 is granted and said documents will remain *ex parte* in the case file;

15. The deadline for the submission of the Appli
79 (NY/2021) is vacated. The Applicant may file this submission by **4:00 p.m. on Monday, 27 September 2021.**

16. The Tribunal will thereafter issue any further instructions on case management.

(Signed)

Judge Joelle Adda

Dated this 14th day of September 2021