UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/073
Judgment No.: UNDT/2020/014 Corr.1
Date: 30 January 2020
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Marmaduke Danquah, OSLA

Counsel for Respondent:
Katrina Waiters, UNFPA

Notice: This Judgment has been corrected in accordance with article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 20 June 2017, the Applicant, a senior official in a country office in the United Nations Population Fund ("UNFPA"), filed an application contesting a fine in the amount of two months' net base salary imposed on the Applicant as a disciplinary measure for retaliation and abuse of authority against her supervisee, Ms. OC.

2. In the present case, the Applicant claims that the disciplinary sanction was unlawful as she did not retaliate against Ms. OC, nor was she was aware that Ms. OC had engaged in a protected activity. The Applicant further contends that there were procedural irregularities in the investigation process including admissibility of secret recordings and inordinate delay of 20 months in the investigation process which caused an adverse effect on her health. The Applicant seeks rescission of the contested decision and reimbursement of the fine. The Applicant also seeks compensation for moral injury.

3. The Respondent argues that the application is without merit and should be dismissed as the disciplinary measure was taken in compliance with Staff Regulations and Rules and the UNFPA Policies and Procedure Manual, Protection against Retaliation for Reporting Misconduct or for Cooperating with an Authorized Fact-Finding Activity ("PaR policy").

4. The Tribunal finds that the Applicant's conduct during two one-to-one meetings with Ms. OC on 16 December 2014 was a violation of staff regulation 1.2(b) and rule 1.2(f) and constitutes misconduct. However, the Tribunal finds nothing in the record to establish a link with Ms. OC's prior report of the Applicant's alleged misconduct and the Applicant's actions during the 16 December 2014 meetings. The Tribunal is therefore unable to find that the protected activity was the cause of the detrimental action.

Facts and procedural history

5. In August and October 2014, Ms. OC reported complaints by email about the Applicant's professional conduct and her managerial style to both UNFPA Department of Human Resources and to the Regional Director for the Asia Pacific Regional Office. In her complaints, Ms. OC alleged instances of abuse of authority by the Applicant in the form of retaliation, favoritism, disregard of staff requests and limitations imposed on staff to perform their duties.

6. On or about 16 December 2014, Ms. OC and the Applicant had two conversations in an attempt to resolve the disputes between them about Ms. OC's 2014 Performance Appraisal and Development report through mediation. Ms. OC recorded these conversations using her cell phone without the Applicant's knowledge.

7. On 1 May 2015, Ms. OC filed a complaint to UNFPA's Ethics Office for protection against retaliation. Specifically, Ms. OC alleged that the Applicant retaliated against her during the two recorded conversations in December 2014 for reporting the Applicant's misconduct.

8. On 14 May 2015, the UNFPA Ethics Office completed the preliminary assessment of Ms. OC's complaints and established that a *prima facie* case of retaliation existed in that: a) the Applicant may have purposely given to Ms. OC an unjustified performance rating in her 2014 Performance Appraisal and Development report; b) on 16 December 2014, the Applicant may have abused her authority when Ms. OC requested that the Applicant participate in mediation of the dispute regarding said performance ratings. The Ethics Office referred the matter to UNFPA's Office of Audit and Investigation Services ("OAIS") for investigation.

9. In August 2015, OAIS sent an investigation mission to the Applicant's country office and notified the Applicant.

10. On 1 December 2015, OAIS issued its investigation report, in which it concluded that the allegations against Applicant were established and that the Applicant's conduct was in violation of staff regulation 1.2(b), staff rule 1.2(f) and (g). OAIS further concluded that Applicant's conduct violated the prohibition of retaliation found in the PaR policy.

11. UNFPA requested the Applicant to comment on the investigation report in June 2016 and Applicant duly replied with her comments on 10 July 2016.

12. On 3 August 2016, UNFPA notified the Applicant that she will be charged with misconduct and set out the charges of misconduct made against her.

13. The Applicant responded to the allegations of misconduct in the charge letter on 14 September 2016.

14. On 13 April 2017, the Executive Director of UNFPA informed the Applicant that the investigation carried out by OAIS did not substantiate the allegation that the Applicant may have purposely given to Ms. OC an unjustified performance rating in her 2014 Performance Appraisal and Development report, and therefore the allegation was dismissed. The Executive Director further informed the Applicant that the OAIS investigation had established that the Applicant had committed abuse in the workplace and retaliated against Ms. OC for making complaints about the Applicant's conduct, and that a fine in the amount of two months' net base salary was imposed on Applicant as a disciplinary measure, in accordance with staff regulation 10.1(a) and rule 10.2(a).

15. On 20 July 2017, Applicant filed an application with the UNDT contesting the decision to impose a disciplinary measure based on retaliation.

16. The case was initially assigned to Judge Ebrahim-Carstens. Following the end of Judge Ebrahim-Carsten's tenure with the Dispute Tribunal, this case was re-assigned to the undersigned Judge on 1 July 2019.

17. On 7 October 2019, pursuant to Order No. 125 (NY/2019), the parties filed a joint submission in which they set out the agreed and contested facts in the case. In the joint submission, the parties further confirmed that they do not wish to submit additional evidence and that the case may be decided on the papers.

18. On 24 October 2019, the parties filed their closing submissions.

Consideration

19. The key issue arising for determination in this case is whether the decision to impose on the Applicant the disciplinary sanction of fine in the amount of two months' net base salary for retaliation against Ms. OC was lawful.

Scope of review

20. The consistent jurisprudence of the Appeals Tribunal in cases concerning the imposition of a disciplinary measure is that the Dispute Tribunal must verify if a three-fold test is met as follows: (1) whether the facts on which the disciplinary measure was based have been established; (2) whether the established facts qualify as misconduct; and (3) whether the sanction is proportionate to the offence (*Abu Hamda* 2010-UNAT-022; *Haniya* 2010-UNAT-024; *Wishah* 2015-UNAT-537; *Portillo Moya* 2015-UNAT-523). It is also incumbent on the Tribunal to determine if any substantive or procedural irregularity occurred (*Maslamani* 2010-UNAT-028; *Hallal* 2012-UNAT-207), either during the conduct of the investigation or in the subsequent procedure.

21. Before commencing its review, the Tribunal must recall that the Appeals Tribunal has stated that under art. 2 of the Statute of the Dispute Tribunal, the Dispute Tribunal has no jurisdiction to conduct investigations into retaliation complaints. However, for the purpose of determining if an impugned administrative decision was improperly motivated, it is within the competence of the Dispute Tribunal to examine such allegations. But such examination is judicial in nature and

does not constitute a *de novo* investigation into a complaint of retaliation (*Larkin* 2011-UNAT-134).

Have the facts on which the disciplinary measure is based been established by clear and convincing evidence?

22. The Tribunal finds that the material facts on which the disciplinary measure is based have been sufficiently established and are not in dispute between the parties.

Did the established facts amount to serious misconduct under the applicable staff regulations and rules?

23. The Tribunal is satisfied, having regard to the contents of the evidence on file, that the established facts considered in their entirety amount to misconduct in the form of retaliation for the reasons particularized below.

24. The essence of the Applicant's claim is that her actions were incorrectly determined by the Administration to amount to misconduct in the form of retaliation. The Applicant claims that she was not aware that Ms. OC had engaged in a protected activity and therefore could not have retaliated against her in connection to the protected activity.

25. The Applicant's case must be assessed under the applicable legal framework which consists of staff rule 1.2 (Basic Rights and Obligations of Staff) and the PaR policy.

26. Staff rule 1.2(c) provides that staff members have the duty to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action and to cooperate with duly authorized audits and investigations. Staff members shall not be retaliated against for complying with these duties.

27. Staff rule 1.2(f) provides that any form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work, is prohibited.

28. Staff rule 1.2(g) provides that staff members shall not disrupt or otherwise interfere with any meeting or other official activity of the Organization, including activity in connection with the administration of justice system, nor shall staff members threaten, intimidate or otherwise engage in any conduct intended, directly or indirectly, to interfere with the ability of other staff members to discharge their official functions. Staff members shall not threaten, retaliate or attempt to retaliate against such individuals or against staff members exercising their rights and duties under the staff rules.

29. The sanction letter of 13 April 2017 states that in two conversations with Ms. OC on 16 December 2014, the Applicant engaged in misconduct as follows: 1) by threatening and intimidating Ms. OC and misrepresenting the effects of mediation in an attempt to deter her from requesting mediation, thereby committing abuse at the workplace in violation of the standards of integrity expected of a United Nations staff member and staff regulation 1.2(b) and staff rule 1.2(f); 2) by threatening Ms. OC with her exercise of her right to request mediation, in violation of staff rule 1.2(g) and, 3) by retaliating against Ms. OC for reporting her misconduct, in violation of UNFPA's PaR policy.

30. The Tribunal will determine if the established facts amount to the forms of misconduct reflected in the sanction letter.

Abuse at the workplace and threat in connection with Ms. OC's right to seek mediation

31. The Respondent claims that by threatening and intimidating Ms. OC during the 16 December 2014 meetings, the Applicant committed abuse at the workplace and in connection with work. In support of his submissions, the Respondent relies on

the audio recordings which Ms. OC made using her cell phone without the Applicant's knowledge at the two 16 December 2014 meetings.

32. The Tribunal notes that OAIS had transcripts made of both recordings and played both recordings for the Applicant during her interview and allowed the Applicant to review the transcripts during her interview and sent her copies of the transcripts. The Applicant verified that it was her voice on each of the audio files and confirmed that she twice met with Ms. OC on 16 December 2014. The record confirms that the Applicant began the discussions in the first meeting at approximately 1:00 p.m. by telling Ms. OC that mediation would negatively affect Ms. OC's career because Ms. OC would then be seen as somebody who did not get along with others. The Applicant then distinguished between her own permanent appointment and Ms. OC's fixed-term appointment, "[The mediation] will hurt your candidacy too if you are looking for any national positions and things like that. It will hurt you more. Me (...) I have permanent contract. I am in the system for many years. I know people. So, you know, I wanted, before we make an agreement, I wanted to make sure that you that it goes on record". The Applicant cautioned, "But my thing is that … you have fixed-term contract. I have permanent. That also is an issue". Ms. OC asked "Why would it be an issue, sorry?" The Applicant responded, "Because you see … [Ms. OC], you do not know those things, huh? [...] I do not know how directly I should tell you. There was a one-time contractual review happened. In that process the definition of fixed-term contract changed immensely. Before fixed-term contract there is an expectation of renewal. Today fixed-term contract, after that reform process, there is no expectation of renewal. The organization can just move you. That is how, for example, fixed-term contract is". The Applicant continued to warn Ms. OC that "[UNFPA Headquarters] is full of landmines" and that for Ms. OC not to underestimate the impact of agreeing to mediate, "A written thing will be made in your file. Do you understand the implications?" The Applicant also cautioned Ms. OC about engaging a mediator, "It could be completely outside of your control, and this external person will write anything he or she wants". When Ms. OC correctly pointed out that mediation was

confidential, the Applicant retorted that it would affect Ms. OC negatively because "in the system there is no confidentiality". The conversation ended with Ms. OC representing that she would get back to the Applicant as soon as possible. The Applicant urged, "Quickly, the quicker the better".

33. Following the first meeting on 16 December 2014, Ms. OC sent the Applicant the following email:

> Since you gave me half an hour to respond to you I could not put a lot of thought into your suggestion not to have a formal mediator through [the Department of Human Resources]. Thus my opinion remains the same. If there is still a possibility to have a formal mediator, I am willing to use it despite all the negative implications you have mentioned just now. I am not so much worried about having a use of mediator in my record even if it will lead to my bad reputation and non-renewal of my contract. My biggest worry is our relationship issues and I still think a mediator can help, especially when I have no experience with these kinds of relationship problems.

34. The Applicant responded, "I don't also understand why things like this needed to be communicated by email, and I really urge you to have a more smooth means of communication styles".

35. The second meeting of 16 December 2014, which the Applicant initiated through an email at 2:58 p.m. to Ms. OC requesting an urgent meeting to discuss *inter alia* human resources matters. During this meeting, the Applicant continued to caution Ms. OC not to involve other people in her concerns: "If it is between you and me, it is between you and me. Other people do not have to get involved". The Applicant also stated "at this point of time, as I said in afternoon, [Ms. OC], you are exposed now. Only way out for you to go back on track, go back on track, is please listen to what I am saying". The Applicant continued to try to convince Ms. OC that mediation would not work by drawing the analogy between mediation and marriage counseling, "Statistics shows in majority of the cases it does not work, because unless the problem is solved internally and then that solution is internalized, it never works. Never works. Do not think that something miracle will happen. It will not happen, because it is between you and me. So that needs to be corrected. Right?". The

Applicant further stated that although she forgave Ms. OC's actions, the Applicant could have requested "protection measures, legal". When Ms. OC queried what the Applicant meant by "protection measures", the Applicant replied that she could not elaborate because she had received the information from a confidential source. Ms. OC responded: "I know you are upset that I talked to the [UNFPA Human Resources] or [the Asia Pacific Regional Office]", to which the Applicant replied, "It is not the talking issue, it is more serious than that".

36. The record shows that after the Applicant listened to the recording with OAIS, the Applicant questioned OAIS investigators: "So, this is my abuse of authority? A threat?".

37. In light of the above, the Tribunal finds that the Applicant did make efforts to persuade Ms. OC to forego attempting mediation to resolve their interpersonal disputes and threatened that mediation could adversely affect Ms. OC's career. In particular, the Applicant implied that should Ms. OC pursue mediation, Ms. OC would develop a bad reputation and that mediation lacked confidentiality. The Applicant further indicated that there may be a negative impact on the chances of Ms. OC's contract renewal as a result of her perusing mediation. This conduct is unequivocally in violation of staff regulation 1.2(b) and rule 1.2(f) and constitutes misconduct.

Retaliation

38. UNFPA PaR policy defines an act of retaliation as "any direct or indirect detrimental action recommended, threatened or taken because an individual reported misconduct in good faith or cooperated with an authorized fact-finding activity". The issues for determination are therefore: 1) whether Ms. OC engaged in a protected activity; 2) whether the Applicant undertook a detrimental action against Ms. OC, and 3) whether said detrimental action was caused by the protected activity.

39. It is clear from the evidence, as discussed above, that the Applicant's language and tone at the 16 December 2014 meetings were intended to intimidate

Ms. OC and dissuade her from seeking mediation and were detrimental to Ms. OC. However, the Tribunal finds nothing in the recordings to suggest, let alone prove by clear and convincing evidence, a link with Ms. OC's prior report of misconduct. The Tribunal is therefore unable to find that the protected activity was the cause of the detrimental action.

Due process

40. The Applicant contends that the disciplinary measure imposed upon her was unlawful by pointing to a number of alleged flaws that occurred during the investigation and argues that she was not afforded due process. The Applicant contests the admissibility of the audio recordings made by Ms. OC during the 16 December 2014 meetings without the knowledge of the Applicant. The Applicant further raises issue with the delay in the investigation process and makes general complaints about the standard of the Investigation Report. The Tribunal will address these complaints in turn.

Admissibility of the secret audio recordings

41. The Applicant states that the audio recordings made by Ms. OC on her phone during the two one-on-one meetings on 16 December 2014 are not admissible as they were made without the knowledge of the Applicant. The Respondent states that the determination of the admissibility of evidence, as well as the weight to be attached to such evidence, is wholly within the broad discretion of this Dispute Tribunal and that the secret audio recordings are very important to the facts of the case and provide incontrovertible evidence of Applicant's acts of retaliation and abuse of authority. The Respondent suggests that it is only in listening to the audio recordings that the full scope of Applicant's behavior is readily evident as to the misconduct consisting of manipulation and intimidation.

42. On this issue, the Tribunal refers to the ruling of the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA") Tribunal in

Judgment No. UNRWA/DT/2013/035 which stated that secret recordings in the workplace, while generally discouraged, may be admissible in certain cases:

> *There is no universally accepted practice or legal principle against the admissibility of secret recordings of discussions so long as the information sought to be admitted is relevant and probative of the issues to be determined. Furthermore, the evidence must be necessary for a fair and just disposal of the proceedings. As a matter of good employment relations, the Tribunal considers that secret recordings in the workplace undermine the important relationship of trust and confidence and are to be strongly discouraged. Any motion to admit such material will be subject to utmost scrutiny. Nothing in this judgment should be taken as giving comfort to those who engage in the practice of clandestine recordings.*

43. The Tribunal recalls that art. 18 of the Rules of Procedure of the Dispute Tribunal provides that the Dispute Tribunal shall determine the admissibility of any evidence and may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings.

44. In *Chhikara* (Order No. 172 (NBI/2016)), the Dispute Tribunal determined that the following five general principles apply when considering whether such evidence should be admitted by this Dispute Tribunal: (1) Is the evidence contained in the recording and its transcript *prima facie* admissible? (2) Is it relevant and probative of one or more of the issues in the case? (3) Is there any specific prohibition in the United Nations legal framework against recording conversations without the consent of one or more of the parties to that conversation? (4) Was the recording an unreasonable intrusion into the privacy of the participants to the conversation? (5) If the evidence was wrongfully obtained, is it in the interests of justice to exclude it? The Tribunal will apply these general principles to the present case as follows.

45. First, upon review of the recordings and the contents therein, the Tribunal finds that the evidence contained in the recordings and its transcript is *prima facie* admissible as the Applicant has authenticated the recordings and the transcripts of the

recordings. The Tribunal finds no indication that the recordings are not authentic or have been tampered with. As the recordings present an accurate representation of the conversations between Applicant and Ms. OC, they are *prima facie* admissible.

46. Second, the Tribunal finds that the recordings are clearly relevant and probative of the issues in this case. The recordings demonstrate Applicant's behavior with Ms. OC on 16 December 2014 and her efforts to persuade Ms. OC to forego perusing mediation of their interpersonal dispute.

47. Third, the Tribunal finds no prohibition in the applicable legal framework against recording conversations without the consent of one or more of the parties to that conversation.

48. Fourth, although the Tribunal considers that secret recordings in the workplace undermine the important relationship of trust and confidence and are to be strongly discouraged, in this case the Tribunal finds that the recording was not an unreasonable intrusion into the privacy of the participants to the conversation for the following reasons. The conversations between the Applicant and Ms. OC were held during two business meetings held during normal working hours at the offices of UNFPA. In these circumstances, the Tribunal accepts that in its consideration of whether there has been intrusion into the privacy of Applicant, the Tribunal may balance the Applicant's privacy rights with the rights of Ms. OC as a subordinate to be free from retaliation and abuse in the workplace by senior managers. There was a power imbalance between the parties with the Applicant being the supervisor of Ms. OC as well as the most senior staff member in the country office. The Tribunal notes that Ms. OC explained to OAIS that she recorded the meetings because "I did not feel comfortable. I was scared basically. And it was one-to-one meeting. And I expected anything could have been discussed. And I would not have any witnesses if she says otherwise later on".

49. Fifth, the Tribunal considers that it would not be in the interest of justice to exclude the audio recordings as they provide pertinent evidence in this case of the

Applicant's conduct. Moreover, given that the conduct in question took place during a private meeting between the Applicant and Ms. OC, absent the secret recording of the conversation, Ms. OC would have had no other way to prove the misconduct.

50. In light of the above, the Tribunal finds that the audio recordings are admissible and were properly considered as evidence by the investigation panel.

Delay in the investigation process

51. The Applicant states that the Respondent exceeded the prescribed time limits within which to submit the charge letter and the investigation report. The Respondent also failed to complete the disciplinary process within 6 months; and notified the Applicant on 26 April 2017, 20 months after the time limit of 12 February 2016. The excessive delay involved caused the Applicant extreme anxiety and distress.

52. The Respondent argues that the Applicant's claim of undue delay is baseless and that the investigation was completed in a reasonable time given the circumstances of the case, including the fact that the OAIS investigators had to travel to the remote country office from 9 to 26 August 2015 where they conducted fifteen in-person witness interviews and two web-based witness interviews as well as other interviews in UNFPA Headquarters and written questions to four witnesses.

53. Following a review of the record, the Tribunal finds that the investigation was completed in a reasonable time given the circumstances of the case, including the fact that at the conclusion of the investigation when OAIS issued its report dated 1 December 2015, the process in the matter was temporarily suspended due to medical treatment concerning the Applicant. Furthermore, the record indicates that the Applicant requested extensions of the deadlines to provide comments to the investigation report and the charge letter and the Respondent granted the extension requests in order to assure that due process was afforded to her in all the phases of the process.

Alleged flaws that occurred during the investigation

54. The Applicant makes a series of general complaints about the standard of the investigation in this matter and argues that the investigation process and report were fundamentally flawed. She contends, *inter alia*, that the investigation report contained errors or unsubstantiated conclusions (such as the error of recording the Asia and Pacific Regional Office and Department of Human Resources joint mission dates as 6 to 18 October 2014, whereas the correct dates are 7 to 9 October 2014). The Applicant claims that the investigation report deliberately tried to give a negative impression of the Applicant, and that she was denied the opportunity to fully address the charge made against her. She further alleges bias and improper motive on the part of the Respondent in this matter.

55. Having reviewed the Applicant's complaints, the Tribunal finds that they are unsubstantiated. The record demonstrates sufficiently that UNFPA followed the relevant due. Specifically, on 21 August 2015, OAIS served the Applicant with a "Notice of Formal Investigation" advising her of the allegations and scope of the investigation. The Applicant was interviewed in person and was afforded ample opportunity to present her account of the matter, her version of events, to identify witnesses and/or additional evidence and between 9 to 26 September 2015, the Applicant submitted additional evidence in the form of 35 emails and 27 attachments.

56. On 22 September 2015, OAIS provided the Applicant with a transcript of her interview for review and comments. On 29 September 2015, OAIS sent the Applicant a transcript of the two audio-recordings made on 16 December 2014 during her two separate meetings with Ms. OC. On 10 October 2015, OAIS sent the Applicant a CD-ROM containing the audio file of her interview with OAIS on 24 August 2015. On 5 October 2015, the Applicant returned the signed interview transcripts with her comments.

57. Based on the above, the Tribunal is satisfied that the key elements of the Applicant's right to due process were met. The Applicant has not met her burden in

proving that the contested decision was based on a mistake of fact, a lack of due process, or that it was arbitrary or motivated by prejudice or other extraneous factors.

58. Consequently, the Tribunal considers that it is clear from the evidence that the Applicant's conduct amounted to misconduct.

Was the disciplinary measure imposed proportionate to the misconduct?

59. The jurisprudence on proportionality of disciplinary measures provides that the Tribunal will give due deference to the Secretary-General unless the decision is manifestly unreasonable, unnecessarily harsh, obviously absurd or flagrantly arbitrary. Should the Dispute Tribunal establish that the disciplinary measure was disproportionate, it may order imposition of a lesser measure. However, it is not the role of the Dispute Tribunal to second-guess the correctness of the choice made by the Secretary-General among the various reasonable courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General (see *Sanwidi* 2010-UNAT-084; *Said* 2015-UNAT-500; *Hepworth* 2015-UNAT-503; *Portillo Maya* 2015-UNAT-523).

60. The Applicant contests the proportionality of the disciplinary measure of a fine in the amount of two months' net base salary stating that the Respondent failed to consider factors such as her good service in the Organization; her unblemished record of good conduct and her full cooperation with the official investigation. The Tribunal finds that the disciplinary measure imposed was proportionate to the misconduct committed by the Applicant and that mitigating factors of good performance and unblemished conduct records do not absolve staff members from discipline.

The Applicant's motion for anonymity

61. As a final issue, the Tribunal notes that the Applicant filed a motion for anonymity in which she requests her name be anonymised in any orders or final judgment. The Applicant argues, *inter alia*, a publicly available document referring to

the Applicant's misconduct would unfairly and unnecessarily prejudice the Applicant's personal and professional reputation, as well as violate the right to privacy of the Applicant and her family.

62. Article 11.6 of the Dispute Tribunal's Statute and art. 26 of its Rules of Procedure provide that the judgments of the Dispute Tribunal shall protect personal data and shall be made available by the Registry of the Dispute Tribunal. The Appeals Tribunal has held in this regard that "the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and, indeed, accountability" (*Lee* 2014-UNAT-481). The Appeals Tribunal's practice establishes that the principle of publicity can only be departed from where the applicant shows "greater need than any other litigant for confidentiality" (*Pirnea* 2014-UNAT-456) and that it is for the party making the claim of confidentiality to establish the grounds upon which the claim is based (*Bertucci* 2011-UNAT-121).

63. In the present case, the Tribunal is persuaded by the Applicant's contention that the publicity of the proceedings is likely to cause risk to her personal and professional reputation. The Tribunal therefore finds it reasonable to grant the motion for anonymity.

Conclusion

64. In light of the foregoing, the application is dismissed.

(Signed)

Judge Joelle Adda

Dated this 30th day of January 2020

Entered in the Register on this 30th day of January 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York