



**Before:** Judge Eleanor Donaldson-Honeywell

**Registry:** Geneva

**Registrar:** René M. Vargas M.

BELSITO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON CASE MANAGEMENT**

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**Counsel for Applicant:**

George G. Irving

**Counsel for Respondent:**

Marcus Joyce, UN Women

Prue Smith, UN Women

## **Introduction**

1. The Applicant served on a fixed-term appointment at the P-5 level in the United Nations Entity for Gender Equality and the Empowerment of Women (“UN Women”).
2. On 11 March 2019, he was placed on administrative leave with full pay pending the outcome of an investigation into allegations of abuse of authority and harassment. The Applicant submitted his resignation the next day and also on 12 March 2019, in a communication erroneously dated 13 July 2017, he sought management evaluation of the decision to place him on administrative leave.
3. On 6 June 2019, the Applicant filed an application before the Geneva Registry of the United Nations Dispute Tribunal to challenge the decision to place him on administrative leave with full pay.
4. The Respondent filed his reply on 11 July 2019. It is the Respondent’s case that the impugned decision was lawful, and that the application should be dismissed in its entirety.
5. On 4 February 2021, the Tribunal issued Order No. 23 (GVA/2021) directing the parties to attend a case management discussion (“CMD”).
6. The CMD took place, as scheduled, on 19 February 2021. Both parties appeared represented by Counsel.

## **The Discussion**

7. The Tribunal outlined the issues as follows:
  - a. Was the decision to place the Applicant on special leave with full pay procedurally lawful;
  - b. Was it tainted by extraneous factors;
  - c. Did the decision amount to constructive dismissal;

d. Did the Applicant's resignation render the application, or parts of it, moot; and

e. Are the Applicant's claims for the remedies he seeks warranted?

8. While the Applicant agrees with the issues as set out by the Tribunal, the Respondent takes the view that this case centres around the question of whether or not the Respondent acted lawfully when he placed the Applicant on administrative leave with full pay. Counsel for the Respondent emphasised that the presumption of regularity is relevant to this central issue.

9. On the issue of pending disclosures, the Applicant seeks disclosure of the complaints that were made against him, the investigation report, the Ombudsman's findings, and correspondence related to the outcome of the investigation.

10. For his part, the Applicant wishes to disclose correspondence in his possession concerning ongoing investigation into the office which commenced before the Applicant was posted to Albania. This is the European Union investigation into the activities at the duty station that was funded by it, which the Applicant alleges put him in a position of conflict vis-à-vis those being investigated. The Applicant also seeks leave to make submissions in response to the Respondent's reply.

11. The Respondent strongly objected to the disclosure of complaints which formed the basis of the impugned decision and investigation that followed. In so doing the Respondent indicated that the investigation into allegations against the Applicant has not concluded. As such, there is no report to be disclosed. As it relates to the complaints, he explained that it is difficult enough for staff members to file complaints on abuse of authority. Allowing disclosure of the details of those complaints, at this stage of the proceedings, would result in a chilling effect on those affected by abuse of authority. Further, Counsel for the Respondent advised that the Applicant has been interviewed by the investigators of the Office of Internal Oversight Services ("OIOS") and must therefore be aware of the substance of the complaints that have been made against him.

12. The Respondent concluded that disclosure of an investigation report and any correspondence on it is premature at this stage since the investigative process is ongoing. The Tribunal expressed its surprise and concern that an investigation which commenced in February 2019 is still ongoing.

13. The Tribunal strongly encouraged the parties to consider and attempt alternative dispute resolution in this matter. Both parties indicated their willingness with reservations, to attempt *inter partes* discussions.

14. Failing settlement discussions, the Tribunal proposed adjudication of this matter on the basis of the parties' written submissions. Neither party objected to this proposition.

#### **Considerations and Order**

15. Based on the discussion with the parties, the Tribunal makes the following **DIRECTIONS:**

a. The Respondent will disclose to the Tribunal, on an *ex parte* basis, the complaints that formed the basis of the decision to commence an investigation into the Applicant's conduct and he shall file under seal a redacted copy of the transcript of the Applicant's interview with the OIOS investigators, by **Friday, 26 February 2021;**

b. The Applicant will likewise effect disclosure of the documents he requested leave to disclose by **Friday, 26 February 2021;** and

c. The parties will engage in *inter partes* discussions and jointly advise the Tribunal of the status of those discussions by **Friday, 5 March 2021.**

16. Should settlement discussions fail, the parties will abide by the following deadlines for further case management directions:

a. The Respondent will file his final and closing submission by **Friday, 12 March 2021;** and

Case No. UNDT/GVA/2019/034

Order No. 56 (GVA/2021)

b. The Applicant will file his submission in response to the Respondent's reply and, with it, the relevant material as proof of harm in support of his claims for moral damages, as closing submission by **Friday, 19 March 2021**.

*(Signed)*

Judge Eleanor Donaldson-Honeywell

Dated this 22<sup>nd</sup> day of February 2021

Entered in the Register on this 22<sup>nd</sup> day of February 2021

*(Signed)*

René M. Vargas M., Registrar, Geneva