



Before: Judge Eleanor Donaldson-Honeywell
Registry: Geneva
Registrar: René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION FOR PARTIAL
POSTPONEMENT OF PROCEEDINGS
AND APPLICANT'S MOTION TO
MAKE FURTHER SUBMISSIONS**

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Matthias Schuster, UNICEF

Alistair Cumming, UNICEF

Introduction

1. The Applicant served on a permanent appointment as a Senior Adviser at the United Nations Children’s Fund (“UNICEF”).
2. On 28 December 2018, the Respondent informed the Applicant that he was being separated from service that day for abuse of authority, harassment and sexual harassment.
3. On 20 February 2019, the Applicant filed an application before the United Nations Dispute Tribunal to challenge the Respondent’s decision to dismiss him.
4. The Respondent filed his Reply on 25 March 2019. The Respondent argues that there is clear and convincing evidence of the Applicant’s misconduct and that the sanction imposed on him was proportionate.
5. On 4 February 2021, the Tribunal issued Order No. 25 (GVA/2021) setting this matter down for a case management discussion (“CMD”).
6. The CMD took place, as scheduled, on 17 February 2021 with counsel for both parties present. The Applicant was not present at the discussion.
7. Following the CMD, on 18 February 2021, the Tribunal issued Order No. 54 (GVA/2021) in which it recorded the salient aspects of the discussion, the issues to be adjudicated and the orders that ensued.
8. While the parties took the view that this matter can be decided on the basis of their written submissions and the documentary evidence that had been filed, the Tribunal’s position was that an oral hearing in which the Applicant testifies would be necessary if the parties are not able to resolve this dispute informally. The Tribunal left it up to the Respondent to decide who, if anyone, he would like to call.
9. On 10 March 2021, the parties filed separate submissions with motions for further submissions and partial postponement of the oral hearing respectively.
10. These motions are the subject of the present decision.

Consideration

Postponement of the Oral hearing

11. The Respondent submits that:

[O]n 9 March 2021, Ms. Assefa informed Counsel for the Respondent that due [to] a family emergency, she is no longer available to attend the hearing on either of the scheduled dates. Accordingly, the Respondent moves the Dispute Tribunal to vary the hearing dates set out in Order No. 54 (GVA/2021), and to adjourn the hearing after the evidence of the Applicant has been taken to a suitable date after the middle of April 2021, when Ms. Assefa should have returned to duty.

12. The Tribunal must here express its misgivings on the substance of the motion.

13. The witness in question was selected and called *by* the Respondent, *for* the Respondent. The Tribunal would therefore have expected him to ensure that his witness was available to testify on the given dates.

14. The Tribunal finds it difficult to accept the suggestion that the witness' "family emergency" should result in these proceedings being deferred by a month. The issue here is whether being on leave is grounds for a witness/staff member to say that he/she is not available to testify before the Tribunal. The Tribunal's schedule cannot be varied on the basis of the exigencies facing the parties, unless there is exceptional reason to do so.

15. In scheduling its hearings, the Tribunal has to balance the interests of both parties as well as its own scheduling constraints, while ensuring that the integrity of the proceedings is properly observed.

16. The Tribunal expects counsel for both parties to conduct themselves in a manner befitting their respective roles as officers of the court and, to that extent, exercise the deference and respect for these proceedings.

17. The Tribunal therefore rules that the hearing of this matter will proceed as scheduled, and that counsel for the Respondent should make the necessary arrangements for his chosen witness, or an alternate, to testify from wherever they may be located at the scheduled time and date.

Applicant's Motion for Leave to File further submissions on the performance appraisal

18. The Applicant submits that the performance appraisal filed by the Respondent in Annex R22 is incomplete and seeks leave to make submissions on the gaps in the document that was filed.

19. The Tribunal allows this motion and directs the Applicant to address these gaps when he comes to testify. The Respondent will be afforded an adequate opportunity to respond.

Conclusion

20. The Tribunal makes the followings **ORDERS**:

- a. The hearing of this matter will proceed as scheduled;
- b. The Respondent is directed to make the necessary arrangements for his chosen witness, or an alternate, to testify from wherever they may be located at the scheduled time and date; and
- c. The Applicant is directed to address the gaps in the performance appraisal when he testifies before the Tribunal.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 12th day of March 2021

Case No. UNDT/GVA/2019/009

Order No. 69 (GVA/2021)

Entered in the Register on this 12th day of March 2021

(Signed)

René M. Vargas M., Registrar, Geneva