



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

JANDL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Jeffrey C. Dahl

Counsel for Respondent:

Lucienne Pierre, AAS/ALD/OHR, UN Secretariat

Albert Angeles, AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 4 August 2020, the Applicant, a former staff member of the United Nations Office on Drugs and Crime (“UNODC”), contests the decision to separate him from service following a disciplinary process.
2. On 4 September 2020, the Respondent filed his reply.
3. By Order No. 37 (GVA/2022), the Tribunal called the parties to a case management discussion (“CMD”) which took place on 30 March 2022.
4. By Order No. 49 (GVA/2022), the Tribunal instructed the parties to provide written submissions on the use of prior conduct as evidence in disciplinary investigations, to identify whether an oral hearing is needed, and to provide a list of potential witnesses, if any, explaining the relevance of each testimony for the determination of the issues in dispute.
5. On 20 April 2022, the Applicant filed a motion for extension of time to respond to Order No. 49 (GVA/2022).
6. Also on 20 April 2022, the Tribunal received, after working hours, the Respondent’s response to said motion requesting that the same extension of time be granted to him.
7. By Order No. 53 (GVA/2022) and Order No. 54 (GVA/2022), the Tribunal granted the parties’ request for extension of time to respond to Order No. 49 (GVA/2022) until 29 April 2022.
8. On 29 April 2022, the parties filed their respective response.

Consideration

The hearing

9. The Applicant submits that the Administration used prior conduct evidence to support the findings of its investigation, while not allowing the Applicant to present the same type of evidence in his defence, and that he has experienced moral

damages as a result of the contested decision. Hence, the Applicant claims that an oral hearing is needed so that the Tribunal can hear the prior conduct evidence dismissed by the investigators and assess the extent of the moral damages he suffered.

10. On the other hand, the Respondent submits that the contested decision lawfully considered prior conduct evidence with respect to the question whether the facts were established – particularly, the parties’ credibility, and that the interviews requested by the Applicant are irrelevant to the determination of this case. The Respondent deems that this matter should be adjudicated on the papers and that an oral hearing is not needed.

11. Having examined the evidence on record and the parties’ submissions to date, the Tribunal finds that, pursuant to the principle of equality of arms and in the interest of fairness, the parties must benefit from similar procedural rights and obligations. Thus, since the Respondent interviewed witnesses and considered prior conduct evidence as a way to assess the parties’ credibility, including that of the Applicant, the Applicant should be granted the same opportunity.

12. Thus, the Tribunal decides to hold a hearing to hear witnesses exclusively related to the matter of prior conduct and moral damages. Regarding the other facts and legal matters in dispute, the Tribunal is satisfied with the extensive evidence on record and will issue its determination based on the papers.

The witnesses

13. In his submission of 29 April 2022, the Applicant, apart from his own testimony, calls for the testimony of the following witnesses:

- a. Dr. A;
- b. Mr. B;
- c. Ms. C;
- d. Ms. D;

- e. Ms. E;
- f. Ms. F;
- g. Ms. G;
- h. Ms. H;
- i. Ms. I;
- j. Mr. J;
- k. Ms. K; and
- l. Ms. L.

14. In his respective submission, the Respondent did not identify any witnesses for the hearing.

15. The Tribunal has assessed the relevance of the testimony to be provided by the proposed witnesses and decides to only hear the following witnesses, who are able to testify on the matter of prior conduct and moral damages:

- a. The Applicant;
- b. Ms. D;
- c. Ms. E;
- d. Dr. A; and
- e. Mr. B.

Dates for the hearing

16. Both parties confirmed their availability to attend a hearing between 13 and 17 June 2022, and the Applicant confirmed the availability of the proposed witnesses.

17. Based on this information, the tentative schedule of the hearing, which may be subject to change, is as follows:

Monday, 13 June 2022

2.30 p.m.	Parties' opening statements.
3 p.m.	The Applicant's testimony. Examination-in-Chief by the Applicant's Counsel and cross-examination by the Respondent's Counsel.
4.30 p.m.	Mr. Gunther Neuman. Examination-in-Chief by the Applicant's Counsel and cross-examination by the Respondent's Counsel.

Tuesday, 14 June 2022

2.30 p.m.	Ms. Fatma Usheva. Examination-in-Chief by the Applicant's Counsel and cross-examination by the Respondent's Counsel.
3.30 p.m.	Ms. Anna Avazzi. Examination-in-Chief by the Applicant's Counsel and cross-examination by the Respondent's Counsel.

Wednesday, 15 June 2022

2.30 p.m.	Ms. Mariana Neves. Examination-in-Chief by the Applicant's Counsel and cross-examination by the Respondent's Counsel.
3.30 p.m.	Parties' closing submissions

Conclusion

18. In view of the foregoing, it is ORDERED THAT:

- a. An oral hearing will be held from Monday, 13 to Wednesday, 15 June 2022, starting at 2.30 pm Geneva time;

b. The parties are notified of the tentative schedule of appearances at the hearing as per para.17 above;

c. The parties are instructed to provide their contact details as well as those of the witnesses (email and phone number) no later than **Friday, 27 May 2022.**

(Signed)

Judge Teresa Bravo

Dated this 19th day of May 2022

Entered in the Register on this 19th day of May 2022

(Signed)

René M. Vargas M., Registrar, Geneva