



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON CASE MANAGEMENT  
AND NOTICE OF HEARING**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Sandra Lando, UNHCR

Marisa MacLennan, UNHCR

## **Introduction**

1. By application filed on 26 February 2021, the Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision to impose on him the disciplinary measure of separation with compensation in lieu of notice and without termination indemnity.
2. On 1 April 2021, the Respondent filed his reply.
3. By Order No. 76 (GVA/2022) of 3 August 2022, the Tribunal convoked the parties to a case management discussion (“CMD”) which took place, as scheduled, on 23 August 2022.
4. By Order No. 79 (GVA/2022) of 24 August 2022, the Tribunal instructed the Applicant to file submissions concerning his medical condition at the time his conduct became an issue, and invited the Respondent to file his comments on the Applicant’s submissions.
5. On 7 September 2022, the Applicant filed his submissions pursuant to Order No. 79 (GVA/2022) including six annexes.
6. On 21 September 2022, the Respondent filed his comments on the Applicant’s submissions, requesting the Tribunal, *inter alia*, to:
  - a. Consider the authenticity and probative value of annexes 1, 2, and 3 to the Applicant’s submissions of 7 September 2022; and
  - b. Grant his motion to adduce additional evidence.

## **Consideration**

### *The Respondent's motion to adduce additional evidence*

7. In his submission dated 21 September 2022, the Respondent sought leave to produce the following additional evidence:

- a. An email dated 30 August 2019 informing the Applicant that he was the subject of an investigation; and
- b. The Applicant's attendance record card from April to October 2020.

8. In support of his request, the Respondent argues that this evidence is relevant because the 30 August 2019 email shows the date on which the Applicant was made aware that he was the subject of an investigation. Moreover, the Applicant's attendance record card refutes his argument that due to a kidney stone surgery, he was not able to respond to the letter informing him of the allegations of misconduct and in which he was asked for his comments.

9. In this respect, the Tribunal recalls that pursuant to art. 18.1 of its Rules of Procedure, it shall determine the admissibility of any evidence and, under art. 18.5, it may exclude evidence it considers irrelevant, frivolous or lacking probative value.

10. Having reviewed the documents that the Respondent seeks to include in the record, the Tribunal finds that there are no grounds to exclude them and will admit them into the case record. However, the Tribunal will decide during its deliberation what weight to attach to each document.

11. Accordingly, the Tribunal finds it appropriate to grant the Respondent's motion to adduce additional evidence.

*Oral hearing*

12. Art. 16.2 of the Tribunal's Rules of Procedure provides that "[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure". Noting the Respondent's request to adduce additional evidence, and having reviewed the parties' submissions to date, the Tribunal finds it appropriate, for the fair and expeditious disposal of this case, to hold a hearing on the merits.

13. Considering that the parties do not dispute the facts on which the disciplinary measure is based, the Tribunal will limit the scope of its hearing, *inter alia*, to testing the authenticity of certain evidence and to assessing the potential impact of the Applicant's health status at the time of the conduct at issue on his behaviour and his ability to control his emotions.

14. Moreover, the Tribunal notes that the Respondent filed a Sworn Declaration provided by Dr. A. F. R., Chief, Medical Section, UNHCR, concerning the Applicant's clearance to return to work, whereas the Applicant filed a Psychiatric Note provided by Dr. L. H., concerning his psychiatric treatment in FirstMed between 10 August 2018 and 15 February 2019. Consequently, pursuant to art.17.1 of the Tribunal's Rules of Procedure, the Tribunal decided to instruct the parties to call Dr. A. F. R. and Dr. L. H. to testify in the present case.

15. Finally, under art. 9.3 of the Tribunal's Statute and art. 16.6 of the Tribunal's Rules of Procedure, the oral proceedings shall be held in public unless the Tribunal decides, at its own initiative or at the request of either party, that "exceptional circumstances require that the oral proceedings be closed". The Tribunal considers that oral proceedings involving sensitive medical information, such as in the present case, constitute exceptional circumstances. Therefore, the Tribunal finds it necessary to have closed oral proceedings and hold the hearing *in camera*.

16. Given the sensitive information regarding the Applicant's medical history in the present case, the Tribunal also finds it necessary to order the anonymization of the Applicant's name for publication purposes of this Order.

### Conclusion

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

- a. The Respondent's motion to adduce additional evidence is granted;
- b. The two documents listed in para. 7 above shall be part of the case record;
- c. The Applicant's name be anonymized in the Tribunal's instant Order; and
- d. The parties take note of the below schedule of appearances at the hearing:

### Wednesday, 26 October 2022

9 a.m.	Parties' opening statements.
9.30 a.m.	Dr. L. H. Examination-in-Chief by the Respondent's Counsel and cross-examination by the Applicant.
11.00 a.m.	Dr. A. F. R.
2.30 p.m.	Applicant's testimony.
3 p.m.	Parties' closing submissions.

*(Signed)*

Judge Teresa Bravo

Dated this 5<sup>th</sup> day of October 2022

Case No. UNDT/GVA/2021/011

Order No. 088 (GVA/2022)

Entered in the Register on this 5<sup>th</sup> day of October 2022

*(Signed)*

René M. Vargas M., Registrar, Geneva