



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

DUYSENHANOVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Bettina Gerber, LPAS, UNOG

Introduction

1. By email of 24 March 2023, the Tribunal convoked the parties to a case management discussion (“CMD”).
2. On 28 April 2023, the CMD took place, as scheduled, virtually through Microsoft Teams, with Counsel for each party present.

Consideration

No need for an oral hearing

3. Noting that in cases involving complaints of harassment and abuse of authority, it is not vested with the authority to conduct a fresh investigation into the initial complaint (see *Messinger* 2011-UNAT-123, para. 27), and considering the voluminous written record, the Tribunal is of the view that an oral hearing is not necessary in this case.
4. At the CMD, both parties agreed that the case could be determined on the written pleadings without holding a hearing on the merits.

Production of evidence and filing of further submissions

5. When perusing the case file, the Tribunal noted that the Respondent relied upon the recordings of the Applicant’s interview with the United Nations Office of Internal Oversight Services (“OIOS”) in his submission filed on 20 March 2023, which is neither provided to the Tribunal nor disclosed to the Applicant.
6. In this respect, the Tribunal recalls that “the staff member must, as a general rule, have access to all evidence on which the authority bases (or intends to base) its decision against him” (see *Bertucci* 2011-UNAT-121, para. 46, referring to International Labour Organization Administrative Tribunal Judgment No. 2229 (2003), para. 3 (b)), and that “[t]he documents relating to the process that led to the contested administrative decision are part of the case file. They must therefore, in principle, come under the Tribunal’s control, unless they are covered by a right to confidentiality by virtue of the internal law of the United Nations” (see *Bertucci* 2011-UNAT-121, para. 47).

7. Having heard the parties' views during the CMD and considering the relevance of the recordings to the Applicant's case, the Tribunal finds it in the interest of justice to order the Respondent to file the above-mentioned recordings.

8. Upon receipt of the Respondent's filing, the Applicant shall file a rejoinder.

9. In accordance with the principle of equality of arms, the Tribunal will give the Respondent an equal opportunity to respond to the Applicant's rejoinder.

Conclusion

10. Pursuant to art. 19 of the Tribunal's Rules of Procedure, IT IS ORDERED THAT:

- a. By **Monday, 1 May 2023**, the Respondent shall file the recordings of the Applicant's interview with OIOS;
- b. By **Monday, 15 May 2023**, the Applicant shall file a rejoinder; and
- c. By **Monday, 22 May 2023**, the Respondent may file comments, if any, on the Applicant's rejoinder.

(Signed)

Judge Teresa Bravo

Dated this 28th day of April 2023

Entered in the Register on this 28th day of April 2023

(Signed)

René M. Vargas M., Registrar, Geneva