



Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

George Irving

Counsel for Respondent:

Miryoungh An, AAS/ALD/OHR, UN Secretariat

Nicola Caon, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 59 (GVA/2023) of 14 June 2023, the Tribunal instructed the parties, *inter alia*, to file their respective list of witnesses and to indicate the witnesses' availability for a hearing on the merits tentatively scheduled from 12 July 2023 to 14 July 2023.
2. On 20 June 2023, the Respondent filed his list of witnesses. At the same time, he filed a motion to admit in the record V03's testimony given during the original proceedings and a motion for accommodations in rehearing V03's testimony.
3. On the same day, the Applicant filed his submissions pursuant to Order No. 59 (GVA/2023). In the same submissions, he indicated that he did not object to the Respondent's motion to admit V03's prior testimony but requested that his Counsel be permitted to cross-examine V03 in person.

Consideration

Witnesses' availability and tentative dates for hearings

4. The Applicant identified three witnesses but informed the Tribunal that one of them, Witness S. R., is not available on the proposed dates for the hearing but is available from 16 July 2023 onwards.
5. The Respondent submitted that due to the lapse of time since the incidents in question, several witnesses who provided evidence during the investigation by the Office of Internal Oversight Services ("OIOS") and who are no longer with the United Nations, namely V01, V02, and Mr. A. K. (an eyewitness to part of the Applicant's conduct towards V02), are not available to appear at the oral hearing despite various attempts to contact them. As such, only V03 is available during the proposed dates.
6. The Respondent further added that Mr. M. N., whose testimonial evidence given to OIOS during the investigation was relied upon by the Administration when imposing the disciplinary sanction at issue, is unavailable between 10 and 14 July 2023 but would be available in the week of 17 July 2023.

7. Considering the circumstances invoked by the parties, the Tribunal finds it appropriate to postpone the hearing by one week and, accordingly, Counsel should enquire with their witnesses about their availability for a hearing tentatively scheduled from Wednesday, 19 July 2023 to Friday, 21 July 2023, starting at 2 p.m. (Geneva time).

8. Noting that V01, V02, and Mr. A. K. are presently not staff members of the United Nations, the Tribunal encourages the Respondent to continue using his best endeavours to ensure the availability of the above-mentioned witnesses for the hearing.

Motion to admit V03's prior testimony to the case file

9. The Respondent requests that V03's oral witness testimony in Case No. UNDT/NY/2019/047 be admitted as part of the record in the present proceedings, and that the Tribunal consider the recorded testimony in its deliberations on this case.

10. The Tribunal notes that the Applicant does not object to this motion. Moreover, considering that the matter at issue is a remanded case, the Tribunal is of the view that the video recordings of V03's oral testimony in the original proceedings should normally be part of the case file in the current proceedings.

11. Accordingly, the Tribunal grants the Respondent's motion in this regard.

Motion for accommodations in rehearing V03's testimony

12. The Respondent further requests the Tribunal to make accommodations for V03 to provide her oral testimony in the present proceedings. Specifically, he requests, *inter alia*, that the Tribunal, or, if not possible, the Applicant's Counsel ask only additional questions on issues that were not yet traversed in V03's testimony provided on 3 November 2020 in Case No. UNDT/NY/2019/047, and that the Applicant remain silent and not visible during V03's oral testimony.

13. Having reviewed the Respondent's submission in this respect, the Tribunal considers it necessary to afford the Applicant an opportunity to respond to it.

Conclusion

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

- a. The Respondent's motion to admit V03's prior testimony into the case record be granted;
- b. By **Tuesday, 27 June 2023**, the Applicant file his comments on the Respondent's motion for accommodations in rehearing V03's testimony; and
- c. By **Wednesday, 28 June 2023**, the parties inform the Tribunal about their witnesses' availability for a hearing tentatively scheduled from Wednesday, 19 July 2023 to Friday, 21 July 2023, starting at 2 p.m. (Geneva time).

(Signed)

Judge Margaret Tibulya

Dated this 22nd day of June 2023

Entered in the Register on this 22nd day of June 2023

(Signed)

René M. Vargas M., Registrar, Geneva