



Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON
SCHEDULING OF HEARING
AND TO CALL A WITNESS**

Counsel for Applicant:

George Irving

Counsel for Respondent:

Miryoung An, AAS/ALD/OHR, UN Secretariat

Nicola Caon, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 62 (GVA/2023) of 22 June 2023, the Tribunal ordered, *inter alia*, the parties to indicate the witnesses' availability for a hearing on the merits tentatively scheduled from 19 July 2023 to 21 July 2023, commencing each day at 2 p.m. (Geneva time).
2. On 26 June 2023, the Applicant confirmed that his proposed witnesses had indicated their availability on the newly proposed dates.
3. On 27 June 2023, the Respondent filed, *inter alia*, his submissions pursuant to Order No. 62 (GVA/2023).

Consideration

List of witnesses

4. The Tribunal notes that the Applicant would like to call the following witnesses:
 - a. Ms. P. M.;
 - b. Mr. G. R.; and
 - c. Mr. S. R.
5. The Respondent would like to call V01, V02, V03, and Mr. A. K. (an eyewitness to part of the Applicant's conduct towards V02) as his witnesses to the oral hearing. However, at the time of this Order, only V03 had confirmed her availability for the hearing between 19 and 21 July 2023 and wished that her testimony be scheduled close to or at 4 p.m. Geneva time.
6. The Tribunal notes that V02 does not want to participate in the hearing on wellbeing grounds. The Tribunal regrets this position as it cannot compel V02 to appear before it because she is not a staff member of the United Nations. Noting that V01 and Mr. A. K. are presently not staff members of the United Nations either, the Tribunal instructs the Respondent to inform it immediately should either of them contact him after the date of this Order.

Order to call Mr. M. N. as a witness

7. Having reviewed the evidence on record, the Tribunal notes that Mr. M. N.'s testimonial evidence given to the Office of Internal Oversight Services during the investigation was relied upon by the Administration when imposing the disciplinary sanction at issue.

8. Moreover, the Appeals Tribunal requires the Tribunal to "at the very least hear the evidence of the complainants, any eyewitnesses to the incidents, the persons to whom the first report was made, and the three witnesses identified" (see *Appellant 2022-UNAT-1210*, para. 60).

9. Accordingly, the Tribunal decides to formally summon Mr. M. N. to appear at the hearing on the merits pursuant to art. 17.1 of its Rules of Procedure.

10. Considering the circumstances of the present case, the Tribunal finds it appropriate to instruct the Respondent to use his best endeavours to ensure the availability of the above-summoned witness for the hearing. The Tribunal further wishes to point out that any difficulty for the witness to appear at the hearing may be alleviated by his participation through electronic means, as provided by art. 17.6 of its Rules of Procedure.

Closed oral proceedings

11. 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 sexual harassment claims, such as in the present case, constitute exceptional circumstances.

12. Therefore, the Tribunal finds it necessary to have closed oral proceedings and hold the hearing *in camera*.

Conclusion

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

- a. Mr. M. N. shall appear to give evidence at the hearing, which will be held through Microsoft Teams;
- b. The Respondent shall use his best endeavours to ensure the availability of the above-summoned witness for the hearing;
- c. The tentative schedule of appearances at the hearing will be as follows:

Wednesday, 19 July 2023

2 p.m.	Parties' opening statements.
2.30 p.m.	The Applicant: Examination-in-Chief by the Applicant's Counsel and cross-examination by the Respondent's Counsel.
4 p.m.	V03: Examination-in-Chief by the Respondent's Counsel and cross-examination by the Applicant's Counsel.

Thursday, 20 July 2023

2 p.m.	Ms. P. M.: Examination-in-Chief by the Applicant's Counsel and cross-examination by the Respondent's Counsel.
3 p.m.	Mr. G. R.: Examination-in-Chief by the Applicant's Counsel and cross-examination by the Respondent's Counsel.
4 p.m.	Mr. S. R.: Examination-in-Chief by the Applicant's Counsel and cross-examination by the Respondent's Counsel.

Friday, 21 July 2023

2 p.m.	Mr. M. N.
3 p.m.	Parties' closing submissions.

(Signed)

Judge Margaret Tibulya

Dated this 5th day of July 2023

Entered in the Register on this 5th day of July 2023

(Signed)

René M. Vargas M., Registrar, Geneva