



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Jeffrey C. Dahl

Counsel for Respondent:

Nicola Caon, DAS/ALD/OHR, UN Secretariat

Albert Angeles, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Judgment *Applicant* UNDT/2022/071, this Tribunal adjudicated Case No. UNDT/GVA/2020/036 (Applicant). The Applicant appealed said Judgment before the United Nations Appeals Tribunal (“UNAT” or the “Appeals Tribunal”).
2. By Judgment *AAO 2023-UNAT-1361*, the Appeals Tribunal reversed the above UNDT Judgment and remanded the case for determination by a different Judge.
3. On 31 July 2023, the remanded case, registered under Case No. UNDT/GVA/2020/036/R1, was assigned to the undersigned Judge.
4. By Order No. 113 (GVA/2023) of 30 August 2023, the Tribunal invited the parties to attend a Case Management Discussion (“CMD”), held virtually on Microsoft Teams on 11 September 2023.

Consideration

5. At the CMD, the Tribunal highlighted the findings made in *AAO 2023-UNAT-1361*, in which UNAT noted that “[i]n the interests of justice to both parties, the matter must be remanded to the UNDT for a fresh trial before another judge”, and that, “[g]iven the limitations in scope of the latter hearing, a new hearing would seem advisable”.
6. Having examined the case record to date, and taking into consideration the UNAT’s findings, this Tribunal decided to proceed with a hearing on the merits.
7. In this context, the following matters were decided.
 - a. The Tribunal has been sufficiently briefed on the issue of prior conduct evidence by the hearing held between 13 and 15 June 2022. The Tribunal will not re-open the discussion on this issue and will make its determination in this regard based on the record and the parties’ written submissions;

b. The Respondent shall inform the Tribunal about the availability of the following witnesses to attend a hearing on the merits between 23 and 31 October 2023:

- i. V01;
- ii. Ms. M. T.;
- iii. Ms. A. S.;
- iv. Mr. E. B.;
- v. Ms. S. K.;
- vi. Mr. U. R.; and
- vii. Mr. A. K.

c. A detailed schedule of the hearing will be issued by the Tribunal upon confirmation by the Respondent of the availability of the above-mentioned witnesses.

8. During the CMD, the Applicant recalled his previous motion for access to the unredacted OIOS investigation report dated 28 June 2019 and its supporting documentation, which was denied by the previous Judge by Order No. 49 (GVA/2022) of 8 April 2022. The Applicant reiterates his belief that V01's ability to objectively process and recollect events was altered by the impact of another incident.

9. Having examined the content of the redacted parts of the investigation report, the Tribunal agrees with the reasoning in Order No. 49 (GVA/2022) that said redactions are not relevant for the determination of the issues under dispute. The Tribunal is mindful of its obligation to protect the anonymity of victims and witnesses of misconduct heard in the context of disciplinary processes, and does not see any exceptional circumstance or compelling reasons in this case that would allow the Tribunal to circumvent this obligation.

10. Finally, following the suggestion of UNAT in para. 73 of *AAO*, the Tribunal strongly encouraged the parties to consider mediation or informal discussions as an alternative resolution to the dispute.

11. The parties agreed to have an informal discussion and revert to the Tribunal informing whether they are open to engage in mediation.

Conclusion

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

a. **By Friday, 29 September 2023**, the Respondent shall inform the Tribunal about the availability of the witnesses listed in para. 5(b) above to virtually attend a hearing on the merits between 23 and 31 October 2023;

b. **By Friday, 29 September 2023**, the parties shall inform the Tribunal of the result of their informal discussion and whether they are amenable to engage in mediation; and

c. The Applicant's oral motion to access the unredacted investigation report is denied.

(Signed)

Judge Sun Xiangzhuang

Dated this 12th day of September 2023

Entered in the Register on this 12th day of September 2023

(Signed)

René M. Vargas M., Registrar, Geneva