



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

KAVOSH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Wangenci Wahome Akedi

Counsel for Respondent:

Rebeca Britnell, UNHCR

Francisco Navarro, UNHCR

Introduction

1. 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 dismissal.

2. On 13 September 2023, a case management discussion (“CMD”) took place with the participation of the Applicant, his Counsel and Counsel for the Respondent.

Consideration

The legal issues

3. During the CMD, the Tribunal referred to the legal issues to be determined, as well as the standard of evidence required, i.e., clear and convincing evidence.

The hearing

4. The Tribunal addressed whether a hearing was required and noted that while the Respondent considers that the present matter can be decided on the papers, the Applicant is of the view that a hearing is required.

5. To assess whether a hearing shall be held, the Tribunal considers it appropriate to give the Applicant the opportunity to indicate the reasons for his request, and to identify the relevant witnesses to be called and the issues on which they would testify. There is no need at this stage to provide written witness statements. It is sufficient for the Applicant to briefly mention on which issues each of the proposed witnesses will testify.

6. The Respondent will then have the opportunity to provide his comments on the Applicant’s submission and to reconsider his position if he so wishes. The Tribunal has taken note of the Respondent’s request to protect the identity of the alleged victim in this case if a hearing is held. To this end, the Tribunal finds that if a hearing takes place, it will be conducted *in camera*. Other measures to ensure the safety and security of the alleged victim may be considered at a later stage.

7. The Tribunal understands that the Respondent's position on the holding of a hearing will also depend on the Applicant's clarifications to other issues raised at the CMD, which will be addressed below.

8. The Tribunal will subsequently decide whether a hearing is to be held and which witnesses are to be called in this respect.

Possible dates for a hearing

9. Having considered the parties' availability, the Tribunal noted that if a hearing is to be conducted, it will take place during the first 10 days of November 2023.

The alleged victim

10. In preparation for a potential hearing, the Tribunal instructed the Respondent to provide information concerning the availability to testify of the alleged victim and the language(s) in which said testimony could be given. The Tribunal will then assess whether interpretation services are required for the hearing.

11. Similarly, the Tribunal considered it appropriate to know the current location of the alleged victim. However, to ensure the alleged victim's safety and security, the Respondent was instructed to provide this information *ex-parte*.

The Applicant

12. Concerning the issue of whether the Applicant is comfortable participating in oral proceedings in English, the Tribunal considers it appropriate to give the Applicant an opportunity to provide his views in this respect. The Respondent is also allowed to comment on the Applicant's submission on this issue.

Additional evidence

13. Regarding the Applicant's oral motion to file additional evidence, the Tribunal considers it appropriate to grant it. The Respondent will be given the opportunity to provide his comments on the forthcoming additional evidence.

Other issues

14. During the CMD, the Respondent sought clarification from the Applicant with respect to his argument about the allegation of sexual exploitation and abuse. On this issue, the Tribunal considers it appropriate to instruct the Applicant to clarify whether his position is that there was a consensual sexual relationship between two adults or that there was no sexual relationship at all.

15. The Respondent also pointed out that the Applicant does not contest the allegations about the misuse of IT equipment. However, the Applicant challenged this statement.

16. The Respondent further indicated at the CMD that he did not consider it necessary to have a hearing on the allegations of sexual harassment and on the allegations of the Applicant's failure to cooperate with the investigation. In his view, there is sufficient evidence on record to enable the Tribunal to determine whether the facts are established on these issues.

Amicable settlement

17. Recalling that the General Assembly has consistently encouraged alternative dispute resolution, the Tribunal considered it appropriate to encourage the parties to explore the possibility of having the dispute between them resolved without recourse to further litigation.

18. The Tribunal notes that while the Applicant expressed his willingness to engage in an amicable settlement, the Respondent was not of the same view considering the nature of the allegations involved.

Conclusion

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

- a. By **Thursday, 28 September 2023**, the Applicant shall file the information indicated in paras. 5, 12, 13 and 14 above;

b. By **Thursday, 28 September 2023**, the Respondent shall file the information indicated in paras. 10 and 11 above, noting that the information in para.11 should be provided *ex parte*; and

c. By **Monday, 9 October 2023**, the Respondent shall file a response to the Applicant's submissions as per paras. 6, 12, and13 above.

(Signed)

Judge Sun Xiangzhuang

Dated this 19th day of September 2023

Entered in the Register on this 19th day of September 2023

(Signed)

René M. Vargas M., Registrar, Geneva