



**Before:** Judge Sun Xiangzhuang (Presiding), Judge Joelle Adda, Judge Sean Wallace

**Registry:** Geneva

**Registrar:** René M. Vargas M.

VANSHELBOIM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER  
ON CASE MANAGEMENT**

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**Counsel for Applicant:**

George Irving

**Counsel for Respondent:**

Jacob B. van de Velden, DAS/ALD/OHR, UN Secretariat

Maria Romanova, DAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a former staff member of the United Nations Office for Project Services (“UNOPS”), contests the decision to impose on him the disciplinary measures of dismissal and a fine of twelve months’ net base salary. He also contests the decision to recover from him the amount of USD63,626,806 and to withhold the release of the PF.4 form (“separation notification”) to the United Nations Joint Staff Pension Fund (“UNJSPF”) until such indebtedness is fully recovered.
2. On 17 May 2023, the Respondent filed his reply.
3. By Order No. 120 (GVA/2023) of 14 September 2023, the Tribunal granted the parties’ request to exceed the page limit, directed the Applicant to file a rejoinder, and granted the Respondent’s motion to file translated documents. The Tribunal further encouraged the parties to seek alternative dispute resolution and, in response to the Applicant’s motion requesting the release of his separation notification to the UNJSPF, the Tribunal clarified that such a claim could not be decided at the early stage of the proceedings, but that it would fast-track consideration of the application due to this pressing matter.
4. Following a request for extension of time, which was granted, the Applicant filed his rejoinder on 13 October 2023.
5. On 19 October 2023, the parties filed a joint submission informing the Tribunal that they explored the possibility of amicable resolution, as instructed, but decided to pursue the litigation instead.
6. On 31 October 2023, the Respondent filed translated documents pursuant to Order No. 120 (GVA/2023).
7. By email dated 24 November 2023, the Tribunal asked the parties to confirm their availability to virtually attend a case management discussion (“CMD”) between 11 and 15 December 2023.
8. By Order No. 163 (GVA/2023), the Tribunal invited the parties to attend a CMD, held virtually and *in camera* on 12 December 2023.

9. By Order No. 168 (GVA/2023), the Tribunal asked the parties to file further submissions by 29 December 2023, and scheduled a second CMD, which was held virtually and *in camera* on 31 January 2024.

10. By Order No. 3 (GVA/2024), the Tribunal informed the parties of the composition of a Three-Judge Panel to adjudicate the matter.

11. By Order No. 20 (GVA/2024), the Tribunal rejected the Applicant's motion for production of the Financial and Board of Auditors Report for the period ending on 31 December 2020 (A/76/5/Add.11), and instructed the parties to file a joint statement of disputed and undisputed facts in relation to the 34 allegations against the Applicant in the Sanction Letter and the issue of recovery of financial loss by the Organization in the amount of USD63,626,806. The parties were also instructed to identify for each disputed fact, the evidence on which they will rely on, including the testimony of witnesses, and to inform the Tribunal whether the testimony of an expert witness is warranted.

12. On 29 March 2024, the Applicant filed additional documentation, numbered annexes 18 to 37, and submitted a request for further production of evidence.

13. On 2 April 2024, the parties filed their joint statement in response to Order No. 20 (GVA/2024).

14. By Order No. 42 (GVA/2024) of 29 April 2024, the Tribunal (i) instructed the Applicant to submit legible copies of annexes 18 to 37; (ii) granted the Applicant's request to file additional documentation by 28 May 2024; and (iii) called the parties to a new CMD, which was held virtually on 3 May 2024.

15. By Order No. 49 (GVA/2024) of 8 May 2024, the Tribunal: (i) revoked the Applicant's deadline of Order No. 42 (GVA/2024); (ii) instructed the Respondent to produce legible copies of the email correspondence contained in the Applicant's annexes 18 to 37; (iii) instructed the parties to confirm the availability of the proposed witnesses to attend a hearing on merits; and (iv) instructed the Applicant to inform about the amount of his pension fund benefit.

16. On 14 May 2024, the Respondent filed a motion requesting the removal of Orders No. 49 (GVA/2024), 42 (GVA/2024), and 168 (GVA/2023) from the Tribunal's public website.

### **Consideration**

17. In support of this motion, the Respondent provides the following:

a. Orders No. 49 (GVA/2024), 42 (GVA/2024), and 168 (GVA/2023), reference *in camera* CMDs. It vitiates the nature of *in camera* CMDs if Orders referencing such discussions are published;

b. The parties had the expectation that exchanges of information with the Tribunal and other party would remain "in chambers". Leaving the order publicly available impairs the Respondent's ability to effectively aid the Tribunal in properly conducting the matter;

c. Specifically, the identification of witnesses in these Orders impairs the Respondent's ability to persuade them to voluntarily appear to testify. The mere mention of their initials and former functions is sufficient for them to be identified in a highly public matter such as this one; and

d. Witnesses who are no longer United Nations staff members have no duty to appear, and the Tribunal has no subpoena power over them. Ensuring the voluntary cooperation of such witnesses involves a carefully staged process, in particular in this highly sensitive matter.

18. Having reviewed the Respondent's submission, the Tribunal decides the following.

19. With respect to the Respondent's expectation vis-à-vis an *in camera* CMD, the Tribunal clarifies that holding a CMD *in camera* does not automatically imply that the subsequent Order will not be published. The same applies to an *in camera* hearing and the subsequent Judgment.

20. An *in camera* CMD simply means that the parties are freely able to discuss the matter with the Judge(s) and other party without interference or scrutiny from the wide public. This does not alter the Tribunal's responsibility with respect to the principles of transparency and accountability enshrined in the United Nations' internal justice system, which does require that its Orders and Judgments be published.

21. Any departure from that must be duly supported by exceptional circumstances.

22. Having said that, the Tribunal will concede to the Respondent's delicate position with respect to having to persuade non-staff members to voluntarily appear before the Court. Indeed, a close reading of Order No. 49 (GVA/2024) by an interested third party could easily reveal the identity of some of the witnesses listed therein.

23. Accordingly, the Tribunal will remove Order No. 49 (GVA/2024) from its public website and replace it with an amended version whereby the witnesses will not be identifiable.

24. With respect to removing Orders No. 42 (GVA/2024) and 168 (GVA/2023), as they do not identify any potential witnesses, the Tribunal sees no reason to remove or alter them.

### **Conclusion**

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

- a. The Respondent's motion is partially granted;
- b. Order No. 49 (GVA/2024) shall be removed from the Tribunal's public website and be replaced with an amended version, as per para. 23 above.

*(Signed)*

Judge Sun Xiangzhuang (Presiding)

Dated this 14<sup>th</sup> day of May 2024

Case No. UNDT/GVA/2023/020

Order No. 53 (GVA/2024)

Entered in the Register on this 14<sup>th</sup> day of May 2024

*(Signed)*

René M. Vargas M., Registrar, Geneva