



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:

Sètondji Roland Adjovi
Anthony K. Wilson

Counsel for Respondent:

Steven Dietrich, ALD/OHR/DMSPC, UN Secretariat
Miryoung An, ALD/OHR/DMSPC, UN Secretariat

Introduction

1. The Applicant, a former Head of the Donor Coordination Section, P-4, at the United Nations Assistance Mission in Afghanistan (“UNAMA”), contests the decision dated 8 May 2023 to impose on him the disciplinary measure of demotion by one grade with deferment for three years of consideration for eligibility for promotion, pursuant to staff rule 10.2(a)(ii), and the decision requiring him to commence gender sensitivity/awareness training (the “contested decision”).
2. On 5 August 2023, the Applicant filed the instant application against the contested decision. With the application, the Applicant also submitted a motion for anonymity and a request to exceed the page limit.
3. On 13 September 2023, the Respondent filed his reply arguing for the lawfulness of the contested decision, the rejection of the Applicant’s motion for anonymity, and also seeking authorization to exceed the page limit.
4. On 16 September 2023, the Applicant filed a motion seeking leave to file a rejoinder.
5. On 19 September 2023, the Respondent opposed the Applicant’s motion and requested to be granted the opportunity to comment on the Applicant’s rejoinder should his motion be granted.
6. By Order No. 150 (GVA/2023) of 10 November 2023, the Tribunal granted the parties’ motion to exceed the page limit, rejected the Applicant’s motion for anonymity, ordered the Applicant to file a rejoinder by 24 November 2023, and the Respondent to comment on said rejoinder by 8 December 2023.
7. On 11 November 2023, the Applicant filed a motion seeking a two-week extension of time to file a rejoinder.
8. By Order No. 157 (GVA/2023) of 15 November 2023, the Tribunal granted the Applicant’s motion for an extension of time to file a rejoinder, which he did on 6 December 2023. On 20 December 2023, the Respondent filed his comments on it.

9. By Order No. 32 (GVA/2024) of 12 April 2024, the Tribunal convoked the parties to a case management discussion (“CMD”), which was held virtually in Microsoft Teams on 24 April 2024.

10. By email of 15 April 2024, the Applicant informed the Tribunal that he retained legal representation and filed the respective authorization form.

11. By Order No. 39 (GVA/2024), the Tribunal instructed the parties to identify any potentially relevant witnesses for a hearing on the merits explaining the relevance of their testimony for the determination of the issues under dispute, and confirming their availability to virtually attend a hearing between 10 and 13 June 2024. With respect to the Applicant’s request for anonymity raised at the CMD, the Applicant was reminded that the matter of anonymity was decided by Order No. 150 (GVA/2023), and that it would not be revisited unless new circumstances arise.

12. On 8 May 2024, the parties filed their respective submission pursuant to Order No. 39 (GVA/2024).

13. On 10 May 2024, the Respondent filed a motion for leave to respond to the Applicant’s submission of 8 May 2024. The following day, the Applicant responded to the Respondent’s motion.

14. By Order No. 54 (GVA/2024), the Tribunal, *inter alia*, reconsidered its previous decision and granted the Applicant anonymity. It also scheduled four witnesses to give testimony on a virtual hearing on the merits to be held on 10 and 11 June 2024. In this respect, the Tribunal granted the Respondent’s request to protect V01’s privacy and well-being by not naming her during these proceedings and Judgment, by having her testimony *in camera*, and by not allowing the Applicant to be virtually present during it.

15. On 20 May 2024, the Applicant filed a motion asking the Tribunal to reconsider para. 27(c) of Order No. 54 (GVA/2024), thus allowing the Applicant to be virtually present during V01’s testimony.

Consideration

16. In support of his motion, the Applicant alleges, *inter alia*, that he has a right to be present during V01's testimony, and that "there does not seem to be one case in the entire history of the United Nations Dispute Tribunal since it was instituted in 2009 where an applicant has been excluded from participating in any part of proceedings of his/her own case".

17. With respect to the latter, the Applicant is simply incorrect. The Tribunal has established in the past the same conditions for the testimony of alleged victims of sexual harassment when deemed necessary to protect their privacy and well-being (*see, Applicant* Order No. 136 (GVA/2023) and *Applicant* Order No. 11 (GVA/2022)).

18. The Tribunal does not see any detriment to these proceedings in accommodating V01's request. The Applicant is represented by Counsel, and will have full access to the audio recording and transcript of V01's testimony through the case management portal. Moreover, even if he was virtually present, the Applicant would not be allowed to interfere or interact with V01. Thus, it is simply untenable that the principle of fairness or any of the Applicant's due process rights will be harmed in any way.

19. Furthermore, this is a disciplinary case involving an alleged victim of sexual harassment who, as provided by the Respondent in the CMD dated 24 April 2024, is no longer a staff member of the United Nations and thus, over whom the Tribunal has no *subpoena* power.

20. By simply objecting to the decision to accommodate V01's request and justifying it on selective jurisprudence, the Applicant has failed to explain how he would be impacted by simply not being able to listen *live* to her testimony.

21. It is well-established jurisprudence that an application for reconsideration of an order rendered by the Tribunal can only succeed under exceptional circumstances such as the discovery of new evidence, or a misapprehension of facts

or the law (*see*, *Caruso* Order No. 34 (NY/2018); *Veliz* Order No. 33 (NY/2019); *Rubvuta* Order No. 031 (NBI/2020); *Applicant* Order No. 88 (NY/2020)).

22. As it follows, the Applicant failed to meet the required threshold.

23. The Tribunal considers that it is in the best interest of these proceedings to accommodate V01's request and does not see any detriment to the Applicant's rights in this respect.

Conclusion

24. In view of the foregoing, it is ORDERED THAT the Applicant's motion for reconsideration of para. 27(c) of Order No. 54 (GVA/2024) is rejected.

(Signed)

Judge Sun Xiangzhuang

Dated this 22nd day of May 2024

Entered in the Register on this 22nd day of May 2024

(Signed)

René M. Vargas M., Registrar, Geneva