



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

KHAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Sadia Javed

Counsel for Respondent:

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

Maria Romanova, DAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 24 July 2023, the Applicant contests the decision to separate him from service, with compensation in lieu of notice, and without termination indemnity, on disciplinary grounds.
2. On 23 August 2023, the Respondent filed his reply.
3. By Order No. 167 (GVA/2023) of 13 December 2023, the Tribunal directed the Applicant to file a rejoinder by 12 January 2024, and the parties to explore resolving the dispute amicably, instructing them to revert to the Tribunal in this respect by 19 January 2024.
4. On 9 January 2024, the Applicant filed a rejoinder.
5. On 19 January 2024, the parties informed the Tribunal separately that they had not been able to amicably resolve the dispute.
6. On 27 February 2024, the present case was assigned to the undersigned Judge.
7. On 16 May 2024, the Tribunal conducted a case management discussion (“CMD”) with the participation of Counsel for the Applicant and Counsel for the Respondent.
8. By Order No. 55 (GVA/2024) of 21 May 2024, the Tribunal instructed the Applicant to indicate, by 4 June 2024, the reasons for his request for a hearing and to identify the relevant witnesses to be called including the issues on which they would testify. It also ordered the Respondent to file a response to the Applicant’s submission by 18 June 2024.
9. On 4 June 2024, the Applicant responded to Order No. 55 (GVA/2024) and, on 11 June 2024, the Respondent filed his response therein.

Consideration

The Applicant's request for a hearing

10. The Tribunal recalls that during the CMD, Counsel for the Applicant requested the Tribunal to hear the testimony of around 18 witnesses not yet identified at the time. On this issue, Counsel for the Respondent indicated that, in his view, there was no need for a hearing as relevant witnesses had already been interviewed. The Tribunal then issued Order No. 55 (GVA/2024) to give the parties an opportunity to further develop their arguments on whether a hearing was needed and to identify the witnesses to be called.

11. In response to the Tribunal's order, Counsel for the Applicant requested a hearing whereas Counsel for the Respondent submitted that there was no need for a hearing.

12. Under the consistent jurisprudence of the Appeals Tribunal, "the assessment of evidence is foremost in the hands and responsibility of the trial judge" who "[has] an appreciation of all the issues for determination and the evidence before it" (see *Karkara* 2021-UNAT-1172 para. 64; *Nyawa* 2020-UNAT-1024, para. 63).

13. To determine whether a hearing shall be conducted, the Tribunal addresses the Applicant's arguments and the relevance of the proposed witnesses' testimony.

14. Counsel for the Applicant submitted that important witnesses were ignored during the investigation and that the disciplinary measure against the Applicant was imposed "without assessing the credibility and relevance" of the interviewed witnesses.

15. However, the evidence shows that the Office of Internal Oversight Services ("OIOS") interviewed 19 witnesses including the Applicant, V01, V02 and 7 witnesses identified by the Applicant. The record also shows that OIOS and the Administration assessed the witnesses' credibility during the investigation and the disciplinary process respectively. Therefore, the argument put forward by the Applicant's Counsel is rejected.

16. Counsel for the Applicant also identified three witnesses for the purpose of a hearing, namely:

- a. Mr. Abdel-Naser Abdalla, Chief of Finance, United Nations Military Observer Group in India and Pakistan (“UNMOGIP”);
- b. Mr. Saif-ur-Rehman Qazi, National Staff Representative; and
- c. Mr. Md Abdullah Al Obaidi, Chief Security Officer, UNMOGIP.

17. In relation to Mr. Abdel-Naser Abdalla, Counsel for the Applicant indicates that he is the Chief of Section and the Applicant’s supervisor. He plays a key role in “observing the attitude and professionalism of his staff members” and is “well-equipped with the [Low Value Acquisition (“LVA”)] report that had been the root cause of the sexual harassment complaint against the Applicant. However, Mr. Abdel-Naser does not have first-hand knowledge of the allegations against the Applicant and Counsel for the Applicant does not indicate how Mr. Abdel-Naser’s knowledge of the LVA report would be relevant to assess the allegations at stake.

18. With respect to Mr. Saif-ur-Rehman Qazi, Counsel for the Applicant submits that he is a staff representative who knows all the local staff members and “who is not only familiar with the Applicant but also knows the bipolar and retaliation nature of V01 and V02”. Nonetheless, Counsel for the Applicant also acknowledged in her submission that V01 and V02 “did not bother to discuss their ... suffering ... with [Mr. Qazi] [and approached instead] OIOS”. The Tribunal finds this to mean that Mr. Qazi does not have first-hand knowledge of the alleged facts.

19. Concerning Mr. Md Abdullah Al Obaidi, Counsel for the Applicant submits that he is a Chief Security Officer and has “access to all the security cameras ... and do surveillance of any shady and doubtful conduct of any person”. She also indicates that he can be asked any questions about the Applicant’s alleged misconduct. Still, Counsel for the Applicant does not indicate on which specific issues Mr. Al Obaidi would testify. Consequently, the Tribunal does not see the relevance of his testimony.

20. In light of the above, the Tribunal finds that none of the identified witnesses have first-hand knowledge of the specific allegations against the Applicant, and their testimony about the Applicant's "nature, conducts and professionalism" is irrelevant for the assessment of the allegations against the Applicant. Counsel for the Applicant presented the three witnesses mentioned above as character witnesses and did not show how they could contribute to establishing or refuting the facts in question with respect to the allegations of sexual harassment (see *Karkara*, para. 69). The Tribunal thus determines that their testimony is not required for the adjudication of the present case.

21. Furthermore, considering the Applicant's admission of relevant facts and the extensive documentary evidence on record, which includes exchanges of WhatsApp and SMS messages, the Tribunal determines, pursuant to art. 19 of its Rules of Procedure, that a hearing is not necessary in the present case.

Closing submissions

22. Having examined the parties' submissions to date and the evidence on record, the Tribunal finds that it is fully informed on the matter and the parties can proceed to file closing submissions.

Conclusion

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

- a. The Applicant's motion for a hearing is rejected; and
- b. By **Friday, 27 September 2024**, the parties shall file their respective closing submission, which shall:
 - i. Exclusively refer to the evidence already on file; and

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Order No. 108 (GVA/2024)

ii. Not exceed 10 pages, using font Times New Roman, font size 12 pts and 1.5 line spacing.

(Signed)

Judge Sun Xiangzhuang

Dated this 12th day of September 2024

Entered in the Register on this 12th day of September 2024

(Signed)

René M. Vargas M., Registrar, Geneva