



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/041

Order No.: 27 (GVA/2025)

Date: 28 March 2025

Original: English

Before: Judge Francesco Buffa

Registry: Geneva

Registrar: Liliana López Bello

SAMARASINHA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Manuel Calzada

Counsel for Respondent:

Elizabeth Gall, UNDP

Introduction

1. By Order No. 19 (GVA/2025) issued on 6 March 2025, the Tribunal ordered by 11 March 2025:

a. The Respondent to file the investigation report issued by the Office of Internal Oversight Services (“OIOS”) in its final version including all annexes;

b. The parties to provide the information required under paras. 25 and 32 of Order No. 4 (GVA/2025), and with their requests and observations on evidence, if any;

c. The parties to submit all documents they find relevant for the disposition of the case, with the warning that any other production of documents after 11 March 2025 would be barred; and

2. By the same order, the Tribunal further instructed the parties to file their comments on the counter parties’ requests and observations on evidence, if any, by Friday, 14 March 2025.

3. On 16 March 2025, the Applicant filed a second motion for leave to call additional witnesses and introduce witnesses’ statements.

4. On 19 March 2025, the Respondent filed his response to the Applicant’s submissions and motions filed on 14 and 16 March 2025.

5. On 23 March 2025, the Applicant filed his comments on the Respondent’s submissions.

Considerations

6. The Tribunal notes that the Respondent complied with Order No. 19 (GVA/2025) and submitted, on 11 March 2025, the investigation report together with the together with an extensive number of attachments. The Respondent also indicated that he will not be calling witnesses as suggested by the Tribunal.

7. The Applicant did not file any request on evidence by 11 March 2025, as instructed.

8. The Tribunal further notes that three days after the deadline, on Friday, 14 March 2025, the Applicant filed a request to call witnesses V04, V06 and Ms. Angelique M. Crumbly, Assistant Secretary-General, Assistant Administrator and Director, Bureau for Management Services, “to be examined and cross-examined on her decision of 20 August 2024”.

9. The Applicant claimed that the Respondent did not include in his submissions in this matter interviews of a number of witnesses and other documents which may be exculpatory and requested the Tribunal to direct the Respondent to submit the totality of evidence acquired or collated in respect of the OIOS investigation report, and irrespective of whether it was relied upon by the investigators in its draft or final reports.

10. The Applicant also asked for leave to submit statements of exculpatory witnesses that the investigators declined or refused to approach.

11. The Tribunal observes that the Applicant’s requests submitted on 14 March 2025 (i.e., for oral evidence and for production of additional evidence) are time-barred, as they were filed after the deadline for requests on evidence. As such, they are inadmissible.

12. The Tribunal recalls that in *Abu-Hawaila* (2011-UNAT-118, para. 29), the United Nations Appeals Tribunal (“UNAT”), partly held that “exceptions to time limits and deadlines must be interpreted strictly and are not subject to extension by analogy”.

13. The Applicant was well aware of the possibility of requesting the collection of said evidence (and in particular from the persons in question) before the deadline set for his evidentiary requests. Thus, the Applicant requests for examination in chief of witnesses are time-barred as they were not timely requested.

14. In addition, the cross-examination by the Applicant is not allowed because the Respondent did not ask for any examination.

15. In this regard, the Tribunal notes that, while it may allow some flexibility and tolerance when dealing with an Applicant who is self-represented, the same attitude cannot be expressed when the staff member is represented by a lawyer, well aware of the importance of legal action in the judicial proceedings in compliance with deadlines clearly set to the parties.

16. As to the request to order the Respondent to produce “the totality of the evidence collated” even if not considered in the final report, the Tribunal notes that, while such request may be in theory considered needed from the adversary filing, the request is generic and unsubstantiated, given that it does not show specific facts or source of evidence and aims in substance to a fishing expedition (see *Abdellaoui* 2019-UNAT-929, paras. 30 and 31).

17. Moreover, the lack of consideration of said evidence by the Respondent did not prevent the Applicant from directly and timely asking to summon the related witnesses.

18. The Tribunal finally notes that its task is not to investigate the facts relevant for the disciplinary profiles of the case, but only to assess if, in the factual situation at the time of the Administrative Leave Without Pay (“ALWOP”) measure, the interim measure and its prolongation were justified in light of the facts as known by the Organization.

19. Given that the Tribunal carries out judicial review of an administrative decision, not an investigation of alleged misconduct, and considered that the parties filed lots of documents relevant to make this assessment properly, the Tribunal is of the view that the case is fully briefed, and that there is no need of a hearing to be ordered *ex officio*.

20. In light of the above and having reviewed the evidence on record and the parties' submissions to date, the Tribunal considers itself sufficiently informed to render its judgment without the need for additional disclosure of evidence or the holding of a hearing on the merits.

21. Pursuant to art. 19 of the Tribunal's Rules of Procedure, and for the fair disposal of the case, the parties will be instructed to file their respective closing submission. Upon their filing, the Tribunal will move forward with adjudicating the case.

Conclusion

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

- a. By **Friday, 2 May 2025**, the parties shall file their closing submissions, which shall:
 - i. Exclusively refer to the evidence already on file; and
 - ii. Not exceed **20 pages**, using Times New Roman, font size 12 pts and 1.5 line spacing.

(Signed)

Judge Francesco Buffa

Dated this 28th day of March 2025

Entered in the Register on this 28th day of March 2025

(Signed)

Liliana López Bello, Registrar, Geneva