



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2023/039

Order No.: 33 (GVA/2025)

Date: 10 April 2025

Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello

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 staff member serving 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)(vii), and the decision requiring him to commence gender sensitivity/awareness training (the “contested decision”).

Facts and relevant procedural history

2. On 25 April 2024, the Tribunal issued Order No. 39 (GVA/2024) determining, *inter alia*, that the parties identify any potential and relevant witnesses for a hearing on the merits.

3. On 8 May 2024, the Applicant submitted his proposed list of witnesses and requested that the Tribunal revisit its decision regarding his anonymity. The Respondent submitted his positions vis-à-vis a hearing, and requested some accommodations to safeguard the anonymity and well-being of V01. Among them, that the Applicant not be virtually present during her testimony.

4. On 10 May 2024, the Respondent filed a motion for leave to respond to the Applicant’s requests in his submission of 8 May 2024.

5. On 11 May 2024, the Applicant filed comments on the Respondent’s 10 May 2024 motion, requesting its rejection.

6. By Order No. 54 (GVA/2024), the Tribunal, *inter alia*, granted the Applicant’s motion for anonymity, scheduled a hearing on the merits to be virtually held via Microsoft Teams on 10 and 11 June 2024, and invited V01, W01, and W02 to attend. By this same Order, the Tribunal also decided that V01’s testimony will be held *in camera*; that V01 will not be named during the proceedings and Judgment; and that the Applicant will not be virtually present during her testimony.

7. 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.

8. By Order No. 56 (GVA/2024), the Tribunal rejected the Applicant's motion for reconsideration of para. 27(c) of Order No. 54 (GVA/2024). It recalled that 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.

9. On 27 May 2024, the Applicant filed a motion to suspend proceedings pending the outcome of an appeal before the United Nations Appeals Tribunal in respect of para. 27(c) of Order No. 54 (GVA/2024) and Order No. 56 (GVA/2024). His motion was granted by Order No. 62 (GVA/2024).

10. On 5 December 2024, the Appeals Tribunal issued *ABA* 2024-UNAT 1495/Corr.1, deciding that the interlocutory appeal was not receivable.

11. On 21 February 2025, the Tribunal requested the parties to confirm their availability and that of their proposed witnesses to virtually attend a hearing on the merits via Microsoft Teams between 8 and 17 April 2025.

12. In response to the Tribunal's request, the Applicant confirmed his availability to attend a hearing between 14 and 18 April 2025. For the same period, the Respondent also confirmed the availability of Counsel, V01, and W01.

13. By email dated 12 March 2025, the Respondent informed the Tribunal that he had not yet been able to reach W02.

14. By Order No. 21 (GVA/2025), the Tribunal, *inter alia*, scheduled a hearing on the merits for 14 and 15 April 2025 via Microsoft Teams. It further instructed the Respondent to keep trying to confirm the attendance of W02, and included him in the hearing's tentative schedule.

15. On 2 April 2025, the Respondent informed the Tribunal that W02, tentatively scheduled to testify on 15 April 2025, will not be appearing due to medical reasons.

16. On 4 April 2025, the Applicant filed a request to take judicial notice of Order No. 37 (NY/2025).

17. On 8 April 2025, the parties filed the joint trial bundle in compliance with Order No. 21 (GVA/2025).

Consideration

The Respondent's email of 2 April 2025

18. The Respondent submits that W02 will not be able to testify in the upcoming hearing because he was on Certified Sick Leave ("CSL") until recently, and is awaiting further medical attention.

19. The Tribunal takes note of the above and, as it follows, confirms that the witness is removed from the tentative schedule.

20. The parties are hereby instructed to be prepared at the hearing to discuss the relevance of the testimony of W02, and to brief the Tribunal on whether they agree to rely on his interview with the Office of the Internal Oversight Service ("OIOS") as evidence.

The Applicant's motion of 4 April 2025

21. In his motion of 4 April 2025, Counsel for the Applicant requests the Tribunal to revisit its decision not to allow the Applicant to be virtually present during V01's testimony.

22. In his new submission, Counsel for the Applicant does not introduce any new factual elements, except for Order No. 37 (NY/2025) issued on 3 April 2025. In this order, the Judge assigned to that case determined that the Applicant should be virtually present during a victim's testimony to observe and provide feedback to his Counsel for cross-examination. This is the argument that Counsel for the Applicant presented before the Appeals Tribunal and is currently making in these proceedings.

23. The Applicant, therefore, requests that this Tribunal take judicial notice of Order No. 37 (NY/2025) for consistency, and rescind its previous ruling. He further asserts that “absent a reversal prior to V01’s testimony [...], the Applicant hereby serves notice that this issue will be included in any future appeal on the merits”.

24. The Tribunal recalls that the decision not to have the Applicant virtually present during V01’s testimony was first made in Orders No. 54 and 56 (GVA/2024). The Applicant appealed both Orders, and his interlocutory appeals were found not receivable by the Appeals Tribunal.

25. The Tribunal takes notice of the Applicant’s “notice of appeal”, and further recalls that the United Nations’ internal justice system operates on a two-tier structure. Appeals are a standard component of the judicial process and an inherent right of any party. The Applicant is thus entitled to appeal the outcome of the present proceedings. However, *veiled* threats of appeals are inappropriate and unacceptable. They are merely empty words that do not and will not influence any present or future decisions.

26. Having stated this, the Tribunal will now address the Applicant’s new legal arguments.

27. The Tribunal recalls that in its Order No. 54 (GVA/2024), it decided that V01’s testimony would be held *in camera* and without the Applicant’s virtual presence. Upon the Applicant’s request for reconsideration, the Tribunal issued Order 56 (GVA/2024) whereby it noted that it did not see any detriment to the proceedings in accommodating V01’s request because 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 the Applicant was virtually present, he would not be allowed to interfere or interact with V01. Thus, it was simply untenable that the principle of fairness or any of the Applicant’s due process rights would be harmed in any way by him not being present during her testimony.

28. The Applicant appealed the foregoing Orders, and the instant proceedings were suspended until a decision was rendered by the Appeals Tribunal. With the issuance of *ABA* 2024-UNAT-1495/Corr.1, by which the interlocutory appeals were dismissed, the proceedings before the Dispute Tribunal resumed. Now, Counsel for the Applicant reopens the same issue and, based on a decision made by a different Judge, requests reconsideration again.

29. First and foremost, the Tribunal reiterates that it did not commit a procedural violation by not requesting the Applicant's opinion before granting the accommodations requested by the Respondent regarding V01. Second, based on his submission of 11 May 2024, the Tribunal already knew that the Applicant disagreed with the request. Third, the Tribunal has discretion in case management and is not required by its Statute to hear the parties on every single argument raised before making a ruling. If it considers itself fully briefed, the Tribunal has the authority to proceed as it deems most appropriate.

30. Furthermore, in addition to a two-tier structure, the internal justice system is founded on the principle of independence. Judges may determine procedural issues on a case-by-case analysis of the matters assigned to them and are not necessarily bound by each other's decisions.

31. In this case, the undersigned Judge balanced the opposing positions of the Applicant and the Respondent and determined that accommodating the request of V01 was the most appropriate course of action. This decision was based on several reasons, including:

- a. The victim-centred approach championed by the Secretary-General in its four-part strategy (i.e., Report A/71/818), and in the creation of the Office of the Victim's Rights Advocate, which recognizes that any victim of sexual harassment and/or exploitation has, *inter alia*, the right to decide their level of involvement in United Nations processes, the right to privacy and confidentiality, and the right to be protected;

b. V01 is no longer a staff member. The Tribunal does not have *subpoena* power over her. Accommodating her request helps to move forward these proceedings;

c. The Applicant is assisted by Counsel, who is presumed to know the case well enough to cross-examine a witness without requiring live feedback from the client. This presumption is based on the professional expertise and experience of legal Counsel, who is trained to anticipate and address issues that may arise during cross-examination; and

d. As a represented party, the Applicant would not be able to interfere in the cross-examination. Counsel is expected to handle it promptly and diligently, ensuring that the process is conducted efficiently and professionally.

32. Notwithstanding the foregoing, the Tribunal has decided to make a slight adjustment to the tentative hearing schedule to reassure the Applicant of his due process rights. In this spirit, it further determines that:

a. The audio recording of V01's testimony will be made available to the Applicant by the Geneva Registry immediately after the first day of the hearing on Monday, 14 April 2025; and

b. V01 will be on standby for further examination and cross-examination on Tuesday, 15 April 2025, at 4 p.m. (Geneva time), should Counsel deem it necessary.

33. With the above accommodations, the Tribunal is confident that the Applicant's due process rights are fully respected.

Conclusion

34. In view of the foregoing, it is ORDERED THAT the Applicant's request for reconsideration of the Tribunal's decision regarding his virtual presence during V01's testimony is rejected.

(Signed)

Judge Sun Xiangzhuang

Dated this 10th day of April 2025

Entered in the Register on this 10th day of April 2025

(Signed)

Liliana López Bello, Registrar, Geneva