



**Before:** Judge Coral Shaw  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko, Officer-in-Charge

HUNT-MATTHES

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON LEAVE TO CALL A  
WITNESS**

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**Counsel for the Applicant:**  
Nigel Lindup

**Counsel for the Respondent:**  
Philippe Sacher, UNHCR

## **Introduction**

1. The Applicant is a former staff member of the United Nations High Commissioner for Refugees (“UNHCR”). She filed an appeal with the former United Nations Administrative Tribunal contesting the decision by UNHCR not to renew her Fixed-Term Appointment (“the Contested Decision”).

2. On the evening of 26 February 2013, the Respondent filed an application to call a witness, on the following grounds:

1. On 26 February 2013, Mr. Anton Verwey appeared as a witness for the Applicant in this proceeding. In the course of his testimony he gave evidence in regard to matters that were not referred to in the summary of his evidence provided on 25 February 2013. These matters included allegations against [the Applicant’s former supervisor] and the former Deputy Inspector General (DIG). Specifically, he stated that [the Applicant’s former supervisor] and the DIG constructed allegations of breach of confidentiality against the Applicant in order to falsely justify a poor performance assessment of the Applicant.

2. The Respondent was taken by surprise by the evidence provided by Mr. Verwey. It was not referenced in the summary of Mr. Verwey’s testimony provided by the Applicant. Despite Order No. 001 (NBI/2013), requiring the Applicant to provide a summary of the anticipated testimony of her witnesses by 31 January 2013, the Applicant failed to do so. By email on 5 February 2013, the Tribunal ordered the Applicant to provide a more detailed summary of the evidence to be elicited by her witnesses by 25 February 2013. In the summary of the evidence to be given, received by the Respondent on the eve of trial, the Applicant failed to make any reference to the alleged falsification of allegations of breach of confidentiality.

3. On 27 February 2013 the Tribunal issued an oral ruling, rejecting the Respondent’s motion to call a witness. The parties were informed that a reasoned Order would be issued in due course. This is the Order with the reasons.

### **Background facts**

4. In paragraph 12 of her application, the Applicant alleged that “The insistence that I vacate the offices of the [Inspector General’s Office] IGO at a time when supposedly the issue of my contract’s renewal was still pending exemplifies the ill will of the IGO managers towards me”.

5. In paragraph 22 of her application she stated that “the organizational culture of UNHCR is conducive to incidents of harassment and retaliation, behaviour patterns many of its senior staff fail to recognize or acknowledge”. In the reply to the application, the Respondent stated that the allegations that the contractual decision was motivated by extraneous factors are without merit.

6. During a Case Management Hearing of this case held on 2 October 2012 and a Status Conference Hearing held on 5 February 2013, the Tribunal gave directions as to the conduct of the case and explained in person how the case was to be conducted. The parties were advised of their right to call witnesses and to cross examine the witnesses of the other party. The parties were invited to produce documentary evidence and agreed to provide an agreed bundle of documents which contained all the documents which were to be referred to at the hearing.

7. In response to Order No. 129 (NBI/2012) dated 9 October 2012, the Applicant on 12 October 2012, submitted a chronology of events which stated *inter alia* that her removal from the IGO post and the abolition of the EPAU office amounted to retaliation for engaging in protected activity.

8. By Order No. 001 (NBI/2013) dated 2 January 2013, the Tribunal ordered the parties to file their respective witness lists, with a summary of the anticipated testimony and the approximate time each witness is expected to take and their contact details.

9. The Respondent advised the Tribunal on 31 January 2013 that “the Respondent wishes to inform the Tribunal that Respondent does not intend to call witnesses”. In response to the same Order, the Applicant filed a summary of the evidence to be given by her and the three other witnesses she was to call.

10. The agreed bundle was filed with the Geneva Registry on 22 February 2013. It included at pages 198 to 200; Mr Verwey's personal statement on the Applicant's situation. He stated that she "[...] is a clear victim of systematic abuse of power intended to lead to her separation from UNHCR".

11. During a Status Conference held on 5 February 2013, among other matters discussed, the Respondent confirmed that he was not calling any witnesses. The Tribunal directed the Applicant to file a more detailed summary of evidence to be elicited by her and her witnesses. This was filed on 25 February 2013. Mr. Verwey's witness summary indicated that he would "describe briefly the origins of IGO and its general *modus operandi*. He will show how it was not independent and had a propensity to be used as a management tool rather than a true oversight body".

12. The substantive oral hearing of this case commenced on 26 February 2013 in Geneva. By agreement of the parties the case was allocated two days hearing time as it was to be immediately followed by the hearing of *Hunt-Matthes v Secretary General* in case number UNDT/NBI/2010/054.

13. The Applicant gave evidence first. Counsel for the Respondent asked her some questions regarding her employment with EPAU after her appointment with IGO ended. He did not challenge any of her evidence relating to her allegations of retaliation and the reasons for the negative Performance Evaluation Report ("PER") she was given by her supervisor which was used as the reason for not renewing her contract with IGO.

14. The Applicant's witness Mr. Verwey gave his oral evidence on the afternoon of 26 February 2013. His evidence generally followed the synopsis that had been submitted to the Tribunal. He elaborated on the synopsis in response to questions from the Applicant's representative and the Tribunal. Mr. Verwey referred to his role in the launch of IGO and the establishment of its database of cases; his knowledge of and experience with the Applicant's former supervisor, his concerns about the way the IGO had conducted some of its investigations He told the Tribunal that he believed that the negative PER that the Applicant received was an act of retaliation. He also referred to the allegations that the

Applicant had breached confidence by discussing her cases with him, among others. He said that the supervisor was a man under pressure at that time. The Tribunal asked him for clarification of his evidence in the following exchange:

**Judge Shaw:** ...is it your evidence that the issues raised about the alleged breaches of confidence were part of a plan to somehow destabilise Ms. Hunt-Matthes. Is that what you are saying?

**Anton Verwey:** That's what I am saying, I think that I was part of IGO at the time, I was carrying out investigations at the time, she talks to me about that case, without mentioning names, details, anything, she talks to me about a broader context, that's not a breach of confidence, it has nothing to do with breach of confidence, to construe that as, I think is simply an under the belt attack.

15. During cross examination, Counsel for the Respondent did not question Mr. Verwey about these allegations. He confined his questions to asking Mr Verwey about his role in finding an amicable solution to the Applicant's problem in IGO and his offer for the Applicant to work at EPAU.

16. The Tribunal concluded the 26 February session at around 5:00pm. At 7:23pm, the Respondent filed the application for leave to call the Applicant's former supervisor as a witness for the Respondent.

17. At 7:46pm, the Registry served the Applicant with the application and sought a response from her. At 11:29pm, the Applicant's representative advised the Tribunal that "[t]he Applicant is content to leave it to her honour's judgment as to whether to allow the Respondent to call a new witness".

### **Considerations**

18. Article 16 of the Tribunal's Rules of Procedure provides for the conduct of hearings:

16.3 The Registrar shall notify the parties of the date and time of a hearing in advance and confirm the names of witnesses or expert witnesses for the hearing of a particular case.

## **Article 17**

### **Oral evidence**

1. The parties may call witnesses and experts to testify. The opposing party may cross-examine witnesses and experts. The Dispute Tribunal may examine witnesses and experts called by either party and may call any other witnesses or experts it deems necessary. The Dispute Tribunal may make an order requiring the presence of any person or the production of any document.

5. Any party may object to the testimony of a given witness or expert, stating reasons for such objection. The Dispute Tribunal shall decide on the matter. Its decision shall be final.

19. Article 19 of the Tribunal's Rules of Procedure, provides that the Tribunal may issue any order or give direction for the fair and expeditious disposal of a case and to do justice to the parties. The question for the Tribunal is whether it is in the interests of justice to allow the Respondent's application.

20. The ground for the application is that Mr Verwey gave evidence in regard to matters that were not referred to in the summary of his evidence provided on 25 February 2013. It is correct that in his summary of evidence to be given Mr. Verwey did not refer to specific allegations of retaliatory behaviour including the question of the Applicant's use of confidential information. However, the Tribunal finds that the issue of alleged retaliation against the Applicant by her supervisors was a prominent aspect of the case from the beginning. It was referred to in the Application, in the Respondent's reply, the Applicant's chronology and in the agreed bundle of documents. All of these were submitted well before the hearing and the Respondent's counsel had access to all the documents.

21. At the oral hearing both the Applicant and Mr. Verwey gave evidence about retaliation. Neither of them was cross-examined or challenged on this point by the Respondent's counsel.

22. If the application to call the Applicant's former supervisor at this late stage were to be granted, the consequence would be that both of these witnesses would have to be recalled and cross examined on this issue to give them an opportunity to comment on whatever the supervisor would say. In light of the pre-determined

and strict timetable agreed by the Tribunal and the parties for the conduct of this hearing this is impossible to achieve.

**Conclusion**

23. The Tribunal concludes that well before the oral hearing of this case the Respondent had adequate notice of the Applicant's allegations of retaliation and harassment by her supervisor and a full opportunity to call any witnesses to rebut those allegations if it had so chosen.

24. Additionally, this late application was not only made out of time but also at a stage of the hearing which, in view of the well-known time restraints, cannot be accommodated.

25. The interests of justice would not be met by granting the application.

**IT IS HEREBY ORDERED THAT:**

- a. The Respondent's application is refused

*(Signed)*

Judge Coral Shaw

Dated this 15<sup>th</sup> day of April 2013

Entered in the Register on this 15<sup>th</sup> day of April 2013

*(Signed)*

Abena Kwakye-Berko, Officer-in-Charge, Nairobi Registry