



**Before:** Judge Rachel Sophie Sikwese

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

DANYLENKO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION TO  
PRODUCE AUDIO-RECORDING AND  
WITNESSES FOR AN ORAL  
HEARING**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Nicole Wynn, AAS/ALD/OHR  
Nusrat Chagtai, AAS/ALD/OHR

## Introduction

1. On 15 September 2018, the Applicant, a former FS-5 Movement Control Section (MOVCON) Assistant with the United Nations Mission in Liberia (UNMIL), filed an application before the Dispute Tribunal. The Applicant describes the contested decision as “not obtaining” Field Central Review Board (FCRB) clearance for the position of FS-6 MOVCON Officer during two rostering exercises: Generic Job Opening (GJO) No. 425940 in 2013/2014 and GJO No. 76109 in 2017/2018.
2. The Respondent filed a reply on 18 October 2018 arguing, *inter alia*, that with respect to the decision on GJO 425940, the Application is not receivable because the Applicant did not timely request management evaluation as required by staff rule 11.2(c).
3. On 14 February 2019, the Tribunal issued Order No. 019 (NBI/2019) requiring the Applicant to provide a response solely on the issue of receivability raised in the reply. The Applicant filed the response on 25 February 2019.
4. On 15 January 2020, the Tribunal issued Order No. 007 (NBI/2020) advising the parties that the claim regarding GJO 425940 was irreceivable *rationae materiae* and that:
  - a. The application would be decided on the basis of the parties’ pleadings and supporting documentation and therefore the parties, if they wished to, could file further and final submissions in relation to the contested decision regarding GJO No. 76109 by 14 February 2020; and
  - b. The Applicant was strongly encouraged to seek legal assistance in drafting his final submissions so that his factual allegations were aligned to relevant applicable law and jurisprudence.
5. The Applicant filed two documents, one on 31 January 2020 in which he promised to file further submissions which he did on 13 February 2020. In his submissions, the Applicant made two requests as follows:

a. The Respondent to make the audio-record of his half-hour interview conducted on 7 May 2018 available to the Tribunal; and

b. The Tribunal to ‘invite for interview’ at the hearing of the case, the following panel members who interviewed him for the contested position; Mr. John Pereira, Mr. Mark Daniel and Ms. Briggite Troughton.

6. The Respondent filed final submissions on 14 February 2020 requesting the Tribunal to dismiss the application on the ground that the Applicant was given full and fair consideration.

### **Considerations**

7. Article 18.2 of the Dispute Tribunal Rules of Procedure (RoP) provides that:

the Dispute Tribunal may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings.

8. The Tribunal notes that the Applicant is self-represented and from his submissions it is evident that he is not a trained lawyer. It is also clear from the Applicant’s final submissions that he did not take heed of the Tribunal’s advice to seek advice from counsel when preparing his final submissions.

9. Instead of filing final submissions, the Applicant who is under the mistaken impression that an oral hearing will be conducted, has requested further evidence and the production of witnesses to be examined by the Tribunal.

10. Articles 16.1 and 16.2 of the RoP provide that the Judge hearing a case may hold oral hearings. A hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure.

11. The norm is to hold oral hearings only in cases where an Applicant is challenging a disciplinary measure. This however does not mean that an oral hearing

may not be conducted in other situations such as in this proceeding, if the Tribunal was of the view that an oral hearing would be in the interests of justice.

12. The Tribunal has taken into consideration the Applicant's status as a lay person and has also considered the pleadings and the main issue of contention which relates to the oral interview. In particular, the Applicant states that:

*(he) was not made aware that the question raised by the Panel: 'Tell me about last time a client made an excessive or unreasonable demand on you' was asked under the Client Orientation probing. Moreover, neither sub-questions, nor additional questions were asked in the process.*

*My written explanation on the answer I had given to the panel members during the interview was never contested by OGM Mr Lars Ronved, and in fact, in his email dated 20 June 2018 he admitted that my explanation in writing matched my answer given during the subject interview.*

13. It is therefore, the Tribunal's understanding from the Applicant's submissions of 13 February 2020 that he requests the presence of the panel members for purposes of producing evidence on the above issues.

## **ORDERS**

14. The Tribunal shall decide this application based partially on the papers and partially on oral evidence.

15. The oral evidence shall be restricted to the evidence by at least one member of the interview panel, preferably the person who chaired the session under contention, who shall be cross examined by the Applicant as requested.

16. In light of art. 17.6 of the RoP on oral evidence, the Respondent shall notify the Tribunal on the preferred mode of satisfying the requirement for person appearance of the witness, that is, whether the witness shall attend in person, by video link, telephone or other electronic means.

17. An oral hearing shall take place on **17 March 2020 from 14.30 p.m.** Nairobi time in the United Nations Dispute Tribunal's Courtroom.

18. The Respondent shall upload, into the Court Case Management System (CCMS), the audio-recording of the half-hour interview conducted on 7 May 2018 on or before **Thursday, 27 February 2020**.

*(Signed)*

Judge Rachel Sophie Sikwese  
Dated this 20<sup>th</sup> day of February 2020

Entered in the Register on this 20<sup>th</sup> day of February 2020

*(Signed)*

Eric Muli, Legal Officer, for  
Abena Kwakye-Berko, Registrar, Nairobi