



**Before:** Judge Margaret Tibulya

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

VALME

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON THE APPLICANT'S  
PROPOSED LIST OF WITNESSES**

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**Counsel for the Applicant:**

Sètondji, Roland Adjovi

**Counsel for the Respondent:**

Miryoung An, AAS/ALD/OHR

Nicola Esti Caon, AAS/ALD/OHR

## **Background**

1. On 17 July 2019, the Applicant filed an application contesting the decision of the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity (the contested decision”).
2. The Respondent replied to the application on 15 August 2019.
3. The Tribunal held a Case Management Discussion on 13 October 2020.
4. On 21 October 2020, the Applicant filed a list of witnesses he proposes to call at a future hearing of the case on its merits.
5. The Respondent filed a response to the Applicant’s proposed list of witnesses on 23 October 2020 in which it is submitted:
  - a. that the Applicant did not provide synopses of the anticipated evidence from the proposed witnesses and that this contravenes Order No. 202 (NBI/2020) which specifically required him to provide a synopsis of the anticipated evidence;
  - b. eight of the proposed witnesses were interviewed during the investigation, which the Applicant acknowledged, and their sworn statements were provided to the Applicant during the disciplinary process, which are now before the Tribunal;
  - c. the Respondent objects to the calling of the eight witnesses on several grounds stated in his response at para. 5;
  - d. for those witnesses who were interviewed by the investigators, the Applicant has failed to particularise the evidence they would adduce over and

above what is already on the record, and therefore, it is unclear how their oral testimony would be useful to the Tribunal and justify a hearing; and

d. that testimony from the remaining two individuals, Mr. Milan Trojanovic, then Director of Mission Support and Ms. Catherine Pollard, USG/DMSPC is not relevant to the factual determination of this case.

6. The Respondent also urges the Tribunal not to hold an oral hearing on the merits of this case.

7. On 27 October 2020, the Applicant sought and was granted leave to respond to the Respondent's objections to his list of witnesses.

### **Deliberations**

8. Articles 16, 17 and 18 of the UNDT Rules of Procedure confirm that the discretion to hold an oral hearing vests in the judge, but indicate that it should normally be held following an appeal against a decision imposing a disciplinary measure. Article 17.1 permits parties to call witnesses and allows for cross-examination. Importantly, it also provides that the UNDT may examine witnesses and experts called by either party and may call any other witnesses or experts it deems necessary.<sup>1</sup>

9. In the present case, the parties have not agreed to the case being decided on papers or on the facts needed to be established by the witnesses. The present case concerns the imposition of a disciplinary sanction on the Applicant. As is well established in UNAT jurisprudence, judicial review of a disciplinary case requires the Dispute Tribunal to examine:

a. whether the facts on which the sanction is based have been established;

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<sup>1</sup> *He* 2016-UNAT-686, para. 46.

- b. whether the established facts qualify as misconduct under the Staff Regulations and Rules;
- c. whether there was a substantive or procedural irregularity, and
- d. whether the sanction is proportionate to the offence.

Part of the test in reviewing decisions imposing sanctions is whether due process rights were observed.<sup>2</sup>

10. The Tribunal considers that an oral hearing will be beneficial in assisting it to address the legal questions at paragraph nine above. An oral hearing will assist the Tribunal to determine the disputed factual issues and to test the credibility, reliability and probabilities of the witnesses' testimonies.

11. The Tribunal has determined that the following witnesses may provide testimony relevant to the disputed facts in this case: the eight witnesses proposed by the Applicant and who were interviewed during the investigation; and Mr. Trojanovic.

12. With respect to Ms. Pollard, the Tribunal agrees with the Respondent that she need not be called as a witness because she was not a witness to the facts concerning the Applicant's conduct and that all the reasons and considerations taken into account by her in reaching the disciplinary measure imposed on the Applicant were clearly set out in the sanction letter.

## **ORDERS**

13. The Respondent's request to have this case determined on the basis of the parties' pleadings is refused. The Tribunal will hold a hearing on the merits on a date to be communicated by the Registry.

14. The following nine witnesses will testify at the said hearing:

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<sup>2</sup> *Applicant* 2012-UNAT-209, para. 36.

- a. The Applicant;
- b. Ms. Lia Yemane;
- c. Mr. Lawi Ooko;
- d. Mr. Joseph Parareda;
- e. Ms. Ferdos Mohammednur;
- f. Mr. Alhaji Kemokai;
- g. Mr. Mahesh Kumar;
- h. Mr. Annandavel Kannan; and
- i. Mr. Trojanovic.

*(Signed)*

Judge Margaret Tibulya

Dated this 28<sup>th</sup> day of October 2020

Entered in the Register on this 28<sup>th</sup> day of October 2020

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi