



Before: Judge Francis Belle
Registry: Nairobi
Registrar: Abena Kwakye-Berko

ZAHOOR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION FOR PROTECTIVE MEASURES
AND OBJECTION TO THE APPLICANT'S
WITNESS LIST**

Counsel for the Applicant:

Omar Josef Shehabi, OSLA

Counsel for the Respondent:

Kevin Browning, UNICEF

Introduction

1. Prior to being summarily dismissed, the Applicant served the United Nations Children’s Fund (“UNICEF”) as the Chief of the Field Office in Kadugli, Sudan. He held a fixed-term appointment at the P4 level.

Procedural History

2. The Applicant was separated from service of the United Nations for misconduct in violation of staff rules 1.2(a) and (b) on 22 March 2019. The disciplinary process was conducted in accordance with paragraphs 4.3 – 5.1 of CF/EXD/2012-005 which governs UNICEF’s Disciplinary Process and Measures. UNICEF also applied paragraph 22 of DHR/PROCEDURE/2018/003 on Personnel Files.

3. The Applicant filed his application to challenge that decision on 12 June 2019 at the United Nations Dispute Tribunal sitting in Nairobi.

4. The Respondent filed his reply to the application on 11 July 2019.

5. This case was assigned to new counsel by the Office of Staff Legal Assistance in August 2020.

6. The parties attended a case management discussion (“CMD”) before the Tribunal on 18 August 2020.

7. On 6 October 2020, the parties jointly submitted on the facts and issues in dispute and provided the Tribunal with their respective witness lists. The Respondent objected to the Applicant’s calling of the two investigators to testify.

8. On 26 October 2020, the Respondent filed a motion for protective measures to be instituted by the Tribunal to protect the complainant’s privacy.

Considerations

9. The Respondent's objection to the calling of the two investigators who conducted the investigation into the Applicant is overruled. The Tribunal takes the view that their testimony is relevant to this case.

10. The Tribunal agrees with the Respondent that the sensitive nature of the complainant's testimony in this case warrants anonymization of any information that could potentially identify her. The Tribunal also agrees that the recording of her testimony should be kept confidential to these and any potential appeals proceedings.

11. The Tribunal finds the other aspect of the Respondent's motion to be unusual. Witnesses testifying before the Tribunal do not ordinarily "interact" with the Applicant, beyond being present in the same room. Under ordinary circumstances, their presence at the same time, and in the same room, would be in the context of the courtroom. As the parties and their witnesses in this case will be testifying remotely, that "interaction" is further removed and is reduced to both the Applicant and the complainant being "present" on the screen at the same time. Both the Applicant and the complainant are known to each other, and there is no basis for the Tribunal to require the Applicant to turn off his camera during the course of the complainant's testimony. Microphones are, in any event, muted unless one is required/called upon to speak. As both parties in this case are represented by counsel, the Tribunal expects that "any and all questions and comments" will be put by their respective counsel.

12. The Tribunal will not, at this stage, set any parameters for counsel's cross-examination of the complainant. The Tribunal expects counsel for both parties to conduct themselves in a manner befitting their respective roles as officers of the court and to that extent to exercise the necessary propriety and decorum that is expected of them.

Orders

13. The Tribunal makes the following Orders:
- a. The Respondent's objection to the calling of Ms Morone and Mr Curtis is overruled;
 - b. The Respondent is directed to make the two witnesses available for the hearing on the dates scheduled;
 - c. The Registry is directed to ensure that the recording of the complainant's testimony is kept under seal; and
 - d. The complainant's name and other identifying information will be anonymized and/or redacted, as appropriate.

(Signed)

Judge Francis Belle

Dated this 5th day of November 2020

Entered in the Register on this 5th day of November 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi