



**Before:** Judge Sean Wallace  
**Registry:** Nairobi  
**Registrar:** René M. Vargas M., Officer-in-Charge

FULTANG

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON THE APPLICANT'S  
MOTION FOR PRODUCTION  
OF EVIDENCE**

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**Counsel for the Applicant:**

Sètondji Roland Adjovi, *Etudes Vihodé*

**Counsel for the Respondent:**

Jacob van de Velden, DAS/ALD/OHR, UN Secretariat  
Andrea Ernst, DAS/ALD/OHR, UN Secretariat

## **Introduction**

1. On 21 January 2023, the Applicant filed an application challenging the 28 November 2022 decision to dismiss him for fraud.
2. From 11-12 March 2024, the Tribunal held a hearing on the merits. Among the witnesses called by the Applicant was the investigator in this case of the Office of Internal Oversight Services (“OIOS”). During his examination of the investigator, the Applicant inquired about a meeting in September 2020 in which both the Applicant (a Conduct and Discipline Officer) and the investigator participated.
3. According to the testimony, the subject of that meeting was a complaint of alleged impropriety by another staff member that the Applicant had forwarded to OIOS. The meeting discussed issues about how the complaint was handled in the assessment process.
4. In his response to the Applicant’s Counsel’s question, the investigator said that he did not remember everything that was discussed, but testified to numerous issues that were discussed in the meeting. As Counsel observed, “you just explained to us the substance of the meeting”.
5. When asked, the investigator said that he had prepared a brief note to file summarizing the meeting and that, to his recollection, there was nothing else in the note other than what he had just stated in his testimony.
6. On 12 March 2024, after the hearing, the Applicant filed a motion to produce evidence, seeking production of that note to file “[o]ut of fairness ... to complete the record”.
7. In his response to the Applicant’s motion, filed on 14 March 2024, the Respondent objects on the grounds that the motion had not stated either the relevance or the need for this document.

## Consideration

8. Article 9.1 of the Dispute Tribunal Statute provides that “[t]he Dispute Tribunal may order the production of documents or such other evidence as it deems necessary”. The Rules of Procedure implementing that authority state that the Tribunal “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”.

9. In *Bertucci* 2010-UNAT-062, paras. 22 and 23, the United Nations Appeals Tribunal held that,

[u]nder the new system of administration of justice, the UNDT has broad discretion with respect to case management. ... As the court of first instance, the UNDT is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties.

10. Having fully considered the record, the Tribunal determines that the production of the note to file is unnecessary for a fair and expeditious disposal of the case.

11. According to the investigator’s testimony, the note does not contain information beyond the testimony that he has already given regarding the meeting. The Applicant does not dispute this testimony as to the substance of the meeting either in the motion for production or his own testimony. Thus, the note would be merely cumulative and its production is not necessary.

12. Additionally, the Tribunal notes that the meeting and the note summarizing that meeting relate to allegations about a third party and are entirely separate from those in this case. Like all such cases, the handling of that complaint is confidential and its relevance is only tangential.

13. Finally, production of the note in question will not assist in the expeditious disposal of this case; to the contrary, it would delay resolution of the case.

14. As noted, the case has been pending for over a year, and the Applicant never sought production of this document until after the hearing on the merits. As a participant in the meeting, he clearly knew about its substance and, to the extent he believes documents about the meeting were relevant, he should have requested production much earlier in the litigation.

15. Ordering production now would require the Respondent to search its files regarding another complaint made three and a half years ago. Then the Tribunal would need to assess issues relating to confidentiality of the note. Upon receiving the note, the Applicant might seek to reopen the evidence and perhaps examine the investigator further. At the very least, it would delay the filing of Applicant's closing submission, which is due nine days from now.

### **Conclusion**

16. The Tribunal finds that production of the note to file at this time is not necessary for the fair and expeditious disposal of this proceeding.

17. Accordingly, it is ORDERED THAT the Applicant's motion to produce additional evidence is denied.

*(Signed)*

Judge Sean Wallace

Dated this 18<sup>th</sup> day of March 2024

Entered in the Register on this 18<sup>th</sup> day of March 2024

*(Signed)*

René M. Vargas M., Officer-in-Charge, Nairobi