



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

KISUMIRO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Sètondji Roland Adjovi, *Études Vihodé*
Antony K. Wilson, *Études Vihodé*

Counsel for Respondent:

Jacob van de Velden, DAS/ALD/OHR, UN Secretariat
Maria Romanova, DAS/ALD/OHR, UN Secretariat

Introduction

1. On 10 July 2023, the Applicant, a former Construction and Maintenance Worker at the United Nations Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), filed an application contesting the decision of 1 May 2023 to separate him from service with compensation *in lieu* of notice and without termination indemnity.
2. The Respondent filed a reply on 10 August 2023 requesting the Tribunal to reject the application. He contends that there is clear and convincing evidence in support of the sanction imposed on the Applicant.
3. The Tribunal held a third case management discussion (“CMD”) on 25 June 2024.
4. By Order No. 78 (NBI/2024), dated 27 June 2024, the Tribunal directed the Respondent to file, *ex parte*, a copy of the investigation file in order for the Tribunal to examine it and determine its relevance for the Applicant’s current case.
5. On 15 July 2024, the Respondent complied with the above Order by filing *ex parte*:
 - a. A copy of the “Closure report on Medical Insurance Fraud by Staff Members at the United Nations Stabilization Mission in the Democratic Republic of the Congo, Investigation Division Case No. 0955/18, Report No. 30/20, 26 February 2020” (“OIOS Closure Report”); and
 - b. An audio file of the Applicant’s interview on 23 April 2019.
6. On 26 July 2024, the Applicant filed a motion requesting the Tribunal to make a ruling on the admissibility of the *ex parte* filing.

Consideration

7. This case is a judicial review of a disciplinary decision taken against the Applicant for medical insurance fraud. The Applicant claims that he did not commit the fraud and that a co-worker, Mr. Raphael Byemba, accessed the Applicant's computer to file the fraudulent claims.

8. The Applicant requested production of the records from the investigation of OIOS in Case No. 0955/18, which also involved allegations of medical insurance fraud by staff members at MONUSCO. The basis for this request is that the investigation cleared the Applicant of those allegations and implicated Mr. Byemba.

9. Based on its review of the OIOS Closure Report, the Tribunal determines that portions of it are relevant to the instant case, but much of it is not. Specifically, those portions that relate to the Applicant and some of the portions related to Mr. Byemba are deemed relevant to this case. However, some of the relevant portions also refer to other staff members, whose privacy should be protected.

Conclusion

10. In view of the foregoing, it is ORDERED THAT the following portions of the OIOS Closure Report be disclosed to the Applicant, with redactions as noted:

- a. Closure Report coversheet;
- b. Page 1, para. 5, redacting the staff member's name on line 3, and para. 6(i), redacting staff member names;
- c. Page 2:
 - i. Paragraph 6(ii) and footnote 6, redacting all names except the Applicant's; and
 - ii. Para. 6(v);

- d. Page 4, section “III Implicated Personnel” including para. 9 and related footnotes 14 and 15, redacting all names except the Applicant’s.
- e. Page 5, para. 13;
- f. Page 6:
 - i. Paragraph 20, redacting the staff member name on lines 3 and 4; and
 - ii. Paragraph 21;
- g. Page 7, paras. 23-26 and related footnotes, redacting the name of the doctor interviewed, and para 27;
- h. Page 8, paras. 28-30, and paras. 31-32, redacting the name of the person interviewed (including in the listed email address);
- i. Page 9, paras 35-37, redacting the name and job title of the person interviewed including in the listed email addresses;
- j. Page 15:
 - i. Section “F. Efforts to Interview Mr. Raphael Kyambikwa Byemba”, including paras. 57-58; and
 - ii. para 59(ii) and footnote 85, redacting all names except the Applicant’s;
- k. Page 16, para. 59(v);
- l. Pages 17-20;
- m. Pages 22-23, with all sender and recipient’s names redacted;
- n. Pages 27-29; and
- o. Page 35.

11. It also ORDERED THAT the audio recording of the Applicant's 23 April 2019 interview be shared with him.

(Signed)

Judge Sean Wallace

Dated this 31st day of July 2024

Entered in the Register on this 31st day of July 2024

(Signed)

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