



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2024/018
Order No.:	12 (NBI/2025)
Date:	6 February 2025
Original:	English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

NK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Anna Mildemberger, UNHCR
Jan Schrankel, UNHCR

Introduction

1. On 5 September 2024, the Applicant filed five Motions, namely:
 - a. Motion to submit medical reports – The Applicant submitted various medical reports that he has referred to in the rejoinder to the reply.
 - b. Motion to indicate witness and substance of testimony – The Applicant intends to call his former supervisor to serve as a witness in his case.
 - c. Motion to submit rebuttal meeting recording – This is a recording of the meeting between the Applicant and the Rebuttal Officer.
 - d. Motion for production of evidence. In the Motion, the Applicant requests the following:
 - i. The Respondent to provide proof regarding the absence of an “on hold” decision on the non-renewal of his contract pending the rebuttal process.
 - ii. That the Tribunal direct the Respondent to submit evidence explaining how the decision to select his position for non-renewal was reached, including the underlying rationale for this choice.
 - e. Motion to submit additional relevant judgments, as their relevance is evident from the application and response comments.
2. On 20 December 2024, the Tribunal issued Order No. 169 (NBI/2024) granting the Applicant’s Motions.
3. Order No. 169 (NBI/2024) further directed the Respondent to file a list of any proposed witnesses, and the evidence requested in the Applicant’s Motion for production of evidence.
4. On 16 January 2025, the Respondent filed a response to Order No. 169. In said response, the Respondent, *inter alia*, proposes that the former supervisor should act as the Respondent’s witness, and that she be availed for cross-

examination by the Applicant. The Respondent proposes to call the Applicant's former reviewing officer, as well as the Assistant Representative (Administration) in Beirut, as the Respondent's further witnesses.

5. On 21 January 2025, the Applicant filed a motion requesting for an extension of time to file a reply to the Respondent's submissions in response to Order No. 169 (NBI/2024).

6. On 27 January 2025, the Applicant filed a Motion requesting the Tribunal to accept the affidavit of the former supervisor, "retain her" as the Applicant's witness, and classify her as a protected witness.

7. Also on 27 January 2025, the Applicant filed a 30-page submission in reply to the Respondent's submissions in response to Order No. 169 (NBI/2024).

Consideration

8. The Tribunal considers that the Applicant's reply to the Respondent's submissions in response to Order No. 169 (NBI/2024) are relevant to the case. Therefore, the Tribunal grants the Applicant's Motion for an extension of time to file a reply and will consider the reply herein.

9. In respect to the Applicant's Motion requesting the Tribunal to "accept the affidavit of [the former supervisor], retain her as the Applicant's witness, and classify her as a protected witness", the Tribunal notes that pursuant to Practice Direction No. 5, the Respondent had until 3 February 2025 to file a response to the Motion but did not do so. The Motion is therefore granted as uncontested.

10. It is to be noted, however, that no party to litigation before the Tribunal "owns" a witness. Referring to a witness as "Applicant's" or "Respondent's" simply means that party has the duty to secure the witness' presence at the hearing, and to conduct the first examination of the witness. As the party with the burden of proof in this case, the Applicant will present his case and witnesses first. So, the former supervisor may be referred to as "the Applicant's witness".

11. It is unclear if the Applicant intends to use the affidavit in place of live direct testimony. If not, the Respondent will be permitted to cross-examine the former supervisor during the hearing. The Applicant's lack of objection to this is noted and the Tribunal always reserves the right to prevent any examination (whether on direct or cross examination) which is irrelevant or does not serve the interests of justice.

12. Concerning the request to classify the former supervisor as a "protected witness", all witnesses are protected from retaliation for their testimony. (*See, e.g.,* para. 18 of A/RES/79/254 (Administration of justice at the United Nations), adopted on 24 December 2024)). In *Kasmani* Order No. 025 (NBI/2010), the Tribunal held that "testifying before the Dispute Tribunal amounts to a protected activity within the scope of ST/SGB/2005/21". (*See also, ST/SGB/2017/2/Rev.1.* (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations)).

13. For the hearing, the Tribunal expects that there will be four witnesses, the Applicant, the former supervisor, Applicant's former reviewing officer, and the Assistant Representative (Administration) in Beirut. The parties shall inform the Tribunal whether the witnesses' affidavits will be used in place of direct testimony. The Tribunal has allocated one day for the hearing.

Conclusion

14. In view of the foregoing, it is ORDERED THAT:

- a. The Applicant's Motion for an extension of time to file a reply to the Respondent's submissions in response of Order No. 169 (NBI/2024) is granted, and his response is accepted as part of the case record.
- b. The Applicant's Motion requesting the Tribunal to accept the affidavit of his former supervisor is granted.
- c. The Applicant's request to classify the former supervisor as a "protected witness" is denied as moot for the reasons stated above.

d. The parties shall consult and confirm with the Registry, by **Wednesday, 12 February 2025**, one day in February for the oral hearing of the case.

e. The parties shall inform the Tribunal, by **Wednesday, 12 February 2025**, whether the witness affidavits filed will be used in place of direct testimony.

(Signed)

Judge Sean Wallace

Dated this this 6th day of February 2025

Entered in the Register on this 6th day of February 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi