



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2024/075
Order No.:	80 (NBI/2025)
Date:	11 June 2025
Original:	English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

LALANDE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON THE APPLICANT'S MOTION
FOR DISCLOSURE**

Counsel for the Applicant:

Héloïse Bajer-Pellet

Counsel for the Respondent:

Albert Angeles, DAS/ALD/OHR, UN Secretariat

Seungyoun Seo, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant served the United Nations Human Settlements Programme (“UN-Habitat”) on a fixed-term appointment.
2. He was separated from service of the Organization with compensation *in lieu* of notice and without termination indemnity on 10 September 2024, for harassment *per* sections 1.3 and 1.4 of ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) which was considered tantamount to serious misconduct in violation of staff regulations 1.2(a) and 1.2(f), and staff rule 1.2(f).
3. On 2 April 2025, the Tribunal held a case management discussion (“CMD”) with the parties. The Applicant was directed to file a written motion for the disclosure of the investigation report into another staff member [Mr. X] who was investigated for similar allegations.
4. The Applicant filed this motion on 15 April 2025, and the Respondent filed his response to it on 25 April 2025.

Submissions

5. The Applicant submits that while the case against [Mr. X] was “closed by OIOS on the grounds of insufficient evidence, the allegations against the Applicant were escalated to the Office of Human Resources and ultimately led to his dismissal.”
6. The Applicant had contacted Mr. X to ask if he would consent to sharing the decision that absolved him. Mr. X responded by quoting from an email from UN-Habitat informing him that “the evidence obtained does not substantiate the reported misconduct” and that the case had been closed. Mr. X did not have a copy of the investigation report himself.
7. The Respondent disagrees that disclosure of the report concerning the other staff member is merited. He contends that that report is neither relevant nor probative in respect of “the Applicant’s liability for his own conduct.” Furthermore,

Mr. X has expressed to Respondent's counsel that he objected to the report being shared with the Applicant.

Consideration

8. Pursuant to Article 18.2 of the Tribunal's Rules of Procedure, the Tribunal "may require any person to disclose any document ... that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings." Thus, the Tribunal must determine whether the disclosure of investigation report of another staff member is necessary to dispose of this case.

9. First, and foremost, sec. 10.1 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) stipulates that

All information obtained at any stage during the reporting of unsatisfactory conduct, the preliminary assessment, the investigation and the disciplinary process shall be considered confidential, subject to [matters not relevant to this case].

As such, disclosure is presumed to be prohibited.

10. Second, the proffered relevance of this information is hypothetical and strained. In para. 40 of the application, the Applicant says

[I]t is worth mentioning the case of Mr [X], against whom an investigation was conducted regarding similar facts. He produced testimonies from former interns, which likely played a role in the Organisation's decision not to sanction him. Eight of them expressed their particular satisfaction with the Applicant's involvement in their internships (**Annex 9**). However, the administration did not give them any weight.

11. In his motion for disclosure, the Applicant alleges "the allegations made against Mr. [X] and the Applicant originated from the same individuals and concerned, as far as we know, similar factual circumstances."

12. As such, it appears to the Tribunal that the Applicant is merely surmising that the allegations are similar. There is no information in the record as to what evidence supported the allegations in the other case.

13. It is axiomatic that the sufficiency of every case rises on the facts in that particular case, and different facts can (and should) lead to different outcomes. It is axiomatic that the sufficiency of every case rises on the facts in that particular case, and that different facts can (and should) lead to different outcomes. By analogy, imagine if the same boy cries “wolf” on two separate occasions, once where there is no evidence of a wolf being present and once where there is a bloody sheep’s carcass on the scene. Evidence from one occasion sheds no light on whether a wolf was present in the other instance. The same is true in this case. Whether or not there was sufficient evidence of misconduct in the case of Mr. X does not establish whether there was sufficient evidence of misconduct by the Applicant, even if the allegations originated from the same individuals.

14. The motion for disclosure also claims that “[t]he stark contrast in the outcome of these two cases, despite similar factual basis, is significant and may bear directly on the issue of the proportionality of the disciplinary measure imposed on the Applicant.”

15. This argument is not a claim raised in the application, nor is it supported by jurisprudence. Proportionality is an analysis of the discipline imposed and the nature of the offense in a particular case. While a proportionality analysis might include whether different discipline was imposed for similar offenses, it cannot include comparing an outcome where there was insufficient evidence of misconduct to bring charges with the outcome where the allegations are found by clear and convincing evidence. While a proportionality analysis might include whether different discipline was imposed for similar offenses, it cannot include comparing an outcome where there was insufficient evidence of misconduct to bring charges with the outcome where the allegations are found to be supported by clear and convincing evidence. The two instances are not similarly situated and thus cannot be compared.

16. Accordingly, the Tribunal finds that the investigation report into the allegations against another staff member are irrelevant and not necessary for a fair disposal of this case.

Conclusion

17. The Applicant's motion is DENIED.

(Signed)

Judge Sean Wallace

Dated this 11th day of June 2025

Entered in the Register on this 11th day of June 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi