



Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

SAINT-LOT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Jorge Diaz-Cueto

Counsel for Respondent:

Matthias Schuster, UNICEF

Alister Cumming, UNICEF

Introduction

1. On 10 November 2021, as directed by the Tribunal, the Applicant filed a submission of oral evidence.
2. On 3 December 2021, the Respondent objected to the requested evidence.

Consideration

3. The Applicant requests the Tribunal to hear testimony from five witnesses. The Respondent objects to all of their testimonies on the grounds that they are irrelevant to the issues in dispute.
4. The Tribunal will review the requests in turn.

Testimony of MB

5. The Applicant requests the cross-examination of MB. He reasons his request as follows:

... Cross examination of witness [MB] will show that she was upset by comment the senior [the Applicant] made about her ripped jeans (sic.). The fact finder dismisses [the Applicant's] assertion that this statement was made without any regards to the gender of the person he was making the comment to. This bias by the fact finder is capricious and not logical as the fact finder ignores one witness [the Applicant] in favor of a witness that credibility is at issue (sic.).

6. The Respondent objects to this testimony stating that the Applicant does not challenge the substance of the evidence provided by MB during the investigation.
7. The Tribunal is not sure it fully understands the reasons underlying the Applicant's request, particularly as he appears to admit that his comments to MB caused her discomfort.

8. However, the Tribunal notes that the Applicant's comments were deemed to amount to sexual misconduct because, among other factors, they were unwelcome and made the receiver feel uneasy. Therefore, even if the Applicant's request is not properly articulated, the Applicant has the right to test the evidence on MB's state of mind. MB's testimony is therefore allowed.

Testimony of PM

9. The Applicant further requests the testimony of PM who, he claims, will testify that she did not feel sexually harassed by the Applicant.

10. The Respondent objects to this testimony on the grounds that the initial charges concerning PM were dropped and her testimony is therefore irrelevant.

11. The Tribunal agrees with the Respondent in this respect. The sanction letter is based exclusively on the Applicant's behavior towards MB. Therefore, PM's testimony is irrelevant to the issues in dispute in this case. This testimony will therefore not be allowed.

Testimony of DW

12. The Applicant further requests the testimony of DW which, he asserts, contradicts that of MB and impeaches her testimony.

13. The Respondent replies that the basis for the Applicant's assertion that DW's testimony calls into question MB's is unclear. Moreover, the Respondent states that there is no evidence to suggest that DW was present during the relevant incident.

14. The Tribunal notes that DW did indeed not witness the incident for which the Applicant was charged and eventually sanctioned. DW stated in his interview that MB had related being uncomfortable around the Applicant after the comments he made to

her and provided a contemporaneous email in which he relays MB's concerns to other UNICEF colleagues.

15. The Applicant, however, fails to point out how any testimony from DW would be capable of calling into question MB's.

16. The Tribunal finds that the Applicant's request for DW's testimony fails to clearly identify which evidence he intends to rebut and rejects the request for his testimony.

Testimony of OSO

17. The Applicant further requests the testimony of OSO which, he claims, will "show that [OSO] not only prejudged the [Applicant] but also lied in order to damage [the Applicant]".

18. The Respondent objects to OSO's testimony because the Applicant does not specify what he means by OSO having "prejudged" him or how he lied. The Respondent further recalls that OSO provided evidence about certain inappropriate comments made by the Applicant but was not present during the incident upon which the contested disciplinary sanction was based. Also, OSO's evidence was limited to corroborating MB's evidence that she recounted the incident to him shortly after it occurred. As the Applicant does not deny that the incident took place, the Respondent argues that the relevance of OSO's testimony is not established.

19. In Order No. 99 (NY/2021) of 27 October 2021, at para. 10-11, the Tribunal laid out the Appeals Tribunal's jurisprudence concerning the production of evidence in

disciplinary cases, which requires the party requesting such production of evidence to show its relevance.

20. The Tribunal agrees with the Respondent that the Applicant does not clarify how OSO lied or prejudged the Applicant or to what extent his testimony would impeach any of the evidence relied on by the Administration.

21. Moreover, the Applicant states with respect to his request for MB's testimony that "[c]ross examination of witness [MB] will show that she was upset by comment the senior [Applicant] made about her ripped jeans".

22. The fact that MB was made to feel uncomfortable by the Applicant's comments is precisely the reason why his conduct was found to be unwelcome. Indeed, the sanction letter explains that OSO confirmed that MB, after her conversation with the Applicant, reported to him that she felt uncomfortable during the meeting with the Applicant and that he had made comments of a sexual nature.

23. Therefore, the Applicant, who is represented by a professional counsel, has failed to show how OSO's testimony would be relevant to any issue in dispute in this case.

24. OSO's testimony is therefore rejected.

Testimony of MCD

25. The Applicant further request the testimony of MCD who "works alongside [the Applicant] in [...]" and whose testimony, he claims, was ignored. The Applicant alleges that MCD will testify that the Applicant is "respectful and that she has never witnessed [the Applicant] sexually harassing any UNICEF employee".

26. The Tribunal notes that, as the Respondent points out, MCD was not a witness to the incidents for which the Applicant was sanctioned.

27. Moreover, the Applicant's prior good record is not in dispute and was actually considered as a mitigating factor in the sanction letter.

28. MCD's testimony in this respect would, therefore, be irrelevant.

29. The Applicant does not request the production of any additional documentary evidence.

30. In light of the above,

IT IS ORDERED THAT:

31. The Applicant's request for additional evidence is granted in part;

32. The Tribunal will hold a one-day hearing **between 17 and 28 January 2022** to hear the testimony of MB;

33. By **4:00 p.m. on Friday, 7 January 2022**, the parties will inform the New York Registry of the witness' availability to testify within the above-mentioned timeframe;

34. Upon receipt of the parties' confirmation as per the above, the Tribunal will schedule the one-day hearing and provide all the relevant instructions through the New York Registry;

35. All other requests for admission of oral evidence are rejected.

(Signed)

Judge Joelle Adda

Dated this 7th day of December 2021