



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

YAZBEK

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Federica Midiri, UNDP

## **Introduction**

1. On 10 March 2021, the Applicant, a former staff member of the United Nations Development Programme (“UNDP”) in Beirut, Lebanon, filed an application to contest the decision not to renew his fixed-term appointment beyond 30 September 2020 for performance issues. The Applicant claims that his manager was “determined not to give [him] a chance to succeed in [his] new job” and he was provided “no real chance of being able to perform to the best of [his] abilities”.
2. On 27 March 2021, the Applicant filed a “motion for submitting additional evidence”.
3. On 3 May 2021, the Respondent filed the reply submitting that the contested decision that was made due to the Applicant’s underperformance was lawful. The Respondent submits that the Applicant failed to prove his allegation that his manager deliberately prevented him from carrying out his job successfully.
4. On 20 October 2021, the case was transferred from the Nairobi Registry to the New York Registry of the Dispute Tribunal.
5. On 1 December 2021, the case was assigned to the undersigned Judge.

## **Consideration**

### *Additional evidence*

6. In the 27 March 2021 motion, the Applicant requested to submit (a) a secret audio recording of a meeting between the Applicant and his managers and (b) email exchanges between the Resident Representative and the Applicant in June 2020.
7. Having reviewed the email exchanges of June 2020 which concern the management of the Applicant’s work assignments, the Tribunal finds that they are relevant and thus accepts them into the record.

8. Regarding the secret audio recording, the Applicant submits that he recorded a meeting that took place on 16 or 17 June 2020 between himself and his managers concerning the management of his work assignments. He submits that the recording shows that his managers planned to end his contract no matter what he did going forward and thus this is relevant to the case.

9. Acknowledging that secret recordings in the workplace are generally discouraged, the Applicant states that he decided to record this meeting since he believed that the meeting was a critical step that would probably determine his future with UNDP. He also states that previous minutes of meeting would be “smartly adjusted to put blame on [him] whenever possible” and thus he wanted to have his own “proof”.

10. In the reply, the Respondent responds that the recording should be excluded from the evidence since it was made without the knowledge or consent of the meeting attendees and that this is unethical. The Respondent also submits that the recording is not relevant or probative of the facts of the case and violates the privacy of managers who attended the meeting.

11. The Tribunal notes that the Appeals Tribunal provided the following guidance concerning the handling of secret recordings in *Asgar 2020-UNAT-982* (para. 43):

... There is no difficulty in principle regarding the admissibility of the recorded conversation on the basis of the manner in which it was procured, even though it perhaps involved an element of entrapment. Where evidence has been obtained in an improper or unfair manner it may still be admitted if its admission is in the interests of the proper administration of justice. It is only evidence gravely prejudicial, the admissibility of which is unconvincing, or whose probative value in relation to the principal issue is inconsequential, that should be excluded on the grounds of fairness. Hence, the problem in this case is not the secret recording of the conversation; it is rather the weight to be given to it. ...

12. According to the above jurisprudence of the Appeals Tribunal, the Tribunal cannot exclude the secret recordings from the evidence solely because it was recorded in an improper or unfair manner. The question is instead whether the evidence is

relevant and has probative value and is not “gravely prejudicial” and if “its admission is in the interests of the proper administration of justice”.

13. Having reviewed the transcript of the recording the Applicant submitted, the Tribunal finds that the recording might be relevant and therefore can have probative value. The Applicant’s main argument is that his managers set him up for failure from the beginning and thus the contested decision was improperly motivated, and he presents this recording to support this argument. The Tribunal also does not consider that it is “gravely prejudicial” to the managers who attended the meeting given that the recorded meeting was an official work meeting concerning the Applicant.

14. Therefore, the Tribunal decides to admit the audio recording the Applicant submitted, and the parties will be given an opportunity to present oral or documentary evidence concerning the audio recording.

### *Hearing*

15. In the Applicant’s motion of 27 March 2021, the Applicant mentions some named and unnamed witnesses who he believes may support his case.

16. The Tribunal notes that arts. 16.1 and 16.2 of the Rules of Procedure provide that “[t]he judge hearing a case may hold oral hearings”. Therefore, it is for the trier of fact to determine whether a hearing is necessary. Even if no witnesses are called, a hearing can be held if a party requests to present her/his case in person to the Tribunal. The parties should, nevertheless, also expect to be ordered to present their closing statement in writing to the Tribunal, wherein they are to summarize their submissions already on file and not present any new legal or factual arguments or evidence.

17. The Tribunal recalls the well-settled jurisprudence of the Appeals Tribunal stating that the Dispute Tribunal may not make its own factual findings if the parties have agreed on certain facts (see *Ogorodnikov* 2015-UNAT-549, para. 28). The Tribunal also notes that the very purpose of producing evidence—written or oral—is to substantiate the specific relevant facts on which the parties disagree. Accordingly, the production of additional evidence is only required in trial if a fact is relevant and

disputed (in line herewith, see *Abdellaoui* 2019-UNAT-929, para. 29, and *El-Awar* 2019-UNAT-931, para. 27).

18. Should any of the parties request the production of further evidence, said party shall specifically identify the relevant documentation/witness and clearly indicate which of the disputed facts such additional evidence is intended to support. In this regard, the Tribunal notes that the Appeals Tribunal has prohibited a so-called “fishing expedition”, whereby one party requests the other party to produce evidence in “the most general terms” (see, for instance, *Rangel* Order No. 256 (2016)). A party requesting certain evidence must therefore be able to provide a certain degree of specificity to her/his request.

19. According to the above jurisprudence, the parties are instructed to clearly identify the witnesses who the party wishes to call and the disputed fact(s) that such witness(es) is/are to corroborate.

*Status of the Applicant’s abuse of authority complaint*

20. The Tribunal further notes that in the 27 March 2021 motion, the Applicant states that he filed an abuse of authority complaint against his manager, which is under review by the UNDP Office of Audit and Investigation (“OAI”), and requests the Tribunal to order the production of a witness statement obtained by OAI. Before determining the possible relevance of such statement, the Applicant is instructed to confirm if he received any updates regarding his complaint and if so, provide any documents he may have received from OAI.

21. In light of the above,

IT IS ORDERED THAT:

22. The Applicant’s request to submit an audio recording of the meeting that took place on 16 or 17 June 2020 and email exchanges of June 2020 as described in paras. 7 and 8 is granted.

23. By **4:00 p.m. on Friday, 7 January 2022**, the Applicant is to confirm if he received any updates regarding his abuse of authority complaint and provide any documents he may have received from OAI.

24. By **4:00 p.m. on Friday, 7 January 2022**, each party shall submit whether they request to production of any additional evidence, and if so, state:

a. What additional documentation they request to be disclosed, also indicating what fact(s) such evidence is intended to substantiate;

b. The identity of the witness(es), who the party wishes to call, and what disputed fact(s) each of these witnesses would testify about, also setting out the proposed witness's testimony in writing. This written witness statement may also be adopted as the examination-in-chief at a potential hearing if the party leading the witness should wish to do so;

c. If no witnesses are requested to be called, if any of the parties wishes a hearing to be held for them to present their case in person to the Tribunal.

*(Signed)*

Judge Joelle Adda

Dated this 20<sup>th</sup> day of December 2021