



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/033
Order No.: 078 (NY/2023)
Date: 6 September 2023
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

AGUILAR VALLE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Isavella Maria Vasilogeorgi, DAS/ALD/OHR, UN Secretariat
Miryoung An, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 056 (NY/2023) dated 13 July 2023, the Tribunal instructed the parties to file lists of agreed and disputed facts, as well as submissions on the production of additional evidence, by 11 August 2023.

2. On 11 August 2023, the parties filed the submissions as per Order No. 056 (NY/2023).

Consideration

Hearing

3. In the Applicant's 11 August 2023 submission on additional evidence, he proposes a hearing for himself and some other witnesses to provide testimony. On the other hand, in the Respondent's 11 August submission, he submits that "the record before the Tribunal is complete and accurate, and that the case may be adjudicated on the papers".

4. Referring to Order No. 056 (NY/2023), the Tribunal reiterates that as for oral evidence, arts. 16.1 and 2 of the Rules of Procedure provide that "[t]he judge hearing a case may hold oral hearings" and that "[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure". In line herewith, the Appeals Tribunal has in various judgments underlined the importance of hearing testimonies in disciplinary cases (see, for instance, *Applicant* 2022-UNAT-1187, particularly, paras. 57-59, and *AAC* 2023-UNAT-1370).

5. As the present case is a disciplinary case and some possibly decisive facts are in dispute, the Tribunal will therefore grant leave to the Applicant's request for holding a hearing in order to have witnesses provide testimony thereon. Considering the schedule of the Tribunal, such hearing is to take place during the week of 6 – 10 November 2023.

The Applicant's proposed witnesses

6. Attached to the Applicant's 11 August 2023 submission is a "sworn witness statement" of MU (the names of all proposed witnesses are redacted for privacy reasons) in English, which he proposes "for adoption as the examination-in-chief", also indicating that MU would be available "for examination, if required, but asks that he be permitted to give [his cross-examination] in Spanish". In addition, the Applicant requests the following additional witnesses to provide testimony before the Tribunal: himself, AM (the alleged victim; for cross-examination), PS, LC, and AB. In accordance with para. 21(b) of Order No. 056 (NY/2023), the Applicant sets out short written statements on the intended topics, which these proposed witnesses' testimonies are to cover.

7. The Respondent objects to all these proposed witness testimonies of the Applicant, contending that (reference to footnotes omitted):

6. The Applicant has submitted various so-called witness statements with the Application, the Rejoinder, and with his separate submission pursuant to Order No. 56 (NY/2023). None of these "statements" were before the decision-maker at the time of the contested decision. All of them have been obtained after the initiation of the present proceedings. At no time had the Applicant proposed that [Office of Audit and Investigations] interview any of these individuals as witnesses. The Applicant did not submit any of these statements for the decision-maker's consideration with his Comments.

7. The Respondent notes that: (i) the contents of these statements have not been authenticated; (ii) the statements do not abide by the [Appeals Tribunal's] standards regarding the necessary indicia of reliability, namely an averment of truth essentially reflecting that of Article 17(3) of the [Dispute Tribunal's] Rules of Procedure; and (iii) some of these statements focus on the working relationship between the Applicant and [RV], which is not the subject matter of the present proceedings.

8. The Respondent is particularly concerned with the statement presented in Annex 18, filed with the Applicant's separate submission pursuant to Order No. 56 (NY/2023) on 11 August 2023. The Respondent wishes to emphasize that, in nominating [MU] as a witness, the Applicant has indicated that [MU] would like to be examined in Spanish. Nevertheless, the statement of [MU] is written in English, using elaborate and sophisticated language. The Respondent questions whether the statement was written by [MU]

and/or whether [MU] fully understood the content of the statement before affixing his signature. In [*Nyambuza* 2013-UNAT-364], the [Appeals Tribunal] has held that a statement, or part of a statement, in a language that the witness may not understand, does not satisfy the indicia of reliability and truthfulness required.

9. The Respondent objects to the admission of these statements as evidence in the casefile. Accordingly, the Tribunal should reject the Applicant's request to call [AM], [LC], [AB], and [MU], as witnesses to provide oral testimony before the Tribunal.

The Tribunal reiterates, as explained above, the Appeals Tribunal's emphasis on the importance of hearing witnesses in disciplinary cases. In this regard, the Respondent's objections against the written statements concerning the Applicant's proposed witnesses are misguided. The purpose of these statements is simply to understand the relevancy of each of the proposed testimonies and define, and thereby also limit, the possible scope of the relevant testimony at a hearing. Any issue with MU's witness statement can simply be fixed by hearing him in person in examination-in-chief after which the Respondent will have the chance to cross-examine him. *The Respondent's proposed witnesses*

8. If the Tribunal decides to hold a hearing, the Respondent submits that the "following witnesses are relevant to the contested decision": AM, VM, FD, RV, BP, AJ, VF, HA, and AR. Despite the Tribunal's explicit orders in para. 21(b) of Order No. 056 (NY/2023), the Respondent has, however, not provided any written statements concerning his proposed witnesses. The Tribunal therefore directs the Respondent to do so.

9. In light of the above,

IT IS ORDERED THAT:

10. Upon the request of the Applicant, a hearing will be held at which those witnesses proposed by the parties, who are permitted by the Tribunal, will provide testimony during **the week of 6 – 10 November 2023**.

11. By **4:00 p.m. on Tuesday, 12 September 2023**, the Respondent is to state what disputed fact(s) each of his proposed witnesses is to give testimony about for the Tribunal to decide on its relevancy. Alternatively, the Respondent may file

signed written statements that the Tribunal may allow to replace the examination-in-chief at the hearing if the Respondent should wish to do so. The Tribunal will thereafter assess the relevancy of each of the witnesses proposed by the parties, decide on whether their testimonies will be allowed, and then provide further instructions regarding the hearing.

(Signed)

Judge Joelle Adda

Dated this 6th day of September 2023

Entered in the Register on this 6th day of September 2023

(Signed)

Isaac Endeley, Registrar, New York