Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

HAMAM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:
Christopher Bollen

Counsel for Respondent:
Miryoung An, AS/ALD/OHR/UN Secretariat
Isavella Maria Vasilogeorgi, AS/ALD/OHR/UN Secretariat

Introduction

1. On 6 May 2022, the Applicant, a former staff member of the Office of the Special Adviser on Africa ("OSAA"), filed an application contesting the decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.

2. The Respondent filed a reply on 3 June 2022 submitting that the contested decision was lawful.

3. On 17 August 2023, by Order No. 071 (NY/2023), the Tribunal ordered the parties *inter alia* to file a jointly-signed statement providing a consolidated list of agreed facts and a consolidated list of disputed facts.

4. On 10 November 2023, the parties duly filed their joint submission.

5. Pursuant to Order No. 140 (NY/2023) of 12 December 2023, the Applicant filed a submission on 18 January 2024 setting out the additional evidence he wishes to adduce and the identity of the witnesses he wishes to call for a possible hearing.

6. On 23 January 2024, the Respondent filed a motion seeking leave to submit whether he wishes to adduce any additional evidence, and to respond to the Applicant's 18 January 2024 submission.

7. On 13 February 2024, by Order No. 017 (NY/2024), the Tribunal granted the Respondent's motion dated 23 January 2024 and ordered the Respondent to file his response to the Applicant's motion and submissions on whether he requests to adduce any additional evidence by 26 February 2024. The Respondent duly filed his submissions.

Considerations

The issues in this case

8. In determining the relevance of the requested evidence and witness testimony, the Tribunal recalls that the issues in this case are related to the

disciplinary measure imposed on the Applicant for misconduct. The misconduct consisted of the Applicant allegedly: (a) making inappropriate remarks towards five staff members of OSAA, which were perceived as demanding personal loyalty and implying retribution for disloyalty, including that contract renewals and promotion opportunities may be adversely impacted; and (b) in opposition to the proposed reform by the then Under-Secretary-General and Special Adviser on Africa ("USG"), engaged in insubordination and creating a hostile work environment.

9. Article 9.4 of the Dispute Tribunal's Statute, as introduced by the General Assembly on 22 December 2023, limits the extent to which the Dispute Tribunal needs to admit new evidence in disciplinary cases as follows (emphasis added):

> … In hearing an application to appeal an administrative decision imposing a disciplinary measure, t*he Dispute Tribunal shall pass judgment on the application by conducting a judicial review*. In conducting a judicial review, the Dispute Tribunal shall consider the record assembled by the Secretary-General and may admit other evidence to make an assessment on whether the facts on which the disciplinary measure was based have been established by evidence; whether the established facts legally amount to misconduct; whether the applicant's due process rights were observed; and whether the disciplinary measure imposed was proportionate to the offence.

10. Concerning the meaning of what constitutes a "judicial review" the Appeals Tribunal in its seminal judgment, *Sanwidi* 2010-UNAT-084, held that:

> … In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. As a result of judicial review, the Tribunal may find the impugned administrative decision to be unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate. During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decisionmaker's decision. This process may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker's administrative decision. This is a misunderstanding of the delicate task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General.

11. At the same time, it is provided in art. 16.2 of the Dispute Tribunal's Rules of Procedure that a "hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure" like the present one.

12. The very purpose of producing evidence—written or oral—is to substantiate the specific relevant facts on which the parties disagree. Accordingly, there is, in essence, only a need for evidence if a fact is disputed and relevant (in line herewith, see *Abdellaoui* 2019-UNAT-929, and *El-Awar* 2019-UNAT-931).

13. Specifically, regarding the necessity of hearing witnesses, the Appeals Tribunal has held that this is only necessary if the relevant facts are unclear or the dispute of facts is irreconcilable (see, for instance, *Abdellaoui* 2019-UNAT-928, *AAC* 2023-UNAT-1370, and *AAO* 2023-UNAT-1361). The Tribunal notes that the Appeals Tribunal has highlighted the importance of allowing an applicant before the Dispute Tribunal, who as the alleged offender is contesting an administrative decision following a disciplinary process, the opportunity to cross-examine any witness whose interview statement from the investigation he is challenging on the basis of its veracity, since the applicant was not present during this interview (see, for instance, *Appellant* 2022-UNAT-1210, and *Applicant* 2022-UNAT-1187).

14. It follows that the central issues in this case relate to the Applicant's own conduct (as opposed to that of others) and the disciplinary measure imposed on the Applicant.

The Applicant's request for additional evidence

15. In the Applicant's 18 January 2024 submission, he set out a "list of additional documentation to be disclosed and added to the case file". The Respondent has objected to the Applicant's requests submitting that the Applicant's requested documentation lacks relevancy to the issues before the Tribunal under Article 9.4 of the UNDT Statute, and as for some of them, were already in the case file. The Tribunal will address each document requested in turn below.

Protection Against Retaliation Questionnaire, completed and signed by BP (name redacted for privacy reasons) against the USG on 28 August 2019

16. The Applicant states that this document is relevant to the case as BP provides a detailed account of the USG's mismanagement of the structural changes BG (name redacted for privacy reasons) imposed upon OSAA, and the USG's harassment, side-lining and retaliation against the senior managers. The Applicant states that this document also evidences that, in view of the USGs' disregard for the applicable rules, the confusion created by her management and her harassing attitude, the Applicant's actions to protect himself, his colleagues and OSAA as an Office were justified and appropriate.

17. The Respondent submits that the Applicant's reasons are not relevant to the facts in issue since they are about BP's complaint of "mismanagement of the structural changes" and "harassment, side-lining and retaliation" by the USG, which is a separate matter that has been addressed through a separate process.

18. The Tribunal finds the document titled "Protection Against Retaliation Questionnaire, completed and signed by [BP] against the USG on 28 August 2019" to not be relevant to the case. This document is related to a third party's (BP) complaint about the USG, and does not help address any of the Respondent's facts which are disputed by the Applicant. Therefore, the Tribunal will not admit this document into the case file.

Interview of the Applicant performed by OIOS on 23 January 2019 as part of its investigation into the USG's conduct

19. The Applicant states that this document is relevant as in his interview with OIOS, the Applicant recalled (a) how he supported the USG's agenda further to her appointment; (b) how, instead of working with his support, the USG questioned his leadership, belittled/harassed him and ultimately attempted to side-line him through her reform of OSAA, and how (c) this situation deeply impacted the Applicant's health and well-being at work. The Applicant states that this document thus evidences that the Applicant's actions at the time were justified by his need to

preserve not only OSAA but also his well-being and professional integrity as a staff member.

20. The Respondent states that OIOS did not interview the Applicant on 23 January 2019 and the investigation into the USG's conduct was conducted by a fact-finding panel. The Applicant was given the outcome of the fact-finding panel investigation and did not contest it. The Respondent adds that the Applicant's complaints of harassment against the USG are not at issue as they do not constitute the facts on which the disciplinary measure was based. Furthermore, the Applicant's various complaints against the USG, even if established, do not justify his breach of obligations under the staff regulations and rules and ST/SGB/2019/8.

21. Having reviewed the record, the Tribunal finds that the Applicant's interview before OIOS in the investigation against him is already in the case file. The Applicant's interview before the fact-finding panel in his complaint against the USG is irrelevant to the issues in the present case.

Email exchange of 11-12 January 2019 between ST (name redacted for privacy reasons) and the USG

22. The Applicant states that this document concerning the 2019-2020 budget plan is relevant, and it is notable that the Applicant is not mentioned nor copied in this email exchange between ST and the USG regarding 2019-2020 budget plan. The Applicant submits that this evidences that he was not tasked with the budget nor involved in its preparation for the 2019-2020 exercise.

23. The Tribunal notes that this document is already in the case file, amongst the supporting documentation filed by the Respondent in document 746 which para. 11 of the agreed facts is based on.

Email sent on 7 January 2020 from the Applicant to OIOS, reproducing an email exchange of 22 October to 5 November 2019 between the Applicant, ST and the USG

24. The Applicant states that an email exchange of 22 October to 5 November 2019 between the Applicant, ST and the USG concerning a meeting relating to the budget is relevant to the USG's harassment and mistreatment of the Applicant.

25. The Tribunal notes that this document is already in the case file, amongst the supporting documentation filed by the Respondent at document 436 which is part of the OIOS investigation report.

Email of 14 December 2018 by MB (name redacted for privacy reasons) to various recipients (not including the Applicant) inviting them for a meeting of 17 December 2018 on the budget finalization (i.e., the 2019/2020 workplan)

26. The Applicant states that this email shows that the Applicant was not invited to the 17 December 2018 meeting on the budget, as preparing the budget and/or the OSAA 2019/2020 workplan and narrative was not part of his attributions. The Applicant adds that he only chaired this meeting on the budget as an emergency measure, as the participants, all senior staff members, had "refused to be chaired by MB who was their junior". In short, this document shows that the Applicant was not involved in the budget preparation and only helped for this meeting.

27. The Tribunal notes that this document is already in the case file, in supporting documentation filed by the Respondent at document 724 which para. 7 of agreed facts is based on. In addition, the Tribunal notes that this fact is not disputed by the Respondent as it is mentioned among the agreed facts.

Memorandum of 25 June 2019 from the senior managers to the Assistant Secretary-General for the Office of Human Resources Management

28. The Applicant states that this memorandum evidences that, following the meeting of 7 May 2019, the Applicant and the senior managers worked to address the issues affecting the USG's proposed workplan, which she had shared on that day. The Applicant states that a notable part of the memo is that the senior managers

highlighted that said workplan was not discussed with the senior managers nor the team leaders, who had voiced concern about the plan's feasibility and missing reporting lines. They also clarified that no agreement was reached in the meeting of 7 May 2019 as to the reporting lines and that the minutes of said meeting were inaccurate in that respect.

29. The Respondent states that this memorandum is not part of the record and the Applicant's "supported fact(s)" appear to repeat the content of the 13 May 2019 memorandum from the Senior Managers, which is part of the agreed facts.

30. The Tribunal notes that this document may be relevant to the issues in the case and grants the Applicant's request for the document to be added to the case file.

Protection Against Retaliation Questionnaire, completed and signed by the Applicant against the USG on 26 August 2019

31. The Applicant states that in his Protection Against Retaliation Questionnaire, the Applicant provided a detailed account of the USG's harassment, sidelining and retaliation against the senior managers, and also her creation of a toxic atmosphere at OSAA. The Applicant adds that the document highlights how the USG's restructuring of the Office violated the applicable UN rules and regulations and was thus unworkable.

32. The Respondent states that the Applicant's disagreement with the USG's reform directives at OSAA and his complaints of harassment by the USG are not relevant to the Applicant's conduct. Even if established, they do not exempt the Applicant from his obligations to comply with staff regulations and rules. In this regard, it is not relevant to the Tribunal's assessment of whether the facts on which the disciplinary measure was based have been established or whether the established facts legally amount to misconduct.

33. The Tribunal finds the document to not be relevant to the case as it does not address the Applicant's conduct, which is the central issue of the case. In addition, the Applicant's disagreements with the USG's reform directives and his complaints

of harassment by the USG are already well established in the existing record of the case. Therefore, the Tribunal will not admit this document into the case file.

Harassment Complaint of 27 October 2018 by MN (name redacted for privacy reasons) against the USG

34. The Applicant states that this document contains further evidence of the USG's improper conduct.

35. The Respondent submits that it is apparent from the Applicant's "supported fact(s)" that this document has nothing to do with the Applicant's conduct at issue.

36. The Tribunal considers this document to be irrelevant to the case. Whether the USG harassed MN has no bearing on the Applicant's own conduct and the disciplinary measure imposed on the Applicant.

Email of 28 June 2019 by the Applicant to AD (name redacted for privacy reasons)

37. The Applicant states that in this email, he reports an additional incident of harassment by the USG to AD. This is the first time the Applicant notified AD of the USG's actions—as he did so due to the gravity and intensity of her conduct. The Applicant states that this document supports the fact of the USG's improper conduct and retaliation against the senior managers.

38. The Respondent submits that the Applicant's "supported fact(s)" only concerned the Applicant's complaint of harassment against the USG, which is not relevant to the assessment of the evidence pertaining to the facts on which the disciplinary measure was based.

39. The Tribunal considers this document to be irrelevant to the issues in this case, namely the Applicant's own conduct and the disciplinary measure imposed on the Applicant.

Email of 7 March 2019 by DC (name redacted for privacy reasons) to the USG

40. This Applicant states that this email evidences DC notifying the USG of her harassing conduct of that day.

41. The Respondent submits that this e-mail does not concern the Applicant. Further, the Applicant's "supported fact(s)" fails to reveal any connection to the facts on which the disciplinary measure was based.

42. The Tribunal considers this document to be irrelevant to the issues in this case, namely the Applicant's own conduct and the disciplinary measure imposed on the Applicant.

Email exchange of 29-30 March 2019 between DC and the Assistant Secretary-General for Human Resources

43. The Applicant states that this email exchange evidences DC's reporting of the USG's improper conduct.

44. The Respondent states that this email does not concern the Applicant. Further, the Applicant's "supported fact(s)" fails to reveal any connection to the facts on which the disciplinary measure was based.

45. The Tribunal considers this document to be irrelevant to the issues in this case, namely the Applicant's own conduct and the disciplinary measure imposed on the Applicant.

Email exchange of 20-21 May 2019 between the USG and the Applicant.

46. The Applicant states that this email exchange evidences the USG's insistence in including the Applicant in the preparations of the African Dialogue Series only at the tail end of the process. The Applicant adds that this email exchange demonstrates the USG's side-lining and retaliation against the Applicant.

47. The Respondent states that whether the Applicant agreed with the USG's managerial decision on who to assign a work project is not relevant to the facts on which the disciplinary measure was based. The USG, as a head of entity, was ultimately responsible for OSAA's mandate delivery, and authorised to make decisions on work-related matters.

48. The Tribunal considers this document to be irrelevant to the issues in this case, namely the Applicant's own conduct and the disciplinary measure imposed on the Applicant.

Public Facebook post by MC (name redacted for privacy reasons) in January 2023

49. The Applicant states that in this public Facebook post, MC, in violation of his duties of confidentiality and loyalty, publicly insults the senior managers. MC further praises the USG and pledges his unconditional support to her. The Applicant states that this post evidences the USG's strong dislike and bias against the senior managers, and intention to have them dismissed.

50. The Respondent states that MC's evidence was not the direct or sole evidence to the facts establishing the Applicant's demand of loyalty. Whether MC, a former staff member, expressed his personal views on the outcome of the matter, after the conclusion of the disciplinary process and the taking of the contested decision, does not undermine the five witnesses' testimony providing direct and consistent evidence to the conversations they personally had with the Applicant.

51. The Tribunal considers this document to be irrelevant to the issues in this case, namely the Applicant's own conduct and the disciplinary measure imposed on the Applicant.

Memorandum of 30 August 2019

52. The document contains the Applicant's reminder to the Ethics Office further to his request for protection of 7 May 2019.

53. The Respondent states that whether the Applicant had reminded the Ethics Office of his request for protection against retaliation is not relevant to the assessment of the facts on which the disciplinary measure was based. From the Applicant's own account, the Ethics Office determined that there was no retaliation by the USG against the Applicant.

54. The Tribunal considers this document to be irrelevant to the issues in this case, namely the Applicant's own conduct and the disciplinary measure imposed on the Applicant.

Email exchange of 9-19 September 2019 between AC (name redacted for privacy reasons) and the USG

55. The Applicant states that this exchange contains the emails quoted in the cited paras. of the parties' consolidated list of disputed facts.

56. The Respondent states that the Applicant's stated facts at paras. 112 and 115 of Annex J/2 of the joint submission dated 10 November 2023 concern AC's interactions with the USG and thus have no relevancy to the facts on which the disciplinary measure was based.

57. The Tribunal considers this document to be irrelevant to the issues in this case, namely the Applicant's own conduct and the disciplinary measure imposed on the Applicant.

Email chain of 18-20 May 2020 involving various staff members regarding the extension of KJ (name redacted for privacy reasons)

58. The Applicant states that this exchange contains the emails quoted in the parties' consolidated list of disputed facts.

59. The Respondent states that the document is irrelevant to the facts regarding KJ on which the disciplinary measure was based, meaning the Applicant's refusal to engage with KJ upon her recruitment and to assume administrative responsibilities as her senior reporting officer related to her conditions of service in 2019. How KJ's temporary assignment was extended in May 2020 is not at issue since it does not justify his conduct that occurred prior to that. The USG did not require the Applicant's approval before taking any managerial and/or administrative decision. Furthermore, the Applicant's insinuation of any impropriety in excluding him from the extension of KJ's temporary assignment is disingenuous given the Applicant's consistent position throughout the period that

he would not be involved in any administrative matters concerning KJ's employment at OSAA.

60. The Tribunal considers this document to be irrelevant to the issues in this case, namely the Applicant's own conduct and the disciplinary measure imposed on the Applicant.

Memorandum of 15 October 2019 from the Ethics Office to the Applicant

61. The Applicant states that this document establishes that the Ethics Office found a *prima facie* case of retaliation by the USG.

62. The Respondent submits that the Ethics Office's review of the Applicant's request for protection against retaliation is outside the scope of the judicial review of the facts on which the disciplinary measure was based.

63. The Tribunal considers this document to be irrelevant to the issues in this case. Further, the Tribunal notes that the Ethics Office's finding of a *prima facie* case of retaliation by the USG has no weight given the final determination by the Ethics Office that there was no retaliation by the USG.

Witnesses

64. In the Applicant's 19 January 2024 submission, the Applicant sets out a list of 10 witnesses, including himself, he wishes to call at a hearing. The Respondent has objected to each witness request submitting that the Applicant provided reasons that are not relevant to an assessment of the issues under art 9.4 of the Dispute Tribunal's Statute. The Tribunal will address each witness request in turn below.

The Applicant

65. The Applicant states that in his proposed testimony, he will detail why none of the charges held against him are established. This will touch upon all the facts of the instant case. This testimony is to address that, in view of the USG's disregard for the applicable rules, the confusion created by her management and her harassing

attitude, the Applicant's actions to protect himself, his colleagues and OSAA as an Office were justified and appropriate.

66. The Respondent states that the Applicant fails to provide how he would "detail why none of the charges held against him are established", but purports to testify on the irrelevant information concerning his complaint against the USG. The Respondent objects to hearing the Applicant on the issues that are not relevant to the matter before the Tribunal.

67. The Tribunal considers that the Applicant's proposed testimony on his conduct will be relevant to the adjudication of the present case and therefore grants the request for the Applicant to give testimony at an oral hearing. The Applicant's testimony will be limited to the issues that are within the scope of the present case, namely the Applicant's own conduct and the disciplinary measure imposed on the Applicant.

JN (name redacted for privacy reasons)

68. The Applicant states that as Senior Programme Management Officer, JN attended most weekly meetings chaired by the USG. He was involved in the meetings on the budget preparation, worked alongside the Senior Managers, and experienced the USG's implementation of her restructuring at OSAA. The Applicant submits that JN's testimony is to address the entirety of the disputed facts, and *inter alia* (a) the contents of the meetings of 18 December 2018, 7 May 2019, 13 May 2019, and 3 July 2019; (b) the USG's harassment and side-lining, notably in meetings; (c) the unlawfulness of the USG's restructuring of OSAA; (d) the dysfunctional and toxic working environment brought about by said reform; (e) the Applicant's and the senior managers' efforts to restore the good functioning of the office. The testimony is also to establish that (f) the Applicant did not demand personal loyalty from his colleagues and subordinates, and that (g) the Applicant never refused to participate in budget meetings.

69. The Respondent submits that the issues whether the internal OSAA restructuring was lawful or properly managed or whether the USG harassed the Applicant are not before the Tribunal. The Applicant's reference to the supposed

13 May 2019 and 3 July 2019 meetings has no basis in the joint submission dated 10 November 2023. There are memoranda dated 13 May 2019 (concerning the 7 May 2019 meeting) and dated 3 July 2019 (complaints against the USG addressed to the Chef de Cabinet), but no meetings on such dates. The contents of the 18 December 2018 meeting which the Applicant chaired before he went on leave are not relevant to his refusal, upon his return from the leave, to take part in the later phase of OSAA's 2020 budget planning and preparation process. The Applicant's disagreement around the substance of the 7 May 2019 meeting is captured in the documentary evidence on record, including the memorandum of 13 May 2019. In determining whose account is more credible, the Respondent relied on the sworn evidence of MT (name redacted for privacy reasons), Executive Officer of the Department of Economic and Social Affairs, who was not part of OSAA, and participated in those meetings and thus was in the best position to provide independent and objective observations as to the meetings and the events that occurred afterwards. The record before the Tribunal is sufficient for the judicial assessment of the reasonableness in such evaluation of evidence. JN was not one of the five witnesses from whom the Applicant demanded personal loyalty and whether such personal loyalty was requested of him is not relevant. Lastly, the Applicant's refusal to participate in budget meetings is captured in email evidence including those originating from the Applicant. It is not clear from the Applicant's submission how JN could disprove the e-mails on record and establish that the Applicant never refused to participate in budget meetings.

70. The Tribunal agrees with the Respondent that the record before the Tribunal is sufficient for the judicial assessment of the contested meetings mentioned by the Applicant. Accordingly, under art. 9.4 of the Statute of the Dispute Tribunal and the referenced jurisprudence of the Appeals Tribunal, the Tribunal will not call JN to provide testimony as witnesses before it.

TK (name redacted for privacy reasons)

71. The Applicant states that as Senior Programme Management Officer and member of the management committee, TK attended all weekly meetings chaired by the USG. He was involved in the meetings on the budget preparation, worked

alongside the senior managers and experienced the USG's implementation of her restructuring at OSAA. The Applicant submits that TK's testimony is to address the majority of the disputed facts, and *inter alia* (a) the contents of the meeting of 18 December 2018; (b) the USG's harassment and side-lining; (c) the unlawfulness of the UGS's restructuring of OSAA; (d) the dysfunctional and toxic working environment brought about by said reform. The testimony will also establish (e) the Applicant never refused to participate in budget meetings.

72. The Respondent objects to hearing TK as a witness. The Respondent submits that TK's proposed testimony is essentially about whether the internal OSAA restructuring was lawful or properly managed or whether the USG harassed the Applicant. Those issues are not before the Tribunal. The contents of the 18 December 2018 meeting which the Applicant chaired before he went on leave are not relevant to his refusal, upon his return from the leave, to take part in the later phase of OSAA's 2020 budget planning and preparation process. In addition, TK left OSAA on 1 February 2019 and could not testify to the Applicant's refusal that occurred in April 2019 and May 2019. The Applicant's refusal to participate in a meeting on 15 January 2019 was established on the basis of email evidence on record.

73. The Tribunal agrees with the Respondent that the proposed testimony of TK is not relevant to the issues of this case. Accordingly, under art. 9.4 of the Statute of the Dispute Tribunal and the referenced jurisprudence of the Appeals Tribunal, the Tribunal will not call TK to provide testimony as witnesses before it.

JW (name redacted for privacy reasons)

74. The Applicant states that as Senior Programme Management Officer and member of the management committee, JW attended all weekly meetings chaired by the USG. She was involved in the meetings on the budget narrative, which was the first stage of the budget preparation work. She also worked alongside the senior managers and experienced the USG's implementation of her restructuring at OSAA. The Applicant submits that JW's testimony is to address the entirety of the disputed facts, and *inter alia* (a) the contents of the meetings of 18 December 2018, 7 May 2019, 13 May 2019, 3 July 2019, and 2 October 2019, and also the

management retreat of 4 - 6 September 2018; (b) the USG's harassment and side-lining, notably in meetings; (c) the unlawfulness of the USG's restructuring of OSAA; (d) the dysfunctional and toxic working environment brought about by said reform; and (e) the Applicant's and the senior mangers' efforts to restore the good functioning of the Office through their successive Memoranda, in particular in relation with the two proposals discussed on 12 September 2019. The testimony is to also establish that (f) the Applicant did not demand personal loyalty from his colleagues and subordinates, and that (g) the Applicant never refused to participate in budget meetings.

75. The Respondent objects to hearing JW as a witness. The Respondent submits that JW is proposed by the Applicant to testify mainly on whether the internal OSAA restructuring was lawful or properly managed or whether the USG harassed the Applicant. The other reasons put forward by the Applicant are without merit. The Applicant's reference to the supposed 13 May 2019, 3 July 2019, and 2 October 2019 meetings has no basis in the joint submission dated 10 November 2023. There are memoranda dated 13 May 2019 (concerning the 7 May 2019 meeting) and dated 3 July 2019 (complaints against the USG addressed to the Chef de Cabinet), and an e-mail dated 2 October 2019. However, no meetings on such dates are mentioned in the disputed facts. The contents of the 18 December 2018 meeting which the Applicant chaired before he went on leave are not relevant to the facts at issue, namely, the Applicant's refusal, upon his return from the leave, to take part in the later phase of OSAA's 2020 budget planning and preparation process. With respect to the substance of the 7 May 2019 meeting, the Applicant chose not to submit a written testimony of JW. This makes it impossible to determine the relevancy of her proposed testimony. The Applicant also chose not to submit her written testimony regarding the management retreat of September 2019. It, therefore, is impossible to determine whether her evidence is relevant and more importantly able to overcome the other evidence on record, including the facilitator's contemporaneous summary of the retreat as corroborated by sworn testimony from MT. In addition, JW was not one of the five witnesses from whom the Applicant demanded personal loyalty and whether such personal loyalty was requested of her is not relevant. Lastly, it remains unclear how JW could disprove

the Applicant's refusal to participate in budget meetings which is captured in email evidence including those originating from the Applicant.

76. The Tribunal considers that the Applicant has not demonstrated that JW's proposed testimony would be relevant to the issues of this case. Accordingly, under art. 9.4 of the Statute of the Dispute Tribunal and the referenced jurisprudence of the Appeals Tribunal, the Tribunal will not call JW to provide testimony as witnesses before it.

BP (name redacted for privacy reasons)

77. The Applicant states that as Chief of Branch and part of the senior managers, BP was highly involved in meetings with the USG. She worked alongside the other senior managers and experienced the USG's implementation of her restructuring at OSAA. The Applicant submits that BP's testimony is to address most of the disputed facts, and *inter alia* (a) the contents of several meetings, in particular the meeting of 19 June 2019 between the senior managers and KJ (name redacted for privacy reasons), and also the management retreat of 5 - 6 September 2019; (b) the USG's harassment, as she directly harassed MP in several meetings in 2018 (notably on 31 May 2018); (c) the unlawfulness of the USG's restructuring of OSAA; (d) the dysfunctional and toxic working environment brought about by said reform; and (e) the Applicant's and the senior managers' efforts to restore the good functioning of the Office through their successive Memoranda, in particular in relation with the two proposals discussed on 12 September 2019. Her testimony is to also address (f) the insecurity and confusion surrounding the appointment and extension of KJ's (name redacted for privacy reasons) contract.

78. The Respondent objects to hearing BP as a witness. The Respondent submits that the issues whether the internal OSAA restructuring was lawful or properly managed or whether the USG harassed the Applicant and BP are not before the Tribunal. The senior managers' meeting of 19 June 2019 with KJ is based on her testimony and the testimony of her first reporting officer ("FRO"), DC (name redacted for privacy reasons) agreeing that the senior managers collectively met with her when she arrived in the office and told her something in line with: "it is really unfortunate the way [she had been] hired" and the [senior managers] filed a

formal "complaint against the way [the] recruitment [had taken] place" and "when it comes to work, [the [senior managers] were not] going to be able to work with [her]", and that the issues related not only to the recruitment process but also that she was working under and reporting directly to the USG. The Applicant chose not to submit BP's written testimony in this regard, and it is not possible to determine how her testimony would be relevant and potentially disprove the testimony from DC, KJ's then FRO, which is corroborated by subsequent email correspondence on record. Regarding the management retreat of September 2019, again the Applicant's choice not to submit BP's written testimony makes it impossible to determine the relevancy of her evidence and assess whether it could overcome the other evidence on record, including the facilitator's contemporaneous summary of the retreat as corroborated by sworn testimony from MT. Lastly, whether there was "insecurity or confusion surrounding the appointment and extension of KJ" does not justify the Applicant's insubordination and creating a hostile work environment targeting KJ.

79. The Tribunal considers that the Applicant has not demonstrated that BP's proposed testimony would be relevant to the issues of this case. Accordingly, under art. 9.4 of the Statute of the Dispute Tribunal and the referenced jurisprudence of the Appeals Tribunal, the Tribunal will not call BP to provide testimony as witnesses before it.

EA (name redacted for privacy reasons)

80. The Applicant states that as Programme Management Officer, EA directly experienced the USG's implementation of her restructuring at OSAA. The Applicant submits that EA's testimony is to address (a) the confusion at OSAA as to the reporting lines and [the Electronic Performance Appraisal System "e-PAS"] completion as a consequence of the USG's restructuring; (c) the USG's harassing conduct through several meetings in 2018; (d) the USG's marginalization and side-lining of the senior managers, notably through the appointment of KJ, and (e) the USG's personal and unilateral decision to assign EA as penholder for a report of the Secretary-General, against EA's express wishes.

81. The Respondent objects to hearing EA as a witness. The Respondent submits that the Applicant's proposed testimony is essentially about whether the internal OSAA restructuring was lawful or properly managed or whether the USG harassed the Applicant or EA. Those issues are not before the Tribunal.

82. The Tribunal agrees with the Respondent that the proposed testimony of EA is not relevant to the issues of this case. Accordingly, under art. 9.4 of the Statute of the Dispute Tribunal and the referenced jurisprudence of the Appeals Tribunal, the Tribunal will not call EA to provide testimony as witnesses before it.

NA (name redacted for privacy reasons)

83. The Applicant states that NA was Programme Management Officer and Special Assistant to the USG from April 2018 to July 2019. The Applicant submits that NA was the note-taker and the drafter of the minutes of the management committee meetings chaired by the USG. She attended most of the meetings between the Applicant and the USG mentioned in the disputed facts. NA's testimony is to establish the events which transpired in the management meetings at the Office. The Applicant submits that NA's testimony is to also establish the USG's harassment of the Applicant and of other staff in these meetings. Finally, her testimony is to establish that the Applicant did not demand personal loyalty from his colleagues and subordinates, and that the Applicant never refused to participate in budget meetings.

84. The Respondent objects to hearing NA as a witness. The Respondent states that the Applicant did not identify which management meetings or what events he was referring to in proposing the testimony of NA as a note-taker of such meetings. More importantly, the Applicant did not illustrate what NA would add to the meeting minutes that are already in the case file. In absence of such illustration, the only concrete reason put forward by the Applicant was whether the USG harassed the Applicant or other staff in management meetings. That issue is not before the Tribunal. Regarding the other reasons submitted by the Applicant, NA was not one of the five witnesses to whom the Applicant made inappropriate comments demanding their personal loyalty. As such, whether she was ever requested for personal loyalty from the Applicant is not relevant.

85. The Tribunal agrees with the Respondent that the proposed testimony of NA is not relevant to the issues of this case. Accordingly, under art. 9.4 of the Statute of the Dispute Tribunal and the referenced jurisprudence of the Appeals Tribunal, the Tribunal will not call NA to provide testimony as witnesses before it.

BO (name redacted for privacy reasons)

86. The Applicant states that BO was an acting Functional Team Leader and an OSAA staff member, who signed the open letter to management of 7 October 2019 raising concerns over the completion of the electronic performance appraisal ("ePAS") reports and the hostile working environment at the Office. The Applicant submits that BO furthermore attended several meetings in the absence of the Team Leader. His testimony is to address (a) the confusion at OSAA as to the reporting lines and ePAS completion as a consequence of the USG's restructuring; (b) the USG's harassment; (c) the dysfunctional and toxic working environment brought about by said reform; and (d) the Applicant's and the senior managers' efforts to restore the good functioning of the Office through their successive memoranda, in particular in relation with the two proposals discussed on 12 September 2019. The Applicant submits that the testimony is to also establish that (e) the Applicant did not demand personal loyalty from his colleagues and subordinates.

87. The Respondent objects to hearing BO as a witness. The Respondent states that BO's proposed testimony is essentially about whether the internal OSAA restructuring was lawful or properly managed or whether the USG harassed the Applicant. Those issues are not before the Tribunal. In addition, the USG was not one of the five witnesses to whom the Applicant made inappropriate comments demanding their personal loyalty. As such, whether the Applicant ever requested personal loyalty from BO is not relevant.

88. The Tribunal agrees with the Respondent that the proposed testimony of BO is not relevant to the issues of this case. Accordingly, under art. 9.4 of the Statute of the Dispute Tribunal and the referenced jurisprudence of the Appeals Tribunal, the Tribunal will not call BO to provide testimony as witnesses before it.

KB (name redacted for privacy reasons)

89. The Applicant states that KB was a member of the Fact-Finding Investigation Panel which investigated the USG and issued the report of 27 June 2019 in which the Panel found that her conduct had in several respects been inappropriate. The Applicant submits that having interviewed most of the staff members at OSAA covering the period of April 2018 to March 2019, KB is well-placed to testify that (a) the USG harassed, belittled and side-lined the Applicant and that (b) the Applicant in this period did his best to cooperate and while safeguarding the best interests of the Office.

90. The Respondent objects to hearing KB as a witness. The Respondent submits that KB, a fact-finding panel member who investigated the complaints against the USG, including those from the Applicant, had no personal knowledge of the facts on which the disciplinary measure was based.

91. The Tribunal considers that the proposed testimony of KB is not relevant to the issues of this case given she has no firsthand knowledge of the facts on which the disciplinary measure was based. In addition, KB's recollection of witness testimony given to the panel is not relevant to the matter before the Tribunal, and of little probative value. Accordingly, under art. 9.4 of the Statute of the Dispute Tribunal and the referenced jurisprudence of the Appeals Tribunal, the Tribunal will not call KB to provide testimony as witnesses before it.

PG (name redacted for privacy reasons)

92. The Applicant states that PG is the author of the Report of 30 April 2022 (Annex 7 to the application). The Applicant submits that PG's expert testimony is to highlight the numerous breaches by the Office of Internal Oversight Services ("OIOS") of its duties of due diligence and impartiality in its investigation.

93. The Respondent objects to hearing PG as a witness, noting that by Order No. 50 (NY/2023) dated 5 July 2023, the Tribunal has already ruled on PG's statement that it would not be considered as part of the evidence. The Respondent submits that the Applicant is proposing PG as an "expert witness"; however, the Applicant has failed to provide any evidence attesting to PG's expertise or to the necessity of his supposed expertise in the present proceedings.

94. The Tribunal considers that the proposed testimony of PG is not relevant to the issues of this case, and that the Applicant has not provided any justification as to why the Tribunal should revisit its decision in Order No. 50 (NY/2023) on this issue.

The USG

95. Having reviewed the record, the Tribunal finds that the testimony of the former USG and Special Adviser on Africa, would be relevant to the issues in dispute in this case as the Applicant's interactions with her are central to the Administration's finding of misconduct. Pursuant to art. 17.2 of the Rules of Procedure of the Tribunal, the Tribunal requests the USG to appear as a witness.

IT IS ORDERED THAT:

96. The Applicant's request to admit into evidence the document entitled "Memorandum of 25 June 2019 from the senior managers to the ASG, OHRM" is granted. The Applicant shall submit the additional evidence by **4:00 p.m. on Thursday, 28 March 2024**.

97. The Applicant's remaining requests to admit further written evidence before the Tribunal are rejected.

98. The Applicant's request to provide testimony as a witness before the Tribunal is granted.

99. The Applicant's request to call JN, TK, JW, BP, EA, NA, BO, KB, and PG to provide testimony as witnesses before the Tribunal is rejected.

100. The Tribunal will call the USG to appear as a witness.

101. The Tribunal will hold a hearing in this case to hear the testimony of the Applicant and the USG. The Respondent is to confirm the USG's availability to attend the hearing.

102. By **4:00 p.m. on Thursday, 28 March 2024**, the parties are to file a joint statement providing proposed hearing dates for a one-day hearing during the period from 1 - 10 May 2024 and confirm the availability of the above-referenced witnesses.

103. The Tribunal will set the exact date of the hearing once the availability of the witnesses and the parties is confirmed.

104. In the event that either party intends to refer to any document during the hearing, that party shall submit a paginated bundle of these documents at least seven days prior to the hearing date.

105. All practical arrangements for the organization of the hearing will be coordinated through the New York Registry of the Dispute Tribunal.

(Signed)

Judge Joelle Adda
Dated this 14th day of March 2024

Entered in the Register on this 14th day of March 2024

(Signed)

Isaac Endeley, Registrar, New York