



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/024
Order No.: 056 (NY/2024)
Date: 22 May 2024
Original: English

Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

HUNT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Steven Dietrich, DAS/ALD/OHR UN Secretariat
Miryoung An, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 040 (NY/2024) dated 4 April 2024, the Tribunal provided the following orders:

... By **4:00 p.m. on Thursday, 11 April 2024**, the Applicant should file submissions covering the following aspects:

- a. detailing the relevancy of the documents which he requests the Respondent to produce;
- b. explaining why a hearing is necessary;
- c. explaining the relevance of the evidence of each of the proposed witnesses;
- d. explaining why this Application should be joined with other three Applications whose particulars should be indicated, including the stages at which each of them is.

... By **4:00 p.m. on Tuesday, 16 April 2024**, the Respondent is to file his comments, if any, on the Applicant's 11 April 2024 submission.

2. The parties duly filed their responses to Order No. 040 (NY/2024).

Consideration

Joining of cases

3. With reference to Cases No. UNDT/NY/2023/038 (Rotheroe), UNDT/NY/2024/006 (Wojciechowski), and UNDT/NY/2024/015 (Saito), the Applicant submits that, "There are presently three other cases with background and arguments similar to those of the Applicant. All three were the direct result of the seizure and examination of the Applicant's IT devices and are based on private email exchanges that took place between them. They were all signatories to the complaint of 19 July 2019 as well to the letter to the SG. All had their IT equipment seized on 13 May 2022 along with the other whistleblowers".

4. The Applicant further states that, "There are obvious connections in the choice of individuals to be targeted with disciplinary action that will require similar

defences and most likely similar hearings on the merits, should they be ordered. The Applicant feels as a matter of judicial economy, this should be brought to the Tribunal's attention. At the same time, each case has slight variations and specific charges that distinguish them that also need to be addressed". Whereas "this is a matter best decided by the Tribunal", in "the event the cases are not joined", the Applicant requests "leave to include further oral testimony from these individuals and that the information and documentation used in these other cases be made available to all parties such as [the Complainant's, name redacted for privacy reasons] other interview of 16 June 2022 and her correspondence with the new RSG on the Governance Audit".

5. The Respondent "objects to the Applicant's request to join the three cases" which "are not identical" as "[e]ach of the three cases includes facts and evidence that are not part of this case".

6. The Tribunal notes that only one of the three other cases is assigned to the undersigned Judge, namely Case No. UNDT/NY/2023/038 (Rotheroe), whereas the two other cases remain unassigned according to the Registry. It further observes that the Applicant agrees that, despite commonalities, the facts and the claims of the relevant four cases are not the same.

7. Accordingly, the Tribunal sees no grounds for joining the present case with any of the other three mentioned cases, or even consolidating the possible hearing of witnesses—with risk that confusion would emerge regarding the possible actions and omissions of any of the relevant applicants, which could be detrimental to justice, fairness, and due process.

8. Regarding the Applicant's request to, in the alternative, hear "further oral testimony from these individuals" and possibly share information and documentation from the different case files, the Tribunal does not understand the specific implications of this request. It is noted that each case before the undersigned Judge is to be decided on its own merits and based on its own set of facts and evidence. If the Applicant wishes to rely on information and/or evidence from any of the other three cases, this information and/or evidence is to be included in the records of the present case for the Tribunal to consider it.

Applicant's request for additional documentation

9. The Applicant generally submits that he “wishes to underscore the importance of understanding the context for the communications cited by the Respondent as evidence of misconduct”. While “the Respondent refuses to recognize either the extraordinary circumstances facing the [Office of Investment Management (“OIM”)] at the time in question or the central role played by the Applicant and his colleagues in courageously acting as whistleblowers to protect the Pension Fund ... these issues are critical to determining the legality of the actions in question”. In other words, “if the underlying actions of filing formal complaints against the improper actions of the former [Representative of the Secretary-General (“RSG”), name redacted for privacy reasons] is not misconduct, how can the conversations facilitating those actions be considered improper”?

10. The Respondent objects to the Applicant’s disclosure requests contending that “the documents sought by the Applicant ... are irrelevant to the finding of misconduct, which is a legal question that could be judicially determined by the Tribunal based on the evidence on record”.

11. Regarding the specific documents that the Applicant requests to be disclosed, the parties make the following submissions:

“The special review/audit report carried out in March 2020 by [the Office of Internal Oversight Services (“OIOS”)]/Audit”

12. The Applicant contends that “there were in fact two Special Audit Reports which, because they were supportive of the Applicant and his colleagues, have been suppressed by the Respondent”. The “first (Special Review 1) involved an investigation requested by the Secretary-General into the allegations brought by [the RSG] on 16/17 November 2019 of underperformance of the portfolios managed by the Applicant and two of his colleagues/ co-complainants. This Report is critical to understanding the difficult working atmosphere following the Applicant’s complaint to OIOS over the mismanagement of investments, including the role of his Special Assistant [name redacted for privacy reasons, the Complainant] (see Annex 6 to Application)”. The “Second (Special Review 2) was

in direct response to the Applicant's and his colleagues' letter to the Secretary-General of 13 March 2020 (see Annex 9 to Application) and addresses the substance of their complaints against him. This report will shed light on the credibility of complaints over management of the Fund's assets and in particular whether concerns over the handling of the GIP IV investment by the Special Assistant of the RSG were well founded; [Both reports are relevant to Disputed Facts 23, 24, 25,26, 27,29, 30,31, 42,43, 44,45,46,47, 48, 49, 50,51]”.

13. The Respondent responds that the Applicant “cited the paragraphs of the Disputed Facts pertaining to the Respondent’s findings of the Applicant’s harassment and abuse of authority against [the Complainant]”. The Applicant “argued that the report would show a ‘difficult working atmosphere following the Applicant’s complaint to OIOS over the mismanagement of investments.’ However, this has no relevance to the instant case. Again, the issue in this case is not whether [name redacted] the former Representative of the Secretary-General (RSG), properly managed the investments and whether he harassed the Applicant. No ‘difficult working atmosphere’ that the Applicant claims to have been subjected to would provide a justification for the Applicant’s harassment of [the Complainant], a junior staff member who was simply performing her duties as the Special Assistant to the RSG, or for the Applicant to undermine her professionally at the OIM, making disparaging remarks about her to other staff members, including senior managers. Likewise, the Applicant’s letter to the Secretary-General of 13 March 2020 against [the former RSG] concerns the allegations of mismanagement of investments and allegations of prohibited conduct by [the former RSG]. This complaint, even if substantiated, does not affect the unlawfulness of the Applicant’s conduct towards [the Complainant]”.

“The Draft Governance Audit Report (‘Detailed Audit Results’)”

14. The Applicant requests the disclosure of the draft governance audit report and “not the final amended version sent to the General Assembly (see Annex 11 to Application), which the RSG’s Special Assistant viewed and commented upon in May 2020 to the new RSG over sections critical to her handling of the GIP IV

investment and which led to her re-filing her complaint against the Applicant on 9 June 2020. [Relevant to Disputed Facts 23, 24, 25, 56, 57]”.

15. The Respondent responds that the Applicant “fails to address how this draft report is relevant to his conduct targeting [the Complainant]”. The Applicant “refers to the Complainant’s “handling of the GIP IV investment”, but “this is not relevant”. Whether the Complainant was “satisfied with the OIOS Audit Results or whether she commented on them before they were finalized does not allow the Applicant to engage in harassment and abuse of authority against her”. The “cited paragraphs 23-25 of the Disputed Facts are irrelevant to the Governance Audit”, because they are “about [HB’s, name redacted for privacy reasons, and the Complainant’s] statements that the Applicant made disparaging remarks about her via email and to colleagues, namely, [RWL, name redacted for privacy reasons, GS, name redacted for privacy reasons]. The three colleagues corroborated [the Complainant’s] statements”.

“Any interviews by OIOS of the former RSG’s Special Assistant [the Complainant] (in particular the one given on 16 June 2022)”

16. The Applicant contends that since his and the Complainant’s “views on the audit reports are discussed and since the statements she made concerning other OIM staff are relevant to her motivation for filing her complaint, [Relevant to Disputed Facts 31,45,56]”, he requests this/these document(s) to be disclosed.

17. The Respondent responds that the Applicant “again refers to ‘[the Complainant’s] views on the audit reports’, which are not relevant”. The Applicant “fails to describe what [the Complainant’s] ‘motivation for filing her complaint’ was, and how [the Complainant’s] statements in other interviews concerning the Applicant and ‘other OIM staff’ could prove ‘her motivation for filing her complaint.’ Most importantly, however, is how [the Complainant’s] motivation could displace the evidence on record, including the Applicant’s own e-mails, of his harassment of her. The cited paragraph 31 of the Disputed Facts is about the Applicant’s 5 November 2020 e-mail to OIM colleagues discussing how to prevent [the Complainant] from obtaining a P-4 level position at OIM”. The Applicant “fails to illustrate how [the Complainant’s] views about him and ‘other OIM staff’ could

invalidate this communication and others evidencing harassment of [the Complainant]”.

Conclusion

18. The Tribunal finds that, at this stage of the proceedings, it cannot fully assess whether any of the documents requested by the Applicant would be relevant or not to the adjudication of the present case. To avoid unnecessary delays and case management, the Respondent will therefore be ordered to produce the requested documentation. If irrelevant, the Tribunal will simply not rely on the documentation in its final Judgment.

Applicant’s proposed witnesses

19. The Applicant proposes the following witnesses:

The Applicant

20. The Applicant submits that his “testimony would assist in clarifying all the disputed facts and in addressing the three charges, one of which abuse of authority, was not sustained by OIOS but nevertheless figures in the charges of the Respondent”. The Respondent “objects to the Applicant testifying about matters that are not relevant to the issues before the Tribunal” and that his written statement on his proposed testimony “contains statements that are irrelevant”. The Respondent, however, does not specify what exactly he finds to be irrelevant.

21. Accordingly, the Tribunal will allow the Applicant to appear as a witness to provide his testimony in accordance with the statement he provided.

New RSG

22. The Applicant submits that the new RSG “could provide specific information on why [the Complainant] was removed from the temporary position [the former RSG] had assigned her to and could clarify why he perceived no harassment in his exchanges with the Applicant. [Disputed Facts 42, 56]”.

23. The Respondent responds that the evidence that the Applicant “intends to elicit from [the new RSG] is irrelevant”. The “cited paragraphs 42 and 45 of the Disputed Facts are irrelevant, as stated by the Respondent in the joint submission”. In “his interview, [the new RSG] also stated that he did not extend [the Complainant’s] temporary assignment as the Special Assistant in line with an ongoing process to reduce the high number of [temporary job opening (“TJO”)] positions in the OIM”, that “he made the decision to return those on TJOs to their parent positions”, and that since replacing the former RSG, he “had not been in the same room as the Applicant and [the Complainant] due to the remote working arrangement due to the COVID-19 pandemic”. The Applicant “again failed to comply with Order No. 109 (NY/2023), requesting a written statement setting out the proposed testimony from the proposed witness”.

24. The Tribunal notes that in the parties’ consolidated list of agreed and disputed facts dated 14 December 2023, para. 42, the Respondent objected to this fact reasoning that “[t]here is no evidence to support this contention” and nothing else. Regarding para. 56 (the Tribunal assumes that it was a typographical error when the Respondent referred to para. 45 in his 16 April 2024 response), the Respondent objected to this fact stating that “[t]his statement is not relevant to the instant case”.

25. Since the Tribunal cannot rule out that any of the disputed facts would be relevant to the adjudication of the case, it will allow the Applicant to call the new RSG as a witness, whose testimony will be limited to the very specific points stated by the Applicant in the mentioned paras. 42 and 56 of the consolidated list of agreed and disputed facts.

AR and MS (names redacted for privacy reasons)

26. The Applicant submits that AR and MS, as his former colleagues in OIM, would provide testimony regarding “the former RSG's treatment of the Applicant in their meeting on 27 August 2019 leading to his 19 September 2019 email regarding the role of the Special Assistant and to the hostile working environment in OIM. They can also provide information on the content of the complaint of 19

July 2019 to OIOS and the letter to the SG, to which they were both signatories. [Disputed facts 24, 27]”.

27. The Respondent responds that the evidence the Applicant “intends to elicit from [AR and MS] relates to his complaint of harassment against [the former RSG]. Those complaints are not before the Tribunal. Furthermore, neither [AR nor MS] were interviewed by OIOS during its investigation in this case”. The Respondent therefore submits that “this evidence is irrelevant to this case” and the “cited paragraphs 24 and 27 of Disputed Facts do not require [AR’s or MS’s] testimony” since “[p]aragraph 24 is about [the Complainant’s] statements, and paragraph 27 is based on the Applicant’s own e-mail”.

28. The Tribunal that also finds that it cannot exclude that the testimonies of AR and MS may have importance for the determination of the present case. Regarding paras. 24 and 27, these are facts proposed by the Respondent and disputed by the Applicant. Assumedly, the Applicant will intend to challenge these through the testimonies. The Tribunal will therefore allow the testimonies of AR and MS on the very limited questions proposed by the Applicant.

MR (name redacted for privacy reasons)

29. The Applicant submits that MR, a “staff representative who was never interviewed by OIOS in spite of playing a central role leading to the replacement of the RSG, [may] provide clarity on the Applicant’s exchanges with her with regard to the allegation of sharing confidential information and on events in OIM from early June 2019, including early contacts with OIOS and exchanges with the RSG and USG Pollard and ASG Lopez. [Agreed fact 18; disputed fact 47]”.

30. The Respondent responds that the evidence that the Applicant “intends to elicit from [MR] relates to events in OIM from early July 2019 involving [the former SRG]. This is also not relevant to this case. The Applicant cited an agreed fact that is not for a judicial determination as both parties have agreed to it. Furthermore, the cited paragraph 18 of the Agreed Facts is about the Applicant’s exchange with [HB, name redacted], not [MR]. The cited paragraph 47 of Disputed

Facts is about the Applicant's 19 July 2019 complaint filed against [the former SRG], which is irrelevant".

31. The Tribunal notes that the Appeals Tribunal has held that the Dispute Tribunal is not to make its own factual findings if the parties have agreed on certain facts (see *Ogorodnikov* 2015-UNAT-549, para. 28). No evidence is therefore necessary on para. 18 of the consolidated list of agreed facts. Regarding para. 47, the Tribunal notes that the Respondent disputed this fact reasoning that "[t]here is no evidence to support the Applicant's allegation that OIOS leaked his complaint to the RSG". Also regarding this fact, the Tribunal cannot rule out that it may be important for the adjudication of the present case. The Tribunal will therefore allow MR's testimony on this very limited point.

Respondent's proposed witnesses

32. The Respondent, in his 14 December 2023 submission, requests that if the Tribunal finds that "an oral hearing is required to elucidate the facts disputed by the Applicant", he then submits that the following witness are relevant: the Complainant, NH, HB, and RWL. Even if the Respondent did not state what disputed facts any of these witnesses were to corroborate or contradict, the Applicant has not objected to any of the witnesses. Rather, with regard to the Complainant, he has requested to cross-examine her.

33. Consequently, the Tribunal will allow all the witnesses to be heard. In this regard, with reference to the consolidated list of agreed and disputed facts, the Respondent is to file a submission wherein he states concerning which of the specific disputed facts each of his witnesses is to testify.

Evidence-in-chief and cross-examination

34. Each party will undertake the examination-in-chief of his witnesses after which the opponent party will have the opportunity to cross-examine them. Each party will be afforded the same amount of time for the questioning of each witness. For instance, if the hearing of a witness is allotted one hour, each party will have 25 minutes to hear him or her, since the additional 10 minutes will be needed for

the preliminary instructions of the Judge, the administration of the witness oath, and possible follow-up questions after the cross-examination.

Opening and closing statements

35. According to the Appeals Tribunal in AAC 2023-UNAT-1370, para. 44, the parties should, at least, be afforded the opportunity to make opening and closing statements. At the opening and closing of the hearing, albeit not obliged to do so, the parties will therefore be allowed five minutes each to present their respective cases. After the hearing, the parties will, under all circumstances, be ordered to file comprehensive written closing statements, summarizing all their respective contentions.

36. In light of the above,

IT IS ORDERED THAT:

37. By **4:00 p.m. on Wednesday, 29 May 2024**, the Respondent is to file a submission in which he specifically identifies the disputed facts concerning which each of his witnesses, namely the Complainant, NH, HB, and RWL, are to testify with reference to the parties' consolidated list of agreed and disputed facts dated 14 December 2023.

38. By **4:00 p.m. on Wednesday, 29 May 2024**, each of the parties is to confirm in a submission to the Tribunal his acceptance of the hearing schedule set out below and the participation of each of his witnesses, including whether they are to participate in person or remotely via MS Teams. If either of the parties wishes to amend the schedule, this is to be indicated in the submission.

39. By **4:00 p.m. on Tuesday, 18 June 2024**, the parties are to file a consolidated and paginated trial bundle of all the documents they wish to present to the witnesses, if any.

40. A hearing is to be held from **Monday, 24 June to Wednesday, 26 June 2024**. The hearing will be held at the premises of the Dispute Tribunal but, as needed, parties and witnesses will be allowed to participate remotely via MS

Teams. The schedule of the hearing is as follows, with the party leading the witness stated in parenthesis:

a. **Monday, 24 June 2024**

- i. From 9:30 a.m. to 10:00 a.m.—introduction by the Tribunal, opening statements, possible case management matters
- ii. From 10:00 a.m. to 12:00 p.m.—the Applicant (the Applicant)
- iii. From 12:00 p.m. to 1:00 p.m.—lunch break
- iv. From 1:00 p.m. to 3:00 p.m.—the Complainant (the Respondent)
- v. From 3:00 p.m. to 4:00 p.m.—new RSG (the Applicant)

b. **Tuesday, 25 June 2024**

- i. From 9:25 a.m. to 9:30 a.m.—introduction by the Tribunal, possible case management matters
- ii. From 9:30 a.m. to 10:30 a.m.—AR (the Applicant)
- iii. From 10:30 a.m. to 11:30 a.m.—MS (the Applicant)
- iv. From 11:30 a.m. to 12:30 a.m.—MR (the Applicant)
- v. From 12:30 p.m. to 1:30 p.m.—lunch break
- vi. From 1:30 p.m. to 2:30 p.m.—NH (the Respondent)

c. **Wednesday, 26 June 2024**

- i. From 9:25 a.m. to 9:30 a.m.—introduction by the Tribunal, possible case management matters
- ii. From 9:30 a.m. to 10:30 a.m.—HB (the Respondent)

- iii. From 10:30 a.m. to 11:30 a.m.—RWL (the Respondent)
- iv. From 11:30 a.m. to 12:30—closing statements by the parties, possible case management matters

41. Other practicalities regarding the hearing, as directed by the Tribunal, will, in due course, be handled by the Registry in communication with the parties.

(Signed)

Judge Margaret Tibulya

Dated this 22nd day of May 2024

Entered in the Register on this 22nd day of May 2024

(Signed)

Isaac Endeley, Registrar, New York