



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/026
Order No.: 048 (NY/2025)
Date: 28 April 2025
Original: English

Before: Judge Solomon Areda Waktolla

Registry: New York

Registrar: Isaac Endeley

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Sètondji Roland Adjovi, Etudes Vihodé Ltée

Counsel for Respondent:

Jacob B. van de Velden, DAS/ALD/OHR, UN Secretariat

Maria Romanova, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 045 (NY/2025) dated 15 April 2025, the Tribunal ordered the Respondent to produce all relevant information and documentation in response to the Applicant's 15 April 2025 motion for production of evidence by 21 April 2025.
2. On 21 April 2025, the Respondent filed his submission in accordance with Order No. 045 (NY/2025) and appended two annexes, R/16 and R/17.
3. After AS's testimony on 23 April 2025, the Applicant stated that he wished to file a written motion to call CH (name redacted for privacy reasons) to testify as an additional witness regarding the Respondent's 21 April 2025 submission. At the same time, the Respondent restated his 5 April 2025 motion to call the Applicant to testify as a witness.
4. By email of 23 April 2025 from the Registry, upon the instructions of the undersigned Judge, Counsel for the Applicant was ordered to file the written motion by 24 April 2025 and Counsel for the Respondent to file his response by 25 April 2025. If an additional witness was to be called, it was further stipulated that the hearing would resume on Friday, 2 May 2025.
5. On 24 April 2025, the Applicant filed a motion to call CH as a witness and recall BL to specifically testify concerning annex R/17.
6. On 25 April 2025, the Respondent filed his response in which he objected to calling CH as a witness and recalling BL.

Consideration

Calling CH to testify as a witness and recalling BL

7. The Tribunal notes that ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), art. 6.20, provides that “[i]f a staff member is on certified sick leave, the investigative and disciplinary processes shall normally proceed as envisaged in the present instruction, *subject to* consultation with the Medical Services Division [this entity has now changed name to the Division of Healthcare Management and Occupational Safety and Health, “DHMOSH]” (emphasis added).

8. In the Applicant’s case, as it is uncontested that he was on certified sick leave when his appointment was terminated, the parties also appear to agree that consultation with DHMOSH was required for proceeding with the disciplinary sanction pursuant to art. 6.20 of ST/AI/2017/1.

9. In support of the Applicant’s motion to call CH to testify as a witness and recalling BL, he, in essence, submits that “consultation can take several forms but its substance is what matters” and that annexes R/16 and R/17 do not provide adequate evidence that a consultation in accordance with art. 6.20 of ST/AI/2017/1 actually took place.

10. Objecting to the Applicant’s motion, the Respondent contends that (emphasis in the original omitted):

... On 24 April 2025, the Applicant filed another motion following a long and drawn-out hearing in which the Tribunal heard the testimony of no less than 12 witnesses called by the Applicant, whose testimony mostly had no direct relevance to the material facts (i.e. the conflict of interest, the sexual harassment, the abuse of authority and the harassment).

... Nevertheless, the Applicant again seeks further witness testimony.

... The Applicant seeks further testimony on the question whether the Administration consulted the Medical Services Division. This fact is not reasonably in dispute.

- The evidence shows that the consultation occurred on 20 March 2024 (R/16 and R/17).

- The Medical Services Division confirmed it would not recommend pausing the disciplinary process in the Applicant's case of "minor or moderate physical conditions" (R/17).

- The Applicant was fully functioning during his disciplinary process, as [the Under-Secretary-General for Operational Support] confirmed in his testimony. Indeed, the Applicant submitted three substantial rounds of comments on the allegations against him. He never asserted being unable to participate. He was represented by [Office of Staff Legal Assistance] counsel who never stated that he was unable to respond. Accordingly, even if consultation had not occurred, *quod non*, it had no influence on the outcome of the disciplinary process.

... In short, the Applicant's request is a fishing expedition fueled by distrust, not by (prima facie) evidence of any irregularity. The request should be denied.

11. Regarding annex R/16, the Tribunal observes that this is a copy of an email of 20 March 2024 from Director of the Administrative Law Division ("ALD") to an unknown recipient with subject-line, "IMPT [presumably an abbreviation of "important"]/URGENT: RE: For your review: revised recommendation [the Applicant's last name, the Division for Special Activities/the Department of Operational Support]". Two lines of the email are redacted, and in the unredacted part, the ALD Director indicates that "[presumably the first name of the Assistant Secretary-General for Human Resources] and I spoke with D[H]MOSH this morning—confirmed that we can move forward" (emphasis in original omitted). The Respondent provides no reason for why parts of the email were redacted.

12. From the 20 March 2024 email, in and by itself, it is not possible to ascertain that a consultation actually took place concerning the termination of the Applicant's

appointment as per art. 6.20 of ST/AI/2017/1, but only that some conversation likely concerning the Applicant took place between some senior United Nations staff members and DHMOSH. Also, the “RE:” in the subject-line shows that this email was sent in response to a previous email, but it cannot from annex R/16 be detected from whom.

13. For the Tribunal to get the full picture surrounding the alleged consultation with DHMOSH, the Respondent is therefore to file the entire email thread in an unredacted version. As the Tribunal assumes this only concerns the Applicant’s own medical and/or employment history, no confidentiality restrictions would, as such, seem relevant. If the Respondent chooses to file the email thread *ex parte*, the Tribunal will consider whether it is relevant and appropriate to share it with the Applicant, possibly in a redacted form. In this regard, the Tribunal notes that the Appeals Tribunal held in *Abu Jarbou* 2013-UNAT-292, para 33, that “[g]enerally, *ex parte* communications between parties and the Tribunal are the antitheses of transparency and should never take place during a proceeding” (in line herewith, see also, for instance, *Nkoyock* 2023-UNAT-1401, para. 64, and *Banaj* 2022-UNAT-1202, para. 61).

14. Concerning annex R/17, the Tribunal notes that this is a copy of an email of 21 April 2025 from the Director of DHMOSH, (BL), in which he states that: “I hereby confirm that a consultation on the case took place with [CH], Senior Medical Officer in DHMOSH, on 20 March 2024. In that conversation, [the Office of Human Resources]/ALD was informed about the sick leave of [the Applicant] ... Of note is that normally, for minor or moderate physical conditions, DHMOSH would not recommend pausing or halting an ongoing disciplinary process. For this case, the same applies”.

15. The Tribunal notes that even if BL by his 21 April 2025 email confirms that a consultation did take place between ALD and DHMOSH regarding the Applicant’s

disciplinary process, the email was produced *ex post facto* for the benefit of these proceedings. R/17 also constitutes hearsay evidence—during his testimony, BL stated that the consultation was conducted with CH and not him, and he is therefore not a direct witness.

16. In conclusion, since annexes R/16 and R/17 might not adequately establish that a consultation indeed took place under art. 6.20 of ST/AI/2017/1, the Tribunal will grant the Applicant's 24 April 2025 motion and call CH as a witness and recall BL specifically to testify concerning R/17.

Calling the Applicant to testify as a witness

17. After hearing the testimony of AS, Counsel for the Respondent stated that he still wished to call the Applicant to testify as a witness. Counsel for the Applicant clarified that the Applicant never opposed appearing as a witness but that he, as his Counsel, had advised him against this as he believed that there was no need to do so.

18. Accordingly, since the Applicant does not oppose testifying as witness, the Tribunal will grant the Respondent's motion to call the Applicant as a witness under art. 17 of its Rules of Procedure following the rationale of its Order No. 039 (NY/2025) dated 7 April 2025. As his Counsel finds no need for the Applicant to testify, the hearing of the Applicant will be limited to 90 minutes. Should his Counsel wish to hear the Applicant in direct evidence before he is cross-examined by the Counsel for the Respondent, he is to inform the Tribunal thereabout.

Scheduling the testimonies of BL, CH and the Applicant

19. The Tribunal notes that the dates of the undersigned Judge's deployment with the New York seat of the Dispute Tribunal have been amended. The witnesses will therefore need to be heard on 6 and 7 May 2025 (the last day of deployment being on 8 May 2025) as the undersigned Judge is no longer available on 2 May 2025. The

logical sequence of hearing the remaining witnesses will be: BL, CH, and the Applicant. As the legal representative of the employer of BL and CH, namely the Secretary-General of the United Nations and the Chief Administrative Officer of the Organization, Counsel for the Respondent is to ensure their participation in the schedule set forth below.

20. In light of the above,

IT IS ORDERED THAT:

21. The Applicant's 24 April 2025 motion to call CH and recall BL as witnesses to testify before the Tribunal is granted.

22. The Respondent's 5 and 23 April 2025 motions to call the Applicant to testify as a witness before the Tribunal is granted and the Tribunal's previous Order No. 039 (NY/2025) is amended accordingly.

23. By **4:00 p.m. on Thursday, 1 May 2025**, the Respondent is to file the entire email thread of the 20 March 2024 email from the ALD Director to an unknown recipient with subject-line, "IMPT/URGENT: RE: For your review: revised recommendation [the Applicant's last name, the Division for Special Activities/the Department of Operational Support]". If the Respondent chooses to redact parts of the email thread, the Respondent is to explain why this is done.

24. The schedule of the remainder of the hearing is as follows (all New York time):

a. **Tuesday, 6 May 2025**

i. From 9:15 a.m. to 10:00 a.m.—BL

ii. From 10:00 a.m. to 11:00 a.m.—CH

b. **Wednesday, 7 May 2025**

- i. From 9:15 a.m. to 10:45 a.m.—the Applicant

(Signed)

Judge Solomon Areda Waktolla

Dated this 28th day of April 2025

Entered in the Register on this 28th day of April 2025

(Signed)

Isaac Endeley, Registrar, New York