



Before: Judge Alexander W. Hunter, Jr.
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Omar Josef Shehabi, OSLA

Counsel for Respondent:
Nicole Wynn, ALD/OHR, UN Secretariat

Introduction

1. On 2 June 2022, Counsel for the Respondent sent an email to the regular email inbox of the Registry of New York in the present case which was otherwise closed by the Tribunal's judgment in Judgment No. UNDT/2020/094. The email read as follows:

Dear Registry,

Kindly advise if the Hearing recordings from above referenced case can be shared. Please note a fact-finding panel is currently reconsidering the case as per the attached UNAT Judgment.

They believe the hearing recordings would be useful evidence in making their fact-finding assessment.

Kindly advise as soon as possible.

2. While the email was only addressed to the Registry and the Applicant was not copied in it, no indication whatsoever was made that it was filed *ex parte*.

3. On 6 June 2022, the Registry responded Counsel for the Respondent as follows:

With reference to your email of 2 June 2022, upon the instructions of Judge Hunter, you are kindly instructed to file a written motion regarding your request.

4. On 15 June 2022, Counsel for the Respondent forwarded a motion for disclosure of hearing record by email to the Registry's regular email inbox. This email was addressed to the Registry's regular email inbox, three Registry staff members, Counsel for the Applicant, Chief of the Office of Staff Legal Assistance ("OSLA") and OSLA's regular email inbox. In the motion, the Respondent stated as follows (reference to footnotes omitted):

A. INTRODUCTION

1. The Respondent requests the Dispute Tribunal's permission to disclose the video and audio recordings of the hearing of this matter held on 7, 8, and 18 May 2020 to the Individual Residual Mechanism for Criminal Tribunals (IRMCT) fact-finding panel (Panel) to aid in

execution of Dispute Tribunal Judgment No. UNDT/2020/094 and Appeals Tribunal Judgment No. 2021-UNAT-1137.

B. SUBMISSIONS

2. The Appeals Tribunal held that the IRMCT is required to re-open the Applicant's complaint of prohibited conduct. To that end, the IRMCT has reconvened the Panel to reconsider the complaint.

3. The Panel has requested access to the record of the sworn testimony before the Dispute Tribunal to assist it in determining whether the complaint of prohibited conduct is substantiated. The record of the hearing contains potentially relevant evidence that was not previously available to the Panel, including the testimony of several individuals who did not previously provide statements to the Panel. They include a Legal Officer who was close to the Applicant at the time of the events, the former IRMCT Registrar, the Alternative Focal Point for Women, and the former Medical Director of the then-Division of Medical Services (DMS). Both the former Registrar and the former Medical Director have since separated from the Organization.

4. Both Tribunals considered the former Medical Director's opinion to be relevant to whether the conduct of the subject of the complaint was consistent with professional standards. Given that the former Medical Director is no longer available, her hearing testimony is the most reliable statement from which the Panel may establish facts upon which the responsible official can determine whether there was prohibited conduct of a sexual nature.

5. The disclosure of the record of the hearing would not prejudice either of the parties. Further, it is in interest of justice and efficiency. The use of the hearing record would prevent potential disputes as to the evidence before the Panel and would assist the Panel in expeditiously conducting its review of the complaint. The Panel intends to use the record of the hearing to determine whether it is necessary to conduct additional fact-finding to avoid the unnecessary duplication of an established evidentiary record.

C. RELIEF

6. On 19 and 27 May 2020, the Tribunal provided the parties partial audio and video recordings of the proceedings to prepare closing submissions. Based on the foregoing, the Respondent requests that the Dispute Tribunal provide the parties with the full recordings and any transcripts of the hearing testimony and to grant the Respondent's request for further disclosure of the hearing records limited to the IRMCT fact-finding panel.

5. On 15 June 2022, Counsel for the Applicant forwarded the following email to the Registry's regular email inbox, the OSLA Chief and OSLA's regular email inbox:

Dear Registry

Counsel for the respondent has confirmed that its correspondence with the Registry leading to Judge Hunter's instructions, and ultimately to respondent's motion filed today, were *ex parte*, for reasons that are unclear to me.

I would appreciate the Registry providing this correspondence.

The applicant intends to respond to the motion within the period provided for in Practice Direction No. 5.

Consideration

6. The Tribunal notes that due to the interest of the confidentiality of the witnesses and the need to keep their identities confidential, it did not decide on the Respondent's email request of 2 June 2022 on an *ex parte* basis.

7. In this regard, the Tribunal notes that case records are generally confidential under Practice Direction No. 6 on records. Also, the hearing in the present case was closed for the public, and subsequently on 19 May 2020, the Respondent signed a confidentiality undertaking regarding the recordings by which he was instructed that "the recordings may not be shared with any third parties or used for any other purpose than preparation of the parties' closing submissions".

8. In light of the above,

IT IS ORDERED THAT:

9. By **9:00 a.m. on Tuesday, 21 June 2022**, Counsel for the Applicant is to file his comments to the Respondent's 15 June 2022 motion for disclosure of hearing records.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 17th day of June 2022