UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2023/039
Order No.: 54 (GVA/2025)
Date: 20 May 2025
Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:
Sètondji Roland Adjovi
Anthony K. Wilson

Counsel for Respondent:
Steven Dietrich, ALD/OHR/DMSPC, UN Secretariat
Miryoung An, ALD/OHR/DMSPC, UN Secretariat

Introduction

1. The Applicant, a staff member serving at the United Nations Assistance Mission in Afghanistan ("UNAMA"), contests the decision dated 8 May 2023 to impose on him the disciplinary measure of demotion by one grade with deferment for three years of consideration for eligibility for promotion, pursuant to staff rule 10.2(a)(vii), and the decision requiring him to commence gender sensitivity/awareness training (the "contested decision").

2. Between 14 and 16 April 2025, the Tribunal held a hearing on the merits in which the Applicant, V01, and W01 testified. As previously informed by the Respondent to the hearing, W02 was unable to appear due to medical reasons and had been removed from the tentative schedule by Order No. 33 (GVA/2025).

3. On 15 April 2025, the Applicant filed a submission reiterating the oral request made at the hearing to call a rebuttal witness.

4. During the hearing, the Applicant made several oral motions, over which the Tribunal decided it would only pronounce itself after the hearing. At the end of the hearing on 16 April 2025, the Respondent requested leave to respond to the Applicant's motions, which was granted. Later that day, the Applicant filed a motion reiterating the oral request he made at the hearing for the production of evidence.

5. On 22 April 2025, the Respondent replied to the Applicant's motions of 15 and 16 April 2025. With it, the Respondent also submitted V01's performance evaluation for the 2020-2021 performance cycle ("Annex R/6").

6. On 23 April 2025, the Applicant submitted that the Respondent's response of 22 April 2025 is "littered with factual misrepresentations and selective quotations which needed to be rebutted". He further stated that Annex R/6 is not a valid performance document because it was not signed by the Applicant or V01, (*i.e.*, it was only signed by W02), and is dated 18 months after the end of the performance cycle.

7. On 23 April 2025, the Respondent filed the Certified Sick Leave ("CSL") of W02, which demonstrates W02 was on CSL until 21 April 2025.

8. On the same day, the Applicant sought leave to comment on the Respondent's submission of 23 April 2025. He stated, *inter alia*, that the evidence filed by the Respondent demonstrates that the CSL of W02 was retroactively approved from 25 March 2025 to 21 April 2025. Therefore, absent any proof that W02 continued to be unfit for duty, he should now be able to testify.

9. Noting that the CSL of W02 had ended on 21 April 2025, the Tribunal asked the Respondent on 24 April 2025 to confirm whether W02 was no longer on CSL.

10. In its response dated 30 April 2025, the Respondent submitted that W02 had not returned to duty since his CSL expired, as W02 had notified the Respondent that he was still unwell and planned to request a further extension of his CSL. The Respondent further noted that W02 has 20 days from 21 April 2025 to seek said extension.

Consideration

11. Having examined the motions and evidence submitted by the parties with respect to the multiple issues that arose during the hearing on the merits, the ensuing analysis will address each of the disputed issues in turn.

Motion to compel W02 to testify

12. Throughout his submissions, the Applicant requests that the Tribunal compel W02 to testify. In summary, he submits that:

a. The testimony of W02 is crucial to disputing the credibility of V01;

b. W02 is no longer on CSL and, therefore, should be able to testify;

c. The Respondent did not provide any medical report attesting to W02's condition, which remains, therefore, unsupported; and

d. Alternatively, if W02 does not testify, his testimony to the Office of Internal Oversight Services ("OIOS") should be excluded from the record, pursuant to *AAC* 2023-UNAT-1370, or, at the very least, treated as hearsay evidence.

13. Having considered the above, the Tribunal determines that, since W02 is not available to testify despite our repeated efforts, his testimony to OIOS will be treated as hearsay evidence. This does not mean that his testimony has no value; it only means that it is of lesser weight (2023-UNAT-1370, paras. 49-50; 2023-UNAT-1361, para. 60). This, however, does not apply to the documentary evidence provided by W02 to the investigation, if any. Documentary evidence, such as screenshots of WhatsApp conversations and email exchanges, does not need to be tested and will be given proper value.

14. The Applicant's motion is, therefore, partially granted:

a. The Tribunal will not compel W02 to testify, given his unavailability for medical reasons;

b. W02's testimony to OIOS will be treated as hearsay evidence because it was not properly tested in examination and cross-examination before the Tribunal; and

c. Documentary evidence provided by W02 during the investigation, if any, is not considered hearsay evidence and will be retained as part of the case record.

Motion to call rebuttal witness

15. Counsel for the Applicant argued that W02 had romantic feelings towards V01 and that his desire to impress her could have led him to support her allegations against the Applicant. He submitted that W02's alleged feelings could be attested by Ms. L.T ("W03"), who used to work with the Applicant, V01 and W02.

16. During cross-examination, Counsel for the Applicant questioned V01 about her interactions with W02 and asked whether there was any personal relationship

between them. V01 consistently denied having any personal relationship with W02. She emphasized that their interactions were strictly work-related.

17. During the Applicant's examination, he stated that V01 showed him private messages in which W02 professed romantic feelings for her. He further testified that W03 was also aware of W02's feelings and messages to V01 and could testify in this respect.

18. In light of the foregoing, Counsel for the Applicant requested that the Tribunal reconsider its decision with respect to the relevance of W03's testimony. He submits that there is now compelling justification to call W03 to rebut the testimony of V01 and further challenge her credibility.

19. The Tribunal recalls that, by Order No. 39 (GVA/2024), it instructed the parties to identify relevant witnesses to attend a hearing on the merits. Counsel for the Applicant complied and, in addition to others, requested that W03 be examined due to the following:

> [W03] was the only other female colleague in the unit led by the Applicant, and she has sufficiently good knowledge of V01 to enlighten the Tribunal about her manipulative skills. Her testimony will further support the way in which the Applicant treated female colleagues and will contradict the allegations as found in the sanction letter.

20. By Order No. 54 (GVA/2024), the Tribunal ruled that the testimony of W03 was not relevant for the determination of the facts under dispute, stating that:

> 26. With respect to the other five witnesses proposed by the Applicant, the Tribunal notes that they were either not heard by the investigation, or do not have direct or indirect knowledge of the facts under dispute. The Applicant intends to only question V01's character or conduct in relation to others, which is neither relevant to, nor the subject of this judicial review. As a result, their testimony would bring no value for the disposition of this case.

21. As it follows, the Tribunal has already pronounced itself with respect to the relevance of the testimony of W03, and no relevant new evidence has been brought up to its attention that would warrant reconsideration.

22. In this connection, the Tribunal acknowledges that the Applicant's position vis-à-vis the relevance of W03's testimony has, since his first request, become more specific. He directly inquired V01 about her relationship with W02 and wants to, consequently, follow up with a new witness that would allegedly impugn her response in this respect. This is the alleged "compelling justification".

23. However, the Tribunal still fails to see the relevance of this discussion. Establishing whether W02 had romantic feelings for V01 is completely outside the scope of the current judicial review exercise. The Tribunal recalls that the Applicant was charged with misconduct for allegedly having "hugged V01, pressed her chest against [his], and kissed her". The incident *per se* upon which he was charged had nothing to do with W02 or W02's alleged feelings towards V01. W02 was also not an eyewitness to the alleged incident.

24. Therefore, the Tribunal finds that there is no new compelling reason to revisit its previous decision, and that the Applicant has failed to establish the relevance of the testimony of W03 for the disposition of the facts under dispute. Consequently, the Applicant's motion in this respect is rejected.

Motion for production of evidence

25. In his oral and written submissions, the Applicant requested the production of the following evidence:

a. Any/all of V01's performance evaluations (both regular and temporary) since she joined UNAMA in 2019 until her separation from UNAMA, including disclosure of V01's First and Second Reporting Officers;

b. All documents that establish who decided to remove V01 from the Donors Coordination Unit following her complaint against the Applicant; and

c. The CSL/medical report of W02 confirming his unavailability to attend a hearing.

Performance evaluation documents

26. Counsel for the Applicant suggests that V01's complaint was motivated by fear of losing her job due to performance issues. He argued that her allegations were a strategic move to protect her position and ensure her transfer to a fixed-term contract. The Applicant testified that he only addressed V01's alleged performance issues informally through WhatsApp messages and emails, but that he never formally documented them in her performance evaluations.

27. The Tribunal recalls that V01's performance is not under judicial review, and nothing on the record supports its relevance to the disposition of this case.

28. Moreover, it recalls that the Applicant admitted to never documenting any performance issues with V01 in any of her performance evaluation documents.

29. Therefore, the Tribunal fails to see the relevance of V01's performance evaluation documents to support the Applicant's allegation that V01 was underperforming.

30. Notwithstanding this, the Respondent has already submitted, *unprompted*, a copy of V01's performance evaluation for the 2020-2021 performance cycle. The Applicant raises reliability issues with this document, which as decided below, will be taken into consideration. The performance evaluation for the 2019-2020 performance cycle is also available, as the Applicant provided it to the investigators and is part of the case record.

31. As a result, the Tribunal considers the Applicant's motion with respect to the performance evaluation documents for the period during which V01 served under the Applicant's supervision to be moot.

32. With respect to the subsequent period, during which V01 served at the Political Affairs Service under different supervisors, the Tribunal is of the view that the respective performance evaluation documents are irrelevant because the Applicant was no longer involved in evaluating V01's performance.

33. Therefore, the Applicant's motion stands to be rejected in this respect.

34. Lastly, with respect to clarifying V01's First and Second Reporting Officers ("FRO" and "SRO"), the two performance documents on record show that W02 was V01's FRO and that the Applicant was V01's SRO. The Applicant does not challenge the assertion that he was V01's supervisor. Therefore, the Tribunal finds that the Applicant's motion is also moot in this request.

Documents relating to V01's transfer to the Political Affairs Service

35. Effective 1 July 2021, V01 was transferred from the Donor Coordination Section to the Political Affairs Service on a temporary reassignment ending on 31 December 2021.

36. During the hearing, Counsel for the Applicant asked V01 about the transfer decision. V01 testified that the decision to transfer her to the Political Affairs Service was made by the Chief of Staff of the Special Representative of the Secretary-General ("SRSG"), to avoid any interaction between V01 and the Applicant after the complaint was filed.

37. Counsel for the Applicant questioned the credibility of V01's statement, suggesting that the decision might have been made by Human Resources instead. On the other hand, Counsel for the Respondent clarified that the decision to transfer V01 was likely a collaborative effort between Human Resources and the Chief of Staff. He emphasized that the transfer was a standard procedure to separate the complainant from the accused in such cases.

38. In this connection, Counsel for the Applicant requests all documents related to V01's transfer to establish the decision-making process and determine the responsible official behind V01's transfer. He submits that this is necessary to further challenge the credibility of V01's testimony and the accuracy of her statements.

39. Counsel for the Respondent objected to the Applicant's motion, submitting that the information about V01's transfer is already part of the case record, and that Counsel for the Applicant could have requested these specific documents earlier in the proceedings instead of on the last day of the hearing.

40. The Tribunal agrees with the Respondent that the motion stands to be rejected, but for different reasons.

41. As the doubt about who made the transfer decision only came about after the examination of V01, Counsel for the Applicant could not have anticipated it and requested said document earlier in the proceedings.

42. Counsel for the Applicant submits, and the Tribunal acknowledges, that there are conflicting statements about who made the decision to transfer V01: while V01 affirms that it was the Chief of Staff of the SRSG, W01 testified at the hearing that the decision was made by Human Resources.

43. When asked to develop on the relevance of this document at the hearing, Counsel for the Applicant stated that he wants this document to establish the accurate information and determine "if V01 was lying".

44. The Tribunal considers this, however, a frivolous exercise. Even if V01 is wrong about the officer responsible for the transfer decision, that changes absolutely nothing about the facts under dispute, and it does not serve to challenge her credibility. It would be an immaterial, irrelevant, and inconsequential mistake of form, not an actual or relevant "lie", as Counsel for the Applicant claims.

The CSL/medical report of W02

45. Counsel for the Applicant further requests the Tribunal to order the Respondent to produce W02's medical report confirming his unavailability to attend the hearing. He states that the CSL filed by the Respondent on 23 April 2025 as Annex R/7 was issued by Ms. SL, who is "not a medical professional capable of making medical assessments to determine whether a staff member's sick leave can be certified". The CSL provides no medical justification supporting W02's nonparticipation in these proceedings.

46. With respect to the latter point, the Tribunal clarifies the following: Annex R/7 consists of an email and attachment from Umoja confirming that the Medical Service approved the CSL of W02 for 18 days, until 21 April 2025. The automated email was sent to Ms. SL. This does not mean that Ms. SL was the one

who made the medical assessment or approved the CSL of W02. It only means that Ms. SL was the one who provided the document.

47. Regarding the Applicant's request for a medical report, the Tribunal considers ordering such a document an invasion of W02's privacy.

48. In this sense, the Tribunal clarifies that it is satisfied with the information that W02 was unable to attend the hearing due to medical reasons that have made him unfit to work, which was further confirmed by the *late* filing of Annex R/7.

49. The CSL email and attachment from Umoja are sufficient to prove that W02 was on CSL, and the Tribunal does not find it necessary to request a medical report to assess whether W02's unavailability is legitimate. A CSL issued in Umoja means that the Medical Service reviewed the relevant documents and asserted the condition.

50. Furthermore, during the hearing, Counsel for the Applicant drew the Tribunal's attention to section 6.20 of ST/AI/2017/1 on "Unsatisfactory conduct, investigations and the disciplinary process", to argue that the Tribunal should consult the Medical Services Division to determine if W02 could participate briefly despite his CSL.

51. Sec. 6.20 of ST/AI/2017/1 provides the following:

> *Investigation report*
>
> […]
>
> 6.20 If 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. If the staff member is on any other leave, including maternity and paternity leave, the investigative and disciplinary processes should normally proceed as envisaged in the present instruction.

52. As it follows, the legal provision cited by the Applicant refers to the investigative and disciplinary processes and, therefore, does not automatically apply to these proceedings.

53. Indeed, no legal provisions compel a staff member to engage with the Dispute Tribunal if said staff member is on CSL. Consequently, any decision in this regard shall be made in consideration of the need, urgency, and relevance of the evidence, and on a case-by-case basis.

54. In light of the above, the Applicant's motions for production of evidence are rejected.

Motion to disregard new evidence

55. The Applicant furthermore requested that the Tribunal consider the performance document filed by the Respondent on 22 April 2025, as Annex R/6, as unreliable because it was only signed by W02, who the Applicant alleges had feelings for V01.

56. The Tribunal recognizes the procedural deficiency in the performance document filed by the Respondent as Annex R/6 and acknowledges the Applicant's position in this respect. It will consider these facts when analysing the relevance and weight of said document in its upcoming judgment. However, it will not dismiss or exclude the document from the case record.

57. The Applicant's motion in this respect is thus rejected.

Motion to further comment on the Respondent's response

58. On 23 April 2025, the Applicant filed a motion seeking leave to respond to the Respondent's reply of 22 April 2025. In it, he summarized the oral motions for production of evidence dealt with above, challenged the reliability of the performance document filed as Annex R/l (see above), recalled its motion to call a rebuttal witness (see above), emphasized the need to compel W02 to testify (see above), and challenged the Respondent's submission, which he asserts is "littered with factual misrepresentations and selective quotations". Lastly, he "respectfully seeks leave to respond in detail to the Respondent's 22 April 2025 reply".

59. The Tribunal does not see the need for granting a new deadline for the Applicant to explain in greater detail the issues he has already addressed. If the

Applicant wishes to highlight the alleged "misrepresentations and selective quotations" with the Respondent's submission, he is free to do so in his closing submission. However, given that he has already responded to the Respondent's reply of 22 April 2025, there is no need for a separate and additional submission in this respect.

Closing submissions

60. Having examined the evidence on record and considered the parties' submissions in length, the Tribunal considers itself fully briefed on the matters under dispute.

61. The parties are instructed to prepare closing submissions, focusing primarily on the facts in dispute and the relevance and reliability of the testimonies and evidence on record. Given the complexity and length of the case record, closing submissions will be exceptionally allowed to be 15 pages long.

Conclusion

62. In view of the foregoing, it is ORDERED THAT:

a. The Applicant's motion to compel W02 to testify despite his CSL is rejected;

b. The Applicant's motion to treat the evidence arising from W02 as hearsay evidence is partially granted;

c. The Applicant's motion to call a rebuttal witness is rejected;

d. The Applicant's motions for production of evidence are rejected;

e. The Applicant's motion to disregard evidence is rejected;

f. The Applicant's motion to further comment on the Respondent's response is rejected; and

g. The parties shall file their respective closing submissions by **Tuesday, 10 June 2025** (COB Geneva time), which shall:

i. Exclusively refer to the evidence already on file; and

ii. Not exceed 15 pages, using font Times New Roman, font size 12 pts and 1.5 line spacing.

(*Signed*)
Judge Sun Xiangzhuang
Dated this 20th day of May 2025

Entered in the Register on this 20th day of May 2025
(*Signed*)
Liliana López Bello, Registrar, Geneva