



**Before:** Judge Sean Wallace

**Registry:** Nairobi

**Registrar:** Wanda L. Carter

NK

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON CASE MANAGEMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Anna Mildemberger, UNHCR

Jan Schrankel, UNHCR

## **Introduction**

1. On 14 May 2024, the Applicant, a staff member at the Office of the United Nations High Commissioner for Refugees (“UNHCR”), filed an application contesting several administrative decisions which he describes as:

- a. Unjustified delays in processing his medical accommodation request;
- b. A premature performance rating;
- c. A Rebuttal Panel decision;
- d. Contract renewal limitations;
- e. Discontinuation notices;
- f. Partial justification of the non-renewal of his fixed-term appointment (“FTA”);
- g. Discriminatory and/or retaliatory contract expiry alignment; and
- h. Determination of “no *prima facie* case of retaliation” by the UNHCR’s Ethics Office without initiating a formal investigation.

2. The Respondent filed a reply on 27 June 2024.

3. On 24 July 2024, the Tribunal issued Order No. 91 (NBI/2024) directing the Applicant to file a rejoinder, to submit a list of all witnesses whose testimony he believes requires an oral hearing and the substance of their anticipated testimony.

4. The Applicant filed the rejoinder on 4 September 2024.

5. On 5 September 2024, the Applicant filed five motions.

- a. Motion to submit medical reports
- b. Motion to indicate witness and substance of testimony.
- c. Motion to submit rebuttal meeting recording.
- d. Motion for production of evidence - the Applicant requests the Tribunal:

- i. To order the Respondent to provide proof that the non-renewal decision was put on hold when he initiated the rebuttal process.
    - ii. To direct the Respondent to submit evidence explaining how the decision to select his position for non-renewal was reached, including the underlying rationale for this choice.
  - e. Motion to submit additional relevant judgments.
6. On 19 September 2024, the Respondent filed a response objecting to the Applicant's request for oral hearing for the following reasons:
- a. The Respondent submits that an oral hearing is not warranted for the fair and expeditious disposal of the case.
  - b. It is unclear why and how the Applicant would be able to explain his case and submissions with necessary clarity in an oral hearing given the fact that his factual and legal submissions are currently set out in over 230 pages and supported by 174 annexes.
  - c. The Applicant did not clarify at all how his former supervisor's testimony would be relevant to the adjudication of this case.
  - d. The witness' evidence would not impact upon the lawfulness of the decision not to renew the Applicant's FTA.
  - e. Should the Tribunal grant the Applicant's request for an oral hearing, the Respondent requests that the Applicant be directed to file a statement from his proposed witness outlining the evidence he anticipates that she would adduce.
  - f. The Respondent requests to be allowed to propose additional witnesses should the Tribunal decide to hold a hearing.

### **Consideration**

7. The Tribunal notes that Practice Direction No. 5 provides

Where the motion is contested, either as to law or fact, the opposing party may file a response. Unless otherwise directed by the Tribunal,

a response to a motion filed by a party shall be filed within five working days of service of the motion on that party. *Id.* Para. 6.

As noted above, the Respondent responded to the request for an oral hearing. However, the Respondent has not filed anything contesting the Applicant's other motions. Thus, the Tribunal deems those motions to be uncontested.

*Request for oral hearing*

8. Article 9.2 of the UNDT Statute provides that “[t]he Dispute Tribunal shall decide whether the personal appearance of the applicant or any other person is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance”. Article 16.1 of the UNDT Rules of Procedure provides that “[t]he judge hearing a case may hold oral hearings”.

9. The UNDT may determine whether to hold an oral hearing or not with the aim to deal with the case efficiently and fairly.

10. In the present case, as argued by the Respondent, the factual and legal issues arising from the application are well-documented by the Applicant's substantial filings. However, the Applicant has alleged in his submissions that his former supervisor had assured him that his FTA would be renewed and that she was in a unique position to clarify several key issues in the case including the fact that she was neither involved in nor consulted about the discontinuation of the Applicant's position. The Applicant submits that his former supervisor also made efforts to renew his FTA contract beyond December 2023, but those attempts were declined by the Head of Human Resources.

11. The Tribunal considers that the former supervisor's oral testimony would help in dealing with the case efficiently and fairly. The Applicant's request for an oral hearing is therefore granted.

12. The Respondent's request to be allowed to propose additional witnesses is also granted. At that time, the Tribunal will determine what witnesses (proposed by either side) may give testimony at the hearing.

## Conclusion

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

- a. The Applicant's motion for an oral hearing is granted;
- b. The Respondent shall file a list of any proposed witnesses by 2 January 2025;
- c. The Applicant's Motion to submit medical reports is granted as uncontested;
- d. The Applicant's Motion to indicate witness and substance of testimony is granted as uncontested;
- e. The Applicant's Motion to submit the rebuttal meeting recording is granted as uncontested;
- f. The Applicant's Motion for production of evidence is granted as uncontested. The Respondent shall provide the requested evidence by 2 January 2025.
- g. The Applicant's Motion to submit additional relevant judgments is granted as uncontested (although the Tribunal will exercise its own discretion as to what is the relevant jurisprudence applicable to the facts of this case).

*(Signed)*

Judge Sean Wallace

Dated this 20<sup>th</sup> day of December 2024

Entered in the Register on this 20<sup>th</sup> day of November 2024

*(Signed)*

Wanda L. Carter, Registrar, Nairobi