



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2024/047
Order No.: 83 (NBI/2025)
Date: 12 June 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

BUBEGA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION TO ADDUCE NEW
EVIDENCE**

Counsel for the Applicant:

Ana Giulia Stella, OSLA

Counsel for the Respondent:

Wei Zhuang, AAS/ALD/OHR, UN Secretariat

Talha Konukpay, AAS/ALD/OHR, UN Secretariat

Introduction

1. At a case management discussion on 14 January 2025, the parties agreed that this case could be determined based on the written record as it existed. Specifically, counsel said that “the Respondent considers that the record assembled by the administration contains sufficient evidence to assist the Tribunal in the matter.” Accordingly, the Tribunal issued Order No. 4 (NBI/2025) directing the parties, *inter alia*, to file their closing submissions. regarding the specific claims in the instant case by 3 March 2025.

2. After the parties complied with the directions, on 23 April 2025, the Respondent filed a motion seeking leave to adduce new evidence, a Sanction Letter dated 12 April 2025 issued to the Applicant. In support of the motion, the Respondent submits that this new evidence “is to refute the Applicant’s argument raised in his closing submission, dated 3 March 2025, that “there is no clear or convincing evidence to suggest that the Applicant, an honest individual, committed fraud”. He further argues that it shows the Applicant “was indeed indebted to the Organization” and that he “does not come to the Tribunal with clean hands.”

3. The Applicant filed a response to the Respondent’s motion on 30 April 2025. The Applicant requests the Tribunal to reject the Respondent’s motion because it is “tardy and against the express instructions of the Tribunal [in] Order No. 4 (NBI/2025). He also argues that “at the time of the Applicant’s separation, no proven misconduct or indebtedness existed. The withholding of the pension release form and final entitlements was unlawful at that time and remains unlawful.”

Considerations

4. Article 18.1 of the UNDT Rules of Procedure provides that the “Dispute Tribunal shall determine the admissibility of any evidence”. In accordance with art. 18.5, the Dispute Tribunal may exclude evidence which it considers irrelevant, frivolous, or lacking in probative value.

5. Preliminarily, the Tribunal agrees with the Applicant that the request to adduce additional evidence is tardy. The parties agreed that the record as it existed (without the new evidence that Respondent now seeks to adduce) was sufficient to

dispose of the case and have filed closing submissions based on that record. Granting the motion to adduce new evidence would reopen the case, require that the Tribunal allow the Applicant to also adduce additional evidence it deems relevant based on the Sanction Letter, and necessitate the filing of supplemental closing submissions.

6. Substantively, in exercising its discretion whether to admit the evidence proposed by the Respondent, the Tribunal's primary consideration is whether the Sanction Letter has probative value and is relevant to the facts at issue in this case.

7. The legal issue arising for consideration in this case is whether the 24 January 2024 decision delaying the issuance of the Applicant's pension forms until the conclusion of the OIOS investigation against him for a possible fraud was lawful. The Sanction Letter dated 12 April 2025 was not in existence at the time the contested decision was taken and thus could not have been considered by the decision-maker. Indeed, it is unclear when the evidence, upon which the Administration concluded that the Applicant committed fraud and was indebted to the Organization, was uncovered. Accordingly, the Tribunal determines that the proffered evidence is neither probative nor relevant to the issue before it in this case.

Conclusion

8. In view of the foregoing, the Respondent's motion to adduce the new evidence is rejected.

9. The Registry is directed to expunge the motion and the Sanction Letter from the case record.

(Signed)

Judge Sean Wallace

Dated this 12th day of June 2025

Entered in the Register on this 12th day of June 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi