UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2024/026
Order No.:	050 (NY/2025)
Date:	15 May 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. 044 (NY/2025) dated 28 April 2025, the Tribunal ordered (a) the Respondent to file the entire email thread of the 20 March 2024 email exchange between the Director of the Administrative Law Division ("ALD") and an unknown recipient, and (b) BL, CH and the Applicant to appear as witnesses to provide testimony on 6 and 7 May 2025.

2. On 29 April 2025, the Applicant filed (a) a motion for production of documents by AW and AS and (b) a motion for (i) the Tribunal to initiate an investigation into the Respondent's possible disclosure of information from the present casefile to witnesses ahead of their testimony and (ii) the Respondent to disclose all communications with the witnesses in the current proceedings since the filing of the application. He further filed a response to Order No. 048 (NY/2025) regarding the hearing of BL, CH and the Applicant as witnesses.

3. On 30 April 2025, the Respondent filed an objection to the Applicant's 29 April 2025 motions.

4. On 1 May 2025, upon the instructions of the Tribunal, the Registry sent an email to the parties by which it amended the sequence of hearing the remaining witnesses to accommodate the requests of the parties expressed in their 29 and 30 April 2025 submissions.

5. On 6 May 2025, BL and the Applicant provided their testimonies.

6. On 7 May 2025, the Applicant filed a motion for the Respondent to disclose further documentation regarding the Respondent's annex R/17, which was filed on 21 April 2025.

7. On the same date (7 May 2025), CH provided her testimony. Subsequently, the Respondent orally requested to hear as witnesses: AT, Director of the Administrative Law Division, and MHL, the Assistant-Secretary-General for Human Resources (names redacted for privacy reasons). The Tribunal orally granted the Respondent's motion. The Applicant, also orally, requested the appearance of JV (Counsel for the Respondent, name redacted for privacy reasons) as a witness to testify concerning his involvement in the case. The Tribunal orally rejected the motion.

8. On 8 May 2025, AT and MHL provided their testimonies. Subsequently, the Tribunal closed the hearing.

9. On 9 May 2025, the Applicant filed a submission concerning "the alleged prioritization of sexual abuse and harassment cases and on unfair treatment of staff members". No motions or requests were made in this submission. The Applicant further filed a number of documents as "additional documentary evidence in follow-up to his testimony".

10. On 12 May 2025, the Respondent filed a "closing submission" and appended two documents as additional evidence, including an email of 8 March 2024 from the Applicant to AT.

11. On the same date (12 May 2025), the Applicant commented on the Respondent's submission of the 8 March 2024 email in evidence, noting that he had already filed it as Annex 17 of the application.

Consideration

The Applicant's 29 April motion for production of documents by AW and AS

12. By his 29 April 2025 motion, the Applicant requests (a) AW to provide documentation concerning "her therapy" and "application history in Inspira" and (b) AS to provide documentation regarding "the delegation of authority for selection (up to P-4)" and "the agreement for the release of [AW to the Assistant Secretary-General]".

13. In his 30 April 2025 objection, the Respondent submits that the motion "should be rejected for lack of relevance" arguing that (emphasis in the original):

> … First, the Applicant seeks [AW's] confidential information (medical and professional). He does not even state its relevance. The Respondent notes that information does not become relevant to an appeal merely because a witness confirms having it. The Applicant should have reasoned his request for relevance. He did not. His motion should be denied.
>
> … Second, the Applicant seeks from [AS] his delegation of authority for selection up to P-4 level, e-mails regarding [AW's] lien to her post, and the Applicant's own e-mails accusing [AS] of funds misuse. Again, *no* relevance is stated. Also this request should be denied.

14. The Tribunal finds that since it cannot rule out the relevancy of any of the documentation requested by the Applicant, the Respondent is therefore ordered to disclose all this documentation.

The Applicant's 29 April motion for the Tribunal to investigate the Respondent's possible disclosure of information from the case record to witnesses ahead of their testimony and for disclosure of all communications with the witnesses

15. In his 29 April 2025 motion, the Applicant explains that the "information about [his] prior sexual relation with [another colleague than AW, referred to as XX in the present Judgment (name redacted for privacy reasons)] appeared in the application on 20 June 2024, throughout Annex 15, paragraph 55. Indeed, that is the only time it was mentioned until the trial during which the issue has led to questions to some of the witnesses".

16. The Applicant submits that at the hearing:

a. AW testified that "she was not aware even though she had heard general rumors".

b. VK provided a "negative response".

c. ER was not asked any questions concerning the relationship.

d. EHM testified that "at the time of the investigation that she was not aware. However, then she admitted that 'A couple of days ago and being briefed about the proceedings, Ald [presumably, meaning ALD] Colleagues did say there are a couple of facts that were submitted and I was informed of this new information'".

e. MW testified that "he had learned from [the Office of Internal Oversight Services, OIOS"] shortly prior to giving his Tribunal testimony that another witness apart from [AW] had also had an affair with the Applicant".

17. Among the Applicant's further submissions, he contends that:

> … As already presented above, Counsel for the Respondent claimed that "The applicant filed a submission, as you will recall, your honour providing an overview what he wanted to ask the witnesses" and "And that's actually the first time I learned of this alleged relationship with between the applicant and [XX] because he mentioned it there. So the applicant in his description of what he was going to discuss with the witnesses" (23 April 2025 – Hearing on the Merits Transcripts – Witness AS at 01:29:28-01:29:57). He then claimed that "So the only thing that we will do if those questions were asked is to send that section saying, you know, this is what the topics that are going to be addressed. So that they would have an idea about you know what what they were going to be here" (at 01:30:08-01:30:21).
>
> … The Applicant submits that the Respondent's explanation about sharing with the witnesses what Counsel for the Applicant had submitted they were going to be asked is not only unacceptable, but demonstrably false. It is clear from [EMH's] testimony that ALD shared the fact that the Applicant had a prior romantic affair with [XX] in preparation for her testimony, and also with [MW], ostensibly through OIOS, while Counsel for the Applicant has never stated anywhere in the submissions before the Tribunal that he was planning to ask them about that relationship.
>
> … The Respondent constantly claims that OIOS is operationally independent ("The Office of Internal Oversight Services shall exercise operational independence under the authority of the Secretary-General in the conduct of its duties") (ST/SGB/273 – Establishment of the Office of Internal Oversight Services). Therefore, why would the Respondent feel that it was appropriate to share details about the tribunal case with OIOS and witnesses during the trial before their testimonies, especially when these materials are confidential? It has become more and more apparent over time that OIOS and ALD are conspiring to achieve their objectives of winning cases, particularly with respect to disciplinary cases and the Tribunal should put a stop to this unsavory practice which has violated the due process rights of the Applicant.
>
> … Moreover, such practice if established aims at coaching the witnesses because the strategy of the Applicant is shared with those witnesses for them to get better prepared not to support the

> Applicant's case. Such preparation is not only inappropriate but also violates the fairness of the trial.
>
> … It is therefore imperative that the Tribunal orders an investigation to determine the specific information shared by Counsel for the Respondent with all witnesses as it intimated it would do (23 April 2025 – Hearing on the Merits Transcripts – Witness AS at 01:46:21).

18. In conclusion, for the purpose of initiating an investigation into these allegations, the Applicant also requests that the Tribunal "order the Respondent to produce all communications with the witnesses since the filing of the application".

19. The Respondent, in his 30 April 2025 objection, submits that the Applicant's request should be denied on the grounds of lack of relevance and further refers to his submissions at the hearing and his 25 April 2025 submission. In the latter submission, he stated as follows (reference to footnotes omitted):

> Pursuant to Order No. 031 (NY/2025), as instructed by the Tribunal, the Counsel for the Respondent contacted and communicated with all the witnesses to ensure their participation in the hearing. This responsibility ought not to fall on the Counsel for the Respondent, who nevertheless complied *bona fide* without ever seeking meetings with any witness. When witnesses asked to meet, they were duly reminded to speak the truth.
>
> Insofar as concerns the investigators, they are not fact witnesses. They testified to the investigation process. As such, their testimony does not affect the assessment of the facts. Regardless, they jointly conducted the investigation within a supervisory relationship, so they would have properly discussed the investigation prior to their testimony. Conversely, the investigators did not speak on this matter after their testimony.
>
> Finally, the Applicant's eleventh-hour assertion of a sexual relationship with another staff member is irrelevant, unsubstantiated and untested in this appeal. It should have no bearing on the Tribunal's assessment. Firstly, the investigators had no knowledge of it during the investigation. The Applicant did not raise it during the investigation. It is therefore irrelevant. Secondly, it would be inappropriate for the

> Tribunal to give it any consideration. The Applicant has not substantiated his assertion in any way, and he has been unavailable for cross-examination. Moreover, the other staff member testified but was not even asked to confirm it by the Applicant's counsel. Hence, the assertion amounts to no more than a rumor. If disclosed, it would unnecessarily damage and embarrass the other staff member.

20. The Tribunal notes that it is a general principle of law that parties are prohibited from coaching witnesses before a hearing. As such, nothing suggests that Counsel for the Respondent has done so in the present proceedings. Also, as Counsel for the Respondent points out himself, the question of the Applicant having an extramarital affair with XX would not appear to have any relevance to the determination of the present case.

21. The Tribunal is, nevertheless, concerned about how and why EMH and MW came to know about this evidently very personal and sensitive information concerning the Applicant and XX.

22. Under art. 10 of Practice Direction No. 6 (Records of the Dispute Tribunal), only the parties—and no one else, including witnesses—are to have access to the records of the present case. "Access to non-confidential issuances of the Tribunal such as judgments and orders is publicly available through the website of the Tribunal and at the Registry of the Tribunal" in accordance with art. 16 of Practice Direction No. 6. In the present case, by Order No. 037 (NY/2025) dated 3 April 2025, the Tribunal additionally closed the hearing to the public considering "the parties' submissions and the sensitive personal topics involved in the present case, as well as to ensure that witnesses feel comfortable and under no undue outside pressure".

23. Consequently, no information from the case record should have been shared with anyone but Counsel and the Tribunal, in particular if this information concerned any sensitive personal topics.

24. In Order No. 031 (NY/2025) dated 14 March 2025, the Tribunal requested Counsel for the Respondent to ensure the participation of all other witnesses than the Applicant at the hearing. All these witnesses were staff members of the Secretariat of the United Nations. As the Chief Administrative Officer of the United Nations under art. 100.2 of the United Nations Charter, the Secretary-General acts as their employer, and holds the instruction authority over them (see staff regulation 1.2(c)). Such power is not conferred to the Dispute Tribunal. Also, when the Applicant's Counsel is external to the Organization, it is standard practice before the Dispute Tribunal that Counsel for the Respondent undertakes to coordinate the participation of witnesses who are United Nations staff members. As the legal representative of the Secretary-General, Counsel for the Respondent was therefore instructed to do so in the present case.

25. After the hearing of the witnesses on 23 April 2025, Counsel for the Respondent explained that when contacting the witnesses, some had raised questions concerning what they were to testify about. Counsel for the Respondent had therefore shared with them, at least part of the Applicant's 6 March 2025 submission, wherein the Applicant presented the topics that he wished to hear them about. Counsel for the Respondent appeared to suggest that the relevant witnesses could have learned about the alleged extramarital affair between the Applicant and XX from there.

26. In Order No. 031 (NY/2025), Counsel for the Respondent was, however, only instructed to ensure the participation of the witnesses and not inform them about the topics of their direct examination by Counsel for the Applicant. Also, the Applicant's 6 March 2025 submission was evidently not a "non-confidential" issuance in accordance with art. 16 of Practice Direction No. 6. Any information about the Applicant and XX, even if irrelevant to the determination of the present case, should therefore not have been shared with the witnesses, particularly if this was of sensitive personal nature.

27. At the same time, the explanation of Counsel for the Respondent is inconsistent with the fact that, as also stated by Counsel for the Applicant, no information about any extramarital affair between the Applicant and XX is indeed revealed in the Applicant's 6 March 2025 submission. So EMH and MW must have learned about this from somewhere else, and in EMH's testimony, she explicitly stated that ALD had informed her about it. If this is correct, in order to avoid a similar situation in the future, the Tribunal will strongly encourage Counsel for the Respondent to ascertain the origin of the apparent information leak and take appropriate action.

28. In conclusion, the Tribunal reminds the parties that the confidentiality of the case record should always be respected and that its instructions are to be followed to the letter (if in doubt thereabout, parties can always seek clarification and/or further directions from the Tribunal). Since (a) the information about the alleged extramarital affair between the Applicant and XX, however, does not have any apparent relevance to the determination of the present case and (b) the topics of Counsel for the Applicant's witness examinations were formulated in broad terms and no material harm was done by revealing them to the relevant witnesses, the Tribunal will not deliberate any more on this matter, at least for now.

The Applicant's 7 May 2025 motion for production of documents relating to annex R/17

29. On 21 April 2025, the Respondent filed his annex R/17, which is a copy of an email from BL to Counsel for the Respondent of the same date (21 April 2025), in which he also copied in CH. In BL's email he stated as follows:

> I hereby confirm that a consultation on the case took place with Dr [CH], Senior Medical Officer in [the Division of Healthcare Management and Occupational Safety and Health, "DHMOSH"], on

> 20 March 2024. In that conversation, [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.

30. The Tribunal notes that this consultation of 20 March 2024 between CH as representative of DHMOSH and AT and MHL was undertaken under art. 6.20 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process).

31. The Applicant requests that the Respondent discloses "the full [email] exchange for a proper understanding of the email that Dr. BL sent and that the Respondent wishes to rely upon to argue that the consultation with the medical services did [take place]".

32. The Tribunal finds that since it cannot exclude the relevancy of the full email exchange between ALD and BL to the determination of the present case, the Respondent is ordered to produce it.

The Applicant's 7 May 2025 motion for calling JV as a witness

33. Subsequent to the testimony of CH on 7 May 2025, Counsel for the Applicant orally requested that JV be called as a witness to testify concerning his involvement in the present case, in particular the 20 March 2024 consultation. The Respondent objected to the motion.

34. At the hearing, the Tribunal rejected this motion indicating that JV, as an officer of the court, is already duty bound by his professional code of ethics to uphold the truth to the best of his abilities in all oral and written submissions to the Tribunal. Consequently, there was no requirement for him to testify.

35. The Tribunal now reaffirms its order, further noting that at the hearing, Counsel for the Respondent amply presented his positions and explanations concerning his involvement, which therefore now also form part of the case record.

Additional information and/or documentation regarding the 20 March 2024 consultation and the Applicant's health condition

36. During the testimonies of BL, CH, AT and MHL on 6, 7 and 8 May 2025, oral evidence was provided concerning the 20 March 2024 consultation and the Applicant's health condition. To ensure that the present case is fully informed and without prejudice to its final outcome, these testimonies lead the Tribunal to instruct the parties to submit the following additional information and/or documentation in accordance with art. 17.2 of its Rules of Procedure:

The Respondent

a. During CH's testimony, she referred to a "note in the record", which she made subsequent to the 20 March 2024 consultation. The Respondent is ordered to produce this "note in the record", as well any other written documentation from DHMOSH regarding the 20 March 2024 consultation.

b. During CH's testimony, she also stated that in connection with the 20 March 2024 consultation, she had only provided AT and MHL with dates related to the Applicant's sick leave and confirmed that it was still ongoing, but that she did not recall having undertaken any medical assessment of his health condition. The Respondent is ordered to instruct DHMOSH to undertake such a medical assessment as per art. 6.20 of ST/AI/2017/1. It shall take as the point of departure the Applicant's health condition on 20 March 2024, including his suitability for undertaking travel to depart his duty station, and be based on the information available to DHMOSH at the relevant time.

In the application, para. 23, the Applicant refers to a "surgical report" that was provided to the Respondent on 7 March 2024. As part of its assessment DHMOSH is to confirm that it had access to this surgical report and took it into consideration when making its medical assessment.

c. The Respondent is further to submit all available information and documentation related to the 20 March 2024 consultation from the Department of Management Strategy, Policy and Compliance ("DMSPC"), including any possible recordings and/or transcripts and meeting notes, as well as a screen shot from MS Teams regarding the date and time of the call.

d. During the testimony of MHL, reference was made to a possible phone call between MHL and the Assistant Secretary-General for Support Operations, LB (name redacted for privacy reasons) concerning the forthcoming termination of the Applicant's appointment. The Respondent is ordered to produce any information and/or documentation regarding the phone call, as well as any other communications of DMSPC concerning the termination of the Applicant's appointment at the relevant time.

e. In para. 23 of the application, the Applicant refers to him having a 30-day period to depart the United States after the termination of his appointment. The Respondent is to provide information and documentation of this rule.

<u>The Applicant</u>

f. Also referring to para. 23 of the application, the Tribunal orders the Applicant to submit in evidence

i. The surgical report to which he makes reference;

ii. His request to the State Department of the United States for an extension of his G-4 visa;

iii. The reply from the State Department of the United States granting him an extension;

iv. Information and documentation related to his departure travel out of the United States as a result of the expiry of his G-4 visa.

g. The Tribunal further orders the Applicant to provide information and documentation related to

i. In light of his health condition at the relevant time, his capability of departing the United States as a result of the expiry of his G-4 visa from 8 March 2024 and onwards, including all relevant reports from medical professionals such as medical doctors and physical therapists;

ii. His claim for "[c]ompensation for harm for the damage to his career and self-respect under Article 10(5)(b) of the UNDT statute" as per the application.

The parties' 9 and 12 May 2025 submissions

37. The Tribunal will allow the additional evidence submitted by both parties, although also noting, as submitted by the Applicant, that the 8 March 2024 email was indeed appended as Annex 17 to the application. As for the parties' further substantive submissions, they can summarize these, as they see fit, in their closing statements.

Filing written closing statements

38. Subsequent to the parties filing the ordered documentation, they are to file their written closing statements according to the timetable set forth below. Afterwards, the Tribunal will adjudicate the present case.

39. In light of the above,

IT IS ORDERED THAT:

40. The Applicant's 29 April 2025 motion by which he requested that (a) the Tribunal investigates the Respondent's possible disclosure of information from the casefile to witnesses ahead of their testimony and (b) the Respondent discloses all communications with the witnesses since the filing of the application, is rejected.

41. The Tribunal's oral rejection of the Applicant's 7 May 2025 motion for JV to appear as a witness, stated during the hearing, is reaffirmed.

42. By **4:00 p.m. on Thursday, 12 June 2025**, the Respondent is to file:

a. The documentation requested by the Applicant in his 29 April 2025 motion for production of documents by AW and AS;

b. The document(s) relevant to the Applicant's 7 May 2025 motion regarding the Respondent's annex R/17;

c. A copy of CH's "note in the record" regarding the 20 March 2024 consultation with AT and MHL concerning the Applicant, as well any other written documentation from DHMOSH regarding this consultation;

d. A medical assessment of DHMOSH as per art. 6.20 of ST/AI/2017/1 of the Applicant's health condition on 20 March 2024, including his

suitability for undertaking travel to depart his duty station, which shall be based on the information available to DHMOSH at the relevant time;

e. All available information and documentation for the 20 March 2024 consultation from the Department of Management Strategy, Policy and Compliance, including any possible recordings and/or transcripts and meeting notes, as well as a screen shot from MS Teams regarding the date and time of the call;

f. Information and/or documentation regarding the phone call between MHL and LB concerning the forthcoming termination of the Applicant's appointment, as well as any other communications of the Department of Management Strategy, Policy and Compliance ("DMSPC") concerning the termination of the Applicant's appointment at the relevant time;

g. Information and documentation concerning the rule that the Applicant had to depart the United Stated within 30 days after the termination of his appointment.

43. By **4:00 p.m. on Thursday, 12 June 2025**, the Applicant is to file information and/or documentation, including with reference to para. 23 of the application, for:

a. The surgical report;

b. His request to the State Department of the United States for an extension of his G-4 visa;

c. The reply from the State Department of the United States granting him an extension of his G-4 visa;

d. Information and documentation related to his departure travel out of the United States as a result of the expiry of his G-4 visa;

e. In light of his health condition at the relevant time, his capability of departing the United States as a result of the expiry of his G-4 visa from 8 March 2024 and onwards, including all relevant reports from medical professionals such as medical doctors and physical therapists.

f. His claim for "[c]ompensation for harm for the damage to his career and self-respect under Article 10(5)(b) of the UNDT statute" as per the application.

44. By **4:00 p.m. on Wednesday, 25 June 2025**, the Applicant is to file his closing statement, which is to be fifteen (15) pages maximum, using font Times New Roman, font size 12 and 1.5 line spacing. The closing statement is solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage.

45. By **4:00 p.m. on Wednesday, 16 July 2025**, the Respondent is to file his closing statement responding to the Applicant's closing statement at a maximum length of fifteen (15) pages, using font Times New Roman, font size 12 and 1.5 line spacing. The closing statement is solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage.

46. By **4:00 p.m. on Monday, 21 July 2025**, the Applicant may file a statement of any final observations responding to the Respondent's closing statement. This statement of final observations by the Applicant must be a maximum of two (2) pages, using font Times New Roman, font size 12 and 1.5 line spacing. It must be solely based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage.

47. Unless otherwise ordered, on receipt of the latest of the aforementioned statements or at the expiration of the provided time limits, the Tribunal will adjudicate on the matter and deliver Judgment based on the documentation on record as soon as possible.

(Signed)

Judge Solomon Areda Waktolla

Dated this 15th day of May 2025

Entered in the Register on this 15th day of May 2025

(Signed)

for: Isaac Endeley, Registrar, New York