



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2025/004  
Order No.: 057 (NY/2025)  
Date: 18 June 2025  
Original: English

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**Before:** Duty Judge  
**Registry:** New York  
**Registrar:** Isaac Endeley

HERRERA

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:**  
Francisco Navarro, UNHCR  
Sandra Lando, UNHCR

## **Introduction**

1. The Applicant, a former staff member of the United Nations Refugee Agency (“UNHCR”), filed an application on 23 March 2025 contesting (a) “[a] finding of sexual abuse and sexual harassment [that] was made against [him]” and (b) the decision to enter his name into the ClearCheck database. He requests a hearing.

2. On 23 April 2025, the Respondent filed his reply in which he contends that “[s]ince the Applicant resigned from UNHCR effective 7 September 2023, no disciplinary process was initiated against him, and no disciplinary measure was imposed. The only point in issue is whether the decision to enter the Applicant’s name in ClearCheck was lawful”.

## **Considerations**

### *Case management*

#### Agreed and disputed facts

3. When reviewing the parties’ submissions on the facts of the case, it is not clear to the Tribunal on what facts they actually agree and disagree. In this regard, the Appeals Tribunal has held that the Dispute Tribunal is not to make its own factual findings if the parties have agreed on certain facts (see *Ogorodnikov* 2015-UNAT-549, para. 28). The Tribunal also notes that the very purpose of producing evidence—written or oral—is to substantiate the specific relevant facts on which the parties disagree. Accordingly, there is, in essence, only a need for evidence if a fact is disputed and relevant (in line herewith, see *Abdellaoui* 2019-UNAT-929, para. 29, and *El-Awar* 2019-UNAT-931, para. 27).

4. The Tribunal will therefore order the parties to produce consolidated lists of agreed and disputed facts to be able to understand the factual issues at stake.

### General observations on evidence

5. The Tribunal notes that in cases like the present one, art. 9.4 of the Statute of the Dispute Tribunal provides that whereas “the Dispute Tribunal *shall* consider the record assembled by the Secretary-General”, it “*may* admit other evidence” (emphasis added). Also, the Appeals Tribunal has prohibited a so-called “fishing expedition”, whereby one party requests the other party to produce evidence in “the most general terms” (see, for instance, *Rangel* Order No. 256 (2016)). A party requesting any evidence must therefore be able to provide a certain degree of specificity to his or her request.

6. As the present case is analogous to a disciplinary matter, the Tribunal notes that evidence is only relevant in the judicial review of the Applicant’s claim regarding whether the facts of the contested decision have lawfully been established—the disciplinary findings on misconduct and proportionality are legal rather than factual determinations.

7. The contested decisions are set out in the letter of 20 September 2024 from UNHCR’s Director of Human Resources. Therein, the factual allegations on which the decisions were based, were presented as follows:

Specifically, the High Commissioner concluded that it has been established on clear and convincing evidence that, on 16 December 2014, following the Christmas party held at the UNHCR cafeteria, [the Applicant] drove [the Complainant] to her flat, that [he] followed [the Complainant] to her room, and that [he] performed oral sex on [the Complainant] and penetrated her without her consent, as she did not consent and was not able to consent on grounds of her alcohol intoxication.

### Production of additional written or oral evidence

8. At the outset, the Tribunal observes that the Applicant has asked for a hearing but neither of the parties has requested the production of any additional documentary evidence.

9. Concerning production of additional written evidence, the Tribunal notes that in art. 18.2 of the Dispute Tribunal’s Rules of Procedure, it is stated that the

Dispute Tribunal “may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings”.

10. As for possible oral evidence, meaning the examination of witnesses at a hearing before the Tribunal, the Tribunal refers to arts. 16.1 and 16.2 of the Rules of Procedure that provide that “[t]he judge hearing a case may hold oral hearings” and that “[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure”. It therefore follows that it is for the judge to whom a case will be assigned to determine whether a hearing is necessary and that in a case like the present one, this shall normally be done.

11. Accordingly, the Tribunal will allow the parties to indicate what, if any, additional written or oral evidence they request to be produced.

12. In light of the above,

IT IS ORDERED THAT:

13. By **4:00 p.m. on Monday, 21 July 2025**, the parties are to file a jointly-signed statement providing, under separate headings, the following information:

- a. A consolidated list of agreed facts. In chronological order, this list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning;
- b. A consolidated list of disputed facts. In chronological order, the list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning. If any documentary and/or oral evidence is relied upon to support a disputed fact, clear reference is to be made to the appropriate annex in the application or reply, as applicable. At the end of the disputed paragraph in square brackets, the party contesting the disputed fact shall set out the reason(s);

14. By **4:00 p.m. on Monday, 21 July 2025**, each party is to submit whether he requests to adduce any additional evidence, and if so, state:

a. What additional documentation he requests to be disclosed, also indicating what disputed fact(s) this is intended to substantiate and referring to the relevant paragraphs in the consolidated list of disputed facts; and/or

b. The identity of the witness(es) the party wishes to call, and what disputed fact(s) each of these witnesses is to give testimony about, also setting out the proposed witness's intended testimony in writing and referring to the relevant paragraphs in the consolidated list of disputed facts. This written witness statement may possibly also be adopted as the examination-in-chief at a potential hearing if the party leading the witness should wish to do so.

15. Upon receipt of the above-referenced submissions and when the case has been assigned to a Judge of the Dispute Tribunal, further case management instructions will be issued.

*(Signed)*

Judge Margaret Tibulya

Dated this 18<sup>th</sup> day of June 2025

Entered in the Register on this 18<sup>th</sup> day of June 2025

*(Signed)*

Isaac Endeley, Registrar, New York