

UNITED NATIONS DISPUTE TRIBUNAL

Background

1. On 17 July 2019, the Applicant filed an application contesting the decision of the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity (the contested decision”).
2. The Respondent replied to the application on 15 August 2019.
3. The Tribunal held a Case Management Discussion on 13 October 2020.
4. On 21 October 2020, the Applicant filed a list of witnesses he proposes to call at a future hearing of the case on its merits.
5. The Respondent filed a response to the Applicant’s proposed list of witnesses on 23 October 2020 in which it is submitted:
 - a. that the Applicant did not provide synopses of the anticipated evidence from the proposed witnesses and that this contravenes Order No. 202 (NBI/2020) which specifically required him to provide a synopsis of the anticipated evidence;
 - b. eight of the proposed witnesses were interviewed during the investigation, which the Applicant acknowledged, and their sworn statements were provided to the Applicant during the disciplinary process, which are now before the Tribunal;
 - c. the Respondent objects to the calling of the eight witnesses on several grounds stated in his response at para. 5;
 - d. for those witnesses who were interviewed by the investigators, the Applicant has failed to particularise the evidence they would adduce over and

above what is already on the record, and therefore, it is unclear how their oral testimony would be useful to the Tribunal and justify a hearing; and

d. that testimony from the remaining two individuals, Mr. Milan Trojanovic, then Director of Mission Support and Ms. Catherine Pollard, USG/DMSPC is not relevant to the factual determination of this case.

6. The Respondent also urges the Tribunal not to hold an oral hearing on the merits of this case.

7. On 27 October 2020, the Applicant sought and was granted leave to respond to the Respondent's objections to his list of witnesses.

Deliberations

8. Articles 16, 17 and 18 of the UNDT Rules of Procedure confirm that the discretion to hold an oral hearing vests in the judge, but indicate that it should normally be held following an 38(t198.07 20.16 reW*nBT/F1 10.8JETBT4(r)-6(e)4(f)25D 0/La8(t198.0

b. whether the established facts qualify as misconduct under the Staff Regulations and Rules;

c.

- a. The Applicant;
- b. Ms. Lia Yemane;
- c. Mr. Lawi Ooko;
- d. Mr. Joseph Parareda;
- e. Ms. Ferdos Mohammednur;
- f. Mr. Alhaji Kemokai;
- g. Mr. Mahesh Kumar;
- h. Mr. Annandavel Kannan; and
- i. Mr. Trojanovic.

(Signed)

Judge Margaret Tibulya

Dated this 28th day of October 2020

Entered in the Register on this 28th day of October 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi