

Case No.: UNDT/NY/20

UNITED NATIONS DISPUTE TRIBUNAL

## **Introduction**

1. At the Tribunal's direction, on 17 May 2021, the parties submitted a jointly-signed statement setting out a consolidated list of the agreed and disputed facts. They each further filed submissions stating their requests for additional documentation and proposed witnesses.

## **Consideration**

### *Request for oral testimony*

2. The Applicant requests the testimony in direct evidence of one of the eyewitnesses of the incident for which she was sanctioned: EK. She further wishes to cross examine MK, the victim of the Applicant's misconduct, and the other eyewitness, SK. The Applicant contests the credibility of MK and SK's statements to OIOS and avers that EK will testify that she did not contradict herself during the investigation process and that she did not witness the Applicant slap MK.

3. The Applicant further wishes to cross-examine the lead investigator from the Office of Internal Oversight Service ("OIOS"), CZ, in the context of the Applicant's challenge to the manner in which the investigation was carried out in this case.

4. The Applicant further requests to provide her own testimony.

5. In light of the application and the subsequent submissions, the Tribunal finds that the testimonies of EK, MK, SK and CZ are relevant to the issues in dispute in this case and authorizes their testimony.

6. The Tribunal further accepts to hear the Applicant's own testimony.



Case No.

17. As the record shows that the Respondent did not timely disclose the entirety of the investigation file, to ensure that the Applicant enjoys her right to a due process, the Tribunal grants the Applicant's request for production of OIOS evidence log.

Exhibits marked by witnesses during their interviews with OIOS

18. The Applicant avers that various witnesses were shown documents during their interviews with OIOS investigators that they were requested to comment on or mark as exhibits.

19. The Applicant states that some of these exhibits, such as floor plans of the location of the incident in dispute are relevant to properly understand the testimonial evidence. However, none of these exhibits were either mentioned in the investigation report or included in the case file.

20. The Tribunal notes that the exhibits shown or marked by the witnesses during their interviews with OIOS are relevant to the facts in dispute. The Tribunal therefore directs the Respondent to submit these exhibits into the case file.

Audio recording of the conversation between EK, AF and MM

21. The Applicant states that, in the synopsis of MM's interview with OIOS, she stated that she recorded a conversation with MK, the victim of the Applicant's misconduct, the day after the incident in dispute, in which they both discuss the events in dispute in this case, in the presence of a third staff member. During her interview, MM informed OIOS investigators that she had handed over the recording to UNEP's Chief of Administration. The Applicant believes this recording to be relevant for the assessment of MK's credibility.

22. The Tribunal notes that in the synopsis of MM's 31 January 2017 interview with OIOS, MM does indeed make reference to a conversation with MK which she

recorded. The Tribunal finds that this conversation, as described by MM in her interview with OIOS may have a bearing on MK's credibility and is directly relevant to the events in dispute in this case. Therefore, shall OIOS be in possession of this piece of evidence, Tribunal directs the Respondent to submit it into this case file.

Record of the witnesses interviewed during the investigation

23. The Respondent submitted audio recordings, transcripts or synopses of all the witnesses interviewed by OIOS in this case. The Tribunal admits these into evidence.

24. In light of the above,

IT IS ORDERED THAT:

25. The evidence submitted appended to the Respondent's 17 May 2021 filing is admitted into evidence;

26. The Tribunal will hear the testimony of the Applicant, EK, CZ, MK and SK;

27. The Tribunal grants the Applicant's request for additional evidence. By **4:00 p.m. on Monday, 7 June 2021**, the Respondent shall upload the evidence referred to in paras. 13, 17, 20 and 22 above into the Tribunal's eFiling portal;

28. By **4:00 p.m. on Monday, 21 June 2021**, the Applicant shall file a submission stating whether, in light of the Respondent's submission of new evidence as ordered herewith, she requires the production of further evidence;

