



Before: Judge Alexander W. Hunter, Jr.

Registry: Geneva

Registrar: René M. Vargas M.

BANAJ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON
PRODUCTION OF EVIDENCE**

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Esther Saabel, LPAS, UNOG

Jérôme Blanchard, LPAS, UNOG

Introduction

1. By application filed on 8 January 2021, the Applicant, a staff member of the United Nations Office on Drugs and Crime (“UNODC”), contests the decision to close her complaint of prohibited conduct under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) with managerial action pursuant to sec. 5.18(b) of ST/SGB/2008/5 with respect to Mr. S., and with no further action pursuant to sec. 5.18(a) with respect to Ms. K..
2. By Order No. 4 (GVA/2022) of 18 January 2022, the Tribunal ordered, *inter alia*, that the Investigation Report into the Applicant’s complaint be disclosed to the Applicant on an under-seal basis and invited the Applicant to file a rejoinder by 7 February 2022.
3. On 7 February 2022, the Applicant responded to Order No. 4 (GVA/2022) by filing a submission requesting, *inter alia*, that the Tribunal order the Respondent to submit all exhibits to the Investigation Report and allow the Applicant to amend her submission within 20 days of receipt of these documents.
4. By Order No. 18 (GVA/2022) of 10 February 2022, the Tribunal invited the Respondent to submit a response to the Applicant’s 7 February 2022 submission, which he did on 21 February 2022.

Consideration

5. In support of her request to order the Respondent to submit all exhibits to the Investigation Report, the Applicant argues that they constitute an integral part of the Investigation Report and include witness testimonies and other relevant documents that are key to reviewing the correctness of the investigation procedure and the Investigation Report.

6. The Respondent opposes the Applicant's request on the basis that it exceeds the scope of Order No. 4 (GVA/2022), lacks specificity and substantiation, and would cause unnecessary risks to third parties and future investigations. He specifically argues that:

- a. A significant part of the exhibits contains information that is already in the possession of the Applicant;
- b. Some exhibits not available to the Applicant constitute internal documents which the Applicant is not legitimately entitled to and have no relevance for any further submissions the Applicant may want to make; and
- c. Regarding the remaining exhibits, which include interview statements with the two subjects of the investigation (exhibits 3 and 8) and six witnesses (exhibits 11, 12, 13, 16, 17, and 28) as well as email communications provided by the witnesses to the Panel (exhibits 10, 22, and 23), the Applicant failed to demonstrate any useful purpose that would be served by their disclosure.

7. The Tribunal recalls that art. 9.1 of its Statute provides that it "may order production of documents or such other evidence as it deems necessary". Furthermore, art. 18.2 of the Tribunal's Rules of Procedure stipulates 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.

8. Having reviewed the parties' submissions and the Investigation Report, the Tribunal is of the view that it is appropriate for a fair disposal of the case to order the Respondent to produce the exhibits to the Investigation Report, especially considering that one core witness alleges that he does not think that he ever received any questions from the investigation panel, whereas the Respondent argues that this witness refused to be interviewed during the investigation.

9. The exhibits in question will, first, be submitted on an *ex parte* basis to the Tribunal and, subsequently, the Tribunal will assess their relevance to the case and decide whether they should be disclosed to the Applicant and her Counsel, with redactions if necessary.

Conclusion

10. In view of the foregoing, it is ORDERED THAT the Respondent submit the exhibits to the Investigation Report by **Monday, 28 February 2022** on an *ex parte* basis.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 23rd day of February 2022

Entered in the Register on this 23rd day of February 2022

(Signed)

René M. Vargas M., Registrar, Geneva