



Before: Francesco Buffa
Registry: Nairobi
Registrar: Abena Kwakye-Berko

VAN DE GRAAF

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON CASE MANAGEMENT
AND NOTICE OF HEARING**

Counsel for the Applicant:

Ana Giulia Stella, OSLA

Counsel for the Respondent:

Matthias Schuster, UNICEF
Alister Cummings, UNICEF

Introduction

1. At the time of the application, the Applicant served as the Supply and Logistics Manager, on a continuing appointment, at the Regional Office of the United Nations Children's Fund ("UNICEF") in Nairobi, Kenya.
2. On 3 May 2021, he filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent's finding of misconduct and decision to separate him from service of the Organization with compensation *in lieu* of notice and termination indemnity.
3. The Respondent filed his reply to the application on 7 June 2021.
4. The Tribunal issued Order No. 011 (NBI/2022) on 7 February 2022, in which the parties were given directions with a view to preparing for an oral hearing of this matter.
5. In compliance with those directions, the parties filed their respective submissions on 11 February 2022.
6. On the same date, the Applicant filed in addition two motions, to introduce other documents in support of the application and for leave to adduce evidence on harm.

Considerations

7. The Applicant's motions to introduce additional documents, being them pertinent and relevant, are granted.
8. As to the witnesses, the Tribunal has considered the parties submissions and - on the basis of their statements - it notes the availability of the witnesses above mentioned - who are mostly not subject to the authority of the Secretary General - to render their testimony only in presence in the Nairobi courtroom, except Ms. AS and Mr. DK who are available also - and perhaps only, depending on their future plans - remotely, through Teams; the Tribunal has considered also that it results to the Registry that Ms. TK passed away, that Mr. WA - who is not subject to the

authority of the Secretary General - declined the invitation by the Respondent to appear in court, that the testimony of Mr. Janc (requested by the Applicant only) is not deemed to be useful, and that other individuals who were guests at the meeting referred to in the challenged disciplinary measure have not been identified.

9. The Tribunal observes that witnesses are requested by the Applicant only and that the Respondent stated he does not want to lead any evidence during the hearing from his witness originally indicated; it follows that witnesses – to be called by the Applicant - will be examined in chief by the Applicant and cross-examined by the Respondent, if the latter so wish.

10. The Tribunal considered also that Counsel are based in New York and sets the agenda of the hearing as follows, taking into account the zones' time differences.

Order

11. The Tribunal makes the following orders:

- a. The Applicant's motions to adduce documents in support of the application and for leave to adduce evidence on harm are **GRANTED**
- b. The Applicant's list of witnesses is **ALLOWED**; and
- c. By Monday, **28 February 2022**, the parties shall submit to the Tribunal:
 - i. An agreed bundle of documents; and
 - ii. A list of authorities, including administrative issuances to be relied upon.

12. **NOTICE** is hereby issued that the matter of *van de Graaf v Secretary-General of the United Nations* (UNDT/NBI/2021/022) is set down for oral hearing in the **UNDT Courtroom** on **8 to 17 March 2022**.

13. The hearing will proceed as follows:

- i. 8 March, at 14.00: Opening statements followed by the Applicant's testimony;
- ii. 9 March, at 14.00: Ms. VA; at 15.00 Mr. CNO;
- iii. 10 March, at 14.00: Mr. GD; at 15.00 Ms. KB;
- iv. 14 March, at 14.00: Ms. GM; at 15.00 Ms. EM;
- v. 15 March, at 14.00: Mr. DK; at 15.00 Ms. AS;
- vi. 17 March, at 14.00: Oral closing submissions.

14. Parties appearing remotely are expected to provide the UNDT Registry in Nairobi with their respective contact details by **Friday, 4 March 2022**.

(Signed)

Francesco Buffa

Dated this 15th day of February 2022

Entered in the Register on this 15th day of February 2022

(Signed)

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi