

Case No.: UNDT/NBI/2023/055
Order No.: 103 (NBI/2024)
Date: 7 August 2024

Introduction

1. By Order No. 78 (NBI/2024), issued on 27 June 2024, the Tribunal directed the Respondent to file, *ex parte*, a copy of the “Closure report on Medical Insurance Fraud by Staff Members at the United Nations Stabilization Mission in the Democratic Republic of the Congo, Investigation Division Case No. 0955/18, Report No. 30/20, 26 February 2020” (“OIOS Closure Report”).

2. On 15 July 2024, the Respondent complied with the above Order by filing *ex parte* the OIOS Closure Report and an audio file of the Applicant’s interview on 23 April 2019. The Respondent did not, however, file the annexes to the OIOS Closure Report.

3. On the same day and together with the above submission, the Respondent filed, also *ex-parte*, a document he termed as “Respondent’s submission in compliance with paragraph 5(c)(ii) of Order No. 78 (NBI/2024)”. This submission (“introductory motion”) introduces the filing of the OIOS Closure Report and the above-mentioned audio file.

4. On 4 August 2024, the Applicant filed a motion for additional information and to call another witness, namely Mr. Raphael K. Byemba. The Applicant requested the Tribunal to order Mr. Byemba to appear as a witness. In the alternative, the Applicant avers that the Respondent should be in a position to locate Mr. Byemba if he is still employed by the Organization.

5. On 6 August 2024, the Respondent submitted a response to the Applicant’s submission of 30 May 2024, where the Applicant provided a list of his witnesses. The Respondent states:

On 1 August 2024, OIOS confirmed to the Respondent that Mr. Paul Harty, Chief of Section at OIOS who oversaw the investigation, would be available to testify, including on any due process issue, which is a divisional responsibility within OIOS. Considering the submission of OIOS, should the Tribunal call an OIOS representative to testify, the Respondent respectfully requests it to call Mr. Harty.

6. On the same day, the Applicant submitted a request for leave to respond to the Respondent's request to call Mr. Harty as a witness.

Consideration

7. As the above matters that the parties raised are related, the Tribunal, in the interest of judicial economy, will address them all in a single Order.

8. Regarding the OIOS Closure Report, the Tribunal notes the need for the Respondent to fully comply with its Order No. 78 (NBI/2024) by submitting the entire case file (including all its annexes) *ex parte* for the Tribunal's examination *in camera* to determine their relevance to the Applicant's case, if any.

9. The Tribunal further notes that the Respondent's 15 July 2024 introductory motion (see para. 3 above) contains no confidential information. The Tribunal sees

