



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/013

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

YISMA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR
CONFIDENTIALITY**

Counsel for Applicant:
Brian Gorlick, OSLA

Counsel for Respondent:
Thomas Elftmann, UNDP

Introduction

1. On 11 February 2011 the Applicant, a staff member of the Multi-Donor Trust Fund Office of the United Nations Development Programme (“UNDP”), filed an application contesting the disciplinary measure of separation from service with notice and termination indemnity.

2. The contested decision was based on the findings of an investigation conducted during December 2009 and Janua

this hearing, the parties also made oral submissions with respect to the Applicant's motion for confidentiality, which is the subject of this Order.

Applicant's submissions

6. The Applicant submits that the public nature of the hearings and the use of her name in judicial rulings would result in severe prejudice to her professional and personal reputation, making it more difficult for her to seek alternative employment outside of the United Nations. The Applicant argues that, even if her case were to prevail before the Tribunal, if her identity is not kept confidential her personal and professional reputation in her office would be severely prejudiced as a result of the proceedings before the Tribunal. She contends that, if her co-workers become aware of Applicant's involvement in this case, it will cause permanent and irreparable damage to her. It would also compromise the principle of presumption of innocence of the Applicant if an external investigation or judicial proceedings were to take place. The application submitted by the Applicant raises personal and confidential information including medical reports concerning the Applicant and members of her family, which must be protected from public disclosure.

Respondent's submissions

7. The Respondent submits that there are no exceptional circumstances to justify

and the only legal issue requiring adjudication is whether the disciplinary measure imposed on the Applicant is proportionate to her misconduct. The Tribunal finds that the Applicant has failed to persuade the Tribunal that her case is of such a nature as to overcome the guiding principle of transparency in judicial proceedings and published rulings before the Tribunal. As was correctly pointed out by the Respondent, this matter does not concern claims arising from a medical condition suffered by the Applicant or work duties of a confidential nature. Neither does it concern other types of sensitive claims, in which confidentiality has previously been granted.

11. Even though the Tribunal is mindful that each case must be decided on a case-by-case basis, it is also alive to the fact that the granting of confidentiality in cases of this nature, without sufficient reasons given to satisfy the Tribunal that confidentiality is justified, has the potential to not only invite requests of this kind in every matter concerning disciplinary proceedings, but to negate a key element of the new system of administration of justice—its transparency. Accordingly, having carefully considered the Applicant’s request for confidentiality, the Tribunal has decided to reject it.

IT IS ORDERED THAT—

12. The Applicant’s motion for confidentiality is rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 1st day of March 2011