

IN THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL

Between

IRMA MATUS

Applicant

and

THE COMMONWEALTH SECRETARIAT

Respondent

Before the Tribunal constituted by

**Mr Christopher Jeans QC, President; Mr David Goddard QC, member; and
Professor Epiphany Azing SAN, member**

JUDGMENT IN RELATION TO INTERLOCUTORY ORDER

Judgment

1. This judgment provides a brief summary of reasons for the Tribunal's Interlocutory Order made on 20th October 2016.
2. The members of the Tribunal met by telephone on 18th October 2016 to consider various interlocutory issues and applications. It made the decisions which were reflected in the Tribunal's Order of 20th October

ORAL PROCEDURE

3. The case is about the Applicant's probation. In broad terms it concerns the termination of her employment following an extended period of probation and the processes and procedures followed by the Respondent in deciding upon and giving effect to the termination.
4. In her Application to the Tribunal, the Applicant advances a range of specific claims and issues. Paragraphs 76 to 81 appear under the heading "*Lack of respect for dignity, unequal treatment and procedural irregularity*".
5. In those paragraphs she makes two distinct complaints. The first is about being placed on administrative leave. The second is that she was "escorted out of the building". This is, she contends, contrary to the standard practice in cases which do not involve wrongdoing and is in itself a breach of her contract of employment. We will call this by way of shorthand the "escort from the building" issue.
6. It is the second of these complaints (the "escort from the building" issue) which gives rise to the possibility of oral procedures.
7. It is apparent from the pleadings that there are factual disputes about what happened when the Applicant left the building after being advised of the end of her employment.
8. By way of example the Applicant disputes in strong terms the Respondent's case that she asked to have an HRD official present while she removed her effects and that she voluntarily agreed to be escorted off the premises (see eg paragraph 45 of the Reply and paragraph 12 of her Additional Statement). There are also surrounding factual questions about the placing of the Applicant's photograph in the security booth at the

entrance to the premises, and as to what may or may not be normal procedures for escorting employees from the building at the termination of employment.

9. The Applicant invites the Tribunal to use an oral procedure for the resolution of the “escort from the building issue”: see paragraph 13 of the Claimant’s Additional statement.
10. All the members of the Tribunal agreed that the “escort from the building” issue is a subsidiary issue that is not at the centre of the case the Tribunal has to decide in relation to the termination of the Applicant’s employment.
11. A majority of the Tribunal (the President and David Goddard QC) considered that it was nonetheless a distinct issue which could only satisfactorily be determined after hearing oral evidence. The majority therefore considered that an oral procedure was appropriate on the “escort from the building” issue.
12. The minority member (Professor Epiphany Azinge) considered that the “escort from the building issue” was highly tangential to the substantial questions the Tribunal would have to decide and he considered that the matter could in any event be determined without oral evidence.
13. The majority view prevails. Hence we have made directions for an oral procedure in relation to the “escort from the building” issue. This will afford the parties the opportunity to call oral evidence, ask questions of witnesses and make oral submissions on this one issue
14. We stress that the oral procedure is confined to the “escort from the building” issue. We did not consider an oral procedure appropriate in relation to any other issue.
15. The directions given on the provision of witness statements are intended to ensure that both parties and the Tribunal are fully apprised well in advance of the hearing of the detailed factual case being put forward on each side on the “escort from the building” issue.

Disclosure

16. The Applicant seeks disclosure of “recordings” of the Review Board (“RB”) meeting or meetings held in February 2015 (“the First RB Meeting(s)”) and the Review Board meeting held in June 2015 (“the Second RB meeting”) to include recordings of witnesses: paragraph 7 of the application refers.
17. The Respondent has advised the Tribunal that there were no “audio” recordings relating to the Second RB meeting. (See paragraph 5 of its Response to additional statement).
18. In relation to the First RB Meeting(s) the Respondent does not deny the existence of audio recordings but contends that disclosure is not necessary or appropriate, especially as the Applicant’s formal challenge is not to the decision of the First RB.
19. The Respondent further contends that the report of the First and Second RBs constitutes a sufficient record in any event.

First RB

20. The Tribunal considered that in the circumstances of the present case, which concerns the assessment of a probationer’s performance over the whole period of her probation, the determination of the First RB and the evidence it received were at least potentially relevant to issues properly raised in the Application.
21. The First RB report contains only summary references to what the First RB was told by witnesses, and we consider that it is appropriate that the verbatim record of their accounts to the First RB (as audio recorded) be produced.
22. As directed in our Order, audio recordings of the oral interviews with witnesses who appeared before the First RB should therefore be transcribed and produced as evidence.
23. We did not consider that it would be necessary or appropriate to require production of the audio recordings themselves, but only of a transcript.
24. We did not consider that it would be necessary or appropriate to order production of any audio recording of the First RB’s “panel deliberations”, if indeed they were recorded, or to make any further order for disclosure in relation to the First RB.

Second RB

25. Since there are no audio recordings relating to the Second RB Meeting there can be no disclosure of recordings, or any order for transcription, in relation to that meeting.
26. We noted however that, as clarified in the Reply and Additional Statement the Applicant's request was not confined to "Audio" recordings. On reviewing the pleadings and Annexes we concluded that there is one aspect of the material considered by the Second RB meeting in respect of which further disclosure would be appropriate, if any notes or written records exist: the "clarifications" apparently provided by Ms Ajibowo and Mr Dunne to which paragraph 5 of the Second RB findings refers (Annex XVIII to the Application). We accordingly made a specific order in this respect.

Anonymity

27. The Applicant seeks an appropriate Order "anonymising" the proceedings for the purposes of promulgation of the judgment on the website. She invokes, in general terms, a claim to privacy.
28. It seems to us that this is an application which is more suitably determined at the stage of giving judgment on the substance of the case. At that point the Tribunal will have a clear view as to what material will feature in its judgment and whether there is anything in that material which merits anonymisation or related protective orders.

Clarificatory paragraph in the Order relating to Annex XIII to the Answer

29. The Tribunal also made on its own initiative a direction requiring the Respondent to provide clarification relating to one document on which the Respondent relies and which appears as Annex XIII to the Answer.
30. In issuing this direction the Tribunal is not indicating that particular significance will (or will not) be placed on this document.
31. The purpose of the direction is simply to assist the Tribunal in its understanding of the material.

Given the 24th day of October 2016

Christopher Jeans QC, President

David Goddard QC, member

Professor Epiphany Azinge SAN, member