



**Before:** Judge Joelle Adda  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

DESBOIS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**  
Julia Kyung Min Lee, OSLA

**Counsel for Respondent:**  
Lucienne Pierre, ALD/OHR, UN Secretariat  
Romy Batrouni, ALD/OHR, UN Secretariat

## **Introduction**

1. On 8 April 2019, the Applicant filed an application contesting the Administration’s “finding of misconduct and imposition of disciplinary measure of separation from service, with compensation in lieu of notice, and without termination indemnity”.
2. On 8 May 2019, the Respondent replied that the application is without merit.
3. The case was transferred from the Geneva Registry to the New York Registry on 1 April 2021.

## **Consideration**

### *Agreed and disputed facts*

4. The Applicant submits that the disciplinary decision against the Applicant was unlawful because (a) the Applicant’s due process rights were violated; (b) the facts on which the sanction is based have not been established by clear and convincing evidence; (c) the established facts do not qualify as misconduct; and (d) the sanction is not proportionate to the offence.
5. The Applicant appears not only to challenge the facts upon which the disciplinary was imposed, but also the manner in which the investigation was carried out.
6. The Tribunal recalls the well-settled jurisprudence of the Appeals Tribunal stating that the Dispute Tribunal may not make its own factual findings if the parties have agreed on certain facts (see *Ogorodnikov* 2015-UNAT-549, para. 28). The Tribunal also notes that the very purpose of producing evidence—written or oral—is

to substantiate the specific relevant facts on which the parties disagree. Accordingly, the production of additional evidence is only required in trial if a fact is relevant and disputed (in line herewith, see *Abdellaoui* 2019-UNAT-929, para. 29, and *El-Awar* 2019-UNAT-931, para. 27).

7. The Tribunal will therefore order the parties to produce consolidated lists of agreed and disputed facts to be able to circumscribe the factual issues at stake in this case.

### *Evidence*

8. The Tribunal notes that arts. 16.1 and 2 of the Rules of Procedure provide that “[t]he judge hearing a case may hold oral hearings” and that “[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure”. Therefore, it is for the trier of fact to determine whether a hearing is necessary, which, in a disciplinary case like the present one, it normally will.

9. In light of the above, should any of the parties request the production of further evidence, said party shall specifically identify the relevant documentation/witness and clearly indicate which of the disputed facts such additional evidence is intended to support. In this regard, the Tribunal notes that the Appeals Tribunal has prohibited a so-called “fishing expedition”, whereby one party requests the other party to produce evidence in “the most general terms” (see, for instance, *Rangel* Order No. 256 (2016)). A party requesting certain evidence must therefore be able to provide a certain degree of specificity to her/his request.

10. In light of the above,

IT IS ORDERED THAT:

11. By **4:00 p.m. on Monday, 17 May 2021**, the parties shall file a jointly-signed statement providing, under separate headings, the following information:

a. A consolidated list of the agreed facts. In chronological order, this list shall reference each individual event in one paragraph indicating the relevant date of the event at the beginning of each paragraph;

b. A consolidated list of the disputed facts. In chronological order, the list shall reference each individual event in one paragraph indicating the date of the event at the beginning of the paragraph. If any documentary and/or oral evidence is relied upon to support a disputed fact, the moving party shall reference the appropriate annex in the application or reply, as applicable. At the end of the disputed fact paragraph in square brackets, the party disputing the fact shall set out the reason(s);

12. By **4:00 p.m. on Monday, 17 May 2021**, each party shall submit whether they request to production of any additional evidence, and if so, state:

a. What additional documentation they request to be disclosed, also indicating what fact(s) such evidence is intended to substantiate; and/or

b. The identity of the witness(es), who the party wishes to call, and what disputed fact(s) each of these witnesses would testify about, also setting out the proposed witness's testimony in writing. This written witness statement may also be adopted as the examination-in-chief at a potential hearing if the party leading the witness should wish to do so.

*(Signed)*

Judge Joelle Adda

Dated this 12<sup>th</sup> day of April 2021