



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

ROLLI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**  
Robbie Leighton, OSLA

**Counsel for Respondent:**  
Daniel Trup, WMO

## **Introduction**

1. On 26 July 2021, the Applicant, a former staff member of the World Meteorological Organization (“WMO”) filed a revised application in accordance with Order No. 58 (NY/2021) dated 10 June 2021 in which he contests his summary dismissal from WMO.

2. On 9 August 2021, the Respondent filed the reply in which he contends that the application is without merit.

## **Consideration**

### *The Tribunal’s limited scope of review*

3. In the present case, the Respondent submits that the WMO Secretary-General acted within his discretion when deciding to summarily dismiss the Applicant under former art. 10.1 of the WMO Staff Regulations, which, in its second sentence, provides that the WMO Secretary-General “may summarily dismiss a member of the staff for serious misconduct”.

4. A decision-maker’s discretion is, however, not unfettered. As the Appeals Tribunal stated in its seminal judgment in *Sanwidi* 2010-UNAT-084, at para. 40, “[w]hen judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate”. This means that the Tribunal “can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse”.

5. The Appeals Tribunal further underlined that “it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him” or otherwise “substitute its own

decision for that of the Secretary-General” (see *Sanwidi*, para. 40). In this regard, “the Dispute Tribunal is not conducting a “merit-based review, but a judicial review” explaining that a “[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision” (see *Sanwidi*, para. 42).

6. Among the circumstances to consider when assessing the Administration’s exercise of its discretion, the Appeals Tribunal stated “[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion” (see *Sanwidi*, para. 38).

#### *Scope of the case*

7. The Appeals Tribunal has consistently held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”. When defining the issues of a case, the Appeals Tribunal further held that “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

8. In the application, the Applicant, in essence, contends that his summary dismissal was unlawful, because:

a. The Applicant was not accorded a due process in connection with the contested decision. Regarding the alleged due process obligation and requirements, he refers to the Appeals Tribunal’s jurisprudence in *Abu Osba* 2020-UNAT-1061 (paras. 68-69), as well as in *Liyanarachchige* 2010-UNAT-087 (separate and concurring opinion of Judge Boyko, para. 4), *Flores* 2015-

UNAT-525 (paras. 23-24), *Nyambuza* 2013-UNAT-364 (para. 35), *Borhom* UNDT/2011/067 (paras. 46-47) and *Leal* 2013-UNAT-337 (para. 24);

b. The factual and legal grounds for the contested decision were not properly established as:

- i. The Applicant did actually inform the WMO Secretary-General of his comments concerning the Internal Office of Oversight's report, before he submitted the email of 30 April 2008 to the members of the Audit Committee about them;
- ii. The Applicant committed no serious misconduct in connection with the relevant payments that were undertaken as part of the "Early Retirement & Voluntary Separation Incentive Programmes";
- iii. The Applicant did not provide inaccurate information to the WMO President in February 2018, as otherwise claimed;
- iv. The termination notice did not provide the Applicant with adequate specificity concerning his alleged mistakes in connection with some case accounts that the External Auditors had identified;
- v. The justifications provided by the WMO Secretary-General in the contested decision were inconsistent with those he subsequently provided to the Joint Appeal Board. In the latter instance, he also referred to the Applicant's alleged performance deficiencies and some alleged irregularities regarding his department having grown disproportionately, IT expenditure being excessive and an approval of a two-year fixed-term appointment.

9. Accordingly, the Tribunal will review the present case in light of these contentions of the Applicant. Should the Tribunal thereafter find that the contested decision was unlawful, it will determine to what remedies, if any, the Applicant is entitled.

*Case management*

10. As additional evidence, the Applicant requests:

a. An “order for disclosure of each and all documents or communications concerning, relating to or touching upon the decision-making process leading to the decision to summarily dismiss the Applicant”; and

b. An oral hearing, noting that this “may assist in resolving the facts of what occurred but is not a mechanism by which the due process violations might be cured”.

11. In response, the Respondent seeks the Tribunal to deny “the Applicant’s vague request for disclosure” and his “request for an oral hearing in this matter, based on the mass of documentary evidence attesting to the Applicant’s activities”.

12. 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”. It therefore follows that it is for the judge assigned to a case to determine whether a hearing is necessary, including by taking into consideration whether the case concerns a disciplinary measure, which the parties also appear to disagree on.

13. At the same time, 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.

14. Also, the Appeals Tribunal has held that the Dispute Tribunal is not to make its own factual findings if the parties have agreed on certain facts (see, *Ogorodnikov* 2015-UNAT-549, para. 28). In this regard, the Tribunal notes that the very purpose of producing evidence—written or oral—is to establish specific facts on which the parties disagree. Accordingly, there is, in essence, only a need for evidence if a fact is disputed (in line herewith, see *Abdellaoui* 2019-UNAT-929, para. 29, and *El-Awar* 2019-UNAT-931, para. 27).

15. In the present case, both parties have presented lengthy factual chronologies, but based on these, it is, nevertheless, not possible the Tribunal to discern on what facts the parties agree and dispute. The parties are therefore to present chronological lists on agreed and disputed facts. Based on the list of disputed facts, the Applicant is then to identify what additional evidence he requests to be produced both in terms of written documentation and possible witnesses. If the Applicant does not wish to call any witnesses, he is to present his alternative arguments for holding an oral hearing. Is it, for instance, that the Applicant wishes to present his submissions orally to the Tribunal before submitting his written closing statement? Subsequently, the Respondent will be provided with the opportunity to comment on the Applicant's submission.

16. Also, the Tribunal notes that the parties appear to disagree upon the legal foundation on which the contested decision was based. The parties are therefore to present the legal framework which they claim applies in this instance, and in case of disagreement, they shall provide separate submissions thereon. As the Tribunal is not likely in possession of the relevant statutory and/or legal acts, the parties are also to submit them to the Tribunal.

17. In light thereof,

IT IS ORDERED THAT:

18. By **4:00 p.m. on Friday, 8 October 2021**, the parties are to file a jointly-signed statement providing, under separate headings, the following information—and relevant supporting documentation:

- a. A consolidated list of the agreed facts. In chronological order, this list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning;
- b. A consolidated list of the disputed facts. In chronological order, the list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning. If any evidence is relied upon to support a disputed fact, clear reference is to be made to the appropriate annex in the application or reply, as applicable. At the end of the disputed paragraph in square brackets, the party contesting the disputed fact shall set out the reason(s);
- c. A list of the legal provisions upon which the contested decision was based. In case of disagreement, each party is to present his separate submissions thereon.

19. If the parties would be willing to enter into negotiations on resolving the case amicably either through the assistance of the Office of the Ombudsman and Mediation Services or *inter partes*.

20. By **4:00 p.m. on Friday, 8 October 2021**, the Applicant is to file a submission in which he specifies:

- a. The identity of the witnesses, which he wishes to call, and what disputed fact(s) each of these witnesses is to give testimony about. Also, he is to provide a brief statement or summary of the issue and/or disputed fact(s) to

be addressed by each witness, which may, upon the Applicant's request, further serve as the examination-in-chief. If the Applicant does not wish to call any witnesses but maintains his request for an oral hearing, he shall provide reasons for the requested hearing;

b. What additional written documentation he requests the Respondent to disclose, also indicating what disputed fact(s) such documentation is intended to support.

21. By **4:00 p.m. on Wednesday, 13 October 2021**, the Respondent is to file his response to the Applicant's 8 October 2021 submission.

22. After the abovementioned submission has been filed, the Tribunal will consider the further handling of the proceedings.

*(Signed)*

Judge Joelle Adda

Dated this 24<sup>th</sup> day of September 2021