



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Isaac Endeley

SILVA ROIG

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER**  
**ON CASE MANAGEMENT**

---

**Counsel for Applicant:**

Víctor Rodríguez

**Counsel for Respondent:**

Esther Saabel, LPAS/UNOG

## **Introduction**

1. By Order No. 19 (NY/2023) dated 10 March 2023, the Duty Judge instructed the Applicant to file a rejoinder to the Respondent's reply and state whether she wished to adduce any further evidence.

2. The Applicant requested an extension of the deadline and subsequently filed her rejoinder on 28 April 2023, rejecting the version of facts as presented by the Respondent in his reply and reaffirming the version presented in her application. In the rejoinder, the Applicant also argues that during the disciplinary process, "exculpatory evidence presented by the Applicant was simply ignored", that "she was never really heard", and that "the double sanction is clearly out of all proportion".

3. On 29 March 2023, the present case was assigned to the undersigned Judge.

## **Considerations**

4. Having examined the parties' submissions, the Tribunal notes that while there is some convergence between them on a number of factual issues, there are also some significant differences in their respective versions of the facts of this case. In particular, it is not clear to the Tribunal on what facts they actually agree or disagree. In this regard, the Appeals Tribunal has held that where the parties have agreed on certain facts, there is no need for the Dispute Tribunal to make its own factual findings (see *Ogorodnikov* 2015-UNAT-549, para. 28). Accordingly, the Tribunal will order the parties to produce consolidated lists of agreed and disputed facts to assist with the adjudication of this case.

5. Further, the Tribunal observes that in the Applicant's rejoinder, it is asserted that "in the consideration of the charges against her only inculpatory information was considered" and that "exculpatory evidence presented by the Applicant was simply ignored". The Tribunal finds that it needs to understand the case better before deciding whether all relevant materials have been submitted. In that connection, the Tribunal will instruct the parties to indicate whether they intend to

adduce any further evidence in support of their respective claims. The Tribunal also notes that the very purpose of producing written or oral evidence is to substantiate the specific relevant facts on which the parties disagree. Thus, the need for further evidence arises only if a fact is disputed and relevant (in line herewith, see *Abdellaoui* 2019-UNAT-929, para. 29, and *El-Awar* 2019-UNAT-931, para. 27).

6. Under the jurisprudence of the Appeals Tribunal, in conducting a judicial review of a disciplinary case, the Dispute Tribunal is required to examine i) whether the facts on which the disciplinary measure is based have been established; ii) whether the established facts amount to misconduct; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable (see para. 51 of *Karkara* 2021-UNAT-1172, and similarly in, for instance, *Modey-Ebi* 2021-UNAT-1177, para. 34, *Khamis* 2021-UNAT-1178, para. 80, *Wakid* 2022-UNAT-1194, para. 58, *Nsabimana* 2022-UNAT-1254, para. 62, and *Bamba* 2022-UNAT-1259, para. 37). The Appeals Tribunal has further explained that clear and convincing proof "requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable" (see para. 30 of *Molari* 2011-UNAT-164). In this regard, "the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred" (see para. 32 of *Turkey* 2019-UNAT-955).

7. As the present case is a disciplinary matter, it should be noted that evidence is only relevant in the judicial review of the Applicant's claim regarding whether the facts of the contested decision have lawfully been established. Regarding oral evidence, the Tribunal reminds the parties that pursuant to arts. 16.1 and 16.2 of its Rules of Procedure, it "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 Tribunal to determine whether a hearing is necessary and that in a disciplinary case like the present one, this shall normally be done.

8. Even if the parties agree that no oral evidence needs to be produced, the Tribunal may still request them to indicate whether they find that an oral hearing is necessary and state the purported objective of such a hearing (see, also *Nadasan* 2019-UNAT-918, para. 39, as affirmed in *Ganbold* 2019-UNAT-976, para. 28). This could, for instance, be an opportunity for the parties to present their legal arguments directly to the Tribunal. It should be borne in mind, however, that the parties will still be required to file written closing statements summarizing all their submissions.

9. In light of the above,

IT IS ORDERED THAT:

10. By **4:00 p.m. on 24 August 2023**, the parties are to 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 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 documentary and/or oral 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);

11. By **4:00 p.m. on 31 August 2023**, each party is to submit whether it requests to adduce any additional evidence, and if so, state:

a. What additional documentation it requests to be disclosed, also indicating what fact(s) this is intended to substantiate; and/or

b. The identity of the witness(es) the party wishes to call, and what disputed fact(s) each of these witnesses is to give testimony 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.

12. Upon receipt of the above-referred submissions, the Tribunal will issue the relevant instructions for further case management.

*(Signed)*

Judge Joelle Adda

Dated this 31<sup>st</sup> day of July 2023

Entered in the Register on this 31<sup>st</sup> day of July 2023

*(Signed)*

Isaac Endeley, Registrar, New York