



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2025/020
Order No.: 084 (NY/2025)
Date: 26 September 2025
Original: English

Before: Duty Judge
Registry: New York
Registrar: Isaac Endeley

GUEYE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Martine Lamothe, OSLA
Marcos Zunino, OSLA

Counsel for Respondent:
Wei Zhuang, DAS/ALD/OHR, UN Secretariat
Sergei Gorbylev, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former staff member of the Department of Operational Support (“DOS”) in New York. On 1 July 2025, she filed an application contesting “the decision to impose [on her] the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity” and “the administrative decision to include her name in [the] ClearCheck” database.

2. On 31 July 2025, the Respondent filed his reply in which he contends that the challenge against the inclusion of the Applicant’s name in ClearCheck is not receivable and that the application lacks merit.

3. On 5 September 2025, the Applicant filed a motion for leave to file a rejoinder together with the substantive rejoinder. At the same time, the Applicant also filed a signed power of attorney dated 17 June 2025 granting to her brother the authority to act on her behalf, “for all administrative and financial matters” and “for a period of one (1) year or unless revoked by [the Applicant] in writing”.

Considerations

The Applicant’s motion for leave to file a rejoinder

4. Having reviewed the Applicant’s rejoinder, the Tribunal considers that it is germane to the case. Therefore, the Tribunal will grant the motion and admit the rejoinder into the case file.

5. The Tribunal also takes note of the signed power of attorney filed with the rejoinder. However, it is not clear what purpose that document is meant to serve in the context of the present proceedings where the Applicant is already represented by Counsel from the Office of Staff Legal Assistance (“OSLA”). Therefore, the Tribunal will instruct the Applicant to provide a detailed explanation of the relevance of the power of attorney.

The issues of the present case

6. 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”. The Appeals Tribunal further held that when defining the issues of a case, “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.

7. Accordingly, the basic issues of the present case can be defined as follows:

a. Did the Under-Secretary-General for Management Strategy, Policy and Compliance (“the USG/DMSPC”) lawfully exercise her discretion when deciding (a) to impose the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity, in accordance with staff rule 10.2(a)(viii), and (b) to enter the Applicant’s name in the ClearCheck database?

b. If not, to what remedies, if any, is the Applicant entitled?

Case management

Agreed and disputed facts

8. When reviewing the parties’ submissions on facts, it is not clear to the Tribunal on what facts they actually agree and disagree. In this regard, 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). 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, there is, in essence, only a need for evidence 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).

9. The Tribunal will therefore order the parties to produce consolidated lists of agreed and disputed facts in order for it to better understand the factual issues at stake.

General observations on evidence

10. The Tribunal notes that in disciplinary cases like the present one, art. 9.4 of the Statute of the Dispute Tribunal provides that whereas “the Dispute Tribunal *shall* consider the record assembled by the Secretary-General”, it “*may* admit other evidence” (emphasis added). Also, 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 any evidence must therefore be able to provide a certain degree of specificity to his or her request.

11. As the present case is a disciplinary matter, the Tribunal notes that evidence is only relevant in the judicial review of the Applicant’s claim regarding whether the facts of the contested decisions have lawfully been established—the disciplinary findings on misconduct and proportionality are legal rather than factual determinations.

12. The contested decisions are set out in a letter dated 2 April 2025 from the Assistant Secretary-General for Human Resources (“the ASG/HR”) to the Applicant, conveying the conclusions of the USG/DMSPC. Therein, it is alleged that the Applicant physically assaulted United Nations security personnel in the conduct of their duties by the following acts:

- a. “In the first basement of the [United Nations] General Assembly building, kicking two security officers and punching several security officers, while refusing to comply with their directions to leave the area”; and

b. “After having been taken out of the [United Nations] premises, punching a security officer on the chest when he was handing [the Applicant’s] mobile phone over to [her]”.

Production of additional written or oral evidence

13. Concerning production of additional written evidence, the Tribunal notes that in art. 18.2 of the Dispute Tribunal’s Rules of Procedure, it is stated that the Dispute Tribunal “may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings”.

14. As for possible oral evidence, meaning the examination of witnesses at a hearing, the Tribunal refers to arts. 16.1 and 16.2 of the Rules of Procedure that 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 to whom a case will be assigned to determine whether a hearing is necessary and that in a disciplinary case like the present one, this shall normally be done.

15. Accordingly, the Tribunal will allow the parties to indicate what, if any, additional written or oral evidence they request to be produced.

16. In light of the above,

IT IS ORDERED THAT:

17. The Applicant’s motion for leave to file a rejoinder is granted and the rejoinder is admitted into the case file.

18. By **3:00 p.m. on Friday, 17 October 2025**, the Applicant is to provide a detailed explanation of the relevance of the filed power of attorney to the present proceedings.

19. By **3:00 p.m. on Friday, 31 October 2025**, the parties are to file a jointly-signed statement providing, under separate headings, the following information:

a. A consolidated list of 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 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);

20. By **3:00 p.m. on Friday, 31 October 2025**, each party is to submit whether she or he requests to adduce any additional evidence, and if so, state:

a. What additional documentation she or he requests to be disclosed, also indicating what disputed fact(s) this is intended to substantiate and referring to the relevant paragraphs in the consolidated list of disputed facts; and/or

b. The identity of the witness(es), who 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 intended testimony in writing and referring to the relevant paragraphs in the consolidated list of disputed facts. This written witness statement may possibly also be adopted as the examination-in-chief at a potential hearing if the party leading the witness should wish to do so.

21. Upon receipt of the above-referenced submissions and when the case has been assigned to a Judge of the Dispute Tribunal, further case management instructions will be issued.

(Signed)

Judge Solomon Areda Waktolla

Dated this 26th day of September 2025

Entered in the Register on this 26th day of September 2025

(Signed)

Isaac Endeley, Registrar, New York