

Introduction

1. On 17 June 2021, the Applicant filed the application in which he contests the

The Tribunal's limited scope of review in disciplinary cases

5. The Appeals Tribunal has consistently held the “[j]udicial review of a disciplinary case requires [the Dispute Tribunal] to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration”. In this context, [the Dispute Tribunal] is “to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct [under the Staff Regulations and Rules], and whether the sanction is proportionate to the offence”. 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”, and when “termination is a possible outcome, misconduct must be established by clear and conviW*nBT/F5 12 Tf1 0 0 1 174.31 698.14 Tm0

7. The Appeals Tribunal, however, 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*

particularly sensitive and could have a very damaging impact on the Applicant's reputation, even if he eventually should win the case. Until the Tribunal renders its final judgment on the merits, wherein this question might be reconsidered as relevant, the Applicant's name is therefore to be anonymized.

Case management

Agreed and disputed facts

12. The Applicant submits that the disciplinary decision against the Applicant was unlawful because (a) the facts on which the sanction is based have not been established; (b) the established facts do not qualify as misconduct under the Staff Regulations and Rules; (c) the sanction is not proportionate to the offence; and (d) due process was not respected throughout the process.

13. When studying the parties' submissions on facts, it is, however, 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 relevant and disputed (in line herewith, see *Abdellaoui* 2019-UNAT-929, para. 29, and *El-Awar* 2019-UNAT-931, para. 27).

14. The Tribunal will therefore order the parties to produce a consolidated list of agreed and disagreed facts to be able to understand the factual issues at stake.

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- a. What additional documentation they request to be disclosed, also indicating what fact(s) this 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 are 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.
23. Upon receipt of the above-referred submissions, the Tribunal will issue the relev