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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/033

Order No.: 056 (NY/2023)

Date: 13 July 2023

Original: English

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**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Isaac Endeley

AGUILAR VALLE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

**ON** **ORDER**

## **Introduction**

1. By Order No. 021 (NY/2023) dated 17 March 2023, the Duty Judge instructed the Applicant to file a rejoinder to the Respondent's reply and state whether he wishes to adduce any further evidence by 13 April 2023.

2. On 6 April 2023, the Applicant filed the rejoinder as per Order No. 021 (NY/2023).

## **Consideration**

### *Receivability*

3. In the Respondent's reply dated 20 July 2022, it is indicated that he contends that the application, in part, is not receivable. He explains that the Applicant "was informed of the decision of the UNDP Office of Audit and Investigations (OAI) not to initiate a formal investigation into his complaint on 12 January 2021", but has not requested management evaluation of this decision in accordance with staff rule 11.2(a).

4. In the Applicant's 6 April 2023 rejoinder, he submits that "the decision being contested is the Applicant's separation from service"

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.

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

a. Was it a lawful exercise of discretion to impose the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity, in accordance with Staff Rule 10.2(a)(viii), against the Applicant?

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

*limited scope of review of disciplinary cases*

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9. 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

## Evidence

13. To start with, the Tribunal notes that neither party has requested production of any additional evidence, either written or oral. If either of the parties wishes to do so, they are to specifically refer to the relevant documentation/witness and clearly indicate what disputed fact the relevant evidence is intended to corroborate. 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.

14. As the present case is a disciplinary case, the Tribunal notes 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—the disciplinary findings on misconduct and proportionality are legal rather than factual determinations.

15. The relevant facts of the contested decision are set out in the sanction letter dated 1 April 2022 as follows:

... Between August and October 2016, [the Applicant] created a hostile work environment for [AA], which resulted in her resignation from [Department of Safety and Security] Bolivia by commenting on her choice of underwear and physical appearance, suggesting that she close her eyes so that [the Applicant] could teach her how to properly kiss/greet, suggesting that [the Applicant] lift her from her waist to reach high shelves, commenting on the prospect of her undertaking training with [the Applicant] alone, and hinting at eating her leg for lunch; and/or;

... [the Applicant] created a hostile work environment for staff members during [his] tenure in Bolivia, including by making denigrating, humiliating and offensive remarks and comments with regards to [BB], [CC] and [DD], showing favouritism to certain staff members and by greeting female staff members with unwelcomed physical contact and salutations, such as “my love”, “my life”, “my princess”, etc.

16. Regarding written documentation, when perusing the case file, the Tribunal finds that it needs to understand the case better before deciding whether all relevant



