
UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. By Order No. 019 (NY/2023) dated 3 May 2023, the Duty Judge ordered the Applicant to file a rejoinder to the wished to adduce any further evidence.
2. On 23 May 2023, the Applicant filed the rejoinder and appended a number of additional documents.
3. On 21 July 2023, the present case was assigned to the undersigned Judge.

Consideration

The issues of the present case

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the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial rev

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6. disciplinary case requires [the Dispute Tribunal] 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 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 *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 c the evidence but less than proof beyond a reasonable doubt it means that the truth *Molari* 2011-UNAT-164).

misconduct for which a disciplinary measure has been taken against a staff member *Turkey* 2019-UNAT-955).

7. Dispute Tribunal to consider the correctness of the choice made by the Secretary- *Sanwidi* 2010-UNAT- -based more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision- *Sanwidi*, para. 42).

8. Among the circumstances list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias,

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capriciousness, arbitrariness and lack of proportionality are some of the grounds on

findings on misconduct and proportionality are legal rather than factual determinations.

13. The factual background of the contested decision is set out in the sanction letter dated 19 July 2022 where it is alleged that the Applicant:

a. [BB] that [AA] was the best option for the position of IC [Individual Contractor] with FTS [Field Technology Service], despite knowledge that [the Applicant] and [AA] were in or had been in a relationship, on the basis of assurances that [he] and [AA] could be objective and professional and because, in any case, since [BB] was leaving the mission, he had informally delegated responsibility for the recruiting process to [the Applicant]

b. [AA] as an IC with FTS, even though [the Applicant]

c. [AA] as a Trygin employee to [CC], while failing to disclose [] relationship with [AA] or her lack of English, and despite the fact that she would remain part of [his] reporting line ;

d. Acted as direct supervisor, while [AA] was working as IC-FTSUNVMC [United Nations Verification Mission in Colombia] and as Trygin employee, despite the fact that [he was] in a relationship [with her] .

14. As a mitigating factor, the USG/DMSPC

aggravating factors, it is stated that the USG/DMSPC considered the following:

a. The Applicant any fault on [his] part regarding the creation and maintenance of a conflict of interest affecting the interests of the Organization;

b. His misconduct compromised the objectivity and integrity of the selection process and damaged the reputation of the Organization in matters relating to selection processes amongst FTS staff members ; and

c. had multiple opportunities to disclose [his] relationship with [AA] to [his] supervisor, [CC], during the prolonged material period of time, and failed to act on them.

15. Regarding written documentation, when perusing the case file, the Tribunal finds that it needs to understand the case better before deciding whether all relevant materials have been submitted. The parties are also instructed to indicate what, if any, further documentation they wish to produce and, if possible, submit the relevant material(s).

16. As for oral evidence, the Tribunal notes that arts. 16.1 and 16.2 of the Rules

[a] hearing shall normally be held following an appeal against an

it is for the assigned judge to a case to determine whether a hearing is necessary and that in a disciplinary case like the present one, this shall normally be done.

17. If no oral evidence needs to be produced, the Tribunal will accordingly request each of the parties to indicate whether they find that an oral hearing is necessary and indicate the purported objective thereof (see, also *Nadasan* 2019-UNAT-918, para. 39, as affirmed in *Ganbold* 2019-UNAT-976, para. 28). This could, for instance, be for the parties to present their legal contentions directly to the assigned Judge, although it is noted that the parties would, in any case, also need to file written closing statements summarizing all their submissions.

Legal representation

18. The Tribunal observes that whereas the Applicant is self-represented in the present case, the Applicant was represented by the Office of Staff Legal Assistance during, at least part of, the disciplinary process.

19. In light of the above,

IT IS ORDERED THAT:

20. By **4:00 p.m. on Friday, 25 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

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

(Signed)

Judge Joelle Adda

Dated this 25th day of July 2023

Entered in the Register on this 25th day of July 2023

(Signed)

Isaac Endeley, Registrar, New York