

Before:

minority concurring opinion made as *obiter dictum*, in *Icha* 2021-UNAT-1077 (paras. 2–4) that:

The
of administrative decisions; the imposition of an onus of proof resting on an affected staff member of establishing irregularity or other unlawfulness once the Organisation has met a very low threshold of regularity; and then that the burden of that proof carried

Organisation is expected to show in its investigation of allegations of serious misconduct against staff members that may result in their summary dismissal from service.

In such situations, the Organisation almost always holds most, if not all, of the information and therefore the evidence relevant to the grounds for its decision. At best, the staff member holds relatively little. The information power imbalance is pronounced. Yet the jurisprudence expects the staff member to make out a case to a high standard against the Organisation that holds unilaterally the relevant information and may naturally be reluct[a]nt to divulge it all. It is little wonder that such cases fail for want of proof. It is difficult, if not impossible, to prove what one may be unaware of.

nformed and detailed consideration needs to be given to whether a more just regime may be one in which adversarialism

ensure that all relevant information is gathered and assessed in a balanced way so that just outcomes can be achieved in cases and the current marked imbalance of power becomes less determinative of the outcome.

7. In view of the above persuasive observations, and recognizing the presumption of regularity that official functions in cases of organizational restructuring are properly performed, and refraining from interfering with any genuine restructuring unless the presumption is successfully rebutted by an applicant (*Nastase* 2023-UNAT-1367, para. 25); in order to do justice to the parties, the legal playing field must be level and balanced.

December 2023, the Respondent is to file a witness statement, and so should the Applicant file his witness statement.

12. By **4:00 p.m. on Tuesday, 12 December 2023**, the parties shall file a joint chronologically paginated trial bundle which shall comprise of pleadings and attachments, witnesses

(Signed)

Judge Rachel Sophie Sikwese

Dated this 21st day of November 2023

Entered in the Register on this 21st day of November 2023

(Signed)

Isaac Endeley, Registrar, New York