





*limited scope of review of disciplinary cases*

5. Under the recently adopted art. 9.4 of the Dispute Tribunal’s Statute, in conducting a judicial review of a disciplinary case, the Dispute Tribunal is required to examine: (a) whether the facts on which the disciplinary measure is based have been established; (b) whether the established facts amount to misconduct; (c) whether the sanction is proportionate to the offence; and (d) whether the staff member’s due process rights were 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 is highly probable. (In line herewith, see the Appeals Tribunal in para. 51 of *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 clear and convincing proof “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable” (see para. 30 of *Molari* 2011-UNAT-164). 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” (see para. 32 of *Turkey* 2019-UNAT-95590003>2600B39

6. 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 Se( )-r595.32 by the Se( )-r595

capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion” (see *Sanwidi*, para. 38).

*Case management*

Agreed and disputed facts

8. When studying 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 *Ogorheld dnikov*

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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.

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

*(Signed)*

Judge Joelle Adda

Dated this 22<sup>nd</sup> day of May 2024

Entered in the Register on this 22<sup>nd</sup> day of May 2024

*(Signed)*

Isaac Endeley, Registrar, New York