



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/32

Order No.: 82 (GVA/2025)

Date: 9 July 2025

Original: English

Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Isaac Endeley, Officer-in-Charge

KUHN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Aly Ahmed, OSLA
Ana Giulia Stella, OSLA

Counsel for Respondent:

Albert Angeles, DAS/ALD/OHR, UN Secretariat
Ui-young Suh, DAS/ALD/OHR, UN Secretariat

Introduction

1. On 27 July 2024, the Applicant, an Internal Auditor at the Internal Audit Division in the Office of Internal Oversight Services, filed an application in which she contests the “disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity”.
2. On 30 August 2024, the Respondent filed his reply in which he submits that the application is without merit.
3. By notification dated 4 November 2024, the Duty Judge ordered (a) the Applicant to file a rejoinder by 19 November 2024 and (b) the parties to explore amicable settlement of the present case and revert to the Tribunal on their efforts by 26 November 2024.
4. On 19 November 2024, the Applicant filed his rejoinder.
5. On 21 November 2024, the parties informed the Tribunal that they were unable to reach an informal agreement on the case.
6. On 27 June 2025, the case was assigned to the undersigned Judge.

Consideration

The Tribunal’s limited judicial review of a disciplinary case

7. According to art. 9.4 of the Tribunal’s Statute, in hearing an application challenging an administrative decision imposing a disciplinary measure, the Dispute Tribunal shall pass judgment on the application “by conducting a judicial review”. In so doing, the Dispute Tribunal “shall consider the record assembled by the Secretary-General and may admit other evidence” to assess:
 - a. Whether the facts on which the disciplinary measure was based have been established by evidence and up to the required standard of proof;

- b. Whether the established facts legally amount to misconduct;
- c. Whether the Applicant's due process rights were observed; and
- d. Whether the disciplinary measure imposed was proportionate to the offence.

8. In this regard, the Appeals Tribunal has 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* 2010-UNAT-084, para. 40). The Appeals Tribunal explained that “the Dispute Tribunal is not conducting a ‘merit-based review, but a judicial review’” and 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*, para. 42).

9. Among the circumstances to consider when assessing the Administration’s exercise of its discretion, the Appeals Tribunal stated that “[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, 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).

The scope and issues of the present case

10. When reading the parties’ submissions, the Tribunal notes that the Applicant only contests the proportionality of the imposed disciplinary sanction. She does not challenge (a) the facts established in the contested decision, (b) the findings of misconduct, or (c) whether her due process rights were observed.

11. The Appeals Tribunal has consistently held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision 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.

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

- a. Did the Under-Secretary-General for the Department of Management Strategy, Policy and Compliance exercise her authority in a proportionate manner when imposing the disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity on the Applicant?
- b. If not, to what remedies, if any, is the Applicant entitled?

Closing statements

13. The Tribunal observes that neither of the parties has requested further evidence to be produced and/or a hearing to be held. As the present case solely turns on the issue of proportionality, the Tribunal also finds that the case is fully informed but will allow the parties to summarize their submissions in closing statements before proceeding to adjudicate the matters before it.

Conclusion

14. In view of the foregoing, it is ORDERED THAT the parties shall file their respective closing submissions by **Wednesday, 16 July 2025**, which is to be five (5) pages maximum, using font Times New Roman, font size 12 and 1.5 line

Case No. UNDT/GVA/2024/32

Order No. 82 (GVA/2025)

spacing. The closing statements are solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage.

(Signed)

Judge Sun Xiangzhuang

Dated this 9th day of July 2025

Entered in the Register on this 9th day of July 2025

(Signed)

Isaac Endeley, for Liliana López Bello, Registrar, Geneva