



## Introduction

1.

were eventually imposed on the Applicant. It contains additional information and evidence in support of the charges retained against the Applicant.

6. While the Respondent claims that the disclosure of the document to the Applicant is not necessary for the fair and expeditious disposal of the case, the Tribunal finds on the contrary that it is necessary to do justice to the Applicant to share this memorandum with him and to give him sufficient time to comment thereon.

7. In addition, the Tribunal fails to see how its disclosure could negatively impact future advice provided to senior officials or hinder Counsel for the Respondent from providing a full and frank review of disciplinary cases.

8. One of the main issues raised by this case is whether the sanctions imposed on the Applicant are proportionate to the alleged misconduct. In Sanwidi 2010-UNAT-084, the Appeals Tribunal stated (emphasis added):

42. In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate ... During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision.

9. The Tribunal finds that the memorandum in question is relevant to the Applicant's case and for the Tribunal to determine how the Respondent reached the impugned decision. It shall therefore be shared with the Applicant.

10.

12. The Registry will transmit to the Applicant a copy of the aforementioned memorandum.

13. The time limit for the Applicant to file and serve observations, if any, on the Respondent's submission of 21 October 2011 and on the aforementioned memorandum is extended until Wednesday, 2 November 2011.

(Signed)

Judge Thomas Laker

Dated this 25<sup>th</sup> day of October 2011

Entered in the Register on this 25<sup>th</sup> day of October 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry