

UNITED NATIONS DISPUTE TRIBUNAL



## **Introduction**

1. On 12 February 2020, the Applicant filed the application in which he contests “the Administration’s finding of misconduct against him and the decision to impose the disciplinary measure of separation from service, with compensation in lieu of notice, and with termination indemnity”.

2. On 10 March 2020, the Respondent duly filed the reply in which he submits that the application is without merit.

## **Consideration**

### *The issues of the present case*

3. The Appeals Tribunal has consistently held that “the Dispute Tribunal has the inherent powe

*The Tribunal's limited scope of review in disciplinary cases*

5. The Appeals Tribunal has consistently held the “[j]udicial review of a disciplinary case requires [the Dispute Tribunal] to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration”. In this context, [the Dispute Tribunal] is “to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct [under the Staff Regulations and Rules], and whether the sanction is proportionate to the offence”. 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”, and when “termination is a possible outcome, misconduct must be established by clear and convincing evidence”. 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, for instance, para 32 of *Turkey* 2019-UNAT-955, quoting *Miyzed* 2015-UNAT-550, para. 18, citing *Applicant* 2013-UNAT-302, para. 29, which in turn quoted *Molari* 2011-UNAT-164, and affirmed in *Ladu* 2019-UNAT-956, para. 15, which was further affirmed in *Nyawa* 2020-UNAT-1024.

6. The Appeals Tribunal has generally held that the Administration enjoys a “broad discretion in disciplinary matters; a discretion with which [the Appeals Tribunal]





assigned Judge, although it is noted that the parties would, in any case, also need to file written closing statements summarizing all their submissions.

15. If any of the parties wishes that further evidence be produced, they are to specifically refer to the relevant documentation/witness and clearly indicate what disputed fact the

