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16.! After requesting a decision review, the Appellant filed an application with the UNRWA Dispute Tribunal on 29 July 2018.

17.! In Judgment No. UNRWA/DT/2019/074, the UNWRA Dispute Tribunal denied the Appellant's request for an oral hearing and dismissed the application on the record. It determined that (1) the facts on which the separation from service with termination indemnity was based had been established by clear and convincing evidence upon the record; (2) the facts legally supported the conclusion of misconduct; (3) the disciplinary measure was proportionate to the offence; and (4) the Agency's discretionary authority was not tainted by evidence of procedural irregularity, prejudice or other extraneous factors, or error of law.

18.! On 29 January 2020, the Appellant appealed the above UNRWA DT Judgment to the United Nations Appeals Tribunal ("Appeals Tribunal"). The Commissioner-General of UNRWA filed an answer to the appeal on 8 April 2020.

### Submissions

#### Appellant's Appeal

19.! The Appellant submits that he did not hit the students and says the UNRWA Dispute Tribunal erred when it stated that he had admitted this in the investigation. He alleges that the Agency and the UNRWA Dispute Tribunal put in a "false and incorrect" investigation.

20.! The Appellant alleges that the other teachers in the school were the perpetrators or wanted him dismissed.

21.! The Appellant objects to the UNRWA Dispute Tribunal's denial of his request for an oral hearing "in the presence of" the complainant students and his lawyer. The Appellant also requests an oral hearing for this purpose before the Appeals Tribunal.

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*Did the UNWRA Dispute Tribunal err in law, fact*

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Review of the UNWRA DT Judgment for



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discomfort, or humiliation ... includ[ing] other cruel or degrading forms of punishment". It also strictly pr

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Dispute Tribunal is not allowed to investigate facts on which the disciplinary sanction has not been based and may not substitute its own judgment for that of the Secretary-General. It will only examine whether there is sufficient evidence for the facts on which the disciplinary sanction was based.

42.! Before *Mbaigolmem*,<sup>8</sup> it was not disputed that the Dispute Tribunal had authority to rehear the witnesses of the disciplinary proceedings to assess whether there was sufficient evidence to conclude that misconduct occurred, and the Dispute Tribunal has done that several times. However, the Appeals Tribunal clarified in *Nadasan* that clear and convincing evidence can be established without an oral hearing in certain circumstances and this is in the discretion of the Dispute Tribunal.

43.! In the present case, the UNRWA DT indicated that it considered this was a case “where the record before the Tribunal arising from the investigation [was] sufficient for the Tribunal to render a decision without the need for an oral hearing”.<sup>9</sup> Without an oral hearing, the determination was based entirely on the documentary evidence and written submissions before the UNRWA DT. The record outlined instances of the Appellant using a wooden stick on one of the complainants, throwing another down on the ground and treading on the belly of a complainant, kicking another, all corroborated by witness testimony.

44.! Article 11(1) of the UNRWA Dispute Tribunal's Rul Tj 583.92 cm BT -0.001318 5831(e .001Pto) 1r

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52.! In paragraphs 34-39 of its Judgment, the UNRWA DT considered the Appellant's submissions of the unfairness of the DUO/J's decision and his denial that he had inflicted corporal punishment on any student. However, this was weighed against the accounts of the complainants and the corroboration of the allegations provided during the investigation, particularly the supporting evidence of thirteen witnesses.

53.! The Appellant has variously argued that the complaints were based on "inaccurate and unconfirmed information" and the Head Principal and/or the Director and/or the UNRWA DT had been personally unfair to him. However, he has provided no support for these allegations or explained how the information relied upon was inaccurate or false. His arguments have varied through the process. His response has been inconsistent. For example, in his response to the investigation report, he denied using corporal punishment but then suggested that he "may have practiced some wrong practices" and requested another opportunity to improve his behaviour if he did deserve punishment. In his application to the UNRWA DT, he argue

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60.! We find that the Commissioner-General's determination that the Appellant's behaviour amounted to serious misconduct subject to termination was a reasonable exercise of his discretion. It is established that due deference be given to the Secretary-General (or in this instance, the Commissioner-General) to hold staff members to the highest standards of integrity and the standard of conduct preferred by the Agency in the exercise of its rule-making discretion. The Agency is better placed to understand the nature of the work, the circumstances of the work environment and what rules are warranted by its operational requirements.<sup>14</sup>

61.! The principle of proportionality of disciplinary measures was set out in *Sanwidi*:<sup>15!</sup>

[REDACTED]







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Judgment

71.! The appeal is dismissed and Judgment No. UNRWA/DT/2019/074 is hereby affirmed.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2020.

*(Signed)*

Judge Sandhu, Presiding  
Vancouver, Canada

*(Signed)*

Judge Murphy  
Cape Town, South Africa

*(Signed)*

Judge Neven  
Brussels, Belgium

Entered in the Register on this 17<sup>th</sup> day of December 2020 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar