
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2015/005

Judgment No.: UNDT/2015/083

Date: 10 September 2015

Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

TAVORA-JAINCHILL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

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approached the Executive Committee of the Staff Council to request that this matter be addressed as a potential Secretariat-wide policy in the forum for staff-management consultation at Headquarters, [the JNC

... On 3 November 2014, the Applicant addressed a request to the Under-Secretary-General for Management pursuant to ST/SGB/2007/9 [(Joint Negotiation Committee at Headquarters)] for a meeting of the JNC to discuss the implementation of the policy

On 14 November 2014, [the Assistant Secretary-General responded to the request of the Executive Committee for a meeting of the JNC by refusing to meet on the pretext that it would constitute an interference in the internal impasse of the Staff Council over staff representation

Since that time, the staff representatives of the [United Nations] Joint Staff Pension Fund made a similar request through [UNSU] to have a matter raised in the JNC and recently a request to discuss the Proposed Programme Budget for 2016-2017 was also rejected No meeting of the JNC has been called to date.

On 16 January 2015, a proposal was discussed for submitting a report to the General Assembly in March 2015 recommending the institution of a Flexible Workplace policy in the [United Nations] Secretariat and FF buildings in New York, and requesting the [General approval There was no prior or subsequent consultation on this unilateral action affecting the conditions of service of all staff at Headquarters.

On 31 January 2015, the Applicant addressed an email communication to staff correcting misinformation in the proposal

5. On 25 November 2014, the Applicant requested a management evaluation of e decision rejecting [her] request of a meeting or [the JNC]

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on receivability

13.

a.

14 November 2014 is incorrect. On the contrary, the documents before the Dispute Tribunal establish that the Applicant knew that a decision had been taken on 8 July 2014, and that she failed to submit a request for management evaluation within the 60-day time limit;

b. The United Nations Appeals Tribunal has confirmed that the date of an administrative decision is based on objective elements that both parties (Administration and the staff member) can accurately determine (*Collas* 2014-UNAT-473). *Asariotis* UNDT/2013/144, relied upon by the Applicant in her submissions, is not binding on the Dispute Tribunal. Contrary to the

be in writing in order for the time limit to request management evaluation to start to run. A decision may be implied by the circumstances or information known to the applicant (*Belkhabbaz*

a JNC meeting. Her email demonstrates that she was aware of the decision. Further, she unequivocally stated in her email that this action constituted a breach of ST/SGB/2007/9. As such, the Applicant was notified of the decision not to convene a JNC meeting by 8 July 2014. The Applicant failed to request a management evaluation of the decision within 60 days of

Further, the provisions relating to staff relations in the Staff Regulations and Rules are not identical to those of other international organizations;

h.

the Statute;

k. The Dispute Tribunal has repeatedly stated that it has no jurisdiction in matters concerning the internal affairs of UNSU, including the conduct of elections and the determination of its new leadership (*Hassanin* UNDT/2014/006

ensure the effective participation of the staff in identifying, examining and resolving issues relating to staff welfare

c. Staff regulations 8.1(b) and 8.2 describe the modalities for implementing staff regulation 8.1(a) on an Organization and Secretariat-wide basis. The JNC at Headquarters has been established for the purpose of facilitating those discussions. These staff regulations, the corresponding staff rules and pertinent administrative issuances form an integral part of every staff member's contract of employment. Every staff member has a contractual right to see that these terms are carried out in accordance with the requirements of good faith and fair dealing;

d. The Respondent's arguments on receivability are primarily based on the premise that the Tribunal has no jurisdiction over internal UNSU matters. This argument is misplaced. The Applicant is not seeking a judicial determination of internal UNSU matters, including the results of a disputed election, but rather is seeking to assert her own right to avail herself of the contractual guarantees she has been given by virtue of her individual status as well as by virtue of the office she holds;

e. The Applicant's right to carry out the role of UNSU President as part of the 44th Staff Council is not in dispute. The Applicant herself has not disputed the results of the past contested elections for the 45th Staff Council. The 44th Staff Council has called into question the conduct and results of the disputed election in 2014 and the outcome has not yet been determined. What is undisputed, however, is that no election result has been recognized by the Secretary-General;

f. The Respondent mistakenly referred to recent decisions by an Arbitration Committee posted on the UNSU w

the Arbitration Committee elected under the 44th Staff Council no longer exists, its members having resigned office. The logical next step would be to allow the polling officers of the 44th Staff Council to elect new members. That step, however, has been blocked by the Administration, which has refused them the documentation and faculties to conduct such an election;

g. No decisions of any arbitration committee have been posted on the UNSU website since the disputed election took place in early 2014. No election results have subsequently been recognized or certified by the Secretary-General;

h. The Respondent suggests that the Secretary-General has no role in resolving the present impasse over Staff Union elections. This does not relieve him of the obligation to continue to engage on issues of staff welfare until a new leadership is recognised;

i. The Applicant's right to facilities derives not from any contested election but rather by virtue of her continuing office of President of the 44th Staff Council. Pending the resolution of the disputed election, the Staff Regulations and Rules require the Secretary-General to maintain constant contact with the staff through their elected staff representatives. No one is contesting the Applicant's office as President of the 44th Staff Council. No other leadership or Council has been recognized or inaugurated. Until that happens, she remains the legitimate spokesperson and is thus entitled to all the facilities and access guaranteed to her office;

j. The Respondent also argues that staff representatives have no standing before the Dispute Tribunal. This is a misstatement of the intention of the General Assembly, which merely declined to give staff associations standing to bring claims as parties on behalf of their constituents. That is quite different from individuals who are asserting claims in their individual and

official capacity (see *Terragnolo* UNDT/2014/005 as well as ILOAT Judgment No. 2919);

k. The Respondent has not explained how the decision to exclude staff associations as parties before the Tribunals entails denying access to individuals who seek to enforce their contractual rights set forth in Chapter VIII of the Staff Regulations and Staff Rules;

l. The Respondent confuses the rights of staff associations with the rights of individual staff members. As the Tribunal held in *Hassanin* Order No. 83 (NY/2011), [t]he benefits of a recognized organizational right

requesting that her right to be recognized and to carry out her functions be consistently respected.

Consideration

Applicable law

15. The Statute and Regulations of UNSU, adopted on 14 December 2007, provides as follows of relevance to the present case:

Part I Statute

5. Leadership

The President, 1st Vice-President and 2nd Vice-President shall run for election in a single ticket and shall be elected by the staff-at-large.

8.

18. Regulations

18.1 The Regulations of the Union shall deal with:

- (a) Membership;
- (b) Leadership;
- (c) Executive Board;
- (d) Council;
- (e) Representatives;
- (f) General Meeting;
- (g) Referendum;
- (h) Standing Committees;
- (i) Finance;
- (j) Elections;
- (k) Responsibilities.

Part II Regulations

4. The Council

Preamble

The Council is:

4.1 The legislative assembly of the Union.

4.2 Responsible and accountable to the General Meeting for all its activities.

Composition

4.3 Comprised of staff representatives and alternaten-US

8.2 Terms of Reference

8.2.3 The Arbitration Committee shall receive, consider and rule upon matters related to violations of the Statute and Regulations.

8.2.5 The Arbitration Committee may impose the following sanctions:

- (a) A verbal warning, which may take the form of an informal or formal discussion of the problem;
- (b) A written warning, which will take the form of a letter from the Arbitration Committee;
- (e) Suspension of Executive Board and/or Council voting rights;
- (d) Recommendation for recall.

8.2.6 The Chair of the Arbitration Committee must in all cases inform the individual being sanctioned of his/her right to request a final review by the Committee.

8.3 Procedure for submitting a complaint

8.3.1 Should any member of the Staff Union be of the view that an act of the Staff Council, Executive Board or any of its officers is in
laint
should be submitted to the Arbitration Committee in accordance with the procedures set out in Regulation 8.3.2 below within three months of such an act having been known or publicized.

8.3.2 Any complaint by a staff member must be submitted to the Arbitration Committee in writing and list the Articles of the Staff Union Statute and Regulations that have been allegedly violated by an act of the Staff Council, Executive Board or any of its members.

10. Responsibilities of Officers

10.1 The **President**, as the principal executive officer of the Union, shall:

- (a) Lead, manage and represent the Union;
- (b) Plan and oversee, either personally or through delegation of authority to other individuals or committees, the implementation of the policies and decisions of the Union, including financial governance, as established under the Statute and Regulations, all programs and activities necessary for the advancement and welfare of the Union, its membership and affiliated bodies;

- (c) Be responsible for all correspondence elaborating policy matters;
- (d) Submit a written report on affairs of the Union at each General Meeting;

the first in a series, deals with decentralization of the consultation procedure and the role of unit representatives of the Staff Council in it.

2. Under staff regulation 8.1, the Staff Council is established as the staff representative body with which the Secretary-General shall consult on questions relating to staff welfare and administration. In the consultative process, members representing the Staff Council meet regularly with members representing the Secretary-General regarding personnel policies and general questions of staff welfare. In line with the policy of expanded delegation of authority in the administration of staff as announced in the Secretary-General's Bulletin ST/SGB/151 and in recognition of the effective and responsible role that the unit representatives of the Staff Council should play in the decision-making process affecting the conditions of service at the local level, the staff-management consultation procedure will be decentralized so that issues of particular concern to the staff of an organizational unit may be resolved expeditiously at the departmental level, without necessarily being referred to the Joint Advisory Committee.

18. ST/SGB/2007/9 (Joint Negotiation Committee at Headquarters), issued on 15 June 2007, provides, of relevance, that:

Section 1

General

1.1 The Joint Negotiation Committee at Headquarters, hereinafter referred to as

shall provide for any other business of an urgent nature to be discussed. Emergency or informal meetings may be called by either side, as required.

3.3 Subject to prior notification, an alternate may be designated as necessary to attend a specific meeting in the absence of a full member. The alternate should normally be:

(a) In the case of the staff, another member of the Staff Committee, in order of rank;

(b) In the case of the administration, the deputy or officer-in-charge of the department or office concerned.

3.4 Both parties shall be entitled to have advisers in attendance at meetings of the Committee, who shall have the right to speak. Each side shall give a minimum of seven days notice to the other side of its intention to invite such advisers to the meeting, except in cases of emergency or informal meetings, in which case notice shall be given when calling for the meeting.

3.5 The parties shall alternately preside at the meetings of the Committee.

3.6 The Committee shall nominate a staff member as a candidate for the position of Secretary of the Committee and forward the nomination to the Secretary-General for designation, pursuant to staff rule 108.2 (e). The Secretary of the Committee shall be responsible for convening meetings, preparing agenda in consultation with both sides and preparing and circulating minutes. Minutes shall be subject to the agreement of the Committee and will be signed by the Chairperson of the meeting at which they are agreed.

Section 6

Final provisions

6.1 The present bulletin shall enter into force on 18 June 2007.

6.2 Secretary-General
Advisory

19. Chapter VIII (Staff relations) of the Staff Regulations and Rules (ST/SGB/2014/1) states, in relevant parts, that:

Regulation 8.1

(a) The Secretary-General shall establish and maintain continuous contact and communication with the staff in order to ensure the effective participation of the staff in identifying, examining and

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(c) Instructions or directives embodying recommendations made by the bodies referred to in paragraph (a) above shall be regarded as having satisfied the requirements of staff rule 8.1 (f) and (h).

(d) The joint staff-management bodies referred to in paragraph (a) above shall establish their own rules and procedures.

(e) The Secretary-General shall designate secretaries of the joint staff-management bodies referred to in paragraph (a) above and shall arrange for such services as may be necessary for their proper functioning.

20. The Dispute Tribunal Statute, art. 2.1(a), states that:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of

all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance.

Receivability *ratione materiae*

21. According to sec. 10.1 of the

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Conclusion

32. In the light of the foregoing, the Tribunal DECIDES:

33. The application is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 10th day of September 2015

Entered in the Register on this 10th day of September 2015

(Signed)

Hafida Lahiouel, Registrar, New York