

Introduction

1. On 4 June 2015, the Applicant, a Benefits Assistant at the GS-5 level, at the United Nations Joint Staff Pension Fund (“UNJSPF”) in New York, filed an application on the merits, under art. 2.1 of the Dispute Tribunal’s Statute, contesting the decision of 2 June 2015 made by the Chief Executive Director (“CEO”) of the UNJSPF to submit to the UNJSPF Board Budget Committee (“Board”) the UNJSPF’s budget estimates for the biennium 2016-2017, without consulting the Applicant in his capacity as staff representative, thus affecting the Applicant’s terms of appointment.

2. On the same day, the Applicant filed a motion for interim measures pending the substantive proceedings, pursuant to art. 10.2 of the Dispute Tribunal’s Statute, seeking an order to “the Administration (UNJSPF CEO/Secretary of the Board) to withdraw the 2016-2017 Fund budget estimate dated 02 June 2015 from the [UNJSPF] web portal until the required consultation on the budget has taken place” (emphasis in original). The Applicant further seeks an order to “the [UNJSPF Board] to refrain from reviewing and making any decision on the 2016-2017 budget estimates dated 02 June 2015 under the record JSPB/62/R.16 submitted by the UNJSPF CEO until formal consultation with the Applicant has taken place”.

3. The Registry transmitted the motion to the Respondent on the same day. The Respondent filed its response on 8 June 2015 and submits that the motion should be rejected as not receivable and without merits.

4. On 8 June 2015, the Applicant submitted his comments to the Respondent’s response to the motion for interim measures.

Factual background

5. The facts presented by the Applicant are as follows (emphasis in original):

1. The United Nations Assistant Secretary-General for OHRM reminded all heads of departments in the context of their respective Proposed Budgets for 2016-2017, to consult with the staff representatives as provided for in *ST/SGB/172* and *ST/SGB/274*.

2. For the past three months, the UNJSPF Staff Representatives have requested the proposed draft budget for the Fund without success. ... The requests were made in the following sequences:

- UNJSPF Alternate Staff Representative email to UNJSPF Executive Officer dated 10 February 2015.

- UNJSPF Executive Officer's message to Deputy CEO dated 2 February 2015.

- UNJSPF Alternate Staff Representative follow up request to Deputy CEO dated 24 March 2015.

- UNJSPF Alternate Staff Representative follow up email to Executive Officer dated 28 April 2015.

- UNJSPF Alternate Staff Representative follow up email to Budget Officer dated 7 May 2015.

- UNJSPF Alternate Staff Representative follow up email to Deputy CEO Executive Officer dated 8 May 2015.

3. On 26 May 2015, the Applicant filed a Management Evaluation Request with the [Management Evaluation Unit ("MEU")] for having been denied his rights of consultation as a staff member and as a staff representative in accordance with Staff Regulations 8.1 8.2 and *STS/GB/172* and *ST/SGB/274*.

4. On 02 June 2015, [the MEU] submitted a reply to the Applicant's [management evaluation request] via email 'Closing Letter - Case of Mr. Ibrahima Faye (MEU/260-15R) ...

The MEU contends in its reply that *'After consulting with the UNJSPF, the MEU ascertained that no decision has been taken by the Fund Management to forego consultation with staff representatives regarding the 2016-2017 budget proposals. Rather, UNJSPF advised that staff representatives were advised most recently on 13 May 2015, that consultations would be held in due course. Although staff were recently invited to a town-hall meeting on the subject, UNJSPF Management is in fact still in the process of finalizing its internal consultations prior to scheduling the necessary consultations with staff representatives. As no administrative decision has been taken regarding your request, the MEU concluded that your request for management evaluation is premature. In the light of the above, we will proceed to close your case.'*

5. On 02 June 2015, the Applicant, was informed and then provided with a copy of the said budget document by various sources, confirmation that the CEO of the UNJSPF, Secretary of the Board has submitted to the Governing Body of the Fund, through the Board Budget Committee members, for consideration of the budget estimates for the biennium 2016-2017.

The same day, the budget document JSPB/62/R.16 dated 02 June 2015 has been uploaded to the UNJSPF Website portal for access by the Pension Board members.

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submission to the Governing Body of the Fund for further submission to the General Assembly.

2- The Applicant's views have not been taken into consideration (*UNDT/2012/118*) Adundo et al. Order No. 126 (NYI2013). While the MEU in its reply to the Applicant's request for Management Evaluation is of the view that ... UNJSPF Management is in fact still in the process of finalizing its internal consultations prior to scheduling the necessary consultations with staff representatives... [t]he holding of consultation after the budget document is submitted to the fund Governing Body does not amount to meaningful consultation in good faith.

9. The Respondent submits that the requirements of arts. 2.1(a) and 8.1(c) of the Tribunal's Statute are not met and the Dispute Tribunal is not competent to rule on the application on the merits or on the motion for interim measures on the grounds that:

a. The Applicant failed to request management evaluation of one of the contested decisions, namely the CEO's decision to submit the budget estimates;

b. No administrative decision has been taken to forego consultations which are still ongoing;

c. It is well established in the jurisprudence of the Dispute Tribunal that it does not have jurisdiction *ratione personae* in relation to applications filed by staff representatives or on behalf of staff unions;

d. The Applicant does not have standing to contest the submission of the biennium in his capacity as an individual staff member since the submission has no direct legal consequences on the Applicant's terms of appointment (reference is made to *Lee* 2014-UNAT-481).

10. Further, the Respondent relies on *Terragnolo* 2015-UNAT-517 to submit that the Dispute Tribunal has no competence with respect to the CEO of the Fund under art. 2.1 of the Statute and cannot issue orders that require him or her to take any

Consideration

Applicable law

13. Article 10.2 of the Tribunal's Statute states:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

14. Article 14.1 (Suspension of action during the proceedings) of the Dispute Tribunal's Rules of Procedure states that:

At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination

15. The Tribunal considers that an order on interim measures may be granted at the request of the parties when the following cumulat

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the Tribunal will not solely provide a temporarily relief as mandatory required by art. 10.2 of the Dispute Tribunal's Statute and art. 14.1 of its Rules of Procedure.

Conclusion

22. Since the Dispute Tribunal may only order, pursuant to art. 10.2 of its Statute, an interim measure to provide *temporary relief* and that the relief requested, if granted, would not be temporary by nature, one of the cumulative conditions to grant a motion for interim relief is not fulfilled. Consequently, the Tribunal need not consider whether the remaining requirements, namely *prima facie* unlawfulness, urgency and irreparable damage, are met.

In light of the foregoing, the Tribunal

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23. The application for interim measures is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 11th day of June 2015