



## **Introduction**

1. The Applicant contests the Secretary-General's lack of response to his request for access to the United Nations' internal website ("iSeek") for the purpose of addressing comments contained in a letter that was posted on iSeek by the then President of the United Nations Staff Union ("President").

## **Facts**

2. On 27 May 2010, "[a] Letter from the President of the United Nations Staff Union No. 5" ("the Letter") was published on iSeek.

3. On 3 June 2010, the Applicant wrote a letter to the Secretary-General whereby he requested that the Letter be removed from iSeek and that he be provided "access to respond to [the President's] letter in the same manner as it was posted".

4. On 8 June 2010, the then Director, Outreach Division, Department of Public Information, who also acted as the Chair of the Editorial Board of iSeek advised the Applicant and the President of the Staff Union that the Letter had been removed from iSeek due to the fact that it did not comply with its publishing guidelines.

5. On 13 July 2010, having received no response to his 3 June 2010 request for "access" to iSeek for the purpose of being able to respond to the Letter, the Applicant wrote a follow-up letter to the Secretary-General.

6. On 2 August 2010, the Applicant requested a management evaluation of the decision to publish the Letter. The Applicant also requested to be able to respond to its content directly on iSeek.

7. On 3 September 2010, a note was published on iSeek by the iSeek Supervisor, in the same manner and format as the Letter, explaining why the 27 May 2010 letter had been removed, namely that "some of the content was found not to be in conformity with the iSeek Guidelines".

8.

resulting in a breach of several rights of United Nations staff members, as well as basic principles of the rule of law;

c. The United Nations has not provided a reasonable and timely remedy

his contractual rights were breached as a result of the publication of the Letter;

b. The Letter was published on a Staff Union bulletin that was created for the purpose of sharing information with all staff members. “The establishment of this bulletin on iSeek does not constitute an individual administrative decision taken in a distinct individual case, creating direct legal consequences to the legal order”;

c. The distribution of the Letter is not an administrative decision as the Administration was not involved and took no decision with regard to the Letter’s content and publication;

d. The Applicant’s claim that the Secretary-General breached his rights by not responding to his request to submit a response to the Letter is not receivable as the Applicant did not exhaust the available administrative procedures. Namely, the Applicant did not attempt to submit a letter or article to the iSeek Editorial Board prior to stating that he was denied the right to submit a response;

e. Consistent with the principle of freedom of association, the Administration did not conduct an editorial or factual review of the Letter which had been submitted for distribution by an authorized officer of the Staff Union. “As the Administration’s review revealed no material that was *prima facie* a violation of the iSeek guidelines the letter was distributed on iSeek”;

f. Upon being informed of the Applicant’s concerns regarding the content of the Letter, the iSeek Editorial Board reviewed the Letter and

g. No staff member has an automatic right to publish an article on iSeek. Rather there is a procedure in place under which anyone may submit a letter or article for publication. Consequently, the Tribunal cannot order that a letter be published without prior review or that monetary compensation be awarded in lieu of specific performance;

h. The Applicant has not shown that any of his rights were violated. Similarly, the Applicant's claim regarding the MEU delays in responding to his request are without merit.

### **Consideration**

#### *Removal of the Letter from iSeek*

14. The iSeek editorial guidelines provide that should any staff member wish to request "the editing and/or removal of content already posted [the request] shall be considered by the iSeek team and, if necessary, by the Editorial Board. If a story is removed in its entirety, it will be replac

decision the applications before the Tribunal were not receivable as none of the rights and terms of appointment of the staff members concerned were being breached at the time the application was filed, nor had they incurred any identifiable damages.

17. In reviewing the applicable timeline, the Administration acted swiftly to address the Applicant's concerns with regard to the content of the Letter by having it removed from iSeek within three business days of being notified of any potential conflict.

18. Consequently, and while the Tribunal notes that a three month delay did occur between the removal of the Letter and the posting of an explanatory note regarding the said removal, the timely rescission of the publication of the Letter negated any potential harm or breach of the Applicant's rights that may have occurred in the present case.

*Publication of a response*

19. The Appeals Tribunal held in *Tabari* 2010-UNAT-030 and *Nwuke* 2010-UNAT-099, that not taking a decision, for example by not responding to a request for investigation or a complaint, also constitutes an administrative decision capable of being contested.

20. By taking specific steps to address the content of the Applicant's letters to the Secretary-General, the Administration took a decision which resulted in the removal of the Letter from iSeek. However, while the Administration had the letter re-reviewed against the iSeek guidelines, it did not address the Applicant's request for unfettered access to iSeek for the purpose of publishing a rebuttal to the Letter. Consequently, the Administration took the implicit decision of not providing the Applicant with his requested remedy to the publication of the Letter.

21. In considering whether the Applicant's rights were breach by the latter decision, the Tribunal notes that at no point in time did the Applicant avail himself of his right to submit an article to the iSeek team for the purpose of having it posted on

iSeek in response to the Letter. Furthermore, aside from the fact that the Tribunal considers that in view of the timely rescission of the decision to post the Letter on iSeek none of the Applicant's rights were breached, it is not within its statutory powers to order the remedy requested by the Applicant.

22. For the Tribunal to grant the Applicant unfettered access to iSeek for the purpose of publishing a rebuttal letter without having it reviewed by the iSeek team to make sure that it conforms with its publishing guidelines would be akin to the Tribunal ordering a potential breach of the iSeek guidelines. Consequently, the only remedy available to the Applicant is to submit a letter directly to the iSeek team using the publication procedures currently in place, a remedy which does not need to be ordered by the Tribunal. The Applicant is also therefore not entitled to receive any compensation.

*MEU deadlines*

23. The Applicant states in his submission that by not responding to his request for management evaluation within 30 days the MEU "missed their deadline to



