



UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant contests the decision of the Under-Secretary-General for Management (“USG/DM”) “not to grant [him] full-time release from his assigned duties as a Population Affairs Officer during his term as United Nations Staff Union [(“UNSU”)] President starting on 2 January 2014”, and “the Administration’s actions and abuse of power consisting in the continuous refusal to grant his request”.

2. The Applicant requests the Tribunal to “rescind the USG/DM’s decision and to enforce the USG/DM’s duty to immediately grant the Applicant’s full time release from his regular job as a Population Affairs Officer during his term as President of [UNSU]“. He also requests the “enforcement of the Administration’s duty pursuant to Staff Rule 1.1(c) to immediately grant him full time release from his assigned duties as Population Affairs Officer during his term as President of [UNSU]“.

3. The Respondent claims that the application is not receivable for several different reasons. Firstly, the application is not receivable *ratione materiae* because (a) the Dispute Tribunal has no jurisdiction over disputes concerning the internal affairs of UNSU, including the conduct of elections and the determination of the new leadership of the UNSU, which remains disputed; and (b) disputes concerning the facilities to be provided to staff representatives under ST/AI/293 (Facilities to be provided to Staff Representatives), issued on 15 July 1982, are to be resolved under Chapter VIII of the Staff Rules and not Chapter XI. Secondly, the application is not receivable *ratione personae* as (a) access to facilities is granted to staff members in their capacities as elected staff representatives and not in their personal capacities; and (b) the Applicant has no standing to bring claim concerning the rights of the UNSU as a staff representative body, or his rights as the alleged president of the UNSU.

Factual and procedural background

4. In his application filed on 7 April 2014, the Applicant outlined the facts as follows:

... Applicant ran for leadership in the [UNSU] elections that were held on 10 and 11 December 2013.

Counsel for Respondent to inquire if Respondent would agree to such mediation. Counsel for Respondent replied by electronic mail the same day and wrote that it was apparent that there is no reasonable prospect of reaching a settlement in this case and, as a consequence, Respondent is unable to agree to refer this matter to the Ombudsman for mediation.

... The same day ... Counsel for Applicant sent a second electronic mail to Counsel for Respondent. Counsel for Applicant wrote that his client regretted that Respondent rejected the possibility of a mediation of the Ombudsman and inquired whether Respondent would agree to refer the matter to an outside arbitrator.

... On 12 June 2015 ... Counsel for Respondent replied that Respondent does not see any prospect of resolving this case through outside arbitration either.

... Therefore, Counsel for Applicant is informing the Tribunal that he could not reach an agreement to amicably settle this litigation with Counsel for Respondent.

12. On 12 June 2015, the Respondent filed his response to Order No. 113 (NY/2015), informing the Tribunal that the parties were unable to resolve the proceedings informally.
13. By submission of 13 June 2015, the Applicant filed a response to the Respondent's reply on the receivability and on the merits.
14. By Order No. 120 (NY/2015) dated 17 June 2015, the Tribunal allowed the parties to

f. The Applicant contests the decision in his capacity as a staff representative, namely as alleged UNSU President. It is well-established that the Dispute Tribunal does not have jurisdiction *ratione personae* in relation to applications filed by staff representatives or on behalf of staff unions;

g. The fact that staff representation is treated as an official function under the Staff Rules does not confer the Applicant an individual right as a staff member to challenge a decision relating to his alleged functions as a staff representative. To recognise the Applicant as having standing to challenge the contested decision would be inconsistent with the General Assembly's intentional limitation of the Dispute Tribunal's jurisdiction in its Statute.

Applicant's submissions on receivability

18. The Applicant's contention on receivability may be summarised as follows:

a. The Applicant seeks a ruling from the Dispute Tribunal requiring the Respondent to abide by the Arbitration Committee's rulings with regard to the UNSU elections of 10 and 11 December 2013. Contrary to the Respondent's allegations, the Applicant does not seek a ruling acknowledging that he is the duly-elected President of the UNSU; such a determination is a prerogative of the Arbitration Committee, of which the Respondent is also aware. Nevertheless, the Respondent must enforce the Arbitration Committee's decisions and cease giving credence to innuendos and false allegations brought by the other alleged UNSU President;

b.

matters related to violations of the Statute and Regulations”. Thirdly, pursuant to UNSU Regulations, art. 8.3.1, if any member of the UNSU is of the view that an act of the Staff Council, Executive Board or any of its officers is in violation of the Statute and Regulations, a complaint may be submitted to the Arbitration Committee. Finally, the rulings of the Arbitration Committee are binding on all bodies of the UNSU (see UNSU Regulations, art. 8.1);

c. The Dispute Tribunal’s jurisprudence has reaffirmed that the Arbitration Committee is the final arbiter on matters related to the UNSU, including the elections;

d. The record shows that prior to the elections held on 10 and 11 December 2013, the Arbitration Committee had ruled the electoral process valid. The record also shows that after the elections, the Arbitration Committee reiterated, in four different rulings or communications, that no irregularity tainted the elections held on 10 and 11 December 2013. Thus, to date, there is not dispute concerning the validity of the elections pending before the Arbitration Committee;

e. While, in a letter dated 24 December 2013, the Under-Secretary-General wrote that “once the disputes regarding the UNSU elections have been resolved, the Administration looks forward to working with the newly elected UNSU leadership”, the Administration has failed to do so despite the consistency and clarity of the Arbitration Committee’s numerous rulings and communications. In fact, the Respondent has deliberately chosen to endorse the crusade led by a resentful losing candidate, the other alleged UNSU Pr0550000(de)4(li)-3(b)-9(e)4(ra)7()r74n704C0in libera3--166(a)4

credence to any allegations—even unsubstantiated—made by the other alleged UNSU President, the Respondent not only defies the Arbitration Committee’s authority but also violate the Statute and Regulations of the UNSU and the Staff Rules and Regulations of the UN;

h. Therefore, the application is receivable as the Applicant seeks a ruling to enforce the rulings and communications of the Arbitration Committee, the final arbiter, with regard to the validity of the electoral process of the elections held on 10 and 11 December 2013;

i. The Applicant acknowledges that only the joint staff-management machinery has jurisdiction over disputes concerning facilities provided to staff representatives, not the Dispute Tribunal. However, Respondent’s allegations concerning the application being not receivable *ratione materiae*, as disputes regarding the provision of facilities to staff representatives under ST/AI/293 are to be determined exclusively under Chapter XIII of the Staff Rules, not Chapter XI of the Staff Rules, are fallacious. In fact, the core dispute is whether the USG/DM has a duty to abide by the rulings and communications of the Arbitration Committee, reiterating that the process of elections held on 10 and 11 December 2013 was valid;

j. As mentioned by the Tribunal, full-time release and the provision of facilities to staff representatives are derivative rights of “the duly elected UNSU staff member with representational functions” (Order No. 45 (NY/2014), paras. 24-25). Therefore, while the Dispute Tribunal has no jurisdiction over disputes concerning facilities provided to staff representatives, it has jurisdiction over the duty of the Respondent to comply with the UNSU rulings with regard to the validity of the electoral process. Unless the Dispute Tribunal enforces the Arbitration Committee’s rulings, the Applicant will not be able to refer the issues of time release and provision of facilities to the joint staff-management machinery for Headquarters pursuant to the procedures set out in Chapter VIII of the Staff Rules, if necessary;

k. The Respondent’s allegation that the Applicant has no standing before the Dispute Tribunal, since the Tribunal has no jurisdiction *ratione personae* in relation to

applications raising claims regarding the rights of staff associations or claims filed by or on behalf of staff representatives, is spurious. While elected as UNSU President, the

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.

6. Executive Board

6.1 The Executive Board is the executive body of the Union and shall comprise the Leadership, Secretary, Assistant Secretary, Treasurer, Rapporteur, and Assistant Rapporteur, who shall be granted time release on conditions prescribed by the General Assembly.

8. Representatives

8.4 The role of representatives shall be as defined under the Regulations made under this Statute.

11. Standing Committees

There shall be the following standing committees of the Union:

- (a) Arbitration Committee;
- (b) Audit Committee.

15. Compliance

The Arbitration Committee shall consider and rule on compliance matters as specified in the Regulations made under this Statute.

17. Interpretation

17.1 Words used in this Statute and in any Regulation made thereunder have the same meaning as in the UN Charter.

17.2 In the event of an unresolved dispute arising over the interpretation of the Statute, its Regulations or any policy the matter shall be referred to the Arbitration Committee.

17.3 In circumstances where an interpretation is sought from the Arbitration Committee, it shall be reported to the Council and duly recorded.

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.

18.2 The Regulations may be established, altered, amended or added to by resolution of the General Meeting pursuant to Article 9, paragraph 3.

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 alternates.
- 4.4 The Council shall take full office from the first day of the month immediately following the declared result of elections.
- 4.5 The term of office of the Council shall not expire earlier than a new Council assumes office.

8. Arbitration Committee

8.1 In order to increase accountability of elected Union officials, the Arbitration Committee is established to review alleged violations of the Statute of the Staff Union and decide on sanctions where warranted. Rulings of the Arbitration Committee shall be binding on all bodies of the Staff Union.

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.

(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.

22. ST/SGB/2007/9 (Joint Negotiation Committee at Headquarters) issued on 15 June 2007 provides, as relevant, that:

Section 1

General

1.1 The Joint Negotiation Committee at Headquarters, hereinafter referred to as “the Committee”, is hereby established. The objective of the Committee is to have an equitable and effective mechanism for staff-management relations at Headquarters.

Section 2

Purpose

2.1 As the joint staff-management mechanism for negotiation in good faith between representatives of staff and the administration, the Committee shall identify, examine and resolve issues through mutual agreements relating to staff welfare, including conditions of employment and of work, general conditions of life and other personnel policies, as provided for in staff regulation 8.1(a). It is understood that preliminary agreements of the Committee that have Secretariat-wide implications shall be referred to and considered by the established Secretariat-wide joint staff-management mechanisms before a final decision is taken.

23. ST/SGB/2011/6/Rev.1 (Staff-Management Committee) issued on 11 July 2013 provides in relevant parts that:

Section 1

Objective and purpose

1.1 Pursuant to staff regulation 8.2 and staff rule 8.2(a)(ii), the Secretary-General establishes the Staff-Management Committee as the joint staff-management machinery at the Secretariat-wide level for the purpose of advising him or her regarding human resources policies and general questions of staff welfare, as provided in staff regulation 8.1.

1.2 The Staff-Management Committee ensures the effective participation of the staff in identifying, examining and resolving Secretariat-wide issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies, as provided for in staff regulation 8.1(a).

1.3 The Staff-Management Committee shall consider Secretariat-wide issues relating to staff welfare, including conditions of work, general conditions of life

and other human resources policies, and shall provide advice and recommendations to the Secretary-

33. It follows that, on 2 January 2014, it was confirmed that the Administration could not agree (“accede”) to the Applicant’s request of 20 December 2013, which constituted a refusal for a limited period of time until the Arbitration Committee had resolved the disputes within UNSU.

34. As results from the documents filed by the Applicant on 11 and 20 February 2014, the Applicant filed two further requests with the USG/DM asking him to reconsider his decision of 24 December 2013 in light of the Arbitration Committee’s decisions of 28 November 2013 and 4 December 2013 and, between November 2013 and March 2014, the Arbitration Committee issued three decisions (28 November 2013, 4 December 2013 and 18 March 2014) related to different aspects of the elections held in December 2013.

35. Following the Arbitration Committee’s decision of 18 March 2014, on 20 March 2014, the Applicant filed a new request to the Secretary-General asking to be granted time release and other resources necessary for staff representation activities to members of the 45th Staff Council and the UNSU leadership.

36. The present application on merits was filed on 7 April 2014, and the Tribunal notes that, before and after the date of filing, the Tribunal registered the following cases in which orders have been issued:

- a. Case No. UNDT/NY/2013/116 (Lane), in which the applicant filed, on 11 December 2013, an application for suspension of action pending completion of management evaluation of “

request no. 12, “to defer consideration of this request to such time as to when the elected Leadership and 45th Staff Council actually have taken full office”.

42. According to the mandatory provisions of arts. 4.3 and 4.4 of

which is to be decided after the UNSU leadership and the 45th Staff Council actually have taken office, namely after the former UNSU officers handover UNSU's office, records, equipment and other facilities.

48. According to secs. 8.1 and 8.2.3 of the UNSU Regulations, the Arbitration Committee:

a. is the only body competent to review alleged violations of the UNSU Statute made by elected UNSU officials (Staff Council, Executive Board and any of its officers) in order to increase their accountability and decide on sanctions were warranted;

b. has an exclusive competence ("shall") to receive, consider and rule upon matters related to violations of the UNSU Statute and Regulations;

c. issues decisions/rulings that are mandatory, final and binding on all bodies of the Staff Union, including on all members of these bodies and all UNSU members.

49. The Tribunal underlines that the Arbitration Committee's decisions/rulings are final (irrevocable) since it

52. The Tribunal underlines that art. 14 of ST/AI/293 states that any disagreements concerning the implementation of the provisions of ST/AI/293, including art. 10(a), are to be discussed and resolved in accordance with the procedures set out in Chapter VIII of the Staff Regulation and Rules. According to the mandatory provisions of staff rule 8.2(a) and (d), the joint staff-management machinery consists of joint advisory committees at designated duty stations (see staff rule 8.2(a)(i)), and a Secretariat wide joint staff-management body (see staff rule 8.2(a)(ii)), and these bodies must establish their own rules of procedure (see