



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

HUNTER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Jérôme Blanchard, ALS/OHRM, UN Secretariat

## **Introduction**

1. By application filed on 9 June 2010, the Applicant seeks to contest “[t]he failure of ... several [peacekeeping] missions to pay their staff correctly and the lack of accountability displayed over the issue”.

2. On 7 July 2010, the Respondent filed a submission requesting the present application to be dismissed in its entirety as not receivable under art. 2.1 of the Statute of the Dispute Tribunal.

## **Background**

3. The Applicant alleges that, in or around July 2007, he became aware that the United Nations Integrated Mission in Timor-Leste (“UNMIT”) had a policy of paying its staff less for business travel within Timor-Leste than what they were entitled to under the applicable rules. The Applicant submits that UNMIT adopted its own instruction AI/2007/8 on official travel within Timor-Lester that contradicted ST/AI/1997/6 (Mission subsistence allowance), as amended by ST/AI/2002/5. According to the Applicant, the Chief Financial Officer of UNMIT informed the Applicant that this policy was approved by officials in the United Nations Headquarters in New York.

4. According to the Applicant, he was later—although it is unclear when—provided with a copy of a facsimile from the Director of the Field Personnel Division (“FPD”), Department of Field Support (“DFS”) to the Chief Administrative Officer, United Nations Operation in Côte d’Ivoire (“ONUCI”). He avers that the facsimile stated that ONUCI was not permitted to pay its staff in the same way that UNMIT was paying its staff and that the staff rules should be applied as written. The Applicant did not include a copy of this facsimile in his application.

5. The Applicant submits that he then attempted to get UNMIT to pay its staff the appropriate amounts, which UNMIT refused to do until the Applicant went to the Office of the Ombudsman. The exact dates are unclear from his application, but, from the chronology of events in this case, it appears that this happened sometime between July 2007 and March 2008.

6. Following this, on 19 March 2008, the Director of the Field Personnel Division (“FPD”), Department of Field Support (“DFS”), sent a facsimile to the Chief of Mission Support, UNMIT. The Director, FPD, stated in this facsimile that “[w]hile understanding the mission’s need to control expenditures for within-mission travel, the [Mission Subsistence Allowance] policy set out in ST/AI/1997/6 as amended by ST/AI/2002/5 with respect to within-mission travel remains in force until such time as any change to the policy is formally approved by the Secretary-General”. The Director, FPD, further requested a confirmation from UNMIT that relevant policies were correctly applied, “[p]ending a change to the [Mission Subsistence Allowance] policy, and to avoid potential appeals from staff that would likely result in compensation payments”.

7. According to the Applicant, after several months and continued pressure from him, UNMIT changed its policy and started to pay its staff correctly. However, the Applicant submits that “UNMIT still however refuses to hold anybody accountable or to back-pay all the staff money that was wrongfully withheld from them”.

8. The Applicant submits that, after getting UNMIT to start paying its staff correctly, he sent emails to colleagues in the United Nations Organization Mission in the Democratic Republic of the Congo (“MONUC”) and United Nations Stabilization Mission in Haiti (“MINUSTAH”) to inform them of the decisions regarding ONUCI and UNMIT and to ensure they were aware that MONUC and MINUSTAH were not paying their staff correctly. The Applicant submits that, eventually, both MONUC and MINUSTAH also started to pay their staff correctly. However, the Applicant

submits that “nobody has been held accountable and staff still have not been back-paid money that was wrongfully withheld from them”.

9. The Applicant submits that he has been trying to “get some accountability and justice for the staff ever since”, and sent memoranda to the Under-Secretary-General for peacekeeping operations and to the Secretary-General, to no avail.

10. On 9 August 2009, the Applicant wrote to the Secretary-General seeking his “assistance in righting a wrong that has been done to your staff”. In this letter, the Applicant expressed concern that since “UNMIT were applying an incorrect policy for so long ... [a] serious injustice ... is being done to the staff of UNMIT”. The Applicant further stated:

In my search for justice and accountability, which remain elusive, I have been subject to what I consider to be harassment and abuse of authority. I have been told: “Be careful because people in New York are out to get you” and that I have been “Blacklisted” amongst other things. Much of this harassment and abuse of authority has been subtle and hard to prove, yet it has got to the point that I feel I need to ask for some form of whistle-blower protection. Especially once this memo has been sent as I expect there to be further harassment.

11. On 26 January 2010, the Applicant requested management evaluation of “[t]he decision of multiple missions to refuse to pay staff correctly for official travel within the mission area”. In his request the Applicant clarified that he first became aware of the decision in July 2007. He stated further that the decision affected his “right to be paid [his] correct entitlements under the Staff Rules”. With respect to the remedy sought, the Applicant stated that he “would like to see all staff that had money they were entitled to withheld from them, paid the money they were entitled to and for those responsible to be held accountable”.

12. In an email to the Applicant dated 4 February 2010, a Legal Officer with the Management Evaluation Unit, enquired whether the Applicant had submitted a claim

for reimbursement that was denied, as this information was required in order to assess the receivability of his request for management evaluation.

13. The Applicant responded that he had submitted several claims that were initially denied but the money was eventually paid to him. However, he explained that “the larger problem” was that there were other staff members who had been denied payments that were rightfully theirs. The Applicant contended that the issue was also “about people being made accountable for their actions”, stating further that “From the way I read your email, it appears that you are only focusing on my individual case, I certainly hope that this impression isn’t correct”.

14. On 9 February 2010, the Legal Officer of the Management Evaluation Unit informed the Applicant that since no decision had been referred to in his request for management evaluation affecting his contract of employment or terms of appointment, his request for management evaluation was not receivable.

15. The Applicant replied on the same day, saying that “[i]t is most disappointing that you appear unconcerned about the issue and instead focus on my individual case”.

16. Subsequently, on the same day, the Legal Officer from the Management Evaluation Unit replied, that he wanted to follow-up with the Applicant further “to make sure [he is] not misunderstanding [the Applicant] and run the risk that [the Applicant will] lose [his] recourse”. The Legal Officer further stated:

[T]he scope of cases which we can legally accept, is limited. We can’t evaluate administrative decisions affecting a particular staff member upon the request of another staff member who was not affected by that decision. As I stated in my previous email, if the Administration has taken a decision specifically with regard to a claim for payment you have submitted (or a decision touching upon your employment contract or terms of appointment), please let us know the particulars of that decision. ... If any colleagues of yours have been affected by such a decision, they may submit a request for evaluation of the decision taken in their case.

If not, you may wish to contact the Office of Staff Legal Assistance to gain further advice as to any other avenues available to you in order to address your concern.

17. The Applicant immediately expressed his disagreement with the Management Evaluation Unit's position on 9 February 2010. Having received no response to this last email, on 17 March 2010, the Applicant requested an update regarding the status of his request for management evaluation.

18. On 20 March 2010, the Management Evaluation Unit emailed the Applicant, stating that "[a] staff member not affected [by an administrative decision] may not [submit requests for management evaluation] on behalf of one or more other staff members". The Applicant was advised of his right to file an application with the United Nations Dispute Tribunal and to seek assistance from OSLA.

19. On 7 June 2010, the Applicant filed the present application before the United Nations Dispute Tribunal.

20. Due to the various challenges faced by the New York Registry, including the departure of two *ad litem* Judges, the Tribunal has been unable to attend to this matter until now. On 6 February 2012, the Tribunal issued Order No. 19 (NY/2012), stating that it deemed it appropriate to consider the case on the papers before it, without a hearing. The parties were directed to file any final submissions and reasoned requests for a hearing, if any, by 15 February 2012. No submissions were filed.

### **Applicant's submissions**

21. The Applicant's principal contentions may be summarised as follows:

a. The Applicant requests that the Organization should ensure that all missions apply correct rules regarding allowance for official travel and that, even if the practices have been amended, "[t]hose who should be held accountable for paying the staff incorrectly be made accountable" and that all

staff members who had money wrongfully withheld from them be fully reimbursed;

b. The Applicant submits that he was subjected to “what [he] feel[s] is an unacceptable level of harassment from the administration of UNMIT over this issue”, and he would like that harassment to stop and for those responsible to be held accountable.

### **Respondent’s submissions**

22. The Respondent’s principal contentions may be summarised as follows:

a. The Applicant did not, in his request for management evaluation or in his application, identify any administrative decision affecting his contract of employment within the meaning of art. 2.1(a) of the Statute of the Tribunal;

b. The Applicant cannot file claims on behalf of others and has no standing to appeal an alleged administrative decision that allegedly adversely affects the rights of other staff members.

### **Consideration**

#### *Preliminary observation*

23. Whilst, in fairness to all parties, it is the practice of the Dispute Tribunal to deal with matters in chronological order of filing, the General Assembly has requested in its resolution 66/237, adopted on 24 December 2011, both the Dispute Tribunal and the Appeals Tribunal to review their procedures in regard to the dismissal of “manifestly inadmissible cases”. It is a matter of record that the Dispute Tribunal has entertained matters of admissibility on a priority basis in appropriate cases, and similarly rendered summary judgments under art. 9 of the Rules of Procedure. However, any application for dismissal of cases that appear manifestly

inadmissible or devoid of merit have to be dealt with on a case-by-case basis bearing in mind the wise words of Megarry J in *John v. Rees* [1970] Ch 345 at 402 (U.K.):

As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change.

*Applicant's standing to file the present application*

24. Article 2.1(a) of the Tribunal's Statute provides that the Tribunal is competent to hear and pass judgment on applications against administrative decisions "alleged to be in non-compliance with the terms of appointment or the contract of employment".

25. For the purposes of art. 2.1(a) of the Statute, it is not sufficient for an applicant to merely establish that there was an administrative decision that she or he disagrees with. As the Tribunal held in a number of cases (see, e.g., *Jaen* UNDT/2010/165, *Warintarawat* UNDT/2011/053), to have standing before the Tribunal, a staff member must show that the contested administrative decision affects her or his legal rights (see also *Nyakossi* UNDT/2011/101).

26. It is a general principle of law that a litigant must have legal capacity and legal standing in order to invoke the jurisdiction of a court or a tribunal. A party who litigates must show that he has sufficient interest in the matter, the basic ingredient of which is that a party must show that he has a right or interest at stake. A litigant will have legal standing if the right on which he bases his claim is one that this individual personally enjoys, or if he has a sufficient interest in the person or persons whose rights he seeks to protect.

27. At first blush, it is unclear in this case whether the Applicant is asserting a private right or endeavoring to prevent what is alleged to be a public wrong. However, from the wording of the present application and accompanying documents,



it becomes apparent that the Applicant does not allege that he is owed any payments. Indeed, he acknowledges that any claims he may have had in the past were settled in conformity with the applicable rules, well before the filing of the present application. Rather, the Applicant seeks to compel the Administration to reimburse other staff members in a number of missions and hold the responsible decision-makers accountable for the application of allegedly incorrect standards for determination of allowances payable to staff members. The Applicant is “trying to get some accountability and justice for the staff” and seeks to ensure that “all staff that had money withheld from them be back-paid fully”. His application is clearly not about his situation, but about what he perceives as injustice done to other staff members.

28. It is, in fact, the Applicant’s contention that the correct rules were applied to him and that he does not have any outstanding compensation disputes with the Organization regarding those payments. The Applicant also does not articulate any harm suffered. Accordingly, the present application does not concern any administrative decision that is in non-compliance with the Applicant’s contract of employment or terms of appointment. He therefore has no right or interest at stake, no cause of action and no outstanding remedies.

29. Furthermore, article 3.1 of the Tribunal’s Statute states that an application under art. 2.1 of the Statute may be filed by:

- (a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
- (b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
- (c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

30. An individual may sue in his own name, or in a representative capacity. The only representative capacity envisaged by the Statute is for applications that are filed on behalf of incapacitated and deceased staff members under art. 3.1(c) of the Statute, quoted above.

31. The Dispute Tribunal adjudicates employment disputes that arise between the staff of the United Nations and the Organization. Each staff member has a contractual relationship with the Organization, and, if she or he feels that her or his rights have been violated, the staff member may pursue informal or formal dispute resolution. The decision to contest an administrative decision alleged to be in non-compliance with the terms of appointment or the contract of employment is for each staff member to make. Under art. 2.1(a) of the Tribunal's Statute, the Applicant does not have standing to intercede in a contractual relationship that exists between other staff members and the Organization by filing applications on their behalf and contesting the alleged non-compliance with their terms of appointment and contracts of employment.

32. Also, the Applicant does not have any power of attorney or signed authorization from the would-be claimants and fails to identify exactly who, if anyone, he is representing.

33. Whilst the Redesign Panel considered it necessary to give staff associations an independent right to bring action to enforce the Staff Rules and Regulations, and proposed the right of a staff association to bring a class or representative action (see paragraphs 77(d) and 82 of A/61/205 (Report of the Redesign Panel on the United Nations system of administration of justice), dated 28 July 2006, there is no provision for class action in the Statute of the Dispute Tribunal.

34. The Dispute Tribunal may, of course, at any time, either on the application of a party, or on its own initiative, join another party if it appears to the Tribunal that such party has a legitimate interest in the outcome of the proceedings (see art. 11 of

the Rules of Procedure). Similarly, there have also been instances before this Tribunal where, for the sake of convenience and judicial economy, parties with a common cause of action and common interest have filed applications with multiple applicants (see, for example, *Leboeuf et al.* UNDT/2010/206 and *A-Ali et al.* Order No. 220 (NY/2011)). In the instant case, there is no such application before the Tribunal, and there are no other parties known to the Tribunal who have a legitimate interest in the outcome of the proceedings or in whose interests a joinder of cases would be appropriate.

35. This application is therefore not receivable.

*Potential harassment*

36. In his application, the Applicant included a vague reference to his fear of potential harassment. The Applicant did not raise any claims with respect to any harassment issues in his request for management evaluation, and this issue is therefore not properly before the Tribunal.

37. In any event, the onus is on the Applicant to provide sufficient evidence of harassment or retaliation (see *Parker* 2010-UNAT-012, *Hepworth* 2011-UNAT-178, *Jennings* 2011-UNAT-184), and the Applicant has failed to meet this burden. He did not allege in his application or in his request for management evaluation that he was, in fact, harassed or retaliated against. No references to any specific instances of harassment or retaliation are included in his documents. Further, there is no evidence that he sought any protection from any form of harassment or retaliation through the mechanisms established for such complaints at the material time.

38. Accordingly, the Tribunal finds that the Applicant's submission is insufficient to even suggest—let alone find—that any actual harassment or retaliation took place against him and that there were any complaints of harassment filed by him that were not properly addressed by the Organization.

**Conclusion**

39. The Tribunal finds that the Applicant has failed to establish that the alleged administrative decision he seeks to contest affects his legal rights. The Applicant lacks legal standing and the application is therefore not receivable.

40. The present application is dismissed.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 22<sup>nd</sup> day of March 2012

Entered in the Register on this 22<sup>nd</sup> day of March 2012

*(Signed)*

Hafida Lahiouel, Registrar, New York