



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

HASSANIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Lennox S. Hinds

Counsel for Respondent:

Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. By the application filed with the Dispute Tribunal on 13 June 2011, the Applicant, a staff member in the Publishing Section, Department for General Assembly and Conference Management (“DGACM”), contests the decision to suspend the payroll deductions of his contributions to the United Nations Staff Union (“UNSU”) from his salary and the suspension of the remittance of the deductions to the UNSU bank account. The Applicant requests that the Tribunal order the Secretary-General to:

a. Correct the management evaluation and overturn the Office of Programme Planning, Budget and Accounts (“OPPBA”) administrative decision by directing its Payroll and Disbursement Section to immediately resume the deduction and remittance to the Staff Union of his contribution to the Staff Union that is deducted from his salary through payroll;

b. Direct Payroll and Disbursement Section to immediately transfer his contribution to the UNSU held in trust from October 2010 to the present to UNSU.

Background

2. On 28 June 2010, the President, UNSU, sent a memorandum to the Director, Accounts Division, OPPBA, Department of Management, requesting that the dues from UNSU members be deposited into a Citibank account.

3. On 27 October 2010, the Secretary of the Executive Board in UNSU sent a memorandum to the Director of the Accounts Division in OPPBA, whereby he stated that he had been made aware of the 28 June 2010 memorandum from the President of UNSU regarding “a change in the bank account for the deposit of staff members’ Union dues”. The Secretary of the UNSU Executive Board went on

to state that “[o]n behalf of the Executive Board of the UN Staff Union, I thank you for the cooperation of your office in stopping the October 2010 transfer of staff dues ... The Board also requests that the membership dues of staff members be redirected back to the UN Federal Credit Union [“UNFCU”] account and that United Nations management seek a method to retrieve the funds that were transferred to Citibank since 28 June 2010”.

4. On 29 October 2010, the Director of the Accounts Division in OPPBA stated that:

In the light of the contracting instructions now received by us from the UN Staff Union, we have decided to suspend, with immediate effect, the payments of dues collected from staff members through payroll, until the issue is resolved internally by the UN Staff Union.

We look forward to receiving a clear instruction from the UN Staff Union about the bank account into which funds should be deposited and, until then, will hold the funds collected in trust”.

5. On 8 November 2010, the President of UNSU wrote to the Controller, Assistant Secretary-General, OPPBA, stating that the President’s memorandum of 28 June 2010 was legal and remained valid. The President also requested the lifting of the suspension which they determined constituted interference in the internal affairs of UNSU by OPPBA. He further stated that

the ultimate authority to implement all policies and decisions of the [UNSU], including financial governance and correspondence and certifying authority, is vested in the President of [UNSU]; in the latter’s absence, it is vested in the First Vice-President. The secretary or any other member of the [UNSU] does not have such authority. You may wish to refer to Statute 10 and Regulation 12 of the Statute and Regulations of the [UNSU].

Any contrary misrepresentations by any member of the Staff Council and/or Staff Union should be brought to the attention of the President.

6. On 18 November 2010, the Secretary of the UNSU Executive Board sent a memorandum to the Director of the Accounts Division in OPPBA stating that their

position was clear and that the Board, therefore, requested that the funds continue to be deposited in their UNFCU account and that the Organization retrieve the funds deposited in the Citibank account.

7. On 26 January 2011, the Controller, Assistant Secretary-General informed the President, UNSU, that the Organization had decided “to suspend, from the month of January 2011, the deduction of staff union dues from the salaries of staff members, to avoid any legal liability for the UN arising from such continued collection under the current circumstances”.

8. On 28 January 2011, the Applicant received an email from the Director of the Accounts Division in OPPBA stating that OPPBA “[had] decided to suspend the remittance of the staff union dues to the Staff Union’s bank account, due to conflicting instructions received from the President of the Staff Union and the Secretary, on behalf of the Executive Board, about the bank account into which the collections should be deposited ... [and] to temporarily suspend the deductions, from the month of January 2011”. The email further stated that the dues already collected for the period October–December 2010 were being held in trust until OPPBA was given a clear instruction about which account to deposit the dues into and that they would be returned to the individual members if no such instruction was given before May 2011.

9. On 9 February 2011, the Applicant filed a request for management evaluation of OPPBA’s decisions and, on the following day, the Applicant filed an application for suspension of action, pending management evaluation.

10. On 24 February 2011, by Order No. 57 (NY/2011), the Dispute Tribunal (Judge Ebrahim-Carstens) suspended the decision to suspend the remittance and the deductions of the Applicant’s contributions. The full reasoning behind its decision was contained in Order No. 83 (NY/2011) dated 10 March 2011.

11. On 15 March 2011, the Management Evaluation Unit (“MEU”) stated that the Applicant’s request was

a matter involving a conflict within a union [and] is the sole responsibility of the parties involved in the conflict themselves, and that the UNDT has no jurisdiction over matters involving the internal affairs of a staff association. It further avoids placing the Administration in the untenable position of being considered as interfering in the internal affairs of the UNSU, when it was merely acting to cover itself legally in the face of conflicting claims to the remittances ... [and that] to continue remitting contributions in these circumstances would be arbitrary.

Following the MEU’s considerations, the Secretary-General decided to uphold the contested decision.

12. From 7 to 9 June 2011, UNSU held elections which included members that were to serve on the UNSU Arbitration Committee with the results of the voting being made available shortly after the closing of the elections.

13. On 13 June 2011, the Applicant filed the present application.

14. The Respondent’s reply, which was filed on 25 July 2011, addressed issues related to both the receivability and the merits of the application.

15. On 1 October 2013, the Tribunal, by Order No. 236 (NY/2013), requested that the Applicant file a response to the issues of receivability raised in the Respondent’s reply. The Applicant filed his submission on 14 October 2013 and the Respondent filed his comments on 29 October 2013.

Applicant’s submissions

16. The Applicant’s principal contentions incorporate the arguments and annexes of his 9 February 2011 request for management evaluation and his 10 February 2010 application for suspension of action, namely:

a. The decision to suspend the deduction of his dues from his salary violated (i) the principle of freedom of association and his right to association; (ii) his eligibility for election to offices of UNSU; (iii) the effective participation of his Staff Union in identifying, examining and resolving issues relating to his welfare, including conditions of work, general conditions of life and other human resources policies; and (iv) his privacy and/or confidentiality;

b. OPPBA's decisions resulted in a breach of staff regulation 8.1 and staff rule 8.1, as well as the Statute and Regulations of the UNSU;

c. The Applicant affirms that the material facts in the present case are not in dispute. The Tribunal having already determined that both the text and legislative history of staff rule 3.17(c)(v) require a reading of the rule as triggering a non-voluntary obligation, it was not open to the MEU or the Secretary-General to substitute their own interpretation of the law for that of the Dispute Tribunal and mischaracterize it as a disputed issue of fact;

d. He further contests the MEU's finding that the issue in this case relates to a fact-based determination and that because evidentiary standards are higher for an application on the merits than for a suspension of action order, the MEU can properly disregard the Tribunal's findings.

Respondent's submissions

17. The Respondent's principal contentions may be summarized as follows:

a. The application is not receivable and is not properly before the Tribunal as it concerns internal affairs of UNSU and is not an administrative decision within the meaning of the Dispute Tribunal's Statute;

b. The decisions were a natural outcome of the contradictory payment instructions received from the UNSU. The UNSU could have resumed the collection and remittance of dues by providing clear and undisputed instructions to the Administration;

c. Article 17.2 of the UNSU Statute provides that unresolved disputes concerning the interpretation of the Statute, Regulations and policies shall be referred to the UNSU Arbitration Committee. The Applicant has not availed himself of the arbitration proceedings in front of the Arbitration Committee which became fully functional after the elections that were held between 7 and 9 June 2009;

d. The application is without merits as none of the Applicant's rights were affected by OPPBA's decision. His status as a dues-paying member of UNSU did not change, nor did it negatively affect his eligibility to run for an UNSU office. Ultimately, the Applicant participated fully in the UNSU elections and he was nominated to the office of the President and unsuccessfully ran on a leadership ticket in June 2011;

e. The Administration adhered to the principle of non-interference in the internal affairs of a union. Further, the fact that the MEU upheld the decision did not result in a manifest abuse of process;

f. The Applicant has no standing to raise claims on behalf of the UNSU and his rights to privacy and confidentiality have not been violated because the email dated 28 January 2011 was blind copied. The Administration adhered to the principle of non-interference in the internal affairs of a union;

g. The fact that the MEU upheld the decision did not result in a manifest abuse of process and the application should be dismissed.

Consideration

Applicable law

18. Staff Rules and Staff Regulations of the United Nations (ST/SGB/2011/1), in force in January 2011, state:

Rule 3.17

Deductions and contributions

(a) Staff assessment shall be deducted, each pay period, from the total payments due to each staff member, at the rates and subject to the conditions prescribed in staff regulation 3.3 and staff rule 3.2.

(b) Contributions of staff members who are participating in the United Nations Joint Staff Pension Fund shall be deducted, each pay period, from the total payments due to them.

(c) Deductions from salaries and other emoluments may also be made for:

(i) Contributions, other than to the United Nations Joint Staff Pension Fund, for which provision is made under the present Rules;

(ii) Indebtedness to the United Nations;

(iii) Indebtedness to third parties when any deduction for this purpose is authorized by the Secretary-General;

(iv) Lodging provided by the United Nations, by a Government or by a related institution;

(v) Contributions to a staff representative body established pursuant to staff regulation 8.1, provided that each staff member has the opportunity to withhold his or her consent to or at any time to discontinue such deduction, by notice to the Secretary-General.

...

Staff Relations

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 resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies;

(b) Staff representative bodies shall be established and shall be entitled to initiate proposals to the Secretary-General for the purpose set forth in paragraph (a) above. They shall be organized in such a way as to afford equitable representation to all staff members, by means of elections that shall take place at least biennially under electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General.

19. UNSU Statute and Regulations state (emphasis in original):

Part I – Statute

...

7. Council

7.1 The Council shall be the legislative body of the Union and shall determine its operational policy, except where such policy is determined by General Meeting or referendum.

...

7.3 The membership of the Council, its standing orders and procedures shall be set forth in 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.

12. Finance

12.1 The President is accountable to the membership for the finances of the Union.

12.2 The day-to-day administration of the Union finances shall be delegated by the President to a Treasurer with responsibility for finance.

...

12.4 The Treasurer shall draw up the Union budget and monitor expenditure and income on behalf of the Council, and exercise other duties as set forth in the Financial Regulations made under this Statute.

14. Operational Policy

...

14.2 Operational policy shall be determined by the Council, subject to the provisions of Article 7, paragraph 1, above.

...

15. Compliance

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

16. Relationship with Administration

The relationship between the Union and Administration shall be as determined by the General Assembly.

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.

...

Part II – Regulations

...

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.

8.2.4 Elected Union officials may only be sanctioned by the Arbitration Committee.

...

9. **Audit Committee**

...

9.6 Responsibilities

9.6.1 The main responsibilities of the Audit Committee are:

(a) To monitor the financial statements of the Union and any formal announcements relating to the Union's finances;

...

9.6.2 In particular, the Audit Committee shall review:

...

(b) Any changes in accounting policies and practices;

...

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 Regulations, all programs and activities necessary for the advancement and welfare of the Union, its membership and affiliated bodies;

...

10.6 The **Treasurer** shall:

(a) Act as financial officer of the Union, receive the income of the Union and collect all monies due the Union and deposit all funds of the Union in its name and in conjunction with the President, propose an investment policy for such funds, subject to approval by the Council;

...

Financial Rules

...

Rule 4

...

3. The Council shall determine policy governing any investment of Union funds.

Contested decisions

20. The Applicant is contesting the two decisions that led to the 28 January 2011 email announcement by the Director, Accounts Division, OPPBA, that they had “decided to temporarily suspend the deductions, from the month of January 2011, since we cannot continue to collect staff union dues without being able to forward these amounts to the staff union”:

a. The 29 October 2010 decision by the Director, Accounts Division, OPPBA, informing UNSU Secretary that “in conformity with our procedures for dealing with payment instructions for third parties [...and in] light of the contradicting instructions now received by us from the UN Staff Union, we have decided to suspend, with immediate effect, the payments of dues collected from staff members through payroll, until the issue is resolved internally by the UN Staff Union”.

b. The 26 January 2011 decision by the Controller, Assistant Secretary-General, that was communicated to the President, UNSU, informing him that the Organization had decided “to suspend, from the month of January 2011, the deduction of staff union dues from the salaries of staff members, to avoid

any legal liability for the UN arising from such continued collection under the current circumstances”.

Receivability

21. In accordance with *O’Neill* UNDT/2010/203, the Tribunal must verify *ex officio* the receivability of the application before analyzing the merits of the case.

22. The appeal against the contested decisions was filed within the applicable time limits and is receivable *ratione temporis*. Consequently, the Tribunal will consider the receivability issues raised by the Respondent.

23. In his application, the Applicant indicated that his appeal incorporated the arguments from his application for suspension of action pending management evaluation, which was filed on 10 February 2011, and which was determined by Order No. 57 (NY/2011). The full reasoning behind the decision of Order No. 57 was contained in Order No. 83 (NY/2011).

24. In the “General comments and conclusion” section of Order No. 83, the Tribunal referred to the several comments that the Applicant had made with regard to the rights of UNSU. The Order further stated that:

35. Article 2.3(a) of the International Covenant on Civil and Political rights provides that any person whose rights and freedoms are violated shall have an effective remedy. Further, art. 2.3(b) provides that any person claiming such a remedy shall have his rights determined by competent judicial, administrative or legislative authorities. However, as indicated in *Kisambira* [Order No. 36 (NY/2011)], this Tribunal has no jurisdiction over matters involving the internal affairs of a staff association.

...

37. ... The Tribunal was advised that despite provision for an arbitration committee, UNSU has failed since the inception of its Statute and Regulations in 2007 to install such a committee.

38. ... Whilst the Respondent has not specifically argued frustration of any contract, the contention is that the Administration is loath to pay the dues directly to either the UNFCU or Citibank bank accounts of UNSU as a result of the contradictory instructions from UNSU office bearers as to the assigned account. The Applicant contended that the Respondent had at all times in the past dealt with the President alone ... [and he is the one] who designates the account into which the funds are deposited, although a plain reading of art. 10.6 of the UNSU Statute states that the Treasurer shall collect all monies due to the Staff Union and deposit its funds in his name.

25. The Tribunal considers that the contested decision is complex in nature as it concerns the Organization's position vis-à-vis the conflicting requests made by the President of UNSU and the Secretary of the UNSU Executive Board. Even if, by Order No. 83 (NY/2011), the Tribunal determined that the contested administrative decision appeared to be *prima facie* unlawful, in light of staff rule 3.17(c)(v) and staff regulation 8.1, the content of the contested decision of October 2010 reflects a temporary refusal to remit the Applicant's UNSU dues into either of the indicated Citibank or UNCFU bank accounts.

26. From a legal stand point, this represents the Organization's position that it cannot apply internal contradictory UNSU decisions and, more importantly, the Organization cannot carry out its own interpretation of the UNSU Statute and Regulations either in favour of or against the position adopted by the UNSU President. This decision also consisted of an official request to the UNSU officials to provide them as soon as possible with the appropriate bank details for it to perform its responsibilities, which it never denied, under staff rule 3.17(c)(v).

27. Article 7.1 of UNSU Statute states that the "Council shall be the legislative body of the Union and shall determine its operational policy, except where such policy is determined by General Meeting or referendum". Furthermore, according to art. 14.2 of UNSU Statute, the "[o]perational policy shall be determined by the Council, subject to the provisions of Article 7, paragraph 1".

28. More importantly, arts. 15 and 17 of UNSU Statute identify how issues of compliance with the Statute and Regulations are to be addressed, namely by stating that “[t]he Arbitration Committee shall consider and rule on compliance matters as specified in the Regulations made under [the UNSU Statute]” and “[i]n 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”.

29. The Arbitration Committee has the exclusive and mandatory competence to resolve the matter that is the subject of the present case. Indeed, the Arbitration Committee has the competence to interpret the application of UNSU Regulations, including regs. 10.1 and 10.6 regarding the responsibilities of its President and Treasurer, as well as the role of the Audit Committee which is responsible for monitoring and addressing any changes in UNSU accounting policies and practices.

30. The Tribunal considers that the Organization was put in a position of having to interpret art. 12 of UNSU Statute which legislates the responsibilities regarding UNSU finances, in this case the remittance to UNSU of their members’ dues. More specifically, art. 12.2 states that “[t]he day-to-day administration of the Union finances shall be delegated by the President to the Treasurer with responsibility for finance; art. 12.3 states that “[t]he union accounts shall be endorsed by the President prior to approval by the General Meeting and made available to the public”; art. 12.4 states that “[t]he treasurer shall draw up the Union budget and monitor expenditure and income on behalf of the Council and exercise other duties as set forth in the Financial Regulations made under this Statute”. The remittance to the Staff Union of the members’ contributions in one bank account or another from the ones mentioned will be equivalent with an interpretation of the above mentioned provisions by the Administration.

31. After the first decision was made in October 2010, instead of resolving the matter in accordance with their Statute, the UNSU President wrote on 8 November 2010 to the Director of OPPBA, asking him to lift the suspension of

the remittance and stating that in taking this decision he “may wish to refer to Statute 10 [sic] and Regulation 12 of the Statute and Regulations of the [UNSU]. Any contrary misrepresentations by any member of the Staff Council and/or Staff Union should immediately be brought to the attention of the President”. Again, the Organization, through the Director, OPPBA, was asked to take a decision regarding the interpretation of UNSU Statute and Regulations.

32. The Tribunal finds that two members of the UNSU holding key positions in the UNSU, by contesting each other’s competencies, involved the Organization in an internal conflict which can be resolved only by the Arbitration Committee.

33. Both as part of his application for a suspension of action and in the present case, the Applicant expressly mentioned that “the decision to suspend the deduction and remittance of his dues to UNSU undermines and *violates the Statute and Regulations of UNSU*” (emphasis added).

34. As stated in *Hassanin* Order No. 139 (NY/2011), “simply because an administrative decision may touch upon matters affecting a staff member’s right to freedom of association does not automatically compel the conclusion that the administrative decision is contestable”.

35. In *Hassanin* Order No. 139, the Tribunal (Judge Kaman) stated that:

The required analysis is under *Andati-Amwayi* 2010-UNAT-058, wherein the Appeals Tribunal held that apart from the “straightforward” determination of what constitutes a contestable administrative decision in terms of appointments, promotions and disciplinary measures, in other instances the administrative decision might be one of “general application” that seeks to promote the efficient implementation of administrative objectives, policies and goals ... Although the administrative decision in the second instance may impose some requirements on a staff member to exercise his or her rights, the decision still does not necessarily affect his or her terms of appointment or contract of employment. In such an instance, the Tribunal will need to determine whether there exists a contestable administrative decision affecting the staff member.

36. At the time of the application for suspension of action, in February 2011, the Arbitration Committee had yet to be put in place. However, as of the time of the present application, which was filed on 13 June 2011, the Arbitration Committee had been elected and become functional as of 9 June 2011.

37. The Tribunal underlines that its competency, in accordance with art. 2.2 of the Tribunal's Statute, is strictly limited to a legal review of the content of the administrative decision that was previously before the MEU and cannot be extended to the findings included in the MEU's review. An appeal filed with the Tribunal must therefore contain critics referring only to the legality of the reasons in the contested decision.

38. The Tribunal also notes that the Applicant, as underlined in Order No. 83 (NY/2011), is applying his own interpretation of the UNSU Statute and Regulations regarding the statutory rights and obligations of the President and the Treasurer of UNSU, considering that "the Respondent had all the times in the past dealt with the President alone ... [and] he is the one who designates the account into which the funds are deposited, although a plain reading of art. 10.6 of the UNSU Statute states that the Treasurer shall collect all monies due to the Staff Union and deposit its funds in his name".

39. The Tribunal considers that the application and relief sought by the Applicant reflect his subjective position regarding who has the right, in accordance with the UNSU Statute and Regulations, to establish the bank account into which the dues collected from its members are remitted. Further, the Applicant is seeking to have the Tribunal substitute itself for the Arbitration Committee with regard to an internal UNSU matter.

40. As indicated in *Kisambira* Order No. 36 (NY/2011), this Tribunal has no jurisdiction over matters involving the internal affairs of a staff association. Consequently, whether or not the President of UNSU delegates his authority to its

Treasurer to perform functions related to the management of its finances, this is not a matter over which either the Organization or this Tribunal have the right or the jurisdiction to substitute the Arbitration Committee.

41. The application is not receivable *rationae materiae*. The Tribunal therefore does not need to consider the merits of the case.

Conclusion

42. The application is not receivable and is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 24th day of January 2014

Entered in the Register on this 24th day of January 2014

(Signed)

Hafida Lahiouel, Registrar, New York