



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

SAKHARDANDE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. On 16 January 2017, the Applicant, an Information Systems Assistant at the GS-6 level, step 10, in the Department of Economic and Social Affairs, filed an application contesting the following decisions (reference to annexes omitted):

(1) The decision of the Department of Management [“(DM)”] to provide the names of eligible voters to an unqualified and unlawfully convened college of Polling Officers, pursuant to what the Arbitration Committee has deemed an illegal, null and void decision by a non-dues-paying, non-member of the Staff Union [“(Union)”] at the Headquarters in New York [“(UNHQ)”] [commonly known as “UNSU”];

(2) The decision of the [Office of Legal Affairs (“OLA”)] to clear the so-called “transitional measures” amending the Statute and Regulations of the [UNSU], which the Arbitration Committee has deemed to be illegal, and hence null and void, as they were introduced in violation of the Statute and Regulations of the [UNSU]; and

(3) The decision of the Administration to interfere in Union affairs.

2. As remedies, the Applicant seeks the rescission of the contested decisions and “compensation for the stress, strain and moral damages of being subjected to unlawful practice and willful abuse of authority”.

3. The Respondent submits that the Application is not receivable *ratione materiae* as the Applicant has not identified any administrative decisions taken in non-compliance with the terms and conditions of his employment and decisions or actions relating to the internal administration of the Staff Union are not receivable before the Dispute Tribunal.

Factual background

4. The following outline of facts is based on the parties’ submissions and the documentation on the record and only reflects those circumstances that are relevant to the issue of the receivability.

5. The Applicant and other staff members were elected as Polling Officers of the 45th Staff Council at UNHQ on 5 August 2013, who subsequently held the UNSU election on 10 and 11 December 2013 in New York.

6. There had been several disputes regarding the validity of the December 2013 UNSU election and its process, one of which was the attempt by the Group of Unit Chairpersons of the 44th Staff Council to recall the Polling Officers of the 45th Staff Council. This issue was brought before the Arbitration Committee by the Chairperson of the Polling Officers of the 45th Staff Council. In the Arbitration Committee decision dated 18 March 2014, the Arbitration Committee held that “[o]ther than the Arbitration Committee, no body of the Union, including the Group of Unit Chairpersons, Staff Council, Executive Board, and General Meeting, has the mandate or is charged with the responsibility under the Statute and regulation[s] of the Union to review the conduct and organization of elections by the Polling Officers”.

7. Subsequently, in its decision dated 14 May 2015, the Arbitration Committee pronounced that “it had fully validated both the process and outcome of the election [held on 10 and 11 December 2013], thereby validating the election in its entirety”.

8. On 21 September 2015, the Applicant submitted a petition to the Arbitration Committee requesting confirmation of the term and authority of the Polling Officers of the 45th Staff Council. The Arbitration Committee decision dated 21 October 2015 stated that “the Polling Officers shall continue to hold office and serve until new Polling Officers have been elected by the 45th Staff Council once it has taken full office”. This decision further stated that “[g]iven that the previous general election was held on 10 and 11 December 2013 and the results of the election were published on 17 December 2013, the term of office of the Staff Council would have started on 1 January 2014 at the least, and a general election could be held by the end of the year of 2015”. The Arbitration Committee found it “necessary that the Polling Officers start making the necessary preparations for the general election” and “expect[ed] the Polling Officers to consult with the 45th Staff Council on the appropriate time and course of action to hold the general election”.

9. However, it is common cause that there were grievances and allegations that management was frustrating the taking of office by the 45th Staff Council apparently due to internal wrangling between the latter and the 44th Staff Council and within the Staff Association generally.

10. On 8 December 2016, a staff meeting was held following an announcement on iSeek (the official United Nations Intranet) for the convening of a “General Staff Meeting to enact change to ensure that your needs and concerns are addressed”. The meeting was chaired by two staff members, one of them a member of the 45th Staff Council.

11. On 19 December 2016, Mr. EDS, the Chairperson of the 45th Staff Council, and Mr. AM, the Secretary of UNSU, submitted a petition to the Arbitration Committee, alleging that the 8 December 2016 meeting was convened in violation of UNSU’s Statute and Regulations.

12. On 27 December 2016, the Arbitration Committee issued a decision concerning the meeting held on 8 December 2016, finding as follows:

The 8 December 2016 meeting is an emergency general meeting in the meaning of the Statute, which was properly called as per Statute 9.7 (c), but was convened in violation of Regulations 5.2, 5.4, 5.7, 5.9, 5.11, 5.13, 5.17, 10.5 (b), and 10.5 (c). Further, taken in the best light, the outcome of the meeting represents a valid motion by the staff for the convening of an emergency general meeting in the context of Regulations 5.11 and 5.13, which is incumbent upon the Staff Council to consider.

13. According to the Applicant, Ms. KK, then Chief, Transition Team of the Secretary-General-designate, in her email to Mr. AM, the Secretary of UNSU, dated 29 December 2016, referred to the letter entitled “UNHQ staff voted for new Staff Union Elections to be conducted by a 3rd party (CCISUA)”, which indicated that Mr. IR, the President of the Coordinating Committee of the International Staff Unions and Associations (“CCISUA”), would act as interim leadership for UNSU until the election of new leadership.

14. Regarding a new election to be organized by CCISUA and Mr. IR's assuming interim leadership for UNSU, Mr. AM urgently requested a decision of the Arbitration Committee, which issued its decision on 4 January 2017 as follows:

[Name redacted, Mr. IR] is not a dues paying member of the UNHQ Staff Union, and is therefore statutorily prohibited from voting in any Union election or holding any Union office, *ad interim* or otherwise, at UNHQ. Any decision by [Mr. IR] concerning any Union election will be deemed illegal, and hence null and void.

15. On the same day (4 January 2017), an email broadcast, jointly signed by the President of CCISUA and the President of the United Nations International Civil Servants Federation ("UNISERV"), was sent to all staff in New York. Noting that the December 2013 election was being challenged and elections had not taken place for UNSU within the 2-year period as required by the staff regulation 8.1(b), the email provided as follows:

Given the difficult history surrounding past elections in New York and in light of a vote by a significant number of New York staff requesting that CCISUA ... and UNISERV staff federations organize elections, and also noting that the terms of office of the bodies that would normally ensure elections in New York are now expired with no apparent legal means of re-establishing them, we will undertake the following:

CCISUA and UNISERV will elect a college of polling officers and arbitration committee members from among their global union membership, and contract a recognized firm to carry out electronic voting.

The polling officers will receive the names of eligible voters from the [DM], carry out the apportionments, call for candidates and carry out elections for unit representatives, unit chairs and the leadership.

The elections will be carried out in line with UNSU's statute and regulations, adapted during a transitional period to integrate the above arrangements. The transitional statutes, cleared by the Office of the Legal Adviser as being compliant with the Staff Rules can be found here ... It should be noted that the sole purpose of these transitional statutes is to enable the organization and completion of the 2017 first quarter elections. They will not confer on CCISUA nor UNISERV a mandate to speak directly for UNSU nor to directly represent staff in New York in dealings with management or other parties.

16. Mr. AM of UNSU requested the Arbitration Committee to issue a decision regarding the email broadcast sent by CCISUA and UNISERV, and on 5 January 2017, the Arbitration Committee issued a decision finding that “all the actions concerning the new election stipulated in the broadcast are in violation of the Statute and Regulations of the Union”. In particular, citing UNSU’s Statute, art. 19, and its regulation 6.18, the Arbitration Committee stated that the only way to “amend its articles [is] through referendum” and “[a]mendments introduced through any other means are therefore illegal, and hence null and void”. Further, quoting staff regulation 8.1 (“electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General”), the Arbitration Committee wrote that it was not clear “what authority [OLA] has to approve amendments to the Statute and Regulations of the Union made illegally”.

17. On 5 January 2017, Mr. AM, transmitting two decisions of the Arbitration Committee to the Secretary-General, requested the Secretary-General to express his disapproval of the new staff union elections described in the 4 January 2017 iSeek announcement as well as the “transitional statutes”. According to the Applicant, no response has been received from the Secretary-General.

18. On 11 January 2017, the Applicant submitted a request for management evaluation to the Management Evaluation Unit (“MEU”), which provided its response on 13 January 2017, stating that the request was not receivable on the grounds that “none of the alleged actions by the Administration, even if substantiated, produced any direct legal consequences generally or with respect to your individual terms of appointment”.

19. On 16 January 2017, a further broadcast email was sent to all staff in New York from UNISERV and CCISUA. In that email, an update on the election process was provided. The name of the company contracted to provide voting services was named, as were polling officers and the members of the arbitration committee.

Procedural background

20. On 16 January 2017, the Applicant filed the current application. On the same day, the Applicant filed a motion for interim measures requesting, as interim relief pursuant to art. 10.2 of the Statute, the suspension of the implementation of the contested decisions pending the proceedings before the Dispute Tribunal.

21. On 16 January 2017, the New York Registry informed the parties that the case had been assigned to the undersigned Judge, transmitted the substantive application to the Respondent, and instructed the Respondent to file a reply by 15 February 2017.

22. On 19 January 2017, the New York Registry advised the parties that, due to the assigned judge (Judge Ebrahim-Carstens) being absent from office due to unforeseen circumstances, the motion for interim measures had been reassigned to Judge Greceanu.

23. On 19 January 2017, the Respondent duly filed his response to the motion for interim relief.

24. By Order No. 17 (NY/2017) dated 20 January 2017, the Tribunal (Judge Greceanu) rejected the Applicant's motion for interim measures, on the basis, *inter alia*, that should the interim measure sought be granted, the Tribunal would not just provide temporary relief but effectively be adjudicating on the receivability and on the merits of the application, which is not the purpose of an interim measure.

25. On 15 February 2017, the Respondent filed his reply on the substantive matter in which he claimed that the application is not receivable *ratione materiae* and, in any event, is without merit.

26. On 20 February 2017, the Applicant filed a "Motion for Summary Judgment and Observations on the Respondent's Reply".

27. By Order No. 108 (NY/2018) dated 30 May 2018, the Tribunal ordered the Applicant to file his comments and any submissions on the receivability issues raised

in the Respondent's reply and for the parties to file separate submissions stating their views on whether the receivability issues may be dealt with as a preliminary issue on the papers before the Tribunal.

28. On 22 June 2018, the Applicant filed his submission on the receivability issues in response to Order No. 108 (NY/2018). On whether receivability may be dealt with as a preliminary issue, the Applicant filed a separate submission contending that a fair disposal requires all matters of the case to be considered in an open trial, and requested the Dispute Tribunal to "bring the case to trial without further delay".

29. On the same day, the Respondent filed his submission stating that he has no objection to the receivability issues being dealt with as a preliminary issue on the papers.

Respondent's submissions on receivability

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

a. The application is not receivable *ratione materiae*. There is no factual basis for the Applicant's assertion that any reviewable administrative decisions have been taken in non-compliance with the terms and conditions of his employment. Further, decisions or actions relating to the internal administration of the Staff Union are not matters that are receivable before the Dispute Tribunal;

b. The Administration circulated a broadcast email to all staff in New York at the request of UNISERV and CCISUA. At the time of the submission of the application, no list of eligible voters had been issued. OLA provided legal advice limited as to whether the proposed amendments to the Statute and Regulations of the Staff Union respected the principle of equitable representation to all staff members, as enshrined in staff regulation 8.1.

Neither of these actions are reviewable administrative decisions under art. 2.1(a) of the Dispute Tribunal's Statute;

c. Under art. 2.1(a) of its Statute, the Dispute Tribunal has jurisdiction to hear applications challenging administrative decisions that are alleged to be in non-compliance with the terms of appointment or the contract of employment of a staff member. An administrative decision is a unilateral decision taken by the administration in a precise individual case which produces direct legal consequences to the legal order (*Hamad* 2012-UNAT-269). The Appeals Tribunal has held that "to be reviewable, the administrative decision must have direct legal consequences on an individual's terms of appointment" (*Nguyen-Kropp & Postica* 2015-UNAT-509);

d. It is well established that the Dispute Tribunal does not have jurisdiction under the Statute to entertain any disputes arising from a challenge to union elections (*Kisambira* Order No. 80 (NY/2014)). Additionally, the Dispute Tribunal has no general jurisdiction to review or supervise the internal affairs of a staff association (*Kisambira* Order No. 36 (NY/2011), para. 17; *Hassanin* Order No. 83 (NY/2011), paras. 35 and 37; *Saffir* UNDT/2013/109, para. 36). Nor does the Dispute Tribunal have jurisdiction to enforce the decisions of the UNSU's Arbitration Committee (*Kisambira* UNDT/2015/085). The Arbitration Committee is the only body with competence to decide on Staff Union disputes (*Sakhardande* Order No. 17 (NY/2017), para. 12);

e. The Applicant has not identified how the circulation of the email or OLA's legal advice concerning the application of staff regulation 8.1 to the proposed amendments to UNSU's Statute and Regulations violated any of the terms of his appointment. Under staff rule 8.1, the Applicant has the right to join a staff union. None of the contested decisions impact on that right. He retains his right of free association. The Statute and Regulations of UNSU do not form any part of the terms of his appointment. His status as a polling

officer is a UNSU internal matter and not subject to the jurisdiction of the Dispute Tribunal;

f. Furthermore, the Applicant is asking the Dispute Tribunal to decide that only the polling officers recognized by the Arbitration Committee decision of 21 October 2015 are validly appointed. In order to do so, the Dispute Tribunal would have to review the internal affairs of the Staff Union, which it cannot do.

Applicant's submission on receivability

31. The Applicant's principal contentions may be summarized as follows:

a. The Respondent's submission on receivability is fallacious and should be rejected. The Respondent has admitted to making the unlawful administrative decisions contested, and the Applicant has legal capacity and legal standing to contest these decisions. The Dispute Tribunal has the jurisdiction to receive and consider the application under art. 2.1(a) of its Statute;

b. The Applicant is a staff member and a Polling Officer of the 45th Staff Council, who at the time of the submission of the Application held office as per the decision of the Arbitration Committee dated 21 October 2015, and hence is not a staff representative as per UNSU regulation 6.6, which provides that "[p]olling [o]fficers shall not be eligible for election as staff representatives nor serve on any Union body";

c. The right of the Applicant to be selected as, and to serve the functions of, a Polling Officer under the pertinent provisions of UNSU Statute and Regulations is provided in staff rule 8.1 (d), and hence, is a confirmed legal right of the Applicant under his contract of employment:

(d) Polling officers selected by the staff shall conduct the election of the members of each staff representative body, on

the basis of the electoral regulations of the staff representative body concerned, in such a way as to ensure the complete secrecy and fairness of the vote. The polling officers shall also conduct other elections of staff members as required by the Staff Regulations and Staff Rules;

d. In *Obdeijin* UNDT/2011/032, the Dispute Tribunal has held:

31. [...] The contract of employment is normally the source of rights and obligations, together with the various regulations, rules, and administrative issuances upon which employment and other rights are conferred. In the adjudication of employment disputes that come before them, international administrative tribunals may rely on, among other sources, general principles of law—including international human rights law, international administrative law and labour law—which may be derived from, *inter alia*, international treaties and international case law;

e. Further, the Applicant has keen interest in the matter having been a Polling Officer at the time the unlawful administrative decisions were made, and hence has legal capacity and legal standing to contest these decisions, as per *Hunter* UNDT/2012/036:

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.

f. The Respondent further contends that the Applicant's status as Polling Officer is a Staff Union internal matter, and not subject to the jurisdiction of the Dispute Tribunal. However, the Applicant does not seek a ruling concerning an internal affair of UNSU or on behalf of other staff members, but only in relation to his own legal right. The application is therefore receivable pursuant to the Dispute Tribunal's finding in *Carlton* Order No. 262 (NY/2014):

18. Accordingly, the Tribunal finds that to the extent the Applicant seeks to make any claims on behalf of other staff members, such claims are not receivable. However, with respect to the claims made by the Applicant in relation to her own legal rights, the application satisfies the statutory requirements and is receivable;

g. Further, contrary to the Respondent's contention, the Applicant is not asking the Dispute Tribunal to decide that only the polling officers recognized by the Arbitration Committee decision of 21 October 2015 are validly appointed. This matter has been fully adjudicated by the Arbitration Committee, and is not subject to review by the Dispute Tribunal;

h. The Respondent confirms in his response that the Administration has circulated the referenced email and follow-up email to all the staff in the Secretariat. In the email dated 4 January 2016, the senders clearly stated that the unlawfully convened group of Polling Officers, as ruled by the Arbitration Committee in its decision dated 5 January 2017, "will receive the names of eligible voters from the [DM]", and that the so-called transitional statutes have been "cleared by [OLA] as being compliant with the Staff Rules". The clearance by OLA is presented as the legal basis of the so-called transitional measures;

i. The fact that the general staff election has been held is by itself evidence that a list of staff has been provided by DM to the unlawfully constituted polling officers. UNSU regulation 6.8 provides that "[p]olling [o]fficers shall start the electoral process a full six months prior to the expiry of the outgoing Council's mandate and shall divide the Secretariat into electoral units on the basis of the official staff list of those on a current 100 series contract";

j. Not only does OLA lack the authority to approve illegally constituted electoral regulations, it also does not have any authority in this regard, as the authority to agree to the electoral regulations drawn up by the staff

representative bodies has been retained by the Secretary-General (see annex of ST/SGB/2015/1 (Delegation of authority in the administration of the Staff Regulations and Staff Rules)). The decision of OLA is therefore doubly unlawful, given that amendments to the election regulations were illegally made, and that OLA lacks the appropriate delegation of authority to agree to such amendments even if they were properly constituted. The Respondent does not clarify why OLA found it necessary to involve itself, and subsequently decided to not reconsider its action, in a matter that falls solely under the jurisdiction of the Arbitration Committee and on which it has made a series of decisions, all of which have been duly transmitted to the Administration;

k. DM is the sole owner and operator of the email servers and computer network and custodian of all email accounts in the Headquarters in New York. The mass distribution of the email of the unlawful Polling Officers, dated 4 January 2017, confirming the clearance by OLA and the provision of the staff list by DM are a testament of the coordination between the administrative and legal branches of the Administration at the highest level, as is evidenced by the correspondence of the Chief of the Transition Team of the Secretary-General designate at the time. This coordination is the epitome of an administrative decision;

l. Also, these decisions could only be deemed to have been implemented in their entirety at the end of the election cycle, as the staff list is continually updated by eliminating retired and transferred staff, and adding newly appointed staff, with the updates being provided to the unlawfully convened Polling Officers until the election has been held. In *Adundo et al.* Order No. 8 (NY/2013), the Dispute Tribunal has held:

17. Therefore, it is not the case that every decision that has been “implemented” will be unable to be suspended by an order for suspension of action. To accept the Respondent’s interpretation would be to render the Tribunal impotent. It

could not have been the intention of the drafters of the Dispute Tribunal's Statute that the Tribunal should have no power to dispense justice (in this context, by granting urgent and limited interlocutory relief) where the Respondent notifies a staff member of a decision at the time of, or at the eleventh hour before the "implementation" of a decision. This would allow even the most tainted and unlawful decision to stand, so long as it has been implemented hastily;

m. Finally, the Respondent submits that the Dispute Tribunal does not have jurisdiction under the Statute to entertain any disputes arising from a challenge to union elections, or general jurisdiction to review or supervise the internal affairs of a staff association, nor does the Dispute Tribunal have jurisdiction to enforce the decisions of the Union's Arbitration Committee. However, the Applicant is not asking the Dispute Tribunal to adjudicate any of these matters.

Consideration

Receivability

32. Article 2.1(a) of the Dispute Tribunal's Statute states that the Tribunal is competent to "hear and pass judgment on an application ... against the Secretary-General as the Chief Administrative Officer of the United Nations ... [t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment".

33. In the present case, the Applicant is essentially contesting the two decisions, namely, "[t]he decision of the [DM] to provide the names of eligible voters" to polling officers convened as referred to in the 4 January 2017 email broadcast, jointly signed by the Presidents of CCISUA and UNISERV, and "the decision of [OLA] to clear the so-called "transitional measures" amending the [UNSU] Statute and Regulations". The Applicant also submits that he contests "the decision of the Administration to interfere in Union affairs", but given that the Applicant does not

provide any other precise specifics regarding this alleged decision, the Tribunal considers that this description refers to two decisions described above.

The decision of DM to provide the names of eligible voters to polling officers as referred to in the 4 January 2017 email broadcast

34. The Applicant contests the decision of DM to provide the names of eligible voters to “an unqualified and unlawfully convened college of Polling Officers” as decided by the Arbitration Committee decision dated 5 January 2017. The Applicant, a Polling Officer of the 45th Staff Council, submits that, according to various decisions of the Arbitration Committee, the Polling Officers of the 45th Staff Council held office and had the authority to organize and conduct elections when the new group of Polling Officers referred to in the 4 January 2017 email broadcast was constituted.

35. On the issue of receivability, the Respondent submits that the matter is not receivable because the Applicant’s status as a polling officer is an internal Staff Union matter and not subject to the jurisdiction of the Dispute Tribunal. The Respondent contends that the Applicant is essentially asking the Dispute Tribunal to rule that only the Polling Officers recognized by the Arbitration Committee decision of 21 October 2015 are validly appointed, which would require the Dispute Tribunal to review the internal affairs of the Staff Union, which it cannot do. The Applicant contends that the right of the Applicant to be selected as, and to serve the functions of a Polling Officer derives from staff rule 8.1 (d), and hence is a confirmed legal right of the Applicant under his contract of employment and hence his application is receivable.

36. In *Saffir* UNDT/2013/109, the Dispute Tribunal held that while the Tribunal is empowered to review administrative decisions including action or inaction by the Secretary-General, “there appears to be no jurisdiction on the part of this Tribunal to entertain any disputes arising from the holding of, or a challenge to, union elections.

Further, there is certainly no general jurisdiction to review or supervise internal union affairs”.

37. The Dispute Tribunal held that “there is neither an express provision in its Statute, nor an implied provision, for referral of any electoral challenge to the Tribunal, either by individual action, or on appeal from the Arbitration Committee” and “[t]here is no provision for an appeal therefrom to any other body, or for any other recourse to any other forum” (*Saffir* UNDT/2013/109). The Dispute Tribunal further held in *Kisambira* UNDT/2015/085 that it has no competence under art. 2.1(a) of its Statute to substitute, review or enforce any of the Arbitration Committee decisions.

38. In the present case, the Applicant submits that he has legal standing as a Polling Officer of the 45th Staff Council and a right to perform his duties as such by virtue of staff rule 8.1, and any hindrance in the performance of such functions by the administration constitutes an administrative decision capable of review. If indeed the Applicant was at the material time a validly elected and serving Polling Officer whose term had not expired, he may well be within his rights to claim that staff rule 8.1 confers upon him sufficient interest and legal capacity to bring a claim to enforce his rights thereunder to conduct his duties as such, according to the pertinent requirements.

39. The Tribunal notes that the Applicant was elected as a Polling Officer of the 45th Staff Council on 5 August 2013 and the Arbitration Committee decision stated that he still held office as at the issuance of the decision on 21 October 2015. On the other hand, the 4 January 2017 broadcast claimed that “the terms of office of the bodies that would normally ensure elections in New York are now expired”. The Tribunal further notes that the Arbitration Committee confirmed in its decisions dated 18 March 2014 and 21 October 2015 that the Arbitration Committee is the only body that can review the conduct and organization of elections by the polling officers and decide the term and authority of the polling officers. The Tribunal observes that the said decision of the Arbitration Committee regarding the functions of the Polling

Officers is qualified, in that they “expect[ed] the Polling Officers to consult with the 45th Staff Council on the appropriate time and course of action to hold the general election”. Further, as the Applicant submitted, the Arbitration Committee decided on 14 May 2014 that “taking full office is not self-executing but effected by the [Administration]”, and the leadership and 45th Staff Council had not taken full office following the general election of December 2013. Therefore, in all practical terms, they could not instruct the Polling Officers to conduct elections.

40. In any event, it is evident that the Dispute Tribunal’s review of the Applicant’s status as a validly elected and serving polling officer and of his legal standing, or DM’s decision to provide the names of eligible voters to the polling officers declared by the Arbitration Committee to be illegally convened, will effectively require the review or enforcement of the Arbitration Committee’s decisions on the term and authority of the polling officers of the 45th Staff Council and/or the legality of the convening of the new polling officers referred to in the 4 January 2017 broadcast, which this Tribunal has no competence to do. An aggrieved person, under the terms of the UNSU Statute, may approach the Arbitration Committee, which was established to “review alleged violations of the Statute of the Staff Union and decide on sanctions where warranted”, and whose rulings are binding on all bodies of the Staff Union (UNSU regulation 8.1). This is what the Applicant did by seeking the Arbitration Committee’s decision of 4 January 2017.

41. As previously held in the case of *Saffir* UNDT/2013/109, “[t]here is no provision for an appeal therefrom to any other body, or for any other recourse to any other forum” and this Tribunal has no general jurisdiction to review or supervise internal union affairs and has no competence to substitute, review or enforce any of the Arbitration Committee decisions.

42. Therefore, the Tribunal finds that the Applicant’s claim regarding the provision of the names of eligible voters to polling officers as referred to in the 4 January 2017 email broadcast is not receivable under art. 2.1(a) of the Dispute Tribunal’s Statute.

The decision of OLA to clear the “transitional measures” amending the UNSU Statute and Regulations

43. The Applicant further contests the decision of OLA to clear the “transitional measures” amending the UNSU Statute and Regulations. The so-called “transitional measures” seem to refer to the UNSU Statute art. 21 (Transition), which provides in pertinent part that “[t]his Statute shall provide the legal basis upon which the Polling Officers shall conduct the election of the next Staff Council and Leadership)” (UNSU Statute, art. 21.1).

44. The Appeals Tribunal has held that the key characteristics of an administrative decision subject to judicial review is that the decision must be “a unilateral decision taken by the administration in a precise individual case ... which produces direct legal consequences to the legal order” (see, for instance, *Gehr* 2014-UNAT-475 and similarly *Lee* 2014-UNAT-481).

45. On the issue of receivability, the Respondent submits that OLA provided legal advice limited to whether the proposed amendments to the UNSU Statute and Regulations respected the principle of equitable representation to all staff members, as enshrined in staff regulation 8.1, and it is not a reviewable administrative decision under art. 2.1(a) of the Dispute Tribunal’s Statute as the Applicant has not identified how OLA’s legal advice violated any of the terms of his appointment. The Applicant, on the other hand, contends that his right as a polling officer derives from staff rule 8.1(d), and hence is a confirmed legal right under his contract of employment. The Applicant also contends that OLA approved the illegally constituted electoral regulations whilst it lacks the appropriate delegation of authority to agree to the amendments of the UNSU Statute and Regulations under ST/SGB/2015/1 (Delegation of authority in the administration of the Staff Regulations and Staff Rules), since the authority to agree to the electoral regulations drawn up by the staff representative bodies has been retained by the Secretary-General.

46. Staff regulation 8.1(b) provides that staff representative bodies “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”. A decision to provide an “[a]greement to electoral regulations drawn up by the staff representative bodies” is an authority retained by the Secretary-General, not delegated to OLA or any other office or department under ST/SGB/2015/1 (delegation of authority in the administration of the Staff Regulations and Staff Rules). While the Respondent submits that OLA provided legal advice limited to whether the proposed amendments to the UNSU Statute and Regulations respected the principle of equitable representation for all staff members, it appears that neither staff regulation 8.1(b) nor ST/SGB/2008/13 (Organization of the Office of Legal Affairs) envisage such a role for OLA.

47. Whatever the role of OLA in this matter, for this matter to be receivable, an administrative decision must be one that is alleged to be “in non-compliance with the terms of appointment or the contract of employment” of an applicant under art. 2.1(a) of the Dispute Tribunal’s Statute. The Applicant submits that OLA’s involvement in this matter, which allegedly cleared the transitional measure providing the legal basis for the election of polling officers referred to in the 4 January 2017 broadcast, is in non-compliance with his terms of appointment, particularly his right as a Polling Officer of the 45th Staff Council.

48. However, as explained above, the Dispute Tribunal’s review of the Applicant’s status as a validly elected and serving polling officer and of his legal standing will of necessity require the review or enforcement of the Arbitration Committee’s decisions on the term and authority of the Polling Officers of the 45th Staff Council during the relevant period. The Dispute Tribunal has no general jurisdiction to review or supervise internal union affairs and has no competence to substitute, review or enforce any of the Arbitration Committee decisions.

49. In light of the foregoing, the Tribunal finds that the Applicant's claim regarding the OLA's involvement in amending the UNSU Statute and Regulations is also not receivable under art. 2.1(a) of the Dispute Tribunal's Statute.

Conclusion

50. The application is not receivable and is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 18th day of December 2018

Entered in the Register on this 18th day of December 2018

(Signed)

Nerea Suero Fontecha, Registrar, New York