



UNITED NATIONS DISPUTE TRIBUNAL

Cases Nos.: UNDT/NY/2021/021/R1
UNDT/NY/2021/024/R1
Judgment No.: UNDT/2023/006
Date: 26 January 2023
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

OVCHARENKO ET AL.

KUTNER ET AL.

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George Irving

Counsel for Respondent:

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Jenny Kim, ALD/AS/OHR, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicants contest the “unilateral change in the individual workload standards for translation and self-revision” as decided by the Under-Secretary-General (“the USG”) for the Department for General Assembly and Conference Management (“DGACM”).
2. The Respondent contends that the applications are without merits.
3. In the Appeals Tribunal’s judgment in *Ovcharenko et al. Kutner et al. 2022-UNAT-1262*, the Tribunal’s Judgment No. UNDT/2021/084, in which the application had been rejected as non-receivable, was reversed and remanded to the Tribunal for “a trial on the merits”.
4. In light of the Tribunal’s findings below, the applications are all rejected.

Facts

5. In *Ovcharenko et al. Kutner et al. 2022-UNAT-1262* set out, as relevant to the present Judgment, the facts as follows:

... On 31 December 2020, the General Assembly adopted resolution 75/252 (Questions relating to the proposed programme budget for 2021). The Resolution in part stated the following:

[The General Assembly welcomes] the increased throughput productivity of the translation services at all duty stations, underlines that these productivity gains, enabled over the years by new working methods and technologies, justify revising the current notional workload standards approved in the pre-computer era by the General Assembly and decides to increase the workload standards for the translation services to 5.8 pages per day[.]

... The implementation of this new workload standard, as decided by the General Assembly, was discussed at several meetings between

DGACM management and staff representatives, namely one on 15 January 2021 and another one on 18 March 2021.

... Subsequently, on 8 April 2021, [the USG/DGACM] held a townhall meeting with staff members in which he discussed the implementation of the General Assembly resolution.

... On or about 26 April 2021, the Applicants requested management evaluation of “[t]he decision of the USG/DGACM of 8 April 2021 conveyed to staff at a town hall meeting that he had decided as of 1 May 2021 to implement the recommendation of the Working Group on the implementation of the increase of workload standards/or the translation services approved by General Assembly in resolution 75/252 as of 1 May 2021 by increasing the daily workload of translators to 5.8 pages and of self-revisers to 6.4 pages”.

6. In the following, the Dispute Tribunal will make its additional factual findings whenever relevant.

Consideration

The issue

7. The Appeals Tribunal has consistently held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”. When defining the issues of a case, the Appeals Tribunal further held that “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

8. When closely perusing the applications, replies and the subsequent filings of the parties, the main issues of the present cases can be defined as follows:

- a. Are the various acts of the General Assembly and the Advisory Committee on Administrative and Budgetary Questions (“ACABQ”), which have been submitted by the Respondent, lawfully before the Tribunal?

b. Was the contested decision, namely to increase the daily workload requirement of self-revision services to 6.4 pages, a lawful exercise of the USG's discretionary authority?

c. Did the process leading up to the contested decision follow proper procedure?

The Tribunal's limited scope of review

9. The Appeals Tribunal has generally held that the discretion of authority of the Administration is not unfettered. As the Appeals Tribunal stated in its seminal judgment in *Sanwidi* 2010-UNAT-084, at para. 40, "when judging the validity of the exercise of discretionary authority, ... the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate". This means that the Tribunal "can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse".

10. The Appeals Tribunal, however, underlined that "it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him" or otherwise "substitute its own decision for that of the Secretary-General" (see *Sanwidi*, para. 40). In this regard, "the Dispute Tribunal is not conducting a 'merit-based review, but a judicial review'" explaining that a "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision" (see *Sanwidi*, para. 42).

11. Among the circumstances to consider when assessing the Administration's exercise of its discretion, the Appeals Tribunal stated "[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness,

arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion” (see *Sanwidi*, para. 38).

Are the various acts of the General Assembly and ACABQ, which have been submitted by the Respondent, lawfully before the Tribunal?

12. By the Respondent’s motions of 25 November 2022, 5 January and 10 January 2023, he seeks to introduce the following documents for the Tribunal’s consideration:

- a. General Assembly resolution 76/245 (Questions relating to the proposed programme budget for 2022) dated 24 December 2021;
- b. ACABQ report A/76/7 (First report on the proposed programme budget for 2022) dated 13 August 2021;
- c. Draft Fifth Committee resolution submitted by its Chair following informal consultations A/C.5/77/L.23 (Questions relating to the proposed programme budget for 2023) dated 30 December 2022;
- d. General Assembly resolution A/RES/77/262 (Seventy-seventh session, Agenda item 138, Proposed programme budget for 2023) dated 30 December 2022.

13. The Applicants object thereto and his submissions may be summarized as follows:

- a. It appears that the Respondent is arguing that “recent General Assembly and ACABQ records” support “the contention that the staff are not entitled to question or interpret any action by the governing body”. A “careful perusal of all the official records submitted by the Respondent suggests the General Assembly as well as the ACABQ requested periodic updates on the policy and

its implications on resources, but did not mandate the particular mode of implementation decided on by the Respondent”. The “absence of any objection by [the General Assembly] or even taking note of something does not indicate approval, particularly in the absence of important information”:

b. The “new documentation” is not relevant, because “the Applicants do not have standing to speak on behalf of the General Assembly and that the resolution entails implied approval of the contested decision, the Respondent's arguments are misplaced”. Requesting “implementation of the revised productivity standards by the Assembly does not entail a blanket endorsement of the proposals of the DGACM Working Group”, and no “authority is cited for the Respondent’s assertion that in taking note, the absence of objections by the ACABQ implies a mandated approval”, which is “irrelevant to the decision being contested, which occurred some two years prior to when these reports and resolutions took place”. A/RES/77/262 “in particular, coming as it does two years after the contested decision, cannot be deemed to have retroactive effect”;

c. In spite of “repeated requests for meaningful departmental consultations on the technical and practical difficulties in implementing these proposed changes, no agreement was reached and a planned implementation date of the first working day of January 2023 was set by DGACM for the full implementation of far-reaching changes that went far beyond the increase in nominal workload standards”. While “wrongly claiming staff had been duly consulted, the USG/DGACM proceeded to report to ACABQ in August 2022 that the new changes, including to the application of reprise (recycled text), would proceed”. The ACABQ “took note of this report without further comment”, and the General Assembly as well as the ACABQ requested periodic updates on the

policy and its implications on resources, but did not mandate or approve the particular mode of implementation decided on by the Respondent”;

d. Following “the unsuccessful discussions in DGACM, the matter was then referred to the Staff Management Committee (“SMC”) for formal consultations as provided under Staff Regulation 8 .1. The staff representatives introduced a proposal in an SMC meeting held on 7 December 2022 for the establishment of a joint SMC working group and deferral of the implementation”. Their proposal to “defer further steps and for establishment of an SMC working group was rejected”, which is “where the matter has remained”.

e. The “new ACABQ Report and General Assembly Resolution are based on incomplete information provided by the DGACM Administration, but in any case, are limited to the issue of individual productivity standards for the Translation Services, but not to other aspects of implementation of the original [General Assembly] Resolution”. It is “clear that the full implementation of the Resolution, including how it will affect performance management and future contractual determinations have not been resolved”. Issues to “still be determined include how technological changes including the treatment of reprise (discounting recycled text), new work assignments (monitoring, resolution review etc.), factoring in terminology and reference work, new training and a variety of other issues”. The “application of the new standards to revision and self-revision work are especially problematical since the work is more exacting than translation and consequently requires more time”. As “staff surveys have shown, imposing on self-revisers the workload standard of 6.4 estimated pages per day under present conditions entails an increase in the number of working hours during the working day and in the number of working days in the working week”. Indeed, “74 and 71 percent of staff indicated

working longer hours/weekends in 2021 and 2022, respectively, in the staff survey previously submitted)", and had "ACABQ and the General Assembly been informed of this, they might have taken a different view", but "the DGACM management chose to report selectively on their implementation which clearly includes *de facto* increasing the staff working hours far beyond the established working week as the only means of achieving this goal";

f. These "on-going changes emanating from the DGACM Management Working Group's recommendations constitute elements of the administrative decision affecting the Applicants that was and is still being imposed without respecting the requirements of the Staff Regulations". Unilateral "changes to conditions of service are not only a violation of the proper exercise of discretionary authority but go the heart of good labor /management practices, consistent with international standards and with the Staff Regulations".

14. The Tribunal notes that the various acts submitted by the Respondent all form part of the general legal and institutional framework of the Organization, which may be considered as part of the Tribunal's deliberations without any further consideration (see, for instance, *Villamorán* 2011/UNDT/126, para. 29).

15. The pertinent question is therefore rather how the Tribunal will decide to rely of them, if at all, based on their relevance and legal significance. Accordingly, in Order No. 111 (NY/2022) dated 14 December 2022 and Order No. 001 (NY/2023) dated 6 January 2023, the Tribunal granted the Respondent's motions. In this regard, the Tribunal agrees with the Applicants that as a matter of principle, a legislative act cannot be given retroactive effect, which will not take effect before from the day of its adoption (in line herewith, see, for instance, the Appeals Tribunal in *Nogueira* 2014-UNAT-409, para. 14).

Was the contested decision, namely to increase the daily workload requirement of self-revision services to 6.4 pages, a lawful exercise of the USG's discretionary authority?

16. The Applicants' submissions may be summarized as follows:

a. The Applicants "are not contesting any decision by the General Assembly but rather the managerial decisions of the Respondent on how it is to implement [General Assembly resolution] 75/252". This resolution "was adopted in the context of budgetary allocations", and how "new workload standards are to be applied, which the General Assembly did not mandate, is within the purview of the Respondent". The "fairness and reasonableness of such discretionary decisions falls within the mandate of the Tribunal to review";

b. The Respondent's "attempt to justify his actions as being mandated by the General Assembly are entirely misplaced and based on a misreading of what the General Assembly decided". The "operative word" in General Assembly resolution 75/252 is 'notional' (i.e., 'revising current notional workload standards' ...)", and these "notional standards are used to determine necessary budgetary allocations for the translation services". The Respondent has "simply ignored the fact that this notional standard of 5.8 pages per day had already been reached in practice by the Department as a whole". Contrary to what the Respondent "infers", the General Assembly "never approved the far-reaching changes in conditions of service for all translators and revisers that were introduced in the Report of the DGACM Working Group", which forms the basis of the contested decision";

c. The USG/DGACM overstepped his discretionary authority when "expanding the scope of the resolution to increase the workload standards of all individual translators and self-revisers as elements of performance

evaluation ... by unilaterally changing their conditions of service”. This increase in the workload requirements “for self-revisers was neither reported to nor approved by the General Assembly”, and “[t]he fact that, based on the same analysis, the Respondent chose not to increase the workload standards of revisers confirms the arbitrary nature of the decision”;

d. The General Assembly specifically referred to “workload standards for the translation service”, and that “[t]his goal has been improperly applied by the Department to all translators, self-revisers and revisers, when required to perform translation or self-revision, on an individual basis”. It thereby “imposes a job requirement that was never intended as a performance metric, with the intention of introducing new work requirements that will affect performance evaluation and contractual decisions”. The “primary goal of the workload standard calculation was budgetary; it allowed management to determine the appropriate staffing for DGACM units depending on their projected workload, including for temporary assistance (translators and revisers hired for peak periods)”. Also, “it allowed them to calculate the programme budget implications (PBis) of the decisions of governing bodies concerning conferences that required additional documentation”. However, “these standards are henceforth also being used as quantitative metrics to evaluate the individual performance of staff”.

e. After “application of discounting rates of 0.42 and 0.91 for revision and self-revision, respectively, the quantity of word[s] done during the year is expressed in translation page equivalents which had to be 5 per working day, and now 5.8 and 6.4, respectively, for translation and self-revision work”. These standards are “expressly mentioned in ePerformance documents (and management insists on the inclusion of the phrase ‘workload standards are a floor, not a ceiling’)”. In case of non-compliance, “the performance evaluation

of staff is deemed no longer satisfactory, and staff members can be and are fired for this reason”;

f. The Applicants are “not contesting the decision of the General Assembly to alter the page requirement for translation services from 5 to 5.8 as a policy and budgetary guideline, but [they are] challenging the implementation measures introduced by the Department that go beyond that decision and impose them individually and arbitrarily on all translation staff”. While the DGACM Working Group “did not change the workload standard approved by the General Assembly of 5.8 pages per day, it went beyond the resolution and expanded the page workload for translators to 5.8 and for self-revisers to 6.4 (this figure had never been reported to or approved by the [General Assembly])”. Even so, “the workload standard arguably ought to be 5.8 pages for everyone, not 6.4”. DGACM had “neither General Assembly endorsement of this change nor any empirical study to support it”. It appears “to have been extrapolated from a claim to increase all workloads by 16% which was never the stated intention of the resolution”.

g. The “imposition of new standards of performance assessment, including an unwarranted extrapolation of the increase to self-revision that was not approved by or even reported to the [General Assembly], constitutes an adverse administrative decision affecting the Applicant and his colleagues”, referring to *Handy* 2020-UNAT-1044. The “new standard will become the norm by which performance is judged, which in turn affects decisions on contractual status”. The Administration has “not indicated the steps it envisages for increasing productivity other than working longer hours, and “[i]t does not provide for any flexibility in the event of circumstances such as the continued impact of COVID-19” ... [n]or does it foresee any appropriate compensation for the additional work required to meet these new standards”.

17. The Respondent, in essence, submits that the USG acted within the scope of his authority when taking the contested decision.

18. The essential point of the Applicants' case is that since the General Assembly in resolution 75/252 only increased the workload standard for the translation services, the USG was not allowed to do the same for self-revisers at the same time.

19. Regarding the background for the contested decision, the Respondent explains, *inter alia*, that,

a. The USG arrived "at the contested decision following a rigorous process which included convening a Working Group from January until March 2021 to conduct a detailed study of workload standards, hold substantive discussions with staff and staff representatives, and propose accommodating measures to help staff transition to the new workload standards". The Working Group was composed of "representatives of all four duty stations was established" and included "senior professionals and experts in the field of translation services";

b. The Working Group "researched the historical antecedents of resolution 75/252, including all parliamentary documentation on workload standards since 1947". Based thereon, it was found that given the workload standards as adopted by the General Assembly were 5 pages/day for translation and 5.5 pages/day for self-revision prior to resolution 75/252 and resolution 75/252 increased the workload standards for translation to 5.8 pages/day, a proportionate increase in the workload standards for self-revision should be effectuated at 6.4 pages/day;

c. The USG "carefully reviewed the Working Group's recommendations, and noted that they reflected a thorough consideration of official precedents, mathematical calculations and analysis of the current technological situation". The USG decided to "endorse both the Working Group's recommendation to

increase the workload standard for self-revision to 6.4 pages/day and the Working Group's recommendation that such increase occur concurrently with transitional measures, such as work accommodations and flexibilities, and allocation of dedicated training resources, to allow staff to gradually achieve the new workload standards".

20. The Tribunal notes that as the Chief Administrative Office of the Secretariat and appointed by the General Assembly under art. 97 of the United Nations Charter, the Secretary-General must follow and implement decisions of the General Assembly that require him to do so (see also sec. 2.1(a) of ST/SGB/2015/3 (Organization of the Secretariat of the United Nations)). In line herewith, the Dispute Tribunal and the Appeals Tribunal have affirmed the superiority of legal acts of the General Assembly to those of the Secretary-General in, for instance, *Villamoran* 2011/UNDT/126, para. 29, and *Al-Shakour* 2021-UNAT-1107, para. 49.

21. Also, pursuant to art. 101.1 of the United Nations Charter, staff members of the Secretariat shall be appointed by the Secretary-General, who as the Chief Administrative Officer also directs their work. In this regard, the General Assembly has stipulated in staff regulation 1.2(c) that "[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations".

22. Regarding DGACM, it follows from sec. 3 of ST/SGB/2021/3 (Organization of the Department for General Assembly and Conference Management) and sec. 6 of ST/AI/2021/4 (Performance Management and Development System) that the USG is charged with the overall responsibility of managing the work of the Department and its staff members. This therefore also includes deciding the specific workload standards and work output requirements. In this regard, the Tribunal notes that albeit in a different context, the Appeals Tribunal in *Simmons* 2016-UNAT-624 held that "[t]he jurisprudence of the Appeals Tribunal has been that the Administration has the power

to restructure and reorganize its units and its departments to lend to greater efficiency” (subsequently affirmed in *Sarieddine* 2018-UNAT-852).

23. Whereas the Tribunal notes that the General Assembly only regulated the workload standard for translation services in its resolution 75/252, it therefore also finds that it squarely falls within USG’s discretionary authority to proportionally adjust the workload standards for self-revision services. Considering the logical and methodological approach taken by the Working Group as per its 26 March 2021 report, the Tribunal further finds that the USG did not overstep the boundaries of his discretion when endorsing the Working Group’s conclusion that the workload standard for self-revision services should be increased to 6.4 pages a day. This only appears to be a fair and reasonable decision in light of the relatively similar increase in workload of the translation services, namely 16 per cent according to the Working Group report.

24. Subsequent to the contested decision, the Tribunal finds that nothing in General Assembly resolution 76/245, ACABQ report A/76/7, A/C.5/77/L.23, or General Assembly resolution A/RES/77/262, changes the Tribunal’s conclusion. Rather, the Tribunal notes that the General Assembly in A/RES/77/262 affirmed the contested decision by requesting the Secretary-General for the future to “fully implement the revised individual productivity standards for translation, and reaffirms the coefficients reflected therein, used to convert all assignments to 5.8 pages per day for translation and adjusted upward accordingly for self-revision and revision” (see para. 37).

Did the process leading up to the contested decision follow proper procedure?

25. The Applicants, in essence, contend that the USG did not comply with the process outlined in staff regulation 8.1. The Applicants' submissions thereon may be summarized as follows:

a. The "repeated refusal of the Respondent to conduct proper staff/management consultations in accordance with the applicable rules renders the resulting changes that have been unilaterally introduced improper". The "Working Group established by the USG/DGACM consisted solely of managers appointed by him" and there "were no staff representatives". It is "unexplained and undocumented how the Working Group was able to ensure that 'staff comments were systematically addressed'", as otherwise stated in the reply. Unlike other working groups, its "draft report was not vetted in any staff-management body prior to being promulgated". Announcing "the results of the Working Group's deliberations to staff, as well as holding Town Hall Meetings, are no substitute for good faith consultations undertaken to give effect to the notion of 'effective participation' as required by the Staff Regulations";

b. In "the Minutes of the Meeting held on 1 April 2021 [reference to annex omitted], the USG/DGACM erroneously noted that no staff consultations were required since the process was an initiative of the General Assembly". This "same mantra has been cited any time the staff representatives raise issues of concern over arbitrary changes in their conditions of work", and the "argument is intentionally misleading". The "meetings organized by the Department with translation staff", which were only "informational sessions" could not "by any standard be considered effective participation". After "fruitless efforts at the departmental level to have concerns heard [reference to annex omitted], the issues were referred to and raised at the level of the Staff Management Committee (SMC) where the spokespersons, noting the concerns of the

translations staff, requested postponement of further changes until a staff/management working group could take up the issues”. There “has been no agreement and DGACM has nevertheless proceeded with its planned implementation”;

c. There are “significant changes in the conditions of service of the translation/revision staff that remain unaddressed, including how page requirements are to be applied in practice, the effects of changes in technology and how all of this is going to be applied to the performance management of the staff affected by these changes”. In the interim, “new workplan requirements have been introduced requiring all staff to meet or exceed the new page requirements”. The “impact is reflected in recent staff surveys indicating concerns over the effects of these arbitrary changes on the working environment”;

d. Given “the impact the contested decision will have on all the Applicants, the Tribunal is requested to find the decision improper”. The Applicants seek “rescission of the contested decision taken in 2021 on the grounds of its clear violation of Staff Regulation 8.1 and also seek deferral of the application of new workload requirements until meaningful staff/management consultations are undertaken”. This is “precisely the change in conditions of service that the Staff Regulations were designed to address in accordance with labor/management best practices”;

e. With reference to staff regulation 8.1(a), this means that “staff representative bodies [are] to be established for this purpose and ST/SGB/274 [Procedures and terms of reference of the staff management consultation machinery at the departmental or office level] mandated the consultative process at the departmental level”. No “such consultation as required in the Regulations preceded the adoption of this new policy which places an onerous

burden on staff to work beyond the limits set by the General Assembly for the purpose of easing the Organization's current financial constraints". Contrary to the "assertions in the management evaluation that discussions and meetings with staff took place, these do not constitute effective participation of staff representational bodies as required under the Regulations".

26. The Tribunal notes that staff regulation 8.1, which is invoked by the Applicants, reads as follows,

(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.

27. In addition, sec. 4 of ST/SGB/274 reads as follows,

4. The issues subject to consultations at the departmental or office level shall, in particular, relate to the following:

(a) Matters affecting staff welfare, working conditions and efficiency and the identification of ways and means of improving them within the framework of the established regulations, rules and policies;

(b) The direct application of the Staff Rules under the authority delegated by the Secretary-General to heads of departments or offices, including the implementation at the departmental or office level of policies and recommendations approved by the Secretary-General bearing on the welfare of the staff;

(c) Problems and crises that may arise within the department or office with a view to solving them at that level.

28. In principle, the Tribunal agrees with the Applicants that staff regulation 8.1(a) and ST/SGB/274 impose a duty on the Administration to establish a staff representative body and undertake meaningful consultations with affected staff in certain particular circumstances. The focus of staff regulation 8.1(a) is, henceforth, on the general application and process concerning preparation and promulgation of “human resources policies” concerning “staff welfare” as explicitly stated at the end of the provision by stipulating the work “other”. Similarly, the consultative process set out in ST/SGB/274 explicitly concerns the general application of “regulations, rules and policies” regarding “staff welfare, working conditions and efficiency” at “the departmental and office level”.

29. Consequently, the Tribunal finds that neither staff regulation 8.1 nor ST/SGB/274 is applicable in the present case. With reference to *Ovcharenko et al. Kutner et al.* 2022-UNAT-1262, rather than general policy questions as per staff regulation 8.1 and ST/SGB/274, the contested decisions are specific appealable administrative decisions in accordance with art. 2.1(a) of the Statute of the Dispute Tribunal with “a tangible individual direct impact” for each of the affected staff members (see para. 54).

30. Nevertheless, even if staff regulation 8.1(a) and ST/SGB/274 were viewed as applicable, the Tribunal finds that there would be no merit to the Applicants’ case.

31. Regarding the composition of the Working Group on Workload Standards, which the Applicants challenge in their submission to the Dispute Tribunal, the Tribunal notes this specific issue was not raised in the Applicants’ various requests for management evaluation. In result, the issue was therefore not as much as contemplated in the subsequent responses of the Management Evaluation Unit.

32. Accordingly, the issue of the composition of the Working Group is not receivable under staff rule 11.2(a), because an applicant must have requested

management evaluation of an issue for the Dispute Tribunal to review it (see in line herewith, for instance, the Appeals Tribunal in *Nouinou* 2020-UNAT-981, para. 57). The Tribunal further notes that none of the Applicants have provided evidence that any of them raised the issue of the Working Group's composition when it was constituted or while the consultative process was ongoing.

33. Regarding the lawfulness of these staff consultations, the Tribunal takes note of the facts set out by the Appeals Tribunal in *Ovcharenko et al. Kutner et al.* 2022-UNAT-1262. Therein, the Appeals Tribunal found that the "implementation of this new workload standard, as decided by the General Assembly, was discussed at several meetings between DGACM management and staff representatives, namely one on 15 January 2021 and another one on 18 March 2021". In addition, "[s]ubsequently, on 8 April 2021, [the USG] held a townhall meeting with staff members in which he discussed the implementation of the General Assembly resolution".

34. The Tribunal further observes that in the Working Group's 24 March 2021 report is explained that five "information sessions" were organized by the Working Group at which affected staff were invited to comprehensive briefings on the Working Group's composition, programme of work and detailed considerations. These sessions were held on 20 January, 3 February, 10 February, 17 February and 22 February 2021 and therefore prior to the USG announcing the contested decision on 8 April 2021.

35. Based thereon, the Tribunal therefore find that the affected staff members were indeed appropriately consulted regarding the contested decision as per staff regulation 8.1 and ST/SGB/274. In this regard, the Tribunal recalls that the Appeals Tribunal in *Leboeuf et al.* 2015-UNAT-568 (see paras. 91 and 92) upheld the Dispute Tribunal's finding in UNDT/2014/033 that "[c]onsultations are not negotiations, and it is not necessary for the Administration to secure consent or agreement of the consulted parties".

36. Accordingly, the Tribunal finds that the USG followed proper procedures when taking and implementing the contested decision.

Conclusion

37. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 26th day of January 2023

Entered in the Register on this 26th day of January 2023

(Signed)

Morten Michelsen, Officer-in-Charge, New York