



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

LANE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 11 December 2013, the Applicant, a P-5 level Senior Social Affairs Officer, Department of Economic and Social Affairs in New York, filed an application for suspension of action, pending completion of management evaluation, of “the certification and implementation of an election process that is fundamentally flawed”. The Applicant identifies the underlying contested decision as the “failure of the Secretary-General to uphold staff right to free and fair elections as provided for in the Staff Rules and Regulations by acting upon decisions of the UN Staff Union [UNSU] Arbitration Committee and Unit Chairs as provided for in the [UNSU] Statute”.

2. The Applicant submits that the Arbitration Committee, which provides binding rulings on complaints concerning alleged violations of the UNSU Statute and Regulations, has excluded one of the candidates from running for office due to “activity that was deemed incompatible with the aims and objectives of the [UNSU] as well as the duties and obligations of all international civil servants”. However, it appeared that the elections were nevertheless scheduled to proceed as planned. Further, the Applicant states that the polling officers continued with election activities although they had been recalled by the Unit Chairpersons for contravening rules regarding the integrity and fairness of elections, and that the Respondent refused to suspend their collective United Nations email account. The Applicant states that, under staff regulation 8.1, she has a right to the proper application of the right to representation as provided for in the Staff Regulations, which the Secretary-General is enjoined to implement under Staff Rule 8.1. She states that “[a]ny violation of these norms therefore constitutes a contractual violation of the right of freedom of association and any decision by the Secretary-General failing to enforce these rights constitutes an appealable administrative decision”.

3. With respect to the requirement of particular urgency under art. 2.2 of the Statute, the Applicant states that the matter is urgent because the “[e]lections are ongoing and results will be announced in the next few days [and the] Secretary-General will have to agree to certification of the results and time release of the staff involved”. With respect to the requirement of irreparable damage under art. 2.2 of the Statute, the Applicant submits that ultimately “the electoral process would be rendered illegal”, and if the elections are permitted to proceed unlawfully, she would be “denied proper representation which [she is] guaranteed under the Staff Rules”.

4. The Registry transmitted the present application to the Respondent on the same day it was received, i.e., 11 December 2013. The Respondent duly filed his reply on 13 December 2013. The Respondent contends, *inter alia*, that the Management Evaluation Unit having responded to the Applicant’s request for evaluation on 13 December 2013, no suspension of action could be ordered under art. 2.2 of the Tribunal’s Statute, which requires as a condition precedent “the pendency of the management evaluation”.

Background

5. The UNSU Statute and Regulations, adopted on 14 December 2007, regulates the conduct of the UNSU elections. The UNSU Statute and Regulations also established the Arbitration Committee to “review alleged violations of the Statute of the Staff Union and decide on sanctions where warranted” (UNSU regulation 8.1) as well as to deal with issues of “interpretation of the Statute, its Regulations or any policy” (UNSU Statute, art. 17.2). In terms of UNSU regulation 8.2.3, “[t]he Arbitration Committee shall receive, consider and rule upon matters related to violations of the Statute and Regulations”. Furthermore, if any member of the UNSU is of the view that an act of the Staff Council, Executive Board or any of its officers is in violation of the Statute and Regulations, a complaint may be submitted to the Arbitration Committee (see UNSU regulation 8.3.1). The rulings of

the Arbitration Committee are binding on all bodies of the UNSU (see UNSU regulation 8.1). (See further *Saffir* UNDT/2013/109, *Ginivan* UNDT/2013/110.)

6. The Applicant submits that, on 22 November 2013, the President of the UNSU, at the request of the 44th Staff Council, wrote to the Secretary-General, forwarding two decisions of the Arbitration Committee of the UNSU, dated 20 November 2013, concerning the electoral process for the 45th Staff Council and the Leadership of the UNSU. The Secretary-General was requested to intervene in order to ensure a fair electoral process. It appears that the elections were set to take place on or about 11 December 2013.

7. The Applicant submits that, on 6 December 2013, the Chief de Cabinet of the Secretary-General replied that the Secretary-General would take no action.

8. The Applicant submits that, on 6 December 2013, the Chair of the Unit Chairpersons of the UNSU wrote to the Secretary-General informing him that according to the Statute and Regulations of the UNSU, the Polling Officers for upcoming Staff Union elections had been recalled and cited a violation of UNSU regulation 6.9 concerning the integrity and fairness of elections and noted that a new call for polling officers would be issued. The Applicant submits that, when the recalled polling officers ignored the recall decision and proceeded with election activities, the Chair of the Unit Chairpersons requested the Assistant Secretary-General for Human Resources Management to suspend the United Nations email account allocated to the polling officers as well as their posting privileges to iSeek (United Nations intranet portal) and time release.

9. The Applicant submits that, on 9 December 2013, the Assistant Secretary-General for Human Resources Management replied to the email from the Chairperson of the Unit Chairpersons, stating that “it was a longstanding policy and practice that it would be inappropriate for management to become involved in

internal administration of the Staff Unions. Such involvement would not be conducive to the proper conduct of staff management relations”.

10. On 11 December 2013, the Applicant submitted her request for management evaluation. The Applicant did not include her request for management evaluation in the papers submitted to the Tribunal, however, it appears from the response she received that her request identified the contested decision as the decision by the Secretary-General “to reject the request to suspend the provision of official facilities to the recalled polling officers”.

11. On 13 December 2013, the Management Evaluation Unit completed its review of the request for management evaluation, and concluded that it was not receivable.

Consideration

12. This is an application for a suspension of action pending management evaluation. It is a discretionary relief of an interim nature, which is generally not appealable, and which, in accordance with the Rules of Procedure, requires consideration by the Tribunal within five working days of the service of the application on the Respondent. Therefore, parties approaching the Tribunal must do so with sufficient information for the Tribunal to preferably decide the matter on the papers before it. Parties approaching the Tribunal on an urgency basis must ensure that their pleadings are properly prepared and contain all relevant information and annexes. An application may well stand or fall on its founding papers. The same also applies to submissions filed by the Respondent in suspension of action cases, which by their nature do not envisage that the parties would be filing multiple submissions or that a full hearing on the merits would be held.

13. Article 2.2 of the Tribunal's Statute states:

2. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

14. Article 2.2 of the Tribunal's Statute thus provides that it may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met.

15. It also follows from art. 2.2 of the Tribunal's Statute that the suspension of action of a challenged decision may only be ordered when management evaluation for that decision has been duly requested and is ongoing (*Igbinedion* 2011-UNAT-159, *Benchebbak* 2012-UNAT-256).

16. As the management evaluation is no longer pending and has been completed, the Tribunal has no jurisdiction under art. 2.2 of its Statute to order the suspension of action.

17. It follows that it is not necessary for the Tribunal to examine if the three statutory requirements specified in art. 2.2 of its Statute, namely *prima facie* unlawfulness, urgency and irreparable damage, are met in the case at hand.

Order

18. The present application for suspension of action is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 16th day of December 2013