

Case No. UNDT/NY/2014/009

Judgment No. UNDT/2015/082

the decision did not rest with her and that she was awaiting guidance from authorities she did not identify

The Applicant replied questioning the basis for the refusal to allow her access to iSeek. This is the first and only occasion on which requests to post notifications to staff through iSeek by the [UNSU] President had not been honored. The communication in question was an important one insofar as it advised staff to ignore an announcement that had recently been disseminated in iSeek by individuals who were no longer authorized to use it. It was also important to organize legally correct elections in order to replace the Arbitration Committee, all of whose former members had resigned.

To date the request for access to iSeek by the Applicant has not been honored.

On 10 February 2014, the Applicant submitted a request for management evaluation challenging the decision to exclude her from access to the official UNSU site on iSeek while allowing it to unauthorized persons

On 11 February 2014, the Chair of the Electoral Unit Chairpersons announced the election of nine Polling Offices. On the same date the Applicant, in her official capacity, requested the publication of an Executive Board Bulletin announcing the new Polling Officers. There has been no posting on iSeek.

Some time thereafter the newly elected Polling Officers sought to circulate an announcement to all staff via iSeek, calling for nominations for the UNSU Arbitration Committee to replace the former members of the Arbitration Committee who had all resigned at the end of 2013. To date, the announcement has not been posted.

On 17 February 2014, the Management Evaluation Unit replied to her request stating that it was not receivable

4. On 25 February 2014, the application was transmitted to the Respondent for him to file a reply within 30 days.
5. On 14 March 2014, the Applicant filed a motion for interim measures under art. 10.2 of the Dispute Tribunal's Statute. The Respondent filed a response to the motion on 18 March 2014. On 21 March 2014, by Order No. 45 (NY/2014), the motion for interim measures was rejected by the Tribunal.
6. The Respondent duly filed his reply on 25 March 2014.

7. By Order No. 46 (NY/2014) dated 25 March 2014, the Tribunal ordered the Applicant to file a response regarding the receivability issues raised by the Respondent in his reply. The Applicant filed his response on 11 April 2014.

8. The case was assigned to the undersigned judge on 15 April 2015.

9. By Order No. 91 (NY/2015) dated 22 May 2015, the Tribunal called the parties to _____ to be held on 28 May 2015 to determine the further progress of the case. At the CMD, Counsel for the Applicant confirmed that the Applicant wished to continue the proceedings of the present case. The parties further informed the Tribunal that the Arbitration Committee had recently issued a decision, which had been contested by the Applicant, and confirmed that no further procedural steps were needed to determine the preliminary issue of receivability on the papers before the Tribunal.

10. Subsequent to the CMD, the Tribunal issued Order No. 102 (NY/2015) dated 29 May 2015 and instructed the parties to file and serve their final submissions on the preliminary issue of receivability. On 12 June 2015, both parties filed their submissions.

submissions on receivability

11.

a. The elections for the 45th Staff Council and Leadership are in dispute. The Dispute Tribunal has repeatedly stated that it has no jurisdiction in matters concerning the internal affairs of the UNSU, including the conduct of elections and the determination of the new leadership of the Staff Union;

b. The internal dispute relating to the outcome of the UNSU elections is ongoing, and it extends to the Applicant's claim that she is entitled to act as President of the 44th Staff Council until her successor takes office. Contrary to

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c. The Respondent's arguments on receivability are primarily based on the premise that the Tribunal has no jurisdiction over internal UNSU matters. This argument is misplaced. The Applicant is not seeking a judicial determination of internal UNSU matters, including the results of a disputed election, but rather is seeking to assert her own rights to facilities she is guaranteed by virtue of the office she holds;

d. The Applicant herself has not disputed the results of the past elections for the 45th Staff Council. Others have done so and that matter is yet to be determined. The Respondent mistakenly referred to recent decisions by an Arbitration Committee posted on the UNSU website. This is not accurate. No group presently has access to the website. The correct facts are that the Arbitration Committee elected under the 44th Staff Council no longer exists, its members having resigned office in December 2013. The logical next step would be to allow the polling officers of the 44th Staff Council to elect new members. That step, however, has been blocked by the Administration, which has refused them the documentation and facilities to conduct such an election. No decisions of any arbitration committee have been posted on UNSU website since the last Arbitration Committee ceased to operate in December 2013. No election results have subsequently been recognised or certified by the Secretary-General;

e. The Respondent is, in d .1.3.2--p6274.38 260.570.0449pr47304 d .1.3.2--p 0 1 275.81 38.9

the Applicant has questioned why a right that was formerly accorded her
(access to iSeek and UNSU

8. Representatives

8.4 The role of representatives shall be as defined under 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.

15. Compliance

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

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.

18. Regulations

18.1 The Regulations of the Union shall deal with:

- (a) Membership;
- (b) Leadership;
- (c) Executive Board;
- (d) Council;
- (e) Representatives;
- (f) General Meeting;
- (g) Referendum;
- (h) Standing Committees;
- (i) Finance;

Part II Regulations

4. The Council

Preamble

The Council is:

- 4.1 The legislative assembly of the Union.
- 4.2 Responsible and accountable to the General Meeting for all its activities.

Composition

- 4.3 Comprised of staff representatives and alternates.
- 4.4 The Council shall take full office from the first day of the month immediately following the declared result of elections.
- 4.5 The term of office of the Council shall not expire earlier than a new Council assumes office.

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.

8.2.5 The Arbitrationil assum

8.3 Procedure for submitting a complaint

8.3.1 Should any member of the Staff Union be of the viewhe

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communication facilities subject to the procedures governing requests for such services, budgetary considerations and any necessary security arrangements. Authority to sign cables and initiate calls shall normally be delegated to an officer designated by the Staff Council or by the staff representative body at the respective duty station.

13. Staff members duly designated or elected by the Staff Council, Staff Committee or corresponding staff representative body to perform representational functions may be accorded such facilities as may be required to perform those functions under arrangements to be determined in accordance with the procedures set out in chapter VIII of the Staff Rules.

14. Disagreements concerning the implementation of the above provisions shall be discussed and resolved in accordance with the procedures set out in chapter VIII of the Staff Rules.

15. Chapter VIII (Staff relations) of the Staff Regulations and Rules (ST/SGB/2014/1) states, in relevant parts,

all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance

Receivability ratione materiae

17. The Tribunal notes that, as stated by the Applicant, on 5 and 6 December 2013, three members of the UNSU Arbitration Committee submitted their resignations

20. The Tribunal notes that the legal basis for her claims is ST/AI/293, which addresses the issue of facilities that may be provided to staff representatives in secs. 13 and 14 as follows:

13. Staff members duly designated or elected by the Staff Council, Staff Committee or corresponding staff representative body to perform representational functions may be accorded such facilities as may be required to perform those functions under arrangements to be determined in accordance with the procedures set out in chapter VIII of the Staff Rules.

14. Disagreements concerning the implementation of the above provisions shall be discussed and resolved in accordance with the procedures set out in chapter VIII of the Staff Rules.

21. It results that the right to have access to iSeek is a derivative right only of the staff member(s) duly designated or elected by the Staff Council, Staff Committee or corresponding staff representative body to perform representational functions and not of any staff member as submitted by the Applicant.

22. Pursuant to secs. 4.3 and 4.4 of the UNSU Regulations, the Council, comprised of staff representatives and alternates, shall take full office from the first day of the month immediately following the declared result of the elections, and the term of office of the Council shall not expire earlier than the new Council assumes office.

23. According to sec. 10.1C BT1 0 0 1 99.384 482.2.57 6fficecil

No. UNDT/NY/2014/026, and that these two staff members currently claim to be President of UNSU, which constitutes a contested electoral issue.

29. The Applicant is seeking a judicial decision to confirm her position that the elections are not valid and that she has the right to continue publishing UNSU communications on iSeek.

30. Any judicial determination on the application and relief requested would result in the Tribunal adjudicating on the Applicant's right to continue her official function as President of UNSU after 17 December 2013, which will represent a direct determination of the term of office of the Council under arts. 4.4 and 4.5 of the UNSU Regulations. This matter is directly related to the validity of the December 2013 elections and its outcome for the leadership and 45th Staff Council.

31. As follows from the above considerations, the competence to rule on any dispute related to this matter belongs exclusively to the Arbitration Committee, and the Dispute Tribunal has no jurisdiction under art. 2.1(a) of its Statute to substitute, review and/or enforce any of the Tribunal's rulings, including the ones on contested electoral issues.

32. Consequently, the application is not receivable *ratione materiae* and is to be dismissed.

Conclusion

33. In light of the foregoing, the Tribunal DECIDES:

34. The application is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 10th day of September 2015

Entered in the Register on this 10th day of September 2015

(Signed)

Hafida Lahiouel, Registrar, New York