
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/107

Judgment No.: UNDT/2022/050

Date: 25 May 2022

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ANNETTE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILIT EMC

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13. By email dated 30 July 2021 to OHR, the CPOs for UNFSU inquired whether the staff list could be shared with the Applicant's team and, if so, whether there were any conditions attached, with a follow-up email on 12 August 2021.

14. On 19 August 2021, the Applicant filed a request for management evaluation arguing that she

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established jurisprudence, that a regulation confer a specific quality of right (“individual” or “collective”) in order for a breach against it to be appealable. As long as such a breach results in a “direct impact” or “direct adverse consequences” for the applicant, the “individual” or “collective” nature of the right that was breached cannot in itself preclude judicial review.

c. The “direct adverse consequence” lies in the very fact that field staff as a whole, including herself, were deprived of a fair vote and, as a corollary, of an “equitable representation” of their interests through the Administration’s own (in)actions. This was achieved by the fact that elections for the only staff representative body available to represent field staff interests were run without any effective opposition while the (sole) opposing team – and sitting executive of the UNFSU – had all means at its disposal to compete effectively, and the Administration knowingly withheld the only viable redress to that imbalance, which ended up vitiating both process and outcome. Any field staff member claiming to be represented by the UNFSU has a direct and vested interest in the cited regulation being respected, even more so the candidates who stood for election, including herself. As such, the “adverse consequences” and “impact” of the breach of the cited regulation could not have been more direct. The finality of the decision to disengage from the matter and to refuse any form of access to means of effective communication further confirms that the conduct engaged in was neither preparatory in nature, nor partial, nor otherwise short of a full-fledged administrative decision. The violation of staff rule 8.1(d), as an integral part of her terms of appointment, was effected through the very actions and omissions of the Administration in this case, both of which are equally recognized in jurisprudence as – express or implied – administrative decisions.

d. Characteriz_

Respondent evidence a fundamental misunderstanding on the part of the Administration of the boundaries beyond which “staff union affairs” become internal and thus rightly exempt from the reach and responsibility of the Secretary-General.

e. The impugned decision concerns the specific actions (e-mail of 29 July 2021) and omissions (subsequent silence and refusal to respond) of the Administration itself, rather than those of the CPOs, and the specific obligation of the Secretary-General (as a custodian of the staff rules and regulations, to enable the CPOs who exercise authorities on his behalf but cannot effectively operate without his cooperation, particularly the provision of information and permissions related thereto that are solely within his purview to manage) rather than that of the CPOs (which is non-implementable without the Administration “doing its part”). Specific recourse is available against possible wrongdoing in electoral matters on the part of the CPOs under the UNFSU Constitution (and other bodies and functions established and further defined therein). That is the sole means of recouTJ12 792 reW*nBT/F1 12 Tf1 0

18. The starting point in addressing the issue and to put the matter into context, the relevant provisions are reproduced below:

Rule 8.1

(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 Rules.

Regulation 8.1

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

19. The Applicant argues that the;

... aspects of staff regulation 8.1 that were not complied with make it evident that, by being deprived of any effective means to address her constituency in staff representative body elections, the Applicant was wronged both as a staff member and as a candidate staff representative, namely in her right to “equitable representation” (staff regulation 8.1(b)), which was to be achieved thr

21.

United Nations which provides for staff relations. Staff rule 8.1 makes provision for staff representative bodies and staff representations and 8.1(d) is directed at

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staff regulation 8.1(b) form part of her terms of appointment and contract of employment or that they regulate her individual contractual relationship with the Secretary-General. Consequently, the Tribunal finds that the decision contested fails the test of a reviewable administrative decision, it had no direct impact and produced no adverse legal consequences on the Applicant's terms of contract and appointment¹¹.

38. The application must also fail on the test of precise individual case because in her application the Applicant refers to the decision affecting her and "her running team". To be reviewable the impugned decision must be a unilateral decision taken by the administration in a precise individual case.

Conclusion

39. The Tribunal having reviewed the provisions at issue and the relevant jurisprudence must

Judgment

41. The application is not receivable *ratione materiae*