



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2011/011  
Order No.: 36 (NY/2011)  
Date: 7 February 2011  
Original: English

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**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Santiago Villalpando

KISAMBIRA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON SUSPENSION OF ACTION**

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**Counsel for Applicant:**

Vinita Ullal

**Counsel for Respondent:**

Sarahi Lim Baro, ALS/OHRM, UN Secretariat  
Christine Graham, ALS/OHRM, UN Secretariat



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conditions of work, general conditions of life and other human resources policies.

b. The decisions are at odds with the established principle of non-interference by management in the internal affairs of the Staff Union (see: staff regulation 8.1 and staff rule 8.1; UNSU Statute and Regulations, secs. 10, 12, and 13).

*Urgency*

c. The contested decisions have interfered with the election process for the 44<sup>th</sup> Staff Council, as sec. 13.3 of the UNSU Statute and Regulations requires that “all candidates for election to office must be dues paying members in good standing of the Union”. Further, the UNSU cash flow and activities are impeded

*Irreparably amPage*

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## **Respondent's submissions**

11. The Respondent's primary contentions may be summarised as follows.

### *Receivability*

a. A request for suspension of action may be granted in situations where the impugned decision has not yet been implemented. The decisions that the Applicant is seeking to suspend have already been implemented. Consequently, the application is moot.

b. The application is not receivable as no request for management evaluation has been filed by the Applicant. A staff member applying for a suspension of action must file a request for management evaluation prior to seeking a suspension of action before the Tribunal.

c. The application is equally not receivable because the Applicant's request was not submitted in his capacity as a staff member alleging non-compliance with his terms of appointment or employment contract. Rather, the Applicant submitted his application in his capacity as the President of UNSU. Staff associations have no standing before the Tribunal.

### *Prima facie unlawfulness*

d. The Applicant has not identified how the contested decisions violate his contract of employment or his terms of appointment. Moreover, the contested decisions were entirely reasonable given the circumstances. The Administration acted in good faith and in conformity with its procedures for dealing with payment instructions of third parties.

e. Staff members who wish to contribute to the Staff Union provide written authorization that UNSU then forwards to OPPBA. There is no statutory basis for this service. The Administration is not obligated to assist UNSU in its collection of membership dues.

*Urgency*

f. The Applicant has only put forth claims involving UNSU. He has not shown how the contested decisions are of particular urgency in respect of his rights as staff member.

g. There is no particular urgency.

*Irreparable damage*

h. There has been no showing that the impugned decisions would cause irreparable damage to the Applicant's rights as a staff member.

**Considerations**

12. The Respondent contends that the Applicant has submitted his request not in his capacity as a staff member alleging non-compliance with his terms of appointment or employment contract, but in a representative capacity as the President of UNSU. The Respondent contends that staff associations, having no standing before the Tribunal, the application is not receivable.

13. Article 3.1 of the Tribunal's Statute, read in conjunction with art. 3.2, provides that an application, including an application for suspension of action pending management evaluation, may be filed by:

- a. Any staff member of the United Nations;
- b. Any former staff member of the United Nations;
- c. Any person making claims in the name of an incapacitated or deceased staff member of the United Nations.

14. Article 2.1 of the Tribunal's Statute states:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual ... against the Secretary- General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance

...

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

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 [...].

16. The nature of the dispute can be distilled from the background and history of the dispute as reflected by the communications between the parties, the issues raised, and the communications between the parties and the Management Evaluation Unit, if any,



how his individual terms of appointment were affected by the decisions he sought to impugn. From the clear wording of its Statute, this Tribunal does not have jurisdiction *ratione personae* in relation to applications filed by or on behalf of UNSU. The application therefore fails on this ground alone, however the Tribunal also wishes to point out another fundamental flaw with the application as it currently stands.

18. Article 8.1 of the Tribunal's Statute states:

An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required.

...

19. The Appeals Tribunal has held that requesting management evaluation is a mandatory first step in seeking the review of an administrative decision—see, e.g., *Planas* 2010-UNAT-049. Despite the fact that *Planas* dealt with an application under art. 2.1 of the Statute (rather than art. 2.2, as in the instant case), the procedural requirements are analogous. Additionally, the phrases “during the pendency of the management evaluation” and “[an application] that is the subject of an ongoing management evaluation” in art. 2.2 confirm further that the filing of a request for management evaluation is also a mandatory requirement for an application under art. 2.2.

20. At the hearing of the matter the Applicant conceded that he had not submitted a request for management evaluation of the contested decisions *qua* his capacity as a staff member, or at all. He argued that this was justifiable, because he only found out about the implementation of the impugned decisions on the same day that the latter of them



