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with the General Assembly Resolution A/RES/62/228 of 22 December 2007 by approaching the SMCC, which was established by the Secretary-General to advise him on matters related to human resources policies and staff welfare.

6. In filling the two positions for staff representatives on the IJC, the SMCC considered the nominees of many staff unions. Three staff unions, which together apparently represented a majority of UN staff, supported a slate of two names for joint appointment to fill the two staff representative vacancies on the IJC: namely Geoffrey Robertson Q.C. (Robertson) and Campos. The SMCC advanced the name of Robertson to the UN Secretary-General and Robertson was appointed as the external jurist representing staff. No complaint arises from that appointment. Ten other staff representative bodies participating in the SMCC selection process supported Clift. The SMCC provided the name of Clift to the UN Secretary-General who then appointed her as the second staff representative on the IJC.

7. It was this appointment process that Campos claims was flawed maintaining that not giving more weight to staff unions and staff associations who represented a larger number of staff was evidence of management interference in staff union election of staff representatives on the IJC.

8. Campos maintains that it was not up to the SMCC to give preference to the nominee of a larger number of staff unions when such preference should properly be given to the nominee of those staff unions who together represent the majority of UN staff.

9. The Secretary-General maintains that the selection procedure employed by the SMCC was transparent from the outset and known to all participating staff unions.

10. Campos filed two appeals to the then existing Joint Appeals Board (JAB). The first appeal to the JAB filed on July 17, 2008 was to challenge the decision of the UN Secretary-General not to nominate him as a representative of the staff on the IJC.¹ His second appeal to the JAB filed on November 11, 2008 was to contest all decisions taken by the IJC which he alleged was illegally constituted.²

¹ Geneva JAB case number 609 which became UNDT/GVA/2009/6.

² Geneva JAB case number 627, which became UNDT/GVA/2009/13.

Secretary-General through a flawed process and a request to declare the decisions of the IJC as being void on the grounds of that body having been illegally constituted.

16. Campos has appealed to this Court from all three of these UNDT judgments.

Submissions

Campos's Appeal

17. Campos requests an oral hearing and the hearing of the following witnesses: President of the UN Staff Union and Vice President of UNISERVE.

18. Campos requests that UNAT immediately set aside the three UNDT Judgments, on the grounds of “grave procedural errors and the flagrant violations of the judicial due process principles, including violation of the UNDT’s own Rules of Procedure”.

19. Campos requests that UNAT set aside the UNDT judgments rejecting his motions to have the UNDT and UNAT judges recuse themselves on the grounds of having a conflict of interest in presiding over cases involving Clift.

20. Campos requests UNAT to declare the immediate and retroactive recusal of the Geneva ad litem judge and all other UNDT judges.

21. Campos requests UNAT to set aside the UNDT rejection of his two appeals originally filed as JAB appeals in which he challenged the UN Secretary-General’s decision to appoint Clift, and not him, as a representative of the staff on the IJC, and challenged the four-year appointment term of the IJC members.

22. Further, Campos requests that UNAT issue an order, pursuant to article 19 of the UNDT Rules of Procedure that the parties to the dispute submit to binding arbitration.

23. Lastly, Campos requests that UNAT take all required temporary measures to preserve Campos’s substantive and procedural rights, and to determine adequate and equitable compensation for legal expenses incurred and for damages, including moral damage.

24. Campos states in a letter to UNAT that he was appealing UNDT judgments

alleges a violation of the right to freedom of association by the Secretary-General in connection with “the nomination of the staff representative in the Internal Justice Council” established by the General Assembly to guarantee the independence and the impartiality of the new United Nations

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Considerations

Whether to grant Campos's request for an oral hearing and the hearing of witnesses

35. On the grounds that he had the opportunity to make a full written argument on all issues and provided this Court with no adequate reason for an oral hearing or the hearing of witnesses, this Court rejects Campos's motion.

36. First, Campos filed in his appeal material pertaining to the position of the staff associations and specific unions clearly supporting his nomination as a representative of the staff on the IJC. He makes no submissions why there is a need to call oral evidence.

37. Second, Campos made no submissions why an oral hearing should be granted. In support of his appeal he filed additional written material and argument in support of his appeal. His primary grounds for appeal are that the UNDT erred in law in not giving proper legal consideration to the undisputed facts of the selection procedures and erred in finding that they were not flawed.

38. Campos does not claim that there is any particular complexity or other reason why this case would demand an oral hearing or the hearing of witnesses. Accordingly, Campos's motions for an oral hearing and the hearing of witnesses are denied.

Whether the UNDT erred in rejecting Campos's claim that Clift was appointed by a flawed process

39. The General Assembly, after considering the proposals of the Redesign Panel concerning the Administration of Justice, passed a resolution aimed at implementing the establishment of the proposed Office of Administration of Justice, the creation of the IJC, and the selection and appointment of judges.

40. The UNDT reviewed the 2007 Report wherein the SMCC specified the role it was assuming in facilitating the participation of the staff in finalizing the details of the new system (that is the establishment of the Office of Administration of Justice and UNDT and UNAT). More specifically, part VI. A. 23 (f) of the Report refers to the identification of a representative of staff, and of management, to serve on the IJC. It is this joint staff and management body that the UN Secretary-General resorted to in seeking to find a staff representative to appoint to the IJC.

47. Nor is there any evidence that during the selection process any of the staff associations participating in the SMCC was opposed to having one vote per association and not one vote per the number of staff members they represented.

48. The UNDT accepted that these facts established, on a balance of probability, that the staff associations in question who put forward names for appointment to the IJC, freely participated in the SMCC selection process, being aware that they would be accorded one vote per association.

49. Further the UNDT found that it was open to the Secretary-General, in establishing the IJC, to seek assistance from the SMCC to provide him with a name of an individual who could be appointed as a staff representative on the IJC.

50. Accordingly the UNDT held that Campos failed to establish the illegality he alleged in the appointment of Clift and rejected his application that Clift's appointment be declared null and void. Campos's two requests before the UNDT, namely (1) to rescind the action dated 8 April 2008 by which the Secretary-General published the appointment of Clift as a member of the IJC and, consequently, to rescind all decisions taken by that Council; and (2) to rescind the decision to appoint the five members of the IJC for a period of four years, were also rejected in their entirety.

51. The UNDT rejected the alleged illegality of Clift's appointment to the IJC, which was also based on an alleged management interference of union affairs and interference in Campos's freedom of association.

52. This Court agrees with and affirms this decision of the UNDT in UNDT Judgment UNDT/2009/021. We hold that the UNDT made no reversible error in rejecting Campos's claim that the UN Secretary-General illegally appointed Clift as the staff representative on the IJC.

53. This disposes of the entire appeal and it is unnecessary for this Court to decide the further claim, being Campos's position in the alternative, that no decision made by the UN General Assembly on the recommendation of the IJC is valid because of one allegedly impugned appointment to the IJC, that all of its subsequent decisions should be rescinded, and that Campos's case should be referred to arbitration.

Whether the UNDT erred in rejecting Campos's request for the recusal of UNDT judges and the dissolution of the entire UNDT panel on the grounds of conflict of interest

54. The UNDT considered Campos's claim that the decision not to appoint him to the IJC resulted from a flawed process which amounted to interference by UN management in the selection of the staff representative of the IJC; and that this interference "tainted the independence and the impartiality of the new UN system of justice".⁶ The tainting of all judges appointed by any involvement of the IJC is the primary ground underlying Campos's claim that all judges appointed to the UNDT and UNAT have a conflict of interest that would erode public confidence in the tribunals.

55. There were, however, other grounds of conflict of interest alleged by Campos in regard to judges of both tribunals. He implies that by virtue of the appointment process, with judges being interviewed in person by the IJC, that judges may be inclined to act deferentially in favour of IJC members. It seems to be from this limited one-time interview that gave rise to his allegation that a professional relationship between the judicial candidates and Clift resulted. This one-time interview he alleges would then give rise to an appearance of an impaired ability on the part of judges of both tribunals to independently and impartially adjudicate a case against him.

56. Under UNDT and UNAT rules, UNDT judges and UNAT judges may be asked to recuse themselves under their respective rules if a litigant establishes that a conflict of interest exists.

57. Each tribunal will itself determine whether or not a judge or judges of that court should recuse himself/herself or themselves.

58. Article 27 of the UNDT Rules of Procedure states:

1. The term "conflict of interest" means any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her.

2. A conflict of interest arises where a case assigned to a judge involves any of the following:

a) A person with whom the judge has a personal, familiar or professional relationship;

⁶ Judgment No. UNDT/NBI/2009/29 (released as UNDT/2009/005).

- a) A person with whom the judge has a personal, familiar or professional relationship;
- b) A matter in which the judge has previously served in another capacity, including as an advisor, counsel, expert or witness;
- (c) Any other circumstances that would make it appear to a reasonable and impartial observer that the judge's participation in the adjudication of the matter would be inappropriate.

69. Article 23(1) of the UNAT Rules of Procedure specifies the applicable procedure for recusal by a judge on his or her own motion. Article 23(2) provides for a motion for the recusal of a judge on the ground of a conflict of interest to be heard by the President of the UNAT, who after seeking comments from the judge shall decide on the request in writing.

70. This Court affirms and adopts the findings of the UNDT concerning the limited role of the IJC in the appointment of all judges, including the UNAT judges, and the findings concerning the lack of any professional relationship between Clift and all judges including the UNAT judges. Accordingly this Court rejects Campos's motion that the UNAT judges recuse themselves from the hearing of the within appeal.

71. This Court also affirms and adopts the findings of the UNDT that UNAT being a creature of statute lacks the statutory authority to dissolve UNAT which is a body created by the UN General Assembly.

THE UNITED NATIONS APPEALS