



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

SAFFIR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Didier Sepho

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On 12 August 2015, the Applicant, a Meeting Service Assistant at the G-5 level in the Department of General Assembly and Conference Management, filed an application contesting the continuing refusal by the Secretary-General to abide by rulings and communications of the United Nations Staff Union (“UNSU”) Arbitration Committee regarding the validity of the elections for the 45th Staff Council and leadership of the UNSU, which were held on 10 and 11 December 2013.

2. The Applicant submits that the Secretary-General has not provided one of the candidates for UNSU President during the 2013 elections—Mr. Kisambira—the facilities and time release from official functions to which he is entitled under ST/AI/293 (Facilities to be provided to staff representatives). The Applicant requests that “the Respondent’s interference with UNSU internal matters and continuing refusal to abide by the Arbitration Committee’s consistent decisions related to the UNSU elections held on 10 and 11 December 2013” be ruled unlawful by the Tribunal because it violates the Applicant’s right to freedom of association.

3. The Respondent submits that the application is not receivable because the Applicant has failed to identify a specific administrative decision. In addition the Dispute Tribunal has no jurisdiction in matters concerning the internal affairs of the UNSU, and, in any event, the Applicant has no standing to bring his claim.

Background

4. On 14 December 2007, the UNSU adopted the UNSU Statute and Regulations.

5. The UNSU Regulations establish a five-member Arbitration Committee—elected by the UNSU membership—to review alleged violations of the UNSU Statute and decide on sanctions where warranted. Rulings of the Arbitration Committee are binding on all bodies of the Staff Union (UNSU Regulations 8.1 and 8.2).

6. On 10 and 11 December 2013, elections were held for the 45th Staff Council and leadership of the UNSU.

7. On 17 December 2013, the Chairperson of the Polling Officers of the 45th Staff Council sent a memorandum to all staff members at the United Nations Secretariat in New York declaring the results of the election for the 45th Staff Council and leadership of the UNSU. The memorandum indicated that Mr. Kisambira had been elected as President of the UNSU.

8. However, the validity of the elections appears to have been disputed.

9. By letter dated 23 March 2015, the Applicant wrote to the Under-Secretary-General for Management. He stated that the Arbitration Committee had, on three instances—24 January 2014, 18 March 2014 and 22 October 2014—separately and jointly ruled and/or affirmed that the electoral process of the general staff election of 10 and 11 December 2013 was valid and further requested that the Administration recognize the outcome of the election. He stated that, notwithstanding these clear rulings, the Administration had refused to allow the elected leadership of the UNSU to take office, which, he claimed, deprived him of his right to freely elect union representatives. He requested immediate action in upholding the rulings of the Arbitration Committee.

10. By letter dated 27 March 2015, Ms. Carole Wainaina, the Assistant Secretary-General, Office of Human Resources Management, responded to the Applicant stating that, as the Applicant had voted in the UNSU elections,

he had not been deprived of the right to freely elect staff representatives. The letter further stated: “As to the other issues raised in your letter, those are issues between Mr. Kisambira and the administration”.

11. On 14 April 2015, the Applicant requested management evaluation, identifying the contested decision in the same terms as he subsequently did in the application.

12. On 12 May 2015, the Management Evaluation Unit informed the Applicant that his request for management evaluation was not receivable.

13. On 12 August 2015, the application was filed.

14. On 11 September 2015, the reply was filed.

Consideration

Applicable law

15. Article 8 of the Statute of the Dispute Tribunal provides:

Article 8

1. An application shall be receivable if:

...

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant’s receipt of the response by management to his or her submission;

...

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute

Tribunal shall not suspend or waive the deadlines for management evaluation.

Is the application receivable?

16. The Respondent submits that the application is not receivable for a number of reasons but has not addressed the issue of the timeliness of the application. Article 8.1(d)(i) of the Dispute Tribunal's Statute states that an application shall be receivable only if it is filed within 90 calendar days of receipt of the response to an applicant's request for management evaluation.

17. In his application dated 12 August 2015, the Applicant lists the date of the response to his request for management evaluation and the date on which he received such response as 12 May 2015. In accordance with art. 8.1(d)(i) of the Dispute Tribunal's Statute, he had 90 calendar days, or until 10 August 2015, to file his application to the Dispute Tribunal. His application, which was dated and received on 12 August 2015, was therefore submitted two days after the deadline. It is time-barred.

18. The Appeals Tribunal has repeatedly held that time limits are to be strictly enforced. In *Eng* 2015-UNAT-520, the Appeals Tribunal stated: "Our jurisprudence mandates that both Tribunals must strictly adhere to statutory filing deadlines as one of the ways to assure the timely hearing of staff members' cases and the prompt rendering of judgments" (para. 22).

19. The Applicant has not requested that the Tribunal suspend or waive the deadline pursuant to art. 8.3 of its Statute and has not provided evidence that his case is exceptional.

20. The application is manifestly not receivable. In the circumstances, the Tribunal is unable to consider the claim on its merits.

Judgment

21. The application is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 13th day of April 2016

Entered in the Register on this 13th day of April 2016

(Signed)

Hafida Lahiouel, Registrar, New York