

UNDT/2013/109, Saffir

UNAT Held or UNDT Pronouncements

The Applicant submitted, inter alia, that as a result, his rights to free and fair elections and to equitable representation in the Staff Union were irreparably compromised. As a remedy, the Applicant sought “an independent, impartial, and thorough investigation overseen by the Dispute Tribunal to determine whether there is sufficient evidence to conclude that the 2011 UNSU election results are safe. If the results of an independent investigation support the Applicant’s contention that the election results are not safe, then the Applicant respectfully requests the Dispute Tribunal to order new elections on the basis that his rights were fundamentally violated by the irregularities and can only be remedied through the opportunity to participate in a new fair and confidential election process”. The UNDT found that the Applicant’s claims regarding the Staff Union elections and, in particular, his claims for relief, were not properly before the UNDT. The UNDT found that the Applicant’s application with respect to the Secretary-General’s refusal to carry out the requested investigation was receivable. However, the UNDT found that the Secretary-General’s refusal to initiate investigation of the Staff Union elections of June 2011 was lawful.

Decision Contested or Judgment/Order Appealed

The Applicant filed an application contesting the Secretary-General’s refusal “to conduct an investigation into the irregularities surrounding the 7–9 June 2011 United Nations Staff Union [(“UNSU” or “Staff Union”)] election[s], in light of the failure of the UNSU Arbitration Committee to adequately address the matter”.

Legal Principle(s)

Judicial review of claims relating to Staff Union elections: International labour standards clearly articulate non-interference in union elections and restrict

intervention by the Administration only to provisions that ensure the proper conduct of the election process. In the UN context, this Tribunal is empowered to deal with administrative decisions including alleged action or inaction by the Secretary-General but there appears to be no jurisdiction on the part of this Tribunal to entertain any disputes arising from the holding of, or a challenge to, union elections. Further, there is certainly no general jurisdiction to review or supervise internal union affairs. An aggrieved person, under the terms of the UNSU Statute, may approach the Arbitration Committee, which was established to “review alleged violations of the Statute of the Staff Union and decide on sanctions where warranted” (UNSU regulation 8.1) as well as to deal with issues of “interpretation of the Statute, its Regulations or any policy” (UNSU Statute, art. 17.2). In terms of UNSU regulation 8.2.3, “[t]he Arbitration Committee shall receive, consider and rule upon matters related to violations of the Statute and Regulations”. Furthermore, if any member of the Staff Union is of the view that an act of the Staff Council, Executive Board or any of its officers is in violation of the Statute and Regulations, a complaint may be submitted to the Arbitration Committee (see UNSU regulation 8.3.1). The rulings of the Arbitration Committee are binding on all bodies of the Staff Union (see UNSU regulation 8.1). Interference by the Secretary-General into Staff Union matters: The Secretary-General may not intervene in the format or conduct of elections by virtue of the Staff Union’s Statute. The Secretary-General’s responsibility is to facilitate organizational rights and not to interfere in those. There is no proper legal basis in the legal framework regulating UNSU and the UNSU Arbitration Committee that would allow for the Secretary-General to interfere with the Committee’s rulings.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Saffir

Entity

DGACM

Case Number(s)

UNDT/NY/2012/007

Tribunal

UNDT

Registry

New York

Date of Judgement

26 Aug 2013

Duty Judge

Judge Carstens

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Standard of review (judicial)

Judicial review (general)

Applicable Law

Staff Regulations

- Regulation 1.1

Staff Rules

- Rule 8.1

UNDT RoP

- Article 19

UNDT Statute

- Article 2.1

Related Judgments and Orders

2010-UNAT-013

2010-UNAT-030

2010-UNAT-058