UNDT/2015/085, Kisambira

UNAT Held or UNDT Pronouncements

The application was rejected as not receivable ratione materiae.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision of the Under-Secretary-General for Management ("USG/DM") "not to grant [him] full-time release from his assigned duties as a Population Affairs Officer during his term as United Nations Staff Union [("UNSU")] President starting on 2 January 2014"and "the Administration actions and abuse of power consisting in the continuous refusal to grant his claim".

Legal Principle(s)

Facilities to be provided to staff representatives. According to secs. 3 and 13 from ST/AI/293, the facilities that are to be provided to staff representatives as well as staff representative bodies are necessary in order to allow the staff members duly designated or elected by the Staff Council to perform their representational functions. In the absence of the required facilities, the staff members with representational functions and the staff representative bodies cannot do so.Full-time release of the UNSU president. In accordance with the mandatory provisions of sec. 10(a) of ST/AI/293 and art. 6.1 of UNSU Statute, the elected UNSU President, who also appears to be the President of the Executive Board (Committee) of the Staff Council, at his/her request, is entitled to be released full-time from assigned duties during his/her term of office, if the number of staff members represented is 1,000 or more. Consequently, the right to a full-time release of the elected UNSU President is directly determined by the term of office because it starts and ends with the term of office of the Staff Council.The term of the UNSU president. The term of office of the elected UNSU President coincides with the term of office of the 45th Staff Council and the beginning of the term of office of the 45th Staff Council is a matter still

pending before the Arbitration Committee, which is to be decided, after the UNSU leadership and the 45th Staff Council actually have taken office, namely after the former UNSU officers handover UNSU's office, records, equipment and other facilities.The Arbitration Committee and UNDT. The Tribunal underlines that the Arbitration Committee's decisions/rulings are final (irrevocable) since it is the unique body competent to review alleged violations of the UNSU Statute and Regulations by the elected UNSU officials and decide on sanctions, if warranted. In accordance with sec. 8.2.6 of the UNSU Regulations, only the decision(s) to impose sanction(s) on the elected UNSU official can be reviewed, but the application for a final review is to be filed only by the individual being sanctioned and is to be considered exclusively by the Arbitration Committee. Therefore, all the decisions taken by the Arbitration Committee are excluded from the Dispute Tribunal's jurisdiction.Any judicial determination on the relief requested by the Applicant (directly determined by the term of office of the Staff Council) would result in the Tribunal adjudicating on the term of office of the 45th Staff Council, a matter on which the competence to rule belongs exclusively to the Arbitration Committee. The Tribunal has no competence under art. 2.1(a) of its Statute to substitute, review and or enforce any of the Arbitration Committee decisions/rulings and consequently the application is not receivable ratione materiae.Section 14 of ST/AI/293 states that any disagreements concerning the implementation of the provisions of ST/AI/293, including sec. 10(a), are to be discussed and resolved in accordance with the procedures set out in Chapter VIII of the Staff Regulation and Rules. According to the mandatory provisions of staff rule 8.2(a) and (d), the joint staff- management machinery consists of joint advisory committees at designated duty stations (see staff rule 8.2(a)(i)), and a Secretariat wide joint staff management body (see staff rule 8.2(a)(ii)), and these bodies must establish their own rules of procedure (see staff rule 8.2 d)).

Outcome

Dismissed as not receivable

Full judgment

Full judgment

Applicants/Appellants

Kisambira

Entity

DESA

Case Number(s)

UNDT/NY/2014/26

Tribunal

UNDT

Registry

New York

Date of Judgement

17 Sep 2015

Duty Judge

Judge Greceanu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)
Subject matter (ratione materiae)

Applicable Law

Administrative Instructions

- ST/AI/293

Secretary-General's bulletins

- ST/SGB/172
- ST/SGB/2007/9
- ST/SGB/2011/6/Rev.1

Staff Regulations

- Regulation 8.1
- Regulation 8.2

Staff Rules

- Rule 8.1
- Rule 8.2

UNDT Statute
UNAT Statute

- Article 2.1(a)