



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/015
Order No.: 83 (NY/2011)
Date: 10 March 2011
Original: English

Before: Judge Ebrahim-Carstens
Registry: New York
Registrar: Santiago Villalpando

HASSANIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

REASONED ORDER
ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. By way of application filed on 17 February 2011, the Applicant sought a suspension of action of the decision to suspend payroll deductions from his salary for his union membership dues and to suspend their remittance to the United Nations Staff Union (New York) (“UNSU” or “Staff Union”). The decision was conveyed to him on 28 January 2011 by email from the Director of the Accounts Division, Office of Programme Planning, Budget and Accounts (“OPPBA”).

2. Due to the nature of such applications, the time frames imposed by the Dispute Tribunal’s Rules of Procedure and the impending Presidents’ Day holiday, the Respondent was served with the application by the Registry on Thursday, 17 February 2011, at 11:00 a.m., and directed to file a response by 10:00 a.m., Friday 18 February 2011. A hearing was held at the Tribunal’s New York Registry at 12:00 p.m., Friday 18 February 2011, at which both parties attended, the Applicant appearing in person.

3. Following the hearing on 18 February 2011 the Applicant requested to file a written answer to the Respondent’s response, as he had only received it an hour or so before the hearing and had not had sufficient time to consider the issues. Because the Applicant was unrepresented, I directed that he file his written answer by 10:00 a.m. on Tuesday, 22 February 2011, and that the hearing would continue at 12:00 p.m. that day.

4. The Applicant filed his answer as directed and the hearing took place at the scheduled date and time, at the conclusion of which I advised the parties that, due to the fact that the Tribunal had a number of other urgent matters pending, including the sitting of a three-Judge panel over the ensuing two-day period, a brief ruling would be issued with reasons to follow thereafter. The Tribunal accordingly rendered a brief ruling on 24 February 2011 in Order No. 57 (NY/2011), the reasons for which follow hereunder.

Facts

5. The Applicant contended that “some years ago” he requested UNSU to submit to OPPBA his written authorisation to make a deduction from his salary as his contribution to UNSU (that is, his “dues”), in accordance with the relevant staff rules (currently, staff rules 3.17(c)(v) and 8.1(g)). It is common cause that the standard form stipulates that “the written authorisation remains valid until cancelled in writing”, and that the Applicant has not cancelled such authorisation.

6. It was submitted by the parties that from June 2010, at the request of the President of UNSU, staff members’ dues which had been deducted through payroll had been remitted into the new Citibank account of UNSU. They had previously been remitted to a United Nations Federal Credit Union (“UNFCU”) account.

7. On 28 January 2011 the Applicant received an email communication by which the Director of the Accounts Division, OPPBA informed that OPPBA “[had] decided to suspend the remittance of the staff union dues to the Staff Union’s bank account, due to conflicting instructions received from the President of the Staff Union and the Secretary, on behalf of the Executive Board, about the bank account into which the collections should be deposited ... [and] to temporarily suspend the deductions, from the month of January 2011”. The email stated that the dues already collected for the period October–December 2010 were being held in trust until OPPBA was given a clear instruction about which account to deposit the dues into and that they would be returned to the individual members if no such instruction was given before May 2011.

8. The Applicant filed a request for management evaluation on 9 February 2011 and subsequently the present application for suspension of action with the Dispute Tribunal on 17 February 2011.

9. Following the Tribunal’s brief Order No. 57 (NY/2011), issued on 24 February 2011, on 1 March 2011, almost a week later, the Respondent filed a Motion for Interpretation of said Order.

10. For the sake of convenience, the Tribunal will set out the Respondent's general submissions first, to be followed by the Applicant's contentions.

Respondent's submissions

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

Receivability

a. A request for suspension of action may only be granted in situations where the impugned decision has not yet been implemented. The Respondent considers that this understanding of the rule has been confirmed by the Tribunal in several decisions, such as *Barringer* UNDT/2010/216 and *Neault* Order No. 6 (GVA/2011).

b. The email dated 28 January 2011 is not an administrative decision within the meaning of art. 2.2 of the Tribunal's Statute—that is, it does not constitute an individual administrative decision taken in a distinct individual case, creating direct legal consequences to the legal order. Rather, the email contains information to the effect that the Administration is temporarily suspending a voluntary service provided pursuant to staff rule 3.17(c)(v). The suspension of the service provided by OPPBA does not carry sufficient direct legal consequences in respect of the Applicant's rights under the terms of his appointment or contract of employment. More specifically, the email does not change the legal order set out in staff regulation 8.1 and staff rule 8.1.

Prima facie unlawfulness

c. There is no evidentiary basis available upon which the Tribunal can reasonably conclude that there exist serious and reasonable doubts about the lawfulness of the contested decision. The Applicant has not shown how the contested decision contravenes his contract of employment or his terms of appointment.

d. Once the Administration received contradictory instructions from UNSU representatives, it suspended the collection and remittance of the UNSU membership dues. This action was taken in order to safeguard the rights of staff members, such as the Applicant by assuring that their dues are remitted to the authorised bank. It also served the duty of the Organisation to protect itself from exposure to liability. The Administration decided to hold in trust the dues it had collected between October and December 2010, until the matter was resolved internally by UNSU. If the matter is not resolved within three months, the dues will be returned to the individual UNSU members.

e. The authorisation given by staff members to collect UNSU dues does not instruct the Administration to deduct the monies and keep them in trust for a prolonged period of time. The Administration may arguably violate the Applicant's express instruction if it were to do so. The Administration could not remit the deduction to UNSU because of its conflicting instructions concerning the bank account into which the UNSU dues were to be deposited. Accordingly, in order to carry out the service in a responsible manner, OPPBA was constrained to temporarily suspend the collection and remittance.

f. Moreover, as stated above, the Administration provides the service of collecting UNSU dues directly from payroll on a voluntary basis. OPPBA is not obligated to provide this service, UNSU is not obligated to utilize it, and therefore, neither is the Applicant. There are other avenues available for the Applicant to pay his membership dues to the UNSU. These options include direct cash payment, check, PayPal, etc. UNSU may also utilise any of these options, and thereby collect the membership dues from its members. Consequently, the Applicant and other members may maintain their status as dues-paying members in good standing with the UNSU.

g. The Applicant's claim that the Director the Accounts Division, OPPBA, breached the confidentiality of the authorisation by contacting him about his contribution via an open email is unfounded, as the email the Applicant refers to

was sent to him and other staff members via “blind copy” (bcc). Therefore, the staff members do not know which other staff members received it.

Urgency

h. The Applicant has not demonstrated that the matter before the Tribunal is urgent. There are other avenues available for the Applicant and other staff to pay membership dues to UNSU.

i. The contested decision has already been implemented. Accordingly, there is no particular urgency which requires suspending a decision that has already been implemented.

Irreparable damage

j. The Applicant has not shown how the contested decision would cause irreparable harm to his rights as a staff member. There are other avenues available for the Applicant and other staff to pay membership dues to UNSU.

Applicant’s submissions

12. The Applicant’s primary contentions may be summarised as follows.

Receivability

a. The action of implementing the decision is ongoing and will continue for some time. The action taken by the Respondent, and his pending refund of the contributions to the Applicant, are not a one-time event but a continuing action, which meets the statutory requirements of art. 2.2 of the Tribunal’s Statute for suspension of action.

b. The decision is an administrative decision within the requirements of art. 2.2 of the Statute as it is a unilateral decision taken by the Respondent which produces direct legal consequences for the Applicant. The fact that the Respondent took the same administrative decision against other individuals does

not negate the fact that a distinct administrative action was taken against the Applicant as an individual staff member.

Prima facie unlawfulness

c. The Applicant's authorisation to make deductions for UNSU dues was to remain valid unless withdrawn, which withdrawal has not taken place.

d. The Applicant did not authorise OPPBA to hold his funds in trust for any period of time, whether for one day, three months or indefinitely.

e. The use of the word "may" in staff rule 3.17(c) is not intended as voluntary and optional, to be applied at the will of the Administration, but provides for conditionality of the circumstances under which the staff rule is applied. Staff rule 3.17(c)(v) (previously staff rule 103.18(b)) originates from an agreement by the Secretary-General to a recommendation of the Staff Management Coordination Committee ("SMCC"), dated 8 May 1984, to make automatic payroll deductions for contributions to staff associations unless the staff member explicitly opts out. The unilateral decision of the Respondent to suspend the deduction of the Applicant's contribution to the UNSU violates this agreement and staff rule 3.17(c)(v). Any reasonable manager faced with contradictory instructions on the change of bank account would have continued to make remittances to the existing bank account pending final resolution of the issue.

f. OPPBA had no business contacting the Applicant about his contributions to UNSU. The information about his contribution to UNSU came into the possession of OPPBA via UNSU. The Applicant expected that information to be confidential for various private reasons. Instead, the Director of the Accounts Division, OPPBA, breached that confidentiality and contacted the Applicant about his contribution via an email by which it is technically possible to access his details.

g. The decisions to suspend the remittance of UNSU dues to its bank accounts and to suspend the deductions of the dues through payroll violates:

- i. the principle of freedom of association and the Applicant's right to association;
- ii. the eligibility of the Applicant for election to the staff representative body, the Staff Union;
- iii. the effective participation of the Staff Union in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies;
- iv. the Applicant's confidentiality and privacy; and
- v. staff regulation 8.1, staff rule 8.1, the Statute and Regulations of the United Nations Staff Union (part I, sec. 12 and part II, sec.10 and part I, sec.13.3).

h. The contested decision allows the Respondent to interfere in the internal affairs of the Applicant's Staff Union; weaken it financially and otherwise; undermine the principle and his right to freedom of association; and diminish UNSU's effectiveness in representing the Applicant in accordance with staff regulation 8.1 and staff rule 8.1. The Applicant's confidence in UNSU has been affected.

i. The contested decision undermines and violates the Statute and Regulations of UNSU, under which the Applicant and other staff members elected the President. The Statute and Regulations of the Staff Union are clear on the responsibilities of its officers with regard to financial governance and correspondence. In particular, the President as principal executive officer is the certifying officer of UNSU, is accountable to the membership for the finances of

the UNSU, and is responsible for all correspondence on policy matters between the UNSU and other parties.

j. The authority to designate the bank accounts where the Applicant's contribution to his Staff Union is deposited is vested in the President of the Union and, in his absence, the First Vice-President. The authority to delegate the administration of UNSU finances to a Treasurer with responsibility for finance is vested in the President of the Staff Union and, in his absence, the First Vice-President.

Urgency

k. The contested decisions have interfered with the election process for the 44th 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". The Applicant's eligibility for election to office with UNSU is affected. Further, the UNSU cash flow and activities are impeded and the decisions also suggest that the management of UNSU, and especially its finances, is in turmoil.

Irreparable damage

l. The contested decision will affect the Applicant's eligibility to be elected to the UNSU office as he is now not an up-to-date dues-paying member. By suggesting other, more difficult, means of remitting contributions to the UNSU, the Respondent is creating further obstacles for the Applicant to remain a dues-paying member of the UNSU in good standing and to be eligible for election to the UNSU and harming the Applicant's relationship with the UNSU.

m. Without staff member dues, the UNSU cannot effectively participate in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies that affect the Applicant as a staff member.

n. The decision will allow the Respondent to interfere in UNSU affairs and will undermine the right to freedom of association, which will affect the Applicant as a staff member.

Considerations

13. At the commencement of the hearing of this matter, the parties were informed that the proceedings before the Tribunal, unlike criminal proceedings or proceedings in a civil court, are not *stricto sensu* adversarial in nature. The Tribunal highlighted that this was a very serious matter concerning basic fundamental rights to freedom of association, with the potential of much wider consequences, which required a resolution as soon as possible with a view to ensuring harmonious industrial relations. Following appropriate directions regarding the Tribunal's tentative view on the legal position of both parties, an effort was made to seek an amicable resolution of this matter. Unfortunately the parties failed to come to an amicable resolution, no doubt in part because of the wider ramifications and consequences of any arrangement they would have come to. However, I must express my gratitude for the parties' attempts in trying to resolve this issue within the constraints of the applicable law.

Whether the impugned decision has already been implemented

14. The primary contention that the Respondent makes is that the impugned decision has already been implemented and that therefore the matter is not receivable. The Tribunal finds that there is a clear distinction between the facts in the instant case, and in the authorities the Respondent cites in support of the above proposition. The current case deals with a decision which has an ongoing implementation and legal effect on the Applicant's rights arising from his terms of appointment. In the cases cited by the Respondent, the decisions and their effects were finite. Notably, in *Barringer*, a third party had already been appointed to the contested position. Further, there are authorities—such as *Calvani* UNDT/2009/092—which clearly reject the Respondent's interpretation of whether "implementation" will necessarily and always prohibit the granting of an application for suspension of action. In *Calvani* the Tribunal held that the

decision to place a staff member on administrative leave without pay during a certain period of time had continuous legal effect during that period of time and could only be deemed to have been implemented in its entirety at the end of the administrative leave (rather than when the decision was first notified). At this juncture the Tribunal wishes to point out that in accordance with the duty of fidelity, as well as general courtesy, it is incumbent upon Counsel to bring any conflicting authorities to the Tribunal's attention, and to make the necessary persuasive arguments as to why they should not be followed or clearly distinguished from the matter in hand.

15. I am not entirely convinced that it is a correct interpretation of the law and jurisprudence for the Respondent to argue that every decision that has been "implemented" (in the sense the Respondent uses the word) will be unable to be suspended by an order for suspension of action. To allow the Respondent's interpretation would be to render the Tribunal impotent. It cannot have been the intention of the drafters of the Statute that the Tribunal should have no power to dispense justice (in this context, by granting urgent and limited interlocutory relief) where the Respondent notifies a staff member of a decision at the time of, or at the eleventh hour before the "implementation" of a decision. This would allow even the most tainted and unlawful decision to stand, so long as it has been implemented hastily.

16. In this case, it is the considered view of the Tribunal that the decision to suspend the monthly deductions from the Applicant's salary and to suspend the remittance thereof are being actively implemented on a month-to-month basis and are therefore still ongoing. In this regard the Respondent's contention on receivability on this ground must fail.

Whether the decision constitutes an administrative decision

17. The second point taken by the Respondent is that the Applicant contests a decision that is not reviewable as it does not constitute an "administrative decision" within the meaning of art. 2 of the Tribunal's Statute—that is, according to the definition outlined by the Respondent, one taken in a distinct individual case and having

direct legal consequences in respect of the Applicant's rights under the terms of his appointment or contract of employment. For this argument the Respondent relies on *Larkin* UNDT/2011/028, which followed the reasoning in former UN Administrative Tribunal Judgment No. 1157 *Andronov* (2003), as discussed in several decisions of the Dispute and Appeals Tribunals.

18. The Respondent argues that the email of 28 January 2011 does not contain an administrative decision, but merely "contains information ... that the Administration is temporarily suspending a voluntary service provided pursuant to [the] Staff Rule[s]". Firstly, it is clear that the Applicant is not appealing the email itself, but the decision it conveys. Secondly, the fact that the suspension is "temporary" is also irrelevant—a decision may contravene a staff member's terms of appointment whether it is operative for one month or indefinitely. Thirdly, the service cannot be described simply as "voluntary"—it is made in connection with staff rights as provided for in the Staff Rules and in general principles of labour law, and exists as part of a consistent pattern of conduct that may create obligations (see discussion below).

19. Accordingly, the Respondent is incorrect that the decision is not taken "in a distinct individual case", as it is clearly taken in respect of the Applicant, and it matters not (for this aspect of the test) that it is taken at the same time in respect of other staff members as well (see e.g., *Jaen* UNDT/2010/165 and *Leboeuf et al.* UNDT/2010/206). As in the first argument regarding receivability, the Respondent has oversimplified the pronouncements of the authorities cited, and failed to point out that there are a number of authorities that conflict with this narrow interpretation of the definition of an "administrative decision".

20. The Respondent is also incorrect that the decision does not create "direct legal consequences to the legal order". If the legal order is considered to refer to the relationship between a staff member and the Organisation at law, then the decision will directly affect this legal relationship if it has the affect of taking away or otherwise materially affecting a right which stems from this relationship. Therefore, the contention in this regard must also fail, even adopting the Respondent's narrow

interpretation of the *Andronov* test. On this point, and although it is not a matter that need be discussed further here, I note that, although the UN Appeals Tribunal has cited jurisprudence from the former UN Administrative Tribunal by way of *Andronov* in an approving manner, it has not stated that the very restrictive application of the test outlined in *Andronov* that the Respondent argues for is what should be applied by the Dispute and Appeals Tribunals. On the contrary, the cases already cited above, as well as others (see, e.g., *Tabari* 2010-UNAT-030, *Luvai* UNDT/2009/074, *Appleton* Order No. 289 (NY/2010)), show that this Tribunal has moved toward a less rigid and more purposive interpretation of what constitutes an administrative decision which the Tribunal is competent to review.

Prima facie unlawfulness

21. The Tribunal will turn now to the challenge that the application does not satisfy the requirements necessary for a suspension of action. Firstly, the Applicant must demonstrate that the decision appears *prima facie* to be unlawful. It is enough for an applicant to present a fairly arguable case that the contested decision was influenced by some improper considerations, was procedurally or substantively defective, or was contrary to the Administration's obligations to ensure that its decisions are proper and made in good faith (see for example *Buckley* UNDT/2009/064, *Utkina* UNDT/2009/096).

22. Article 23.4 of the Universal Declaration of Human Rights provides that everyone has the right to form and to join trade unions for the protection of his interests. This must include the meaningful exercise of such right. The International Covenant on Civil and Political Rights, adopted by the General Assembly on 16 December 1966 and in force from 23 March 1976, also recognises under art. 22 that everyone has the right to freedom of association, including the right to form and join trade unions. The General Assembly of the United Nations, at its Second Session, endorsed the principles relating to freedom of association and the protection of the right to organise and requested the International Labour Organization ("ILO") to adopt relevant conventions, spawning the birth of C87 Freedom of Association and Protection of the Right to Organise

Convention, 1948, and C98 Right to Organise and Collective Bargaining Convention, 1949, two core conventions of the ILO.

23. The Tribunal has previously discussed at length that general principles of international law and norms are relevant in its interpretation of a staff member's rights in the context of their terms of appointment (see *Obdeijn* UNDT/2011/032). In *Kisambira* Order No. 36 (NY/2011) the Tribunal stated that, in accordance with general principles of international law and norms (including as expressed in international instruments on the right to freedom of association and collective bargaining), the Respondent has an obligation to facilitate organisational rights. One of the basic organisational rights is the right of a union to request an employer to make deductions of and to pay over union membership subscriptions, also known as "check-off" rights. Such a right, if not catered for by statute or in a recognition agreement or by negotiation, can become a recognised organisational right as a result of established past practice. The benefits of a recognised organisational right are conferred on every individual member. In this case, particularly where the deduction and remittance of the membership dues is a long established past practice, the Respondent has recognised this organisational right and cannot now withdraw it unilaterally.

24. The Respondent maintains that the Applicant has not shown how the contested decision contravenes his contract of employment or his terms of appointment. In particular the Respondent maintains that OPPBA has been providing the service of collecting the dues on a voluntary basis, and furthermore, that the authorisation to deduct union dues does not allow for these funds to be kept in trust for a prolonged period of time.

25. In terms of staff rule 3.17(c)(v), contributions may be deducted from payroll for transmission to a staff representative body established pursuant to staff regulation 8.1, provided that each staff member has opportunity to withhold his consent or at any time to discontinue such deduction by notice to the Secretary-General. The Applicant has shown by documentary evidence, and the Respondent has not refuted, the origin of this staff rule pursuant to a recommendation of the SMCC in 1984. The Tribunal finds

therefore that the unilateral decision of the Respondent to suspend deduction of the contributions violates both that agreement and the particular staff rule in so far as it pertains to the Applicant.

26. It is common cause that the Applicant has given no instruction for the discontinuance of the deduction and remittance of his UNSU dues. On receipt of the Applicant's written instruction the Respondent became contractually obliged to deduct and transmit the Applicant's contributions as it has been doing all along. The unilateral cessation by the Respondent is in breach of his obligations to the Applicant in this regard.

27. The Tribunal also finds that the decision to suspend the remittance of the UNSU dues and to suspend the deductions violates the Applicant's right to freedom of association, obstructs his eligibility for election to the staff representative body, and impedes his potential participation in the activities of UNSU.

28. On the evidence currently before the Tribunal and in view of the above, the Tribunal is satisfied that the Applicant has established *prima facie* unlawfulness.

29. It is also instructive to note the *Freedom of Association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (2006) ("Digest of Decisions"), para. 475, highlights that the withdrawal of the check-off facility which could lead to financial difficulties for a trade union organisation is not conducive to the development of harmonious industrial relations and should therefore be avoided. It was also recognised by the Committee that the "failure to transfer union dues to trade unions may constitute serious interference in trade union affairs" (see Case No. 2224, Definitive Report: Complaint against the Government of Argentina presented by the Confederation of Argentine Workers and the Association of State Workers).

Urgency

30. The Respondent contends that the Applicant has not satisfied the requirement of urgency. The Applicant on the other hand maintains that the contested decision has interfered with the election process for the 44th staff council (which should normally be undergoing at present), 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 with UNSU. Therefore the Applicant's eligibility for election to office is affected by the contested decision and, given the Applicant's unchallenged assertion that the elections should be underway already, the Tribunal finds the requirement of urgency satisfied.

Irreparable harm

31. The Respondent contends that the Applicant has not shown that the contested decision would cause irreparable harm to his rights as a staff member and that there are other avenues available for the Applicant (and other staff) to pay membership dues to UNSU. The Applicant contends that the decision affects his eligibility to be elected to office within UNSU and that his right to freedom of association is undermined as long as the Respondent withholds his dues.

32. Generally, harm will not be "irreparable" if it can be adequately compensated financially (see *Fradin de Bellabre* UNDT/2009/004, *Utkina* UNDT/2009/096). In *Jaen* Order No. 27 (NY/2011), the Tribunal said, *inter alia*:

Indeed article 10.5 of the Tribunal's Statute allows compensation for non-pecuniary loss, and such compensation has been awarded by both the Dispute Tribunal and the Appeals Tribunal. However, the Dispute Tribunal's ability to remedy a loss is not absolute. There are certain types of damages of a non-pecuniary nature that fall under the category of irreparable. In my view such damages may stem from the breach of a right that is so valuable that it cannot be expressed in mere financial terms. Fundamental human rights, for instance, fall under this category—in large part, their true value for individuals is in being able to actually exercise them, and not simply to receive subsequent compensation for the breach. Such rights may stem for instance from the principle of equal pay for work of equal value referred to in art. 23.2 of the Universal Declaration of

Human Rights and art. 7 of the International Covenant on Economic Social and Cultural Rights which as the Appeals Tribunal stated in *Tabari* 2010-UNAT-030, applies to United Nations staff. ... Accordingly if the only way for the Tribunal to ensure that certain rights are truly respected is to grant interim relief, than the requirement of irreparable damage will be satisfied.

33. The Tribunal finds that the right to freedom of association is a fundamental right and the right to stand for office is a necessary part of this right. The Tribunal is therefore satisfied that the Applicant has proved irreparable harm.

General comments and conclusion

34. For the above reasons, in Order No. 57 (NY/2011) the Tribunal ruled that the Applicant had satisfied all the requirements for a successful application for a suspension of action, and accordingly made the following order on 24 February 2011:

10. The Tribunal orders suspension of action, pending management evaluation, of the decision to suspend the remittance to UNSU of the Applicant's staff union dues and to suspend deductions from the Applicant's payroll from the month of January 2011. The Respondent shall ensure that all of the Applicant's dues, currently held on trust, any outstanding (which shall be deducted from OPPBA), and any which may fall due pending management evaluation, are remitted to UNSU without delay.

35. I turn now to the several comments that the Applicant made that touched more specifically on the rights of UNSU. Article 2.3(a) of the International Covenant on Civil and Political Rights provides that any person whose rights and freedoms are violated shall have an effective remedy. Further, art. 2.3(b) provides that any person claiming such a remedy shall have his rights determined by competent judicial, administrative or legislative authorities. However, as indicated in *Kisambira*, this Tribunal has no jurisdiction over matters involving the internal affairs of a staff association.

36. At para. 1113 of the Digest of Decisions, the Committee states that a matter involving a conflict within the trade union movement is the sole responsibility of the parties involved in the conflict themselves. In cases of internal dissensions within the union organisation the Committee has pointed out that judicial intervention would

permit a clarification of the situation from a legal point of view for the purpose of settling the question of leadership and representation of the organisation concerned. However, the Dispute Tribunal does not currently have jurisdiction of this nature.

37. Paragraph 1123 of the Digest of Decisions provides that conflicts within the trade union lie even outside the competence of the Committee and should be resolved by the parties themselves or by recourse to the judicial authority or an independent arbitrator. This Tribunal has no jurisdiction regarding staff associations or the internal disputes within a staff union, its members or its executive. The only available recourse in terms of the UNSU Statute would be to the Arbitration Committee. The Tribunal was advised that despite provision for an arbitration committee, UNSU has failed since the inception of its Statute and Regulations in 2007 to install such a committee. It is unfortunate that the Union has not established the Arbitration Committee; perhaps the moment is opportune.

38. I turn now to the practicalities of the order made in favour of the Applicant. Whilst the Respondent has not specifically argued frustration of any contract, the contention is that the Administration is loath to pay the dues directly to either the UNFCU or Citibank bank accounts of UNSU as a result of the contradictory instructions from UNSU office bearers as to the designated account. The Applicant contended that the Respondent had at all times in the past dealt with the President alone. According to the Applicant, it is the UNSU President who designates the account into which the funds are deposited, although a plain reading of art. 10.6 of the UNSU Statute states that the Treasurer shall collect all monies due to the Staff Union and deposit its funds in its name and in conjunction with the President, propose an investment policy for such funds subject to approval by the Council. The Applicant however contends that the President delegates authority to the Treasurer to perform these functions. At all events, this is not a matter over which the Tribunal has jurisdiction to exercise judicial function, and these comments are made as observations only.

39. In the Tribunal's view, there are some aspects of this case that are perplexing, if not troubling. The Respondent has been less than forthcoming with information which

must surely be within the Administration's provenance. Counsel for the Respondent was unable to say who gave the original instruction regarding banking arrangements to the Administration, and was unable to provide any documentation or record of correspondence between the Staff Union and the Administration. The Tribunal finds it strange that there is no documentation whatsoever going over a period of several decades setting out the course of dealing with the various UNSU officials over this time, let alone a written agreement concerning the very important aspect of the designated bank account and/or signatories. Nevertheless, it is clear that the Respondent is dealing with only one recognised union in New York; that check-off rights have been unilaterally withdrawn; and that remittance of the funds to UNSU has been ordered to be made without delay. There are various ways by which funds may be remitted by the Administration to UNSU. It is then a matter for UNSU to resolve where these funds are to be deposited.

40. This matter having been explained, the Respondent's Motion for Interpretation of Order No. 57 (NY/2011) is also considered to have been answered.



Judge Ebrahim-Carstens

Dated this 10th day of March 2011