



Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Abena Kwakye-Berko



v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Nicole Washienko, OSLA

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

Introduction

1. The Applicant, a Security Officer with the Opération des Nations Unies en Côte d'Ivoire, YRLUH 218 &, ILOHG DQ \$SSOLFDWLRQ ZLV, decision of the United Nations Claims Board (UNCB) to deny his claim for compensation for personal effects looted and/or destroyed at his residence in Daloa following post-election violence in Côte d'Ivoire, YRLUH +H GLG QRW VXE, contested decision for management evaluation.

2. In his reply, the Respondent alleges that the Application is not receivable and in any event is without merit.

3. The Tribunal has decided receivability as a preliminary issue.

Procedural history

4. The Applicant filed the current Application on 19 March 2014.

5. The Respondent submitted a Reply on 24 April 2014 by which he asserts that the Application is not receivable because the Applicant failed to request management evaluation of the contested decision under staff rule 11.2(c).

6. 7KH \$SSOLFDQW ILOHG KLV UHVSRQVH- WR WKH 5, receivability on 29 May 2014.

7. The Tribunal ordered the Respondent, by Order No. 224 dated 26 June 2015, to provide further evidence regarding the delegation of the Secretary-General ¶ V DXWKRULW\ LQ VWDII UXOH E WR WKH 0 (MEU).

8. 7KH \$SSOLFDQW ILOHG KLV REVHUYDWLRQV RQ W, August 2014.

9. The parties have requested that the case should be decided on the papers without an oral hearing. The Tribunal is of the view that an oral hearing is not required in this case and will determine receivability as a preliminary issue based

on the submissions filed by the parties.

Facts

10. In 2011, the Office of Staff Legal Assistance (OSLA), on behalf of another staff member, submitted to MEU a request for management evaluation of a decision by UNCB. On 16 September 2011, MEU made a formal determination that the UNCB is a technical body. In this judgment this will be referred to as Determination A. The determination has been redacted to preserve the confidentiality of the staff member in that case.

11. Determination A stated:

7 K L V L V L Q U H I H U H Q F H W R \ R I X U F R U U H V S R Q G H Q F
the Management Evaluation Unit, requesting management
evaluation concerning the denial of your lump sum claim in respect
R I S H U V R Q D O H I I H F W V O R V W R U G D P D J H G « L Q - X C
preliminary review of your case, we have determined that your
case is not receivable at the MEU.

(The determination then quotes Staff Rule 11.2(d))

The MEU notes that the request for management evaluation was taken on the advice of the United Nations Claims board, which is a technical body for the purposes of Staff Rule 11.2(b) and accordingly, you are not required to submit a request for
P D Q D J H P H Q W H Y D O X D W L R Q «

(The determination then cites Staff Rule 11.4(b))

In light of the forgoing, you may proceed to file your appeal directly with the United Nations Dispute Tribunal (UNDT) in accordance with Staff Rule 11.4(b).

12. In the present Application to the Tribunal, which was filed by OSLA on

E H K D O I R I W K H \$ S S O L F D Q W R Q 0 D U F K W K H T X H
P D Q D J H P H Q W H Y D O X D W L R Q R I W K H Z F R U H G H V W R H G Q Q M F
S H U P L W W H G E \ 6 W D I I 5 X O H V E D Q G E '

13. On 23 March 2014, Counsel for the Respondent requested comments from MEU as to whether MEU maintained its past interpretation of UNCB being a technical body.

19. In his UHSO\ WR WKH 7ULEXQDO¶V UHTXHVW IRU W evidence of the delegation of the Secretary-General UDO¶V DXWKRULW\ WKH 5H submitted a statement from MEU in which it is stated, ³>W@KH 0(8 GRHV QRV GHWHUPLQH ZKDW FRQVWLWXWHV D WHFKQLFDO ERG\

[I]n carrying out our function to assess the receivability of a request the Unit does need to make a determination as to whether 5XOH E DSSOLHV« ,Q WKH DEVHQFH RI DQ DGP the MEU makes a determination of what is a technical body based on what was considered to be a technical body under the old system.

Appli FDQW¶V VXEPLVVLRQV

20. The Applicant submits that MEU does have the authority to determine for the Secretary-General which entities constitute technical bodies for the purpose of staff rule 11.4(b) and once it has exercised its authority to make this determination for the Secretary-General it cannot change its determination.

21.

32. Determination A was a formal notification of a decision made on behalf of the Secretary-General. It was contained in an official document.

(Signed)

Judge Coral Shaw

Dated this 2nd day of October 2015

Entered in the Register on this 2nd day of October 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi