

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant is a Movement Control Assistant at the FS-5 level working with the United Nations Support Office in Somalia (“UNSOS”).¹

2. By an application filed on 20 August 2020, he contests what he terms as “UNSOS Human Resources Section decision to await the outcome of any subsequent filings with the United Nations Dispute Tribunal (“UNDT”) and the United Nations Appeals Tribunal (“UNAT”) instead of properly exercising its legal authority of discretion pursuant to staff rule 3.18(c)(iii)”.²

3. On 21 September 2020, the Respondent filed a motion to have receivability determined as a preliminary matter. On 22 September 2020, the Applicant filed a motion to strike out the said motion.

Facts

4.

7. On 31 August 2018, the Organization directed the Applicant to comply immediately with the court order with regard to child maintenance.⁶ The Applicant requested management evaluation, which was refused as not receivable, for the fact that the matter did not involve an administrative decision subject to management evaluation.⁷

8. During the period 2018-2019, the Applicant engaged in court processes in order to have the court decision reversed.

9. On 29 May 2020, the Applicant, requested UNSOS

13. On 20 July 2020, UNSOS denied the Applicant’s request for an advance salary payment and securing it against his future pension. On this occasion UNSOS also recalled that the Applicant had filed a request with the Management Evaluation Unit (“MEU”) regarding a number of requests made in connection with his private legal obligations related to child maintenance orders and legal costs in the cause from proceedings before the Supreme Court of Florida. In this respect, UNSOS announced that it would “await the outcome of the review and any possible subsequent filings with the UNDT and UNAT”.¹²

14. In connection with the 20 July 2020 UNSOS memorandum, the Applicant filed with MEU an addendum to the previous submission, stressing that it did not constitute a new evaluation request.¹³ The MEU acknowledged having received this addendum on 22 July 2020.¹⁴ On the merits, the MEU responded on 20 August 2020 that no decision on deductions from the Applicant’s salary had been made as yet whereas UNSOS communication of 22 June 2020 could not be construed as an administrative decision pursuant to staff rule 11.2(a). Thus, the request was found not receivable.¹⁵

15. On 20 August 2020, the Applicant filed the present application.¹⁶

Submissions

Respondent’s submissions

16. The Respondent submits that the Application is not receivable *ratione materiae*. The Applicant does not challenge an administrative decision under art. 2.1(a)

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Compliance (“USG/DMSPC”), not UNSOS, has the delegated authority to approve deductions from a staff member’s salary to fulfil private legal obligations.

17. The Respondent explains that on 20 August 2020, UNSOS referred the matter of the Applicant’s court order child support payments to the USG/DMSPC for her consideration. There has been no decision to make salary deductions yet. Accordingly, the application is premature.

Applicant’s submissions

18. The Applicant maintains that the application is receivable. Contrary to the Respondent’s argument that the Applicant is not challenging an administrative decision, the Applicant opines that it is for the Tribunal to individualise and define the administrative decision being contested.¹⁷ The Applicant argues that he is not challenging his obligation to provide child maintenance, but the Organization’s decision not to act on his request while “awaiting the outcome of any possible subsequent filings with the UNDT and UNAT”. The UNSOS decision not to exercise its discretion as per his request is clearly unlawful. It is not UNDT or UNAT to exercise the discretion accorded to the Organization.

19. Accordingly, the Applicant requests the Tribunal not to grant the Respondent’s motion to have receivability determined as a preliminary matter.

Considerations

20. As a preliminary matter, the Tribunal notes that it is competent to adjudicate the merits only where the receivability requirement is satisfied. It is, accordingly, competent to consider a receivability issue on its own initiative, whether or not it has been raised by the parties.¹⁸ In the present case the Tribunal found that the course proposed by the Respondent was justified by expediency.

¹⁷ Applicant’s motion to strike out the Respondent’s motion to have receivability determined as a preliminary matter, para. 3.

¹⁸ E.g., *O’Neill* 2011-UNAT-182, para. 31.

21. The Tribunal further confirms that it has “the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”, and “may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed”.¹⁹ At the same time, however, the Appeals Tribunal has also held that it is for the Applicant to identify an administrative decision capable of being reviewed.²⁰ It results that that the Tribunal’s power to interpret an application serves to assist unrepresented applicants, who exhibit a genuine difficulty in articulating their claim. In the latter case applications must be interpreted *bonae fidei* to ascribe to them a sense consistent with the presumed intention and legal interest of the applicant²¹, as it would not be in the interests of justice to hold them formalistically and technically to what they may or may not have pleaded. The Tribunal will not use this power to sanitize frivolous, impulsive or otherwise undisciplined submissions.

22. On this note, in reference to the Applicant’s impugning the phrase about awaiting the outcome of processes initiated by him, the Tribunal remarks that an applicant should not necessarily exp /F1 12J ET Q qr.aq9ou087(-)21(t)-14(o)19e of processes a p

in its competence, any such acts are to be distinguished from those not having direct legal consequences.

25. The Tribunal finds that the present case does not involve an administrative decision in the above-stated sense. First and foremost, the United Nations administration is not competent to amend the content of a staff member's private obligations. The latter are created in the sphere of autonomous legal relations, subject to municipal laws. The Organization's competence in this connection is limited to deciding on motions for honouring municipal court orders as titles for deduction from staff member's emoluments, and on the extent of such deductions. Thus, the

