

**The Arbitration Committee of United Nations Staff Union**

**45th Staff Council Arbitration Committee**

16 January 2019

New York

Case Number: 02/2019

**Decision in the case:**

**Treasurer and Assistant Treasurer v. Second Vice-President**

**I. Procedure**

On 22 October 2018, the Arbitration Committee received by e-mail a complaint filed jointly by Mr. Ibrahima Faye and Ms. Rosemary Lane, in their respective quality as the Treasurer and the Assistant Treasurer of the UN Staff Union (UNSU), (referred to hereinafter as collectively as the Plaintiffs and individually by their titles) against Ms. Christina Silva Roig in her capacity as the Second Vice-President of the Staff Union (referred to hereinafter as the Second Vice-President), by which they accuse the Second Vice-President of violating the Financial rules 3, 4 and 5 (and by way of reference the financial rule 2) of the Statutes and Regulations of the Staff Union.

Both Parties were heard by the Arbitration Committee within the proceedings, with the Second Vice-President being assisted by her Counsel. Both Parties submitted evidence and the Arbitration Committee requested and received information from one of the authorized signatories of the UN Athletic Club account.

**II. Summary of facts:**

The Second Vice-President was designated to be the liaison for Staff Day Committee and was a member of the UNSU 2018 Staff Day committee. She was charged with contacting the Missions for gifts and sponsorships in general of the Staff Day. As part of that undertaking, the Permanent Mission of Qatar (the Mission of Qatar) offered to the UNSU a financial donation of USD 15,000. From what the Arbitration Committee has gathered, financial donations are not usually received from missions and this seems to have been a first.

The Second Vice-President instructed the Mission to transfer the money to the account of the UN Athletics Club<sup>1</sup>, to which the donation was wired on 6 September 2018 (the value date being 1 September 2018). There

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<sup>1</sup> In her statement before the Arbitration Committee (4 December 2018), the Second Vice-President stated that: "And so I asked the Mission to transfer the money to the account of the Athletics Club. The donation was, after all, earmarked for sports. I am the Vice President of the Athletics Club. As Vice President of the Athletics Club, I have access to the account for this club. But I am not the only one with access. There needs to be at least two signatories for any

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was no written communication from the Second Vice-President to inform the Council of the donation. The Staff Council found out about the donation on 10 September.

The sum of 12,000 was first understood to be the amount of the donation, but an official letter from the Mission of Qatar, dated 12 October 2018, confirmed that the amount of the donation was in fact USD 15,000.

Two separate cash deposits were made to the UNSU account:

- 7,000 on September 10 at the UNFCU DC2 Branch and;
- 5 000 on September 12 at the UNFCU GA branch.

The bank did not keep track of the identity of the person who made deposits.

In her initial correspondence with the Arbitration Committee, the Second Vice-President stated in writing that she was the person who deposited those amounts<sup>2</sup>, but later in a hearing denied having any knowledge of the identity of the person who made the deposits.

The Second Vice-President explained the difference of 3,000, by expenses that were made, during the Staff Day or in the period leading to it, to acknowledge the contribution made by the Mission of Qatar and to pay Staff Day referees<sup>3</sup>. In that regard, the Second Vice-President has submitted invoices to prove those expenses. The Second Vice-President explained that some of expenses were made from her personal funds (Credit card) and later reimbursed by the Athletic Club.

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disbursements from this account. Apart from myself, either President or the Treasurer of the Athletics Club needs to co-sign on any cheques. I want to emphasize that this account is not my personal account, to which I have sole access. I have better working relations with the President and Treasurer of the Athletics Club and I was confident that I would get my money back for my out-of-pocket expenses. (Verbatim copy of the Statement delivered by Ms. Cristina Silva at the Arbitration Committee Hearing on 4 December 2018, attached to an e-mail sent by her Counsel to the Committee on Monday, 10 December 2018, 11:57 AM).

<sup>2</sup> In her written answers to the Committee, the Second Vice-President, answers the following question, as follows:

**Question:** Is there an explanation for separate cash deposits?

**Answer:** I had never made deposits like this before so I thought it was better to break them into two deposits rather than one large one. So, I deposited \$7,000 and then \$5,000.

(Second Vice-President's e-mail dated, Thursday, November 15, 2018 7:58 AM To: Zhepyir Mabande, Subject: RE: Complaint against UNSU vice President Cristian Silva)

<sup>3</sup> According to the Second Vice-President: "The \$15,000 donation of the Qatar Mission was distributed as follows:

\$7,000 deposited to the Staff Union Reserves Fund on 10 September 2018 to cover the cost of the sports programme.

\$5,000 deposited to the Staff Union Reserves Fund on 12 September 2018 to cover the cost of the sports programme.

\$1600 to cover reimbursement for the rush banners recognizing the Qatar Mission      \$1,400 to cover the additional referees that were obtained for the sports events." (Second Vice-President's e-mail dated, Thursday, November 15, 2018 7:58 AM To: Zhepyir Mabande, Subject: RE: Complaint against UNSU vice President Cristian Silva)

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The Arbitration Committee asked for a proof of payment made by the Second Vice-President and received a copy of a United Airlines credit card statement on which Ms. Silva's name is not visible. The Arbitration Committee asked the Second Vice-President and the Athletic Club for receipts from Staff Day referees for cash payments made to them as well as their contact details. Neither Ms. Silva nor Mr. Seales (an authorized signatory of the Athletic Club) provided either the receipts or contact details of the referees.

### **I. Legal discussion:**

In order to decide on these claims, the Arbitration Committee needs to decide first on the admissibility of the complaint (A), then on the merits thereof (B).

#### **A. Admissibility**

Under Regulation 8.3.2 "Any complaint by a staff member must be submitted to the Arbitration Committee in writing and list the Articles of the Staff Union Statute and Regulations that have been allegedly violated by an act of the Staff Council, Executive Board or any of its members." The complaint was submitted by staff members, in writing and it lists the Articles of the Staff Union Statute and Regulations that have been allegedly violated. Moreover, the plaintiffs have standing to challenge violations of the financial rules, given their attributions as Treasurer and Assistant Treasurer. Therefore, the complaint is admissible.

#### **B. Merits**

In order to rule on the merits of the complaint, the Arbitration Committee would need to examine the veracity of the accusation made and the defenses and motives advanced by the Second Vice-President and ultimately whether those actions constituted a violation of the financial rules.

##### **1. On the veracity of facts and eventual justification:**

The Arbitration Committee notes that the Second Vice-President did not deny that the facts in themselves took place, but rather sought to justify them and to explain the reasons why she believed she was justified to proceed as she did.

However, the reasons<sup>4</sup> advanced by the Second Vice-President for not contacting the Treasurer to inform him of the donation, even though he was in the Secretariat in the afternoon of the 6 of September, do not seem

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<sup>4</sup> "On the 6th, since it was the last day before the event, the arrangements had already been made. In addition, I was dealing with many last minute problems associated with Staff Day as well as [PRIVATE INFORMATION]. It was extremely late, and I live in [PRIVATE INFORMATION], so my main objective was to finish the pressing items so I could get home and return early the next day."

(Second Vice-President's e-mail dated, Thursday, November 29, 2018 3:22 PM To: Zhepyir Mabande, Subject: FW: Reference matters before the Arbitration Committee)

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convincing to the Arbitration Committee. She could have alerted him by phone, mail or in person when he came to sign checks on the 6 of September.

The Second Vice-President has also produced invoices to show in fine that she used part of the donation to recognize the MQ and thank them for their generosity. The Arbitration Committee believes however that, though much has been said about the invoices and payments, their authenticity or lack thereof, we must recall that the question before the Arbitration Committee is not whether those expenses made and later imputed to the donation from the Qatari Mission were exact, justified or not, but rather whether they should have been imputed in the first place to the donation and reimbursed by an external body, thus evading the mechanisms of control put in place within the UNSU to ensure accountability and safeguard transparency.

The crux of the matter is that the donation should have been wired to the UNSU account in the first place. Since the Second Vice-President was mandated by the UNSU to solicit gifts and contributions, she should have given the UNSU account as beneficiary, not the UN Athletic Club. And all the expenses imputed to the donation should have been imputed to the already approved budget and reimbursed by the Treasure, if regular.

The donation was money donated to the UNSU for the raffle (as indicated in the wire copy). The Second Vice-President did not produce any proof substantiating her claim that donation was affected exclusively to sport activities. Her own emails and affirmations *per se* do not suffice to prove that donation was to be affected to Sport activities<sup>5</sup>, and even if that was the case, it should have been wired to the UNSU account, and all sports expenses be made from the already approved budget as stated above.

The personal emails (Gmail) to her contact in the Mission of Qatar (unofficial email address), that she produced do not suffice to prove that claim, when the transfer slip states clearly "DONATION TO THE STAFF DAY RAFFLE OF THE UNITED NATIONS STAFF DAY TAKING PLACE SEPT 7<sup>TH</sup> 2018"<sup>6</sup> and when no document from the mission of Qatar was produced to refute that statement contained in the wire.

**2. On the violation of the financial rules:**

The Arbitration Committee finds the Second Vice-President in violation of Financial Rule 5 ('Expenditure incurred in official entertaining on behalf of the Staff Union shall be paid subject to the provisions contained in Rule 2'). The Arbitration Committee further finds that the Second Vice-President violated Financial Rule 2 (a) ('Expenditure that cumulatively or singly exceeds \$1,000 must be approved in advance by the Council').

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<sup>5</sup> "This has never happened before – that a Mission requested to fund an activity of Staff Day. Normally, they provide gifts for the raffle or just donate general funds which go to the general Union account. However, this year they wanted to do something specifically for sports. I guess the accountant put a notation that the donation was for the raffle because I originally sent letters to all the Missions asking for raffle donations. However, you are free to confirm with the Permanent Representative that the funds were earmarked for the sports programme." The Second Vice-President written responses to the Arbitration Committee written questions.

"the Mission of Qatar requested specifically to fund the sports programme only for sports, not food etc., because they will be involved in an Olympic sports programme next year." (Second Vice-President's e-mail dated, Thursday, November 15, 2018 7:58 AM To: Zhepyir Mabande, Subject: RE: Complaint against UNSU vice President Cristian Silva)

<sup>6</sup> COPY OF THE WIRE from the Mission of Qatar

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However, the Arbitration Committee finds that the Financial Rules 3 and 4 could not be directly invoked in this case.

**II. For these reasons,**

The Arbitration Committee:

By a majority of 4 concurring members to one member who was not present,

- Decides that the complaint is admissible,

By a majority of 4 concurring members to one member was not present,

- Decides that the Second Vice-President has violated Financial Rules 2(a) and 5 of the UNSU Statute and Regulations;

By a majority of 4 concurring members to one member who was not present,

- Decides to suspend the Second Vice-President's executive board and Council voting rights, effective immediately;

By a majority of 4 concurring members to one member who was not present,

- Decides to recommend her recall;

By a majority of 4 concurring members to one member who was not present,

- Informs the Second Vice-President of her right to request a final review from the Arbitration Committee and says that this right must be exercised no later than 15 days from the date of this decision.

**IN FAVOR:**

Elina Pekler

Elizabeth Kissoon-Barker

Modou DIENG

Vincent Wilkinson

**ABSENT:**

Zhepyir Mabande

Done in English at New York, UN Headquarters, this day of January 16, two thousand and nineteen.

(Signed) Chair of the Arbitration Committee,

**Individual opinion (Modou DIENG)**

I agree with the present decision in its entirety. I would like however to make the following remark regarding the defense based on novelty and on the principle of *nullum crimen nulla poena sine lege* (or the principle of legality of crimes and punishments) raised by the Counsel of the Second Vice-President.

In her written submission on behalf of the Second Vice-President, the Counsel argues that since “there are no guidelines, rules or policy governing the receipt of donations” the Second Vice-President cannot be held liable for acts which are not prohibited. She further argues, based on the principle, that “[w]ithout any provision prohibiting conduct such as the actions of Ms. Silva, she cannot be said to have committed any offence under the Financial Rules of the Staff Union”<sup>7</sup>.

I do believe that this argumentation cannot prosper.

The financial Rules do indeed apply to donations as well as to any funds of which the UNSU is the lawful owner regardless of the means by which they were acquired. Therefore, the Second Vice-President can be lawfully held liable for her conduct in this case. The fact that no donation was never received prior to this instance has no bearing whatsoever on that applicability.

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<sup>7</sup> (Submission of the Counsel of Ms. Silva on her behalf, attached to an e-mail sent by the Counsel to the Committee on Monday, 10 December 2018, 11:57 AM).