



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Tadonki
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

[No. 2010-UNAT-005]

Before:	Judge Mark P. Painter, Presiding Judge Inés Weinberg de Roca Judge Jean Courtial
Case No.:	2009-006
Date:	30 March 2010
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant: Katya Melliush

Counsel for Appellant/Respondent: Phyllis Hwang

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. Appellant Secretary-General (SG) appeals from a decision of the United Nations Dispute Tribunal (UNDT). We hold that the UNDT exceeded its jurisdiction by ordering a suspension of action pending the final determination of the substantive case. We annul the UNDT order of 1 September 2009, UNDT/2009/016.

Facts and Procedure

2. Georges Tadonki (Tadonki) joined the Office for the Coordination of Humanitarian Affairs (OCHA) as head of its office in Harare, Zimbabwe, on 24 March 2008 on a one-year fixed-term appointment (FTA). His FTA was subsequently extended for varying periods of duration through 3 September 2009.

3. The problem here began with an email dated 27 January 2009 from OCHA's Assistant Secretary-General Catherine Bragg, in which she informed Tadonki that his contract would not be renewed beyond its expiry date of 23 March 2009, based on his performance. She also directed Tadonki to relocate to OCHA's regional office in Johannesburg, South Africa, and work there through 23 March 2009.

4. Tadonki filed a suspension of action (SOA) request with the Joint Appeals Board (JAB)/New York. The JAB did not support Tadonki's SOA request, but recommended that his Performance Appraisal System (PAS) rebuttal process be completed before 23 March. The Secretary-General agreed.

5. On 16 March, Tadonki filed another SOA request. Around the same time OCHA extended his contract for a month through 23 April. The JAB/New York consequently did not take any action on the second SOA request.

6. On 10 July, Tadonki filed an application for suspension of action with UNDT/Nairobi against the decision not to extend his contract beyond 15 July. The application was withdrawn after OCHA extended his contract from 16 July to 2 August. His contract was subsequently again extended to 3 September "only for the purpose of utilizing [his] sick leave entitlement". Tadonki filed another application for SOA on the decision not to renew his contract beyond 3 September.

7. On 1 September 2009 the UNDT issued a judgment UNDT/2009/016 on Tadonki's SOA application. It was not persuaded by the Administration's claim that Tadonki's appointment had been extended for two months to 3 November. As it was not satisfied that Respondent had implemented the PAS rebuttal panel's findings or the recommendations of the Panel on Discrimination and Other Grievances (PDOG), UNDT determined that the decision not to renew "appears to be in breach of the Organization's Rules" and "international legal norms relating to due process". UNDT found that the contested decision was prima facie unlawful, that the matter was urgent, and that Tadonki would suffer more than the Administration if his SOA application was not granted, as he would not have a paid appointment and would suffer psychological stress that would compound his state of health. UNDT thus ordered that the decision not to renew Tadonki's appointment be suspended pending the final determination of the substantive case. Moreover, it ordered as an interim measure that Tadonki be paid half his salary until the final determination of the case.

Considerations

8. The UNAT Statute does not clarify whether UNAT may review only a judgment on merits, or whether an interlocutory decision may also be considered a judgment subject to appeal. But one goal of our new system is timely judgments. This Court holds that generally, only appeals against final judgments will be receivable. Otherwise, cases could seldom proceed if either party was dissatisfied with a procedural ruling.

9. But as we state in *Kasmani*¹ and *Onana*², the prohibitions on appeals in Articles 2(2) and 10(2) of the UNDT Statute cannot apply where the UNDT issues orders that purport to be based on these articles but in fact exceed its authority. For instance, if UNDT were to award punitive damages as an "interim measure", this judgment could be appealed before UNAT, because such a judgment would exceed the authority of UNDT.

10. UNDT has no authority under Article 2(2) to order a suspension of the contested decision beyond the deadline for management evaluation. UNDT exceeded its jurisdiction in ordering suspension of the decision not to renew Tadonki's employment "pending the final

¹ *Kasmani v. Secretary General*, Case No. 2009-015.

² *Onana v. Secretary General*, Case No. 2009-009.

determination of the substantive appeal”. Article 2(2) authorizes the UNDT to order a suspension of a contested decision only “during the pendency of the management evaluation”.

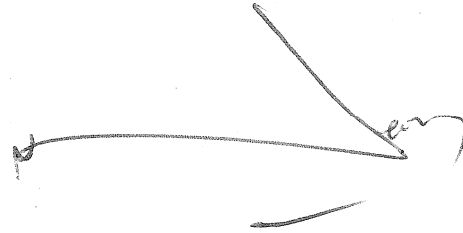
11. Our three decisions this date should not be interpreted to mean that all preliminary matters are receivable—almost none will be. In these cases, it was clear that UNDT had exceeded its grant of jurisdiction; there was also a divergence among the UNDT courts themselves, so it was our duty to resolve the issue. Most interlocutory matters will not be receivable—for instance, matters of evidence, procedure, and trial conduct. Only when it is clear that the UNDT has exceeded its jurisdiction will a preliminary matter be receivable.

Judgment

12. This Court annuls the UNDT judgment of 1 September 2009, UNDT/2009/016.



Judge Painter, Presiding



Judge Weinberg de Roca



Judge Courtial

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT