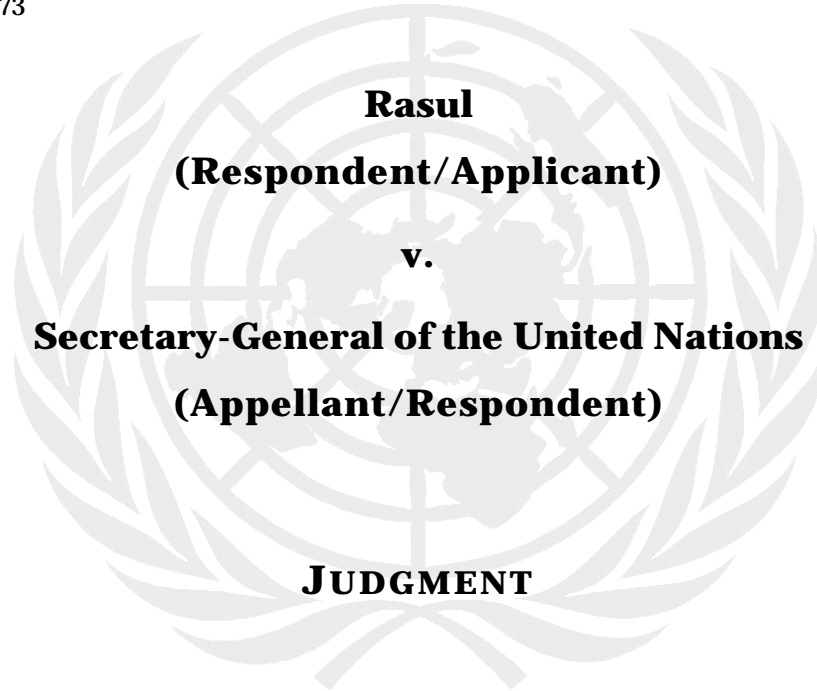




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-073



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**Before:** Judge Inés Weinberg de Roca, Presiding  
Judge Kamaljit Singh Garewal  
Judge Luis María Simón

**Judgment No.:** 2010-UNAT-077

**Date:** 27 October 2010

**Registrar:** Weicheng Lin

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**Counsel for Respondent/Applicant:** Esther Shamash

**Counsel for Appellant/Respondent:** Phyllis Hwang

**JUDGE INÉS WEINBERG DE ROCA, Presiding.**

### **Synopsis**

1. Zubaida Rasul (Rasul) withdrew her application to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) for suspension of action on the same day that the Dispute Tribunal issued the Order for suspension of action. The Order had no practical effect. The appeal by the Secretary-General is moot as it is academic and seeks an opinion from this Tribunal regarding the issues raised in the appeal. The appeal is therefore dismissed.

### **Facts and Procedure**

2. Rasul joined the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) on 15 February 2007. Rasul returned to MONUC on 7 May 2009 on a temporary deployment contract. On 18 August 2009, Rasul was placed on a three month fixed-term contract. On 15 October 2009, Rasul was interviewed for the post of Senior Political Affairs Officer with MONUC and she received the highest score of the candidates interviewed for the post. On 17 November 2009, Rasul's contract was extended for three months to 17 February 2010. In December 2009, Rasul enquired about the outcome of the selection process for the post and she was informed that there had been a delay in finalizing the appointment of the successful candidate. In January 2010, Rasul was informed that the record of the interviews would be finalized in late January or early February. On 27 January 2010, Rasul was informed that her contract would not be extended and, on 5 February 2010, she received written notification of the termination of her contract.

3. On 12 February 2010, Rasul requested a management evaluation of the decision not to extend her contract. She also made an application for suspension of action pending the outcome of the management evaluation to the Dispute Tribunal. On 16 February 2010, the Dispute Tribunal issued Order No. UNDT/NBI/O/2010/023, which stated as follows:

The application for a suspension of action is granted. The suspension will lapse at the end of the management evaluation, if successful, or, if unsuccessful, a period of four weeks from the date that the outcome was communicated to [Rasul], so as to allow the [Secretary-General] sufficient time to conclude the administrative process in relation to the post of Senior Political Affairs Officer and for [Rasul] to seek an alternative posting within the UN.

4. Also on 16 February 2010, Rasul filed a document entitled “Applicant’s notification of withdrawal”, in which she withdrew her request for suspension of action on the basis that the Secretary-General had agreed to extend her contract by one month and her application had become moot.

5. The Secretary-General filed an appeal against the Order on 5 April 2010. Rasul filed an answer to the appeal on 4 May 2010.

### **Submissions**

#### **Secretary-General’s Appeal**

6. The Secretary-General submits that the Order constitutes a judgment within the meaning of Article 2(1) of the Statute of the Appeals Tribunal (Statute). As the Order for suspension of action exceeds the competence of the Dispute Tribunal, the prohibition on an appeal from a decision of the Dispute Tribunal on an application for suspension of action under Article 2(2) of the Statute of the Dispute Tribunal (UNDT Statute) does not apply. Accordingly, the appeal is receivable.

7. The Secretary-General submits that the Dispute Tribunal may suspend the implementation of a contested administrative decision only for the duration specified in Article 2(2) of the UNDT Statute, namely during the pendency of the management evaluation. The Dispute Tribunal exceeded its competence by ordering the suspension of the administrative decision for four weeks following the date of communication to Rasul of the outcome of the management evaluation if the evaluation resulted in an adverse outcome for Rasul.

8. The Secretary-General requests that the Appeals Tribunal make a number of findings and vacate the Order of the Dispute Tribunal.

#### **Rasul’s Answer**

9. Rasul submits that the decision of the Secretary-General on 16 February 2010 to extend her contract for one month rendered her application for suspension of action moot. Accordingly, Rasul withdrew her application and she received the Order shortly after filing her withdrawal. Rasul has been involved in attempts to resolve the dispute informally

through the Office of the Ombudsman, and her contract has been extended on a month-by-month basis during this process.

10. Rasul submits that the Secretary-General has no standing to challenge the Order. By extending her contract prior to the issuance of the Order, the Secretary-General rendered her request for suspension of action moot. At the time the Order was issued by the Dispute Tribunal, there was no longer an application for suspension of action before the Tribunal for it to consider.

11. Rasul requests that the Appeals Tribunal dismiss the appeal in its entirety.

### Considerations

12. As a preliminary matter, this Tribunal must determine if the appeal by the Secretary-General is receivable under Article 7 of the Statute. The issue of receivability arises in this case as Rasul withdrew her application to the Dispute Tribunal for suspension of action on the same day that the Dispute Tribunal issued the Order for suspension of action.

13. On 5 February 2010, Rasul received written notification of the termination of her contract on 17 February 2010. On 12 February 2010, Rasul filed a request for suspension of action of the decision not to extend her contract pending the outcome of her request for management evaluation of the decision.

14. On 16 February 2010, the Secretary-General informed Rasul that her contract would be extended by one month. The decision of the Secretary-General to extend Rasul's contract thereby rendered moot her request for suspension of action of his earlier decision not to extend her contract. On the same day, Rasul withdrew her request for suspension of action. The Dispute Tribunal nevertheless issued the Order for suspension of action that day.

15. In the *Sefraoui* case,<sup>1</sup> this Tribunal dismissed the appeal by the Secretary-General from the Judgment of the Dispute Tribunal, which was in his favour. This Tribunal held that the party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds. The same principle can be applied in this case. The Order had no practical effect following the withdrawal of Rasul's request for suspension of

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<sup>1</sup> *Sefraoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-048.

action. In these circumstances, the appeal by the Secretary-General is moot as it is academic and seeks an opinion from this Tribunal regarding the issues raised in the appeal.

**Judgment**

16. Based on the foregoing reasons, the appeal is dismissed.

Dated this 27<sup>th</sup> day of October 2010 in New York, United States.

Original and authoritative version: English

*(Signed)*

Judge Weinberg de Roca,  
Presiding

*(Signed)*

Judge Garewal

*(Signed)*

Judge Simón

Entered in the Register on this 29<sup>th</sup> day of December 2010 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar