



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

Case Nos. 2011-214 & 2011-219

**Igbinedion
(Respondent/Applicant)**

v.

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

JUDGMENT

Before: Judge Luis María Simón, Presiding
Judge Sophia Adinyira
Judge Inés Weinberg de Roca

Judgment No.: 2011-UNAT-159

Date: 8 July 2011

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Nyaberi Omweri Samsom

Counsel for Appellant/Respondent: John Stompor

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) reiterates its jurisprudence that the exclusion of the right to appeal a decision to suspend the execution of an administrative decision constitutes an exception to the general principle of the right to appeal and must therefore be narrowly interpreted. As a result, this exception applies only to jurisdictional decisions ordering the suspension of an administrative decision *pending* a management evaluation and not beyond its date. When dealing with an appeal against a jurisdictional decision of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) rendered on the basis of Article 2(2) of its Statute and Article 13 of its Rules of Procedure, the Appeals Tribunal needs to decide whether the Dispute Tribunal has respected the limitations of its scope of jurisdiction under those provisions. In a situation in which the Appeals Tribunal is led to observe that the Dispute Tribunal has exceeded its competence, the appeal will be judged receivable.

2. In the present case, the first Order under appeal extended the suspension of action until 13 May 2011, beyond the date on which the management evaluation was in fact completed. The UNDT should have granted a suspension until 13 May 2011 or until the completion of management evaluation, if the latter was earlier. By fixing a date without taking into account that the management evaluation might be completed earlier, the UNDT exceeded its jurisdiction and committed an error of law.

3. The second Order under appeal extended the suspension until the final determination of the case, and therefore beyond the completion of management evaluation.

4. Both Orders therefore violated Article 2(2) of the UNDT Statute, which provides for suspension of the implementation of a contested decision only “during the pendency of the management evaluation”, and Article 10(2) of the UNDT Statute, which prohibits the suspension of the implementation of an administrative decision during the proceedings before the UNDT, in cases of appointment, promotion, or termination.

5. In light of the foregoing, both Orders are vacated and the jurisprudence of this Tribunal in *Tadonki*,¹ *Onana*,² and *Kasmani*,³ is affirmed.

Facts and Procedure

6. On 9 April 2011, Joseph Igbinedion (Igbinedion) filed a request for management evaluation of the decision not to renew his appointment. On 11 April 2011, Igbinedion filed an application for suspension of action requesting the Dispute Tribunal to suspend the decision not to renew his appointment. On 15 April 2011, the UNDT issued Order No. 30 (NBI/2011) in which it found it necessary to hold an oral hearing on this matter on 4 May 2011 and suspended the non-renewal decision until 13 May 2011. In accordance with the Order, the Secretary-General extended Igbinedion's appointment until 13 May 2011.

7. On 29 April 2011, the Secretary-General filed an appeal against Order No. 30 (NBI/2011) on the grounds that the Dispute Tribunal exceeded its competence in suspending the non-renewal without stating the reasons for the suspension and without examining whether the requirements for a suspension of action had been met. On 9 May 2011, the Dispute Tribunal held a hearing on the motion for suspension of action of the non-renewal decision.

8. On 10 May 2011, the Management Evaluation Unit submitted its evaluation of the non-renewal decision, with the Dispute Tribunal being informed of the outcome of the decision on 11 May 2011. On 12 May, the Dispute Tribunal issued Order No. 33 (NBI/2011) concluding that Igbinedion had "established a *prima facie* case for suspension of action" and ordered that the "suspension will remain in force until the case is finally determined on its merits".

9. The Secretary-General appeals both Orders.

¹ *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

² *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008.

³ *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011.

Submissions

Secretary-General's Appeal

10. The Secretary-General submits that in accordance with Article 2(1) of the Statute of the Appeals Tribunal, and the Appeals Tribunal's Judgments in *Tadonki*, *Onana*, and *Kasmani*, an appeal may be filed against an interlocutory order in which the Dispute Tribunal exceeded its jurisdiction or competence. In *Kasmani*, the Appeals Tribunal held that

any jurisdictional decision, however it may be described by the Dispute Tribunal (judgment, order or other) which, as in the present case, orders the suspension of the implementation of the contested administrative decision beyond the date on which the management evaluation is completed, cannot be considered as falling within the scope of the exception to the right of appeal....

11. The Dispute Tribunal relied on Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules of Procedure that authorize the Dispute Tribunal to suspend a contested decision "during the pendency of the management evaluation". The Secretary-General submits that the Dispute Tribunal, which was informed on 11 May 2011 that the management evaluation had been completed on 10 May 2011, erred in ordering the suspension of the non-renewal decision "until the case is finally determined on its merits" and beyond the completion date of the management evaluation.

12. The Secretary-General, while seeking guidance and acknowledging that interlocutory appeals are only receivable in limited cases, contends that, when reading Article 11(3) of the UNDT Statute and Article 7(5) of the Statute of the Appeals Tribunal, the Orders issued by the Dispute Tribunal do not create an immediate obligation to execute, and that Article 2(2) of the UNDT Statute is clear in that it does not authorize the Dispute Tribunal to suspend a contested decision beyond the date upon which the management evaluation is completed.

Igbinedion's Answer

13. Igbinedion responds that the Dispute Tribunal did not exceed its mandate in ordering the suspension of action until his case was determined on its merits and that under Article 2(2) of the UNDT Statute “[t]he decision of the Dispute Tribunal on such an application shall not be subject to appeal”.

14. Igbinedion submits that the Dispute Tribunal was aware of the response of the Management Evaluation Unit before issuing Order No. 33 (NBI/2011), that the Order was based on evidence submitted during the hearing, and that the Dispute Tribunal has yet to adjudicate on the non-renewal of the contract.

15. Igbinedion further contends that Article 7(5) of the Statute of the Appeals Tribunal that states that the filing of an appeal will suspend the execution of a judgment is not applicable seeing that only orders and decisions have been issued in his case, with a judgment pending the determination of the main application.

Considerations

16. The Appeals Tribunal stated in *Onana*:

The Appeals Tribunal is of the view that the exclusion of the right to appeal a decision to suspend the execution of an administrative decision constitutes an exception to the general principle of the right to appeal and must therefore be narrowly interpreted. As a result, this exception applies only to jurisdictional decisions ordering the suspension of an administrative decision pending a management evaluation. The Appeals Tribunal therefore considers that no jurisdictional decision, no matter how it is named by the Dispute Tribunal, which, as in the present case, orders the suspension of a contested administrative decision for a period beyond the date on which the management evaluation is completed, can be considered as falling within the scope of the exception to the right to appeal as outlined in the aforementioned provisions of Article 2 (2) of the UNAT Statute, and of Article 13 of the Rules of Procedure of the Dispute Tribunal.⁴

⁴ *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008, para. 19.

The Appeals Tribunal further held:

In order to give full effect to paragraph 28 of General Assembly resolution 63/253, when dealing with an appeal against a jurisdictional decision of the Dispute Tribunal rendered on the basis of article 2 (2) of its Statute and article 13 of its Rules of Procedure, the Appeals Tribunal needs to decide, whether the Dispute Tribunal has respected the limitations of its scope of jurisdiction under those provisions. In a situation in which the Appeals Tribunal is led to observe that the Dispute Tribunal has exceeded its competence, the appeal will be judged receivable.⁵

17. Article 2(2) of the Statute of the UNDT, laying out the general structure and jurisdiction of the UNDT, grants the power to suspend the implementation of an administrative decision *during the pendency of management evaluation*.

18. Article 10(2) of the Statute of the UNDT provides that the UNDT may adopt interim measures at any time of the proceedings, that is to say, once judicial proceedings have been initiated. Among those measures, it provides for the suspension of implementation of administrative decisions and prohibits the adoption of such suspension *in cases of appointment, promotion, or termination*. These cases are also subject to special treatment under Article 10(5)(a) of the UNDT Statute, which provides for compensation as an alternative to the rescission of administrative decisions.

19. Articles 13 and 14 of the UNDT Rules of Procedure follow the same logic, though with slightly different wording. They must not be read as amending the Statute, because they merely serve as instrument to implement the Statute (see Article 7(1) of the UNDT Statute).

20. Articles 2(2) and 10(2) of the UNDT Statute govern the suspension of the implementation of an administrative decision and must be read together. The first concerns the time period pending management evaluation, and the second, the time period of judicial proceedings before the UNDT. It must also be pointed out that, in principle, administrative decisions are executable upon their adoption. Therefore, the suspension of the execution or implementation of an administrative decision constitutes an exception that cannot be extended beyond the limits and prohibitions established by

⁵ *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008, para. 21.

the Statute since, otherwise, the legislative texts, spirit, and goals underlying them would be ignored or violated.

21. In the present case, the first Order under appeal was issued before the completion of the management evaluation. The Order, however, extended the suspension until 13 May 2011, beyond the date the management evaluation was in fact completed. The UNDT should have granted a suspension until 13 May 2011 or the completion of management evaluation, if the latter was earlier. By fixing a date without taking into account that the management evaluation might be completed earlier, the UNDT exceeded its jurisdiction and committed an error of law. The appeal against the Order is therefore receivable and upheld on its merits.

22. The second Order extended the suspension until the final determination of the case on its merits. Article 10(2) of the UNDT Statute clearly excludes the possibility of such an order in cases of appointment, promotion, or termination. Hence, the Judge exceeded his jurisdiction. The appeal against the Order is therefore receivable and upheld on its merits.

23. Both Orders therefore violated Article 2(2) of the UNDT Statute, which provides for suspension of the implementation of a contested decision only “during the pendency of the management evaluation”, and Article 10(2) of the UNDT Statute, which prohibits the suspension of the implementation of an administrative decision, during the proceedings before the UNDT, in cases of appointment, promotion, or termination.

24. The Judge’s Orders are even more surprising in light of the clear jurisprudence of the Appeals Tribunal in *Tadonki*, *Onana*, and *Kasmani*.

25. For the foregoing reasons, we grant both appeals. We therefore, at this time, need not address the other arguments presented by the Secretary-General.

Judgment

26. The Appeals Tribunal vacates the two UNDT Orders under appeal.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 29^h day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar