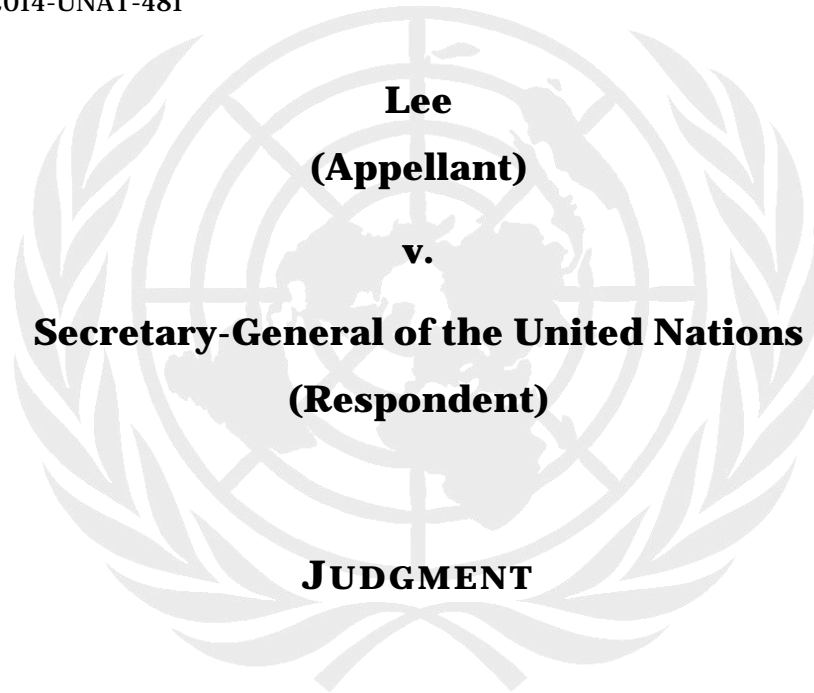




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-481



Before:	Judge Rosalyn Chapman, Presiding Judge Sophia Adinyira Judge Mary Faherty
Case No.:	2014-555
Date:	17 October 2014
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Secretary-General:	Phyllis Hwang

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it the appeal by Ms. Michelle Lee of Judgment No. UNDT/2013/147 issued by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 26 November 2013, in the case of *Lee v. Secretary-General of the United Nations*. Ms. Lee has also filed appeals of Orders Nos. 182 (GVA/2013) and 183 (GVA/2013), issued on 25 November 2013, and Order No. 199 (GVA/2013), issued on 27 December 2013. Additionally, Ms. Lee has filed a “Motion for leave to file additional pleadings; for the submission of additional documentary evidence; for the production of documents; for oral proceedings; and for confidentiality” (Motion). For the purpose of judicial economy, the appeals and the motion have been consolidated for determination.

Facts and Procedure

2. The following factual findings made by the Dispute Tribunal are uncontested by the parties:¹

... [Ms. Lee] joined the Organization on 21 July 2004 and has since then held various posts. In February 2009 she became Management Analysis Assistant, in the Management Support Services (“MSS”), Office of the Under-Secretary-General for Management (“OUSG/DM”). [She] was assigned to work on the Enterprise Resource Planning project (“ERP”/“Umoja”) within the Department of Management [DM].

... In September 2009 the [Under-Secretary-General for Management] approved a request from the Director of Umoja to integrate MSS and the Change Management Team into a single entity. This integration affected several posts[,] including [Ms. Lee]’s. In November 2010 [she] was temporarily assigned to the Policy, Evaluation and Training Division in the Department of Peacekeeping Operations and she returned to her post in Umoja in February 2012.

... In October 2012, [Ms. Lee] was assigned to work for the Chief of the Global Field Support Services (“GFSS”) where she was attached until May 2013.

... On 1 February 2013, during a meeting with the Executive Officer of DM, the Chief MSS, OUSG/DM, and the Director of Umoja, [Ms. Lee] was informed that the OUSG/DM would propose to the General Assembly the abolition of two posts; [sic] her post and that of Associate Programme Management Officer in the MSS because they were no longer needed. She was further informed that the proposal was subject

¹ *Lee v. Secretary-General of the United Nations*, Order No. 199 (GVA/2013), paras. 2-11, 13-15, and 19.

to the consideration of the General Assembly and that a decision on the proposal would be made in December 2013.

... The proposed programme budget for the OUSG/DM for the biennium 2014-2015 was published on 18 April 2013 and it included the proposal to abolish [Ms. Lee]'s post and that of Associate Programme Management Officer in MSS. (See A/68/6(Sect. 29A).

... On 1 May 2013, [Ms. Lee] was offered a post as Management Analysis Assistant in Umoja for a duration of 8 months, expiring 31 December 2013.

... On 28 August 2013, [Ms. Lee] received an email from the Executive Office, informing her of the [pending] abolishment of her post and encouraging her to apply for other job openings.

... In September 2013, [Ms. Lee] was informed of her selection to fill a temporary post as an Administrative Assistant in the Office of Information and Communication Technology ("OICT"). In addition, she was further informed that she was being released by Umoja to take up the temporary assignment at OICT as from 5 October 2013 to 31 December 2013 and that due to the pending abolition of her post, she was encouraged to apply for other positions.

... On 11 October 2013, [Ms. Lee] submitted a request for management evaluation of the decision to abolish her post in MSS, OUSG/DM.

... On 14 October 2013, [Ms. Lee] was informed by the Administrative Officer EO/DM that she had no lien on her post in Umoja.

...

... On 19 November 2013, [Ms. Lee] received a reply to her Management Evaluation request in which the decision to abolish her post was upheld on grounds that it was made in conformity with the applicable law.

... In a letter dated 27 November 2013 from the Executive Officer, DM to [Ms. Lee], [the] Executive Officer reiterated an earlier meeting of February 2013 in which [Ms. Lee] was informed of the proposal to abolish her post subject to the approval of the General Assembly. The letter further stated that:

This letter thus serves as advance notice that your fixed-term appointment may not be extended beyond 31 December 2013 pending the decision by the General Assembly on the proposed Programme Budget of 2014-2015, which is expected during the month of December 2013.

[...]

In the event the General Assembly decides not to abolish your post, we will inform you on your contractual status with the Organization.

... On 24 December 2013, [Ms. Lee] received a document titled “Note for the File” authored by the Executive Officer, DM. In this note, the Executive Officer, DM recalled two prior meetings held with [Ms. Lee] on the subject of abolition of her post. ... [Ms. Lee] was informed that pending the decision of the General Assembly on the proposed programme budget 2014-2015, she had a lien on her post until 31 December 2013.

...

... On 25 December 2013, [Ms. Lee] filed a [second] request for management evaluation of the decision to abolish her post among other several decisions. ...

Procedural History

3. On 13 November 2013, Ms. Lee filed an application with the Dispute Tribunal, which she completed on 15 November 2013. The UNDT Registry assigned the application case no. UNDT/GVA/2013/066. In her application, Ms. Lee sought, among other things, review of the decision to abolish her post, rescission of the decision to abolish her post, and compensation for the stress and harm caused by the decision.

4. On 16 November 2013, Ms. Lee filed a motion for suspension of action in case no. UNDT/GVA/2013/066, seeking to stay the General Assembly from making a decision to abolish her post while her request for management evaluation was pending. The Secretary-General filed his response or opposition to the motion on 19 November 2013, and Ms. Lee filed comments on 20 November 2013.

5. On 16 November 2013, Ms. Lee also filed a request for confidentiality in case no. UNDT/GVA/2013/066, asking that her name be withheld from orders and judgments “on the grounds that it may negatively affect [her] on-going search for employment”. The Secretary-General filed his response or opposition to the motion on 19 November 2013, and Ms. Lee filed comments on 20 November 2013.

6. On 25 November 2013, the UNDT issued Order No. 182 (GVA/2013) in case no. UNDT/GVA/2013/066, denying Ms. Lee’s motion for suspension of action.² In its Order, the UNDT concluded that the decision Ms. Lee was seeking to suspend was not a “contested administrative decision” within the meaning of Article 10(2) of the UNDT Statute and Article 14 of the UNDT Rules of Procedure (UNDT Rules) governing the granting of temporary

² This Order will be referred to as Order No. 182 for the purpose of this Judgment.

relief. Rather, it was merely a proposal that did not produce “direct legal consequences” on Ms. Lee’s terms and conditions of employment. Since challenging a “contested administrative decision” is a prerequisite for temporary relief under the UNDT Statute and Rules, the UNDT also concluded that it was not necessary for it to determine whether the legal requirements for temporary relief had been met, i.e., *prima facie* unlawfulness, urgency and irreparable damage.

7. On 25 November 2013, the UNDT issued Order No. 183 (GVA/2013) in case no. UNDT/GVA/2013/066, denying Ms. Lee’s request for confidentiality.³ In its Order, the UNDT found that Ms. Lee had “failed to demonstrate how her case [wa]s of such a nature as to overcome the guiding principle of transparency in judicial proceedings and published rulings”.

8. On 26 November 2013, the UNDT issued Summary Judgment No. UNDT/2013/147 in case no. UNDT/GVA/2013/066, denying Ms. Lee’s application for judicial review of the decision to abolish her post. Pursuant to Article 9 of the UNDT Rules, the UNDT, without awaiting the Secretary-General’s answer to Ms. Lee’s application, determined *sua sponte* that the decision Ms. Lee was challenging was not an administrative decision that was subject to judicial review under Article 2(1)(a) of the UNDT Statute. Rather, the decision was merely a proposal that did not produce direct legal consequences affecting the terms and conditions of Ms. Lee’s employment. For this reason, the UNDT found that Ms. Lee’s application was not receivable *ratione materiae*.

9. On 25 December 2013, Ms. Lee filed a second motion with the Dispute Tribunal for suspension of action, again seeking to suspend the General Assembly from making a decision to abolish her post while her second request for management evaluation was pending. The UNDT Registry assigned the motion case no. UNDT/GVA/2013/075.

10. On 27 December 2013, the UNDT issued Order No. 199 (GVA/2013) in case no. UNDT/GVA/2013/075, rejecting Ms. Lee’s second motion for suspension of action as non-receivable.⁴ In its Order, the UNDT concluded that any action by the General Assembly to abolish Ms. Lee’s post would not constitute an “administrative decision” subject to judicial review under the UNDT Statute. The UNDT opined that “when the General Assembly adopted the Statute of the [Dispute] Tribunal, it did not intend to have the [Dispute] Tribunal review its

³ This Order will be referred to as Order No. 183 for the purpose of this Judgment.

⁴ This Order will be referred to as Order No. 199 for the purpose of this Judgment.

decisions. So even if the General Assembly has decided to abolish [Ms. Lee]’s post, her application should be rejected as not receivable”.

11. On 6 January 2014, Ms. Lee filed appeals of Orders Nos. 182, 183 and 199 and Summary Judgment No. UNDT/2013/147.⁵ On 10 February 2014, the Secretary-General filed his answer to the appeals of Orders Nos. 182, 183 and 199, and on 10 March 2014, he filed his answer to the appeal of Summary Judgment No. UNDT/2013/147.

12. On 14 September 2014, Ms. Lee filed her Motion and on 26 September 2014, the Secretary-General filed observations on the Motion.

Submissions

Ms. Lee’s Appeal of Orders Nos. 182, 183 and 199

13. The Dispute Tribunal erred on a question of law and failed to exercise jurisdiction vested in it when it issued Order No. 182 denying Ms. Lee’s motion for interim suspension of the proceedings.

14. The UNDT erred on a question of law and failed to exercise jurisdiction vested in it when it issued Order No. 183 denying Ms. Lee’s request for confidentiality because it failed to consider that her request “was to protect [her] as a possible whistleblower”.

15. The UNDT erred on a question of law and failed to exercise jurisdiction vested in it when it issued Order No. 199 rejecting as not receivable Ms. Lee’s second motion for interim suspension of the proceedings.

The Secretary-General’s Answer to Appeal of Orders Nos. 182, 183 and 199

16. The appeals of Orders Nos. 182 and 199 are not receivable by the Appeals Tribunal because the UNDT did not exceed its competence or jurisdiction in issuing these orders. Ms. Lee claims only errors of law. She does not contend that the UNDT exceeded its competence or jurisdiction.

⁵ The appeals were filed during the Appeals Tribunal’s 2013-2014 winter recess and were considered timely filed on 6 January 2014.

17. The appeal of Order No. 183 is not receivable because the UNDT has broad discretion in the management of cases and, in issuing Order No. 183, the UNDT did not exceed its competence or jurisdiction. To the contrary, Order No. 183 promotes the policies set forth in Article 11(6) of the UNDT Statute and Article 26 of the UNDT Rules, both of which require publication and transparency of UNDT judgments. Moreover, there is no basis for Ms. Lee's belated claim that the UNDT erred in law because she should be afforded confidentiality as a "whistleblower" who is entitled to protection from retaliation, which confidentiality would afford. Ms. Lee did not provide any facts or evidence to support the assertion that she should be protected as a "whistleblower" in her pleadings before the UNDT or on appeal. Thus, the UNDT properly exercised its discretion to deny her request for confidentiality.

Ms. Lee's Appeal of Summary Judgment No. UNDT/2013/147

18. The Dispute Tribunal erred on a question of law and failed to exercise jurisdiction vested in it when it erroneously determined that the application did not challenge an administrative decision subject to judicial review. The UNDT made an error of law when it concluded that the application was not receivable *ratione materiae*.

19. Ms. Lee contends that the Secretary-General's proposal to abolish her post is an administrative decision subject to judicial review because the Secretary-General is the authority responsible for the financial management of the Organization, pursuant to ST/SGB/2013/4 "Financial Regulations and Rules of the United Nations", as revised and amended by General Assembly resolution 67/246. Accordingly, the proposed programme budget is not merely a proposal, as the UNDT erroneously found. To the contrary, the Secretary-General "as the Chief Administrative Officer has the authority to comply or not comply with General Assembly resolutions and is accountable for its decisions when [he] chooses not to".

20. Ms. Lee argues that the definition of an administrative decision subject to judicial review must include any decision that may affect a staff member in the future, as recognized by Judgments Nos. 1712, 2583 and 2632 of the Administrative Tribunal of the International Labour Organization (ILOAT). Otherwise, the Secretary-General cannot be held accountable for his budgetary decisions, which clearly affect a staff member's employment.

21. Ms. Lee complains that the Secretary-General has not afforded her due process or the right to adequate notice required under Staff Regulation 9.3(c) and Staff Rule 9.7(b) (and ILOAT

Judgment No. 3033) for separation of service. None of the correspondence from the DM Executive Officer has clearly communicated a decision to terminate her contract. Thus, her due process rights have been violated.

22. Ms. Lee contends that the administrative decision she challenged was made on 18 April 2013, when the Secretary-General submitted ACABQ report A/68/6 on the proposed programme budget for the biennium 2014-2015 to the General Assembly, which included a proposal to abolish her post (Section 29). However, this decision was not communicated to her until 19 November 2013, when she received the response to her request for management evaluation. The response does not mention the decision being contingent upon approval by the General Assembly.

23. Ms. Lee also claims that the application is receivable *ratione temporis*, having been timely filed after she received written notice of the administrative decision on 18 November 2013, or alternatively, when she received a response to her application on 19 November 2013.

24. Ms. Lee requests that the Appeals Tribunal reverse Summary Judgment No. UNDT/2013/147 and Orders Nos. 182, 183 and 199 and remand her application to a different UNDT Registry for determination on the merits. Additionally, Ms. Lee seeks an award of compensation and/or costs, a referral for accountability and the granting of confidentiality.

The Secretary-General's Answer to Appeal of Summary Judgment No. UNDT/2013/147

25. Ms. Lee has not established any error on the part of the UNDT warranting a reversal of the Judgment. The UNDT properly dismissed the application as non-receivable *ratione materiae* because the Secretary-General's proposal to abolish Ms. Lee's post did not produce any direct legal consequences on her rights or contract of employment. It was merely a proposal from the Secretary-General to the General Assembly.

26. Ms. Lee's reliance upon decisions by the ILOAT is misplaced since those decisions pertain to benefits or emoluments of staff members, and Ms. Lee does not contend that her rights to any benefits or emoluments have been curtailed by the Secretary-General's proposal to abolish her post.

27. Under her fixed-term appointment, Ms. Lee does not have any “expectancy, legal or otherwise, of renewal or conversion” of her appointment. In light of the nature of her appointment, she cannot demonstrate that the Secretary-General’s proposal had any direct legal consequences on the terms or conditions of her employment.

28. The UNDT properly dismissed the application as non-receivable because the Secretary-General’s proposal to abolish Ms. Lee’s post was not a decision of individualized application. Rather, it was part of a proposed budget that included the abolition of 396 posts. The proposal by the Secretary-General is a comprehensive assessment of how the Organization’s resources should be distributed in light of the competing priorities of the Organization’s mandates. Thus, it falls within the Organization’s discretionary powers to restructure and is subject to limited judicial review. To enable staff members to challenge budgetary decisions would paralyze the budgetary process and inappropriately insert the UNDT into that process.

29. Ms. Lee has not established that the UNDT erred in its findings regarding the General Assembly’s authority over budgetary matters. Contrary to Ms. Lee’s contention, the Secretary-General cannot ignore the General Assembly’s decisions related to administrative and budgetary matters.

30. Ms. Lee’s claim that her application was receivable *ratione temporis* does not establish any error on the part of the UNDT, which did not address the timeliness of the application.

31. The Summary Judgment should be affirmed and the appeal dismissed in its entirety.

Considerations

Motion

32. For the reasons discussed below, the Appeals Tribunal denies Ms. Lee’s Motion *in toto*.

Oral Proceedings

33. Although Ms. Lee did not timely request an oral hearing when she filed her appeals, she filed a motion that included a request for an oral hearing shortly before the Appeals Tribunal convened to consider her appeals. In her motion, Ms. Lee requests that “oral proceedings be held to hear from witnesses regarding the receivability of [her] application”, citing Article 8 of the Appeals Tribunal Statute and Article 18 of the Appeals Tribunal Rules of Procedure

(Rules). However, oral proceedings and the taking of oral evidence are not the same thing under the Appeals Tribunal Statute and Rules. The taking of oral evidence is governed by Article 2(5) of the Statute, which precludes the Appeals Tribunal from taking oral testimony. Assuming Ms. Lee is requesting an oral hearing under Article 8(3) of the Statute and Article 18(1) of the Rules, the Appeals Tribunal does not find that an oral hearing “would assist in the expeditious and fair disposal of the case”. Thus, the request is denied.

Confidentiality

34. Ms. Lee made a request for confidentiality in her appeals and again in the Motion. The Appeals Tribunal denies the request for confidentiality, as did the UNDT. Article 10(9) of the Appeals Tribunal Statute provides that “[t]he judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal”. Thus, it is clear that one of the purposes or goals of the new internal justice system is to assure that the Appeals Tribunal judgments are public documents that are published and widely made available to the Organization’s staff and the general public. Other purposes or goals of the new internal justice system are to promote transparency and accountability in the operations of the Organization, as well as the new internal justice system. Thus, Article 20 of the Appeals Tribunal Rules provides that “[t]he published judgements will normally include the names of the parties”. As we have stated, “[t]he names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and, indeed, accountability”.⁶

35. Moreover, Ms. Lee’s claim that she is entitled to confidentiality because she is a “whistleblower” who has brought an action before the UNDT challenging unlawful actions by the Administration would require confidentiality in each and every case before the UNDT and Appeals Tribunal. Clearly, that would be contrary to the foregoing goals. Staff members challenge many types of employment-related decisions before the internal justice system. Some of these decisions pertain to personal matters, such as disability or illness, and others pertain to the staff member’s performance -- even to claims of serious misconduct. If confidentiality attached to the staff member’s identity in each case, there would be no transparency regarding the operations of the Organization or the administration of justice. Ms. Lee has not shown any

⁶ *Servas v. Secretary-General of the United Nations*, Order No. 127 (2013), para. 5.

“greater need than any other litigant for confidentiality”.⁷ Thus, her motion for confidentiality is denied.

Additional Pleadings

36. Neither the Appeals Tribunal Statute nor the Appeals Tribunal Rules provide for an appellant to file an additional pleading after the respondent has filed his answer. Nevertheless, Article 31(1) of the Appeals Tribunal Rules and Section II.A.3 of Practice Direction No. 1 of the Appeals Tribunal allow the Appeals Tribunal to grant a party’s motion to file additional pleadings if there are exceptional circumstances justifying the motion.

37. Ms. Lee seeks to file additional pleadings to: (a) “address the Respondent’s claims of non-receivability of [her] appeals”; and (b) to “present arguments ... that had not been discussed during proceedings before the Dispute Tribunal.” Neither reason assists Ms. Lee in showing “exceptional circumstances”. First, Ms. Lee has addressed the issue of non-receivability in her appeals documents. Second, an appellant cannot raise new arguments on appeal that were not made before the UNDT although available at the time. Thus, Ms. Lee has not shown exceptional circumstances to file additional pleadings and her motion for additional pleadings is denied.

Additional Documentary Evidence

38. Article 2(5) of the Appeals Tribunal Statute provides that the Appeals Tribunal may receive additional evidence in exceptional circumstances, if it is in the interest of justice and the efficient and expeditious resolution of the proceedings. The documents Ms. Lee seeks to admit into evidence relate to the merits of her application before the Dispute Tribunal and, thus, were not presented to the UNDT. However, Ms. Lee misapprehends the nature of the decision by the Dispute Tribunal. The Judgment of the Dispute Tribunal did not address the merits of her claims; it solely addressed the receivability of her application. The Dispute Tribunal may reach that decision *sua sponte* without taking any argument or evidence from the parties.⁸ Thus, Ms. Lee’s claim that she was unable to present documents to the Dispute Tribunal does not avail her. On appeal, the issue is whether the Dispute Tribunal erred in not receiving the application.

⁷ *Ibid.*, para. 5.

⁸ *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406; *Christensen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-335.

The merits of the claims in the application are not before the Appeals Tribunal. Thus, the documents Ms. Lee seeks to submit would not assist this Tribunal in reaching an efficient and expeditious resolution of the appeal. In light of this, it cannot be said that exceptional circumstances exist to receive these documents or that their admission into evidence is required in the interest of justice. Thus, the request is denied.

Production of Documents

39. Under Article 8(1) of the Statute, the Appeals Tribunal has the authority to order the production of evidence, subject to Article 2. Ms. Lee seeks an order for the production of certain correspondence, e-mails, and the like, the “[l]egal basis for the Respondent’s statement” that the General Assembly has authority to abolish posts, and the “[l]egal references ... distinguishing the role of the General Assembly from the Secretary-General on ‘administrative and budgetary matters.’” Initially, Ms. Lee does not seek evidence when she seeks legal authority for statements by the Secretary-General in his answer. Further, Ms. Lee has not explained why the evidence she seeks is relevant to the issue on appeal. As noted above, the matter before the Tribunal is a matter of law. Thus, Ms. Lee’s motion for the production of documents is denied.

Orders Nos. 182 & 199

40. Generally, our jurisdiction provides that “only appeals against final judgments will be receivable.”⁹

41. The Dispute Tribunal Statute, however, provides that in addition to issuing final judgments in cases, the UNDT may also issue decisions under Article 2(2) regarding

an application ... to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

⁹ *Mpacko v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-314, para. 15, quoting *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160, para. 35 and *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005, para. 8.

42. When considering an appeal of a UNDT decision on an application for a suspension of action pending management evaluation, the Appeals Tribunal has consistently held that the appeal, regardless of whether it is from a judgment or an order, “will be receivable only if th[e] [Dispute] Tribunal, in adjudicating on such [an] application[], exceeded its competence or jurisdiction”.¹⁰

43. Ms. Lee claims that the UNDT erred on questions of law and failed to exercise its jurisdiction in issuing Orders Nos. 182 and 199. She does not, and cannot, claim that the UNDT exceeded its competence or jurisdiction in issuing these orders. This is not sufficient to allow an appeal of these orders and “to bypass the exception to the right to appeal set out in Article 2(2) of the UNDT Statute”.¹¹ Moreover, a review of the record shows that the UNDT did not exceed its competence or jurisdiction in issuing Orders Nos. 182 and 199 denying Mr. Lee’s two applications to suspend action. Thus, the appeals of these orders are not receivable *ratione materiae*.

Order No. 183

44. The Secretary-General similarly argues that Ms. Lee cannot file an interlocutory appeal of this Order denying her request for confidentiality. He is correct. Once again, Ms. Lee does not, and cannot, claim that the UNDT exceeded its competence or jurisdiction in issuing Order No. 183; she claims only that the UNDT made an error of law and failed to exercise its jurisdiction. Moreover, a review of the record again shows that the UNDT did not exceed its competence or jurisdiction in issuing Order No. 183 denying Ms. Lee’s motion for confidentiality. Thus, Ms. Lee’s appeal of Order No. 183 is not receivable *ratione materiae*.

45. The Appeals Tribunal recently reiterated the reasons for not receiving interlocutory appeals:¹²

... [C]ases before the UNDT would seldom proceed if either party were able to appeal to the Appeals Tribunal when dissatisfied with interlocutory decisions made during the course of the proceedings.

¹⁰ *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-330, para. 19, quoting *Mpacko v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-314; *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011; *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008; *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005. See also *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300.

¹¹ *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-330, para. 22.

¹² *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300, paras. 16 and 17.

... [T]he UNDT enjoys wide powers of discretion in all matters relating to case management and ... [the Appeals Tribunal] must not interfere lightly in the exercise of the jurisdictional powers conferred on the tribunal of first instance to enable cases to be judged fairly and expeditiously and for the dispensation of justice. For this reason, and in accordance with Articles 2(2) and 10(2) of the UNDT Statute, appeals against decisions taken in the course of proceedings and relating to procedure ... are not receivable, even where the judge of first instance has committed an error of law or fact.

Summary Judgment No. UNDT/2013/147

46. The Dispute Tribunal issued summary judgment on its own initiative, without awaiting the Secretary-General's answer to Ms. Lee's application, pursuant to Article 9 of the UNDT Rules, which provides: "A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate."

47. On appeal, Ms. Lee does not contest the Dispute Tribunal's application of Article 9 of the UNDT Rules. The Dispute Tribunal summarily concluded that Ms. Lee's application was not receivable *ratione materiae*. Initially, the UNDT determined that the application challenged "only the decision to abolish [her] post ... , Management Analysis Assistant (G-5)".¹³ Next, the UNDT found that "the abolition of [Ms. Lee]'s post has not yet been formally approved by the General Assembly. ... [And] the abolition of [her] post ... is nothing more than a proposal that the General Assembly could decide not to entertain."¹⁴ Finally, the UNDT determined that the budgetary proposal made to the General Assembly to abolish Ms. Lee's post was not an administrative decision subject to judicial review within the meaning of *Andronov*¹⁵ because it did not produce "direct legal consequences" on Ms. Lee's terms and conditions of employment; thus, the decision was not receivable *ratione materiae*.

48. The Dispute Tribunal correctly concluded that Ms. Lee's application was not receivable *ratione materiae* because it challenged a decision that was not an administrative decision subject to judicial review. In reaching this conclusion, the UNDT correctly applied the definition of administrative decision set forth in *Andronov*:

¹³ Impugned Judgment, para. 23.

¹⁴ *Ibid.*, para. 27.

¹⁵ Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), cited with approval in *Al Surkhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304.

... There is no dispute as to what an “administrative decision” is. It is acceptable by all administrative law systems, that an “administrative decision” is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

49. We have consistently held that the key characteristic of an administrative decision subject to judicial review is that the decision must “produce[] direct legal consequences”¹⁶ affecting a staff member’s terms and conditions of appointment; the administrative decision must “have a direct impact on the terms of appointment or contract of employment of the individual staff member”.¹⁷ The UNDT correctly found that the decision Ms. Lee was challenging did not “produce[] direct legal consequences” affecting her employment.

50. The UNDT also properly considered “the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision”¹⁸ in determining that Ms. Lee was not challenging an administrative decision subject to judicial review.

51. There is no merit to Ms. Lee’s arguments that the UNDT erred. At the time her application was pending before the Dispute Tribunal, the General Assembly had not acted on the proposed programme budget and had not adopted a resolution that would abolish Ms. Lee’s post. And even if the General Assembly had adopted such a resolution, that decision would not have changed anything. Both the Secretary-General’s budgetary proposal and the General Assembly’s adoption by resolution of the budget proposal are merely acts prefatory to or preceding an administrative decision that would “produce[] direct legal consequences” to Ms. Lee’s employment. Although Ms. Lee cannot challenge the discretionary authority of the Secretary-General to restructure the Organization or to abolish her post, she may challenge an administrative decision resulting from the restructuring once that decision has been made.¹⁹

¹⁶ Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V.

¹⁷ *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 17.

¹⁸ *Bauzá Mercére v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-404, para. 18, citing *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058,

¹⁹ See i.e. *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236; *Dumornay v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-097.

52. Finally, Ms. Lee's claim that the definition of an administrative decision subject to judicial review, as set forth in *Andronov*, "does not define whether the direct legal consequence needs to be 'considered as "open"' or not in order to be considered an administrative decision" is to no avail. As noted above, the Appeals Tribunal jurisprudence requires that an administrative decision must have a "direct" impact and not a future injury, as Ms. Lee argues. Ms. Lee's reliance on jurisprudence from other administrative tribunals is misplaced.

53. Ms. Lee's other claims on appeal (lack of written notice and the timeliness of the application) are not related to the Summary Judgment and the Appeals Tribunal need not address them.

Judgment

54. The appeals of Summary Judgment No. UNDT/2013/147 and Orders Nos. 182, 183, and 199 are dismissed and Summary Judgment No. UNDT/2013/147 is affirmed.

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Faherty

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar