UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2010-124

Cohen

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

ORDER ON MOTION FOR TEMPORARY RELIEF

Before:	Judge Jean Courtial, Presiding Judge Judge Sophia Adinyira Judge Kamaljit Singh Garewal
Order No.:	27 (2010)
Date:	24 November 2010
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant:	Edwin Nhliziyo
Counsel for Appellant/Respondent:	Cristián Gimenez Corte

JUDGE JEAN COURTIAL, Presiding.

Facts and procedure

1. On 12 July 2010, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) rendered Judgment No. UNDT/2010/118 on the application of Judith Cohen (Cohen) contesting her summary dismissal by the Secretary-General. The Dispute Tribunal rescinded the decision to summarily dismiss Cohen and made various orders for consequential relief, including reinstatement, payment of salaries and entitlements from the date of Cohen's summary dismissal to the date of the Judgment with interest, compensation for breach of Cohen's right to due process, and compensation in lieu of reinstatement with interest.

2. On 30 August 2010, the Secretary-General filed an appeal against the Judgment. The Secretary-General argues that the Dispute Tribunal erred on a question of law and exceeded its competence in awarding compensation in excess of two years' net base salary without explaining the exceptional circumstances justifying such an award, as required under Article 10(5) of the statute of the Dispute Tribunal (UNDT statute). He also contends that the Dispute Tribunal erred on a question of law in setting the interest rate at eight per cent per annum.

3. On 12 October 2010, Cohen filed a "Motion for temporary relief under Article 31 of the UNAT Statute - Appeal of Judgement UNDT/2010/118", in which she seeks relief from the Appeals Tribunal that would allow the Office of Human Resources Management "to proceed with [her] reinstatement or otherwise ... and permit recovery of at least two years of her salary pending the outcome of the Secretary-General's appeal". Cohen's grounds for seeking temporary relief are that normal procedures were not followed in respect of the filing and service of the appeal, she is in "dire financial straits", she has been cleared of wrongdoing but is left in "limbo" pending the appeal, and the personal toll that the disciplinary proceedings have taken on her.

4. Cohen filed her answer to the Secretary-General's appeal on 13 October 2010.

5. On 19 October 2010, the Secretary-General filed the "Appellant's observations on the Appellee's motion for temporary relief", in which he asserts that Cohen has not established that there is a real possibility of irreparable harm if the interim measures are

not granted, as required under Article 9(4) of the Statute of the Appeals Tribunal (Statute). The Secretary-General has elected not to reinstate Cohen and the Judgment can only be executed through the payment of compensation. The Secretary-General observes that Cohen does not have a right to be compensated for two years' net base salary as an alternative to reinstatement, as this issue is pending in the appeal, and the amount of alternative compensation awarded by the Appeals Tribunal may be set below the ceiling of two years' net base salary.

Considerations

6. Cohen was successful in her application before the Dispute Tribunal, which challenged the decision of the Secretary-General to impose the disciplinary measure of summary dismissal against her. In its Judgment, the Dispute Tribunal ordered the rescission of the decision of the Secretary-General to summarily dismiss Cohen, reinstatement of Cohen, and payment of compensation and interest. The Judgment awarded three heads of compensation: (1) salary and entitlements from the date of Cohen's summary dismissal to the date of the Judgment, with interest at eight per cent; (2) compensation for the breach of Cohen's right to due process at the rate of two months' net base salary; and (3) as an alternative to reinstatement, compensation of two years' net base salary, with interest at eight per cent.

7. In her motion for temporary relief, Cohen requests relief in the form of enforcement of the Dispute Tribunal's order for her reinstatement and the award of compensation so that she may recover at least two years' net base salary pending the outcome of the appeal. Cohen states that she is seeking to enforce that part of the Dispute Tribunal's Judgment which is not subject to appeal by the Secretary-General.

8. In his appeal, the Secretary-General states:

> 2. The present submission constitutes the Appellant's Appeal of the Judgment in respect of the amount of the compensation granted to the Appellee and of the interest rate established by the UNDT; thus, the Appellant is not appealing the rescission of the decision to summarily dismiss the Appellee. For the reasons stated below, the Appellant respectfully requests [the Appeals Tribunal] to find that the Dispute Tribunal (a) erred on a question of law and exceeded its competence in awarding compensation in excess of two years' net base salary ... ; and (b) erred on a question of law in setting the interest rate at 8 per cent a year.
> ...
> 25. Accordingly, the Appellant further requests the Appeals Tribunal to

> modify the remedies ordered by the Dispute Tribunal in respect of the compensation and the interest rate.

9. According to his observations on Cohen's motion for temporary relief, the Secretary-General has elected not to reinstate Cohen. In this event, the Judgment set the alternative compensation to be paid by the Secretary-General in the amount of two years' net base salary.

10. In this case the Secretary-General is appealing the Judgment only in part, that is, to the extent that the Dispute Tribunal decided to award compensation in excess of two years' net base salary and set the interest rate at eight per cent per year. Given that this Tribunal does not have competence to rule on the merits of the case beyond that required to determine the Secretary-General's appeal, and the time provided for either party to file any appeal or cross-appeal has expired, we conclude that the part of the Judgment which is not challenged by the Secretary-General's appeal is final and binding upon the parties. That part of the Judgment – the order for the payment of two years' net base salary, without interest – is therefore executable by the Secretary-General in accordance with Article 11(3) of the UNDT statute.

11. This Tribunal recalls that failing to execute a judgment in due time may result in the imposition of additional interest in accordance with this Tribunal's Judgment in *Warren*.[1] Further, subject to the consideration of the case by the Dispute Tribunal or this Tribunal, the Administration may be held liable for a breach of the rights of the staff member or former staff member in whose favour the judgment was rendered.

12. Cohen's motion for temporary relief is ostensibly brought under Article 31 of the Rules of Procedure of the Appeals Tribunal (Rules), which addresses procedural matters not covered in the Rules. The Appeals Tribunal has express power to grant interim measures under Article 9(4) of its Statute, which states that "[a]t any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal".

[1] *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059.

13. For the reasons outlined above, Cohen is already entitled to be paid the amount of compensation set by the Dispute Tribunal as an alternative to the order to reinstate her, without interest. Thus, for the time being, there is no likelihood of irreparable harm to Cohen and no basis for an interim order for temporary relief.

Order

14. For the foregoing reasons, this Tribunal dismisses Cohen's motion for temporary relief.

Dated this 24th day of November 2010 in Paris, France; Accra, Ghana; and Chandigarh, India.

Original: English

(*Signed*)	(*Signed*)	(*Signed*)
Judge Courtial, Presiding	Judge Adinyira	Judge Garewal

Entered in the Register on this 24th day of November 2010 in New York, United States.

(*Signed*)

Weicheng Lin, Registrar
United Nations Appeals Tribunal