



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

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against “Interim Judgment” No. UNDT/2011/174, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 7 October 2011 in the case of *Baron v. Secretary-General of the United Nations*. The Secretary-General appealed on 17 November 2011, and Mr. Roman Baron answered on 6 January 2012.

### **Synopsis**

2. In the present case, the Appeals Tribunal sees no reason to depart from the general rule that only appeals against final judgments are receivable.<sup>1</sup> Under the new system of administration of justice, the UNDT has broad discretion with respect to case management.

### **Facts and Procedure**

3. Mr. Baron joined the United Nations Office at Geneva (UNOG) on 10 September 2002 as a Security Officer. On 1 June 2003, he was assigned to the Security Council Secretariat.

5. On 8 November 2010, Mr. Baron was informed that as the Advisory Board on Compensation Claims (ABCC) had made no recommendation in support of his claim for additional compensation for permanent loss of ear, nose and throat (ENT) and pulmonary functions, the Secretary-General had decided to reject this claim.
  
6. Mr. Baron applied to the UNDT on 28 January 2011 to contest the decision to deny him additional compensation for permanent loss of ENT and pulmonary functions. In “Interim

8. The Secretary-General maintains that the inferences drawn by the UNDT from the text of Article 17(a) of Appendix D to the Staff Rules are legally unsustainable. If the word “must” rather than “may” had been used in Article 17(a), then staff members would be required to challenge the Secretary-General’s determination in every case, even when they are satisfied with it. It is therefore unreasonable to expect the Organization to include mandatory language in a provision that would compel such an absurd result or to require the Organization to accept that the use of the word “may” automatically confers a non-obligatory character on the administrative remedy established in Article 17(a).

9. The Secretary-General also maintains that it is not clear how any ambiguity in article 17(a) should lead the UNDT to the conclusion that Mr. Baron’s direct application was receivable, given that the UNDT recognized that the intent of the Secretary-General was to establish the administrative remedy in Article 17(a) as a prerequisite for filing an application with the UNDT. In the view of the Secretary-General, the UNDT’s conclusion is contrary to the general principle that administrative remedies should be exhausted before initiating litigation.

10. The Secretary-General further maintains that the UNDT exceeded its competence by taking it upon itself to make decisions in connection with a medical board that would normally fall within his prerogative. The UNDT’s decision was contrary to the jurisprudence of the Appeals Tribunal. The UNDT had no legal basis to order a medical board since Mr. Baron never requested a reconsideration of the decision as communicated to him on 8 November 2010.

### **Mr. Baron’s Answer**

11. Mr. Baron maintains that the present appeal is not receivable because the UNDT has issued an “Interim judgment” without disposing of the merits of the case. This type of decision, interlocutory in nature, can only be appealed together with the subsequent judgment on the merits, in accordance with the jurisprudence established by the Appeals Tribunal in *Bertucci* and *Tadonki*.<sup>3</sup>

12. Furthermore, Mr. Baron submits that the UNDT correctly concluded that he could apply directly to the UNDT to contest the decision of the Secretary-General to deny him additional compensation, because the principle of exhaustion of internal remedies is nowhere set forth in either the Statute or Rules of Procedure of the UNDT or the provisional Staff Regulations or Staff

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<sup>3</sup> *Bertucci*, 2010-UNAT-062; *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

Rules, and also because Article 17(a) of Appendix D to the Staff Rules makes the request to the Secretary-General for reconsideration only an option, and further because Staff Rule 11.2(b) explicitly exempts his case from the requirement of management evaluation.

13. Mr. Baron requests that the Appeals Tribunal order the Secretary-General to pay him USD 10,000, as legal costs as the appeal by the Secretary-General has prolonged the proceedings and it would be unfair for him to absorb the expenses necessary to defend his case on appeal.

### **Considerations**

14. Mr. Baron requested an oral hearing. The Tribunal considers that a hearing at this preliminary stage of the proceedings is not necessary and would unduly delay the delivery of the Judgment.

15. In the present case, the Appeals Tribunal sees no reason to depart from the general rule that only appeals against final judgments are receivable.<sup>4</sup>

16. Under the new system of administration of justice, the UNDT has broad discretion

**Judgment**

18. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 1<sup>st</sup> day of November 2012 in New York, United States.

*(Signed)*

Judge Weinberg de Roca, Presiding

*(Signed)*

Judge Faherty

*(Signed)*

Judge Lussick

Entered in the Register on this 18<sup>th</sup> day of January 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar