



THE UNITED NATIONS APPEALS

30 September 2011. The programme manager then asked the DFS Executive Office to further extend Ms. Kananura's appointment until 31 December 2011. On 22 September 2011, Ms. Kananura was informed that she would reach her limit of 729 days under ST/AI/2010/4 (Administration of temporary appointments) which specifies the maximum duration of a temporary appointment. She would, therefore, have to take a break in service from 18 October 2011.

7.

10. The Secretary-General submits that, had he been allowed to respond, he would have argued that any urgency in the case was created by Ms. Kananura's delay in filing her application for suspension of action.

11. The Secretary-General submits that by ruling on the application for suspension of action without giving him the opportunity to respond, the UNDT violated the principle of equality before courts and tribunals and thereby exceeded its competence, erred in law and fact and committed a procedural error such as to affect the decision of the case. There were no legal distinctions in this case which would have justified a departure from the principle.

12. The Secretary-General requests the Appeals Tribunal to vacate the UNDT Judgment.

Ms. Kananura's Answer

13. Ms. Kananura submits that the appeal is not receivable.

14. She avers that the UNDT did not violate the principle of *audi alteram partem*. Ms. Kananura contends that the UNDT only engaged in an interlocutory exercise that did not involve the actual merits of the case and, consequently, the permanent interests of the Secretary-General could not have been injured.

15. Ms. Kananura submits that the UNDT did not commit any procedural errors. Under Article 2(2) of the UNDT Statute and Article 13(2) of the UNDT Rules of Procedure, the UNDT was not required to seek a response from the Secretary-General. Rather, it was within the UNDT's discretion to decide whether the responding party should be given the opportunity to respond. Therefore, the UNDT did not abuse its discretionary authority when rendering a judgment on suspension of action without hearing the Respondent.

Considerations

16. The issue for this Tribunal to determine is whether the UNDT exceeded its jurisdiction or competence in ordering suspension of action on the basis of an application made by Ms. Kananura in respect of which the Secretary-General, albeit on notice of the application, was not afforded an opportunity to argue against the making of the order.

17. The Secretary-General, inter alia, argues that the denial of his opportunity to respond violates the principle of *audi alterem partem*.

18. The Secretary-General asserts that the failure to give him a voice is not consistent with Article 13(2) of the UNDT Rules of Procedure, which provides for notice to be given, and Article 13(3), which provides for the five-day period, in which the decision must be made.

25. The complaints made by the Secretary-General, in the view of this Tribunal, fall squarely within the jurisdiction and competence of the UNDT, notwithstanding the alleged breach of procedural fairness. In those circumstances, the present appeal is not receivable.

Judgment

26. For the foregoing reasons, the appeal is dismissed.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Lussick

Entered in the Register on this 18th of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar