

Translated from French

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Calvani
(Respondent/Applicant)

v.

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

JUDGMENT
[No. 2010-UNAT-032]

Before:	Judge Jean Courtial, Presiding Judge Inés Weinberg de Roca Judge Mark P. Painter
Case No.:	2010-044
Date:	30 March 2010
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant:	François Loriot
Counsel for Appellant/Respondent:	Phyllis Hwang

Judge Jean Courtial, Presiding Judge

Synopsis

1. The United Nations Appeals Tribunal has before it an appeal by the Secretary-General of the United Nations against Order No. 39 (GVA/2009), in which the United Nations Dispute Tribunal ordered the Administration to submit, by 18 December 2009,* a signed confirmation from the Secretary-General that he made the decision to place Mr. Sandro Calvani on administrative leave without pay pursuant to provisional staff rule 10.4. The Tribunal considers the appeal not receivable and rejects it on these grounds.

Facts and procedures

2. On 1 July 2007, the Secretary-General appointed Mr. Calvani to the post of Director of the United Nations Interregional Crime and Justice Research Institute (UNICRI). The initial one-year contract was subsequently extended until 30 June 2010. However, following the issuance of an audit report that severely criticized the management of UNICRI, the Under-Secretary-General for Management** informed Mr. Calvani by letter dated 7 December 2009 of the Secretary-General's decision to place him on administrative leave without pay, given the nature and gravity of the findings.

3. The respondent requested that the decision should be submitted to a management evaluation. He furthermore filed an application with the Dispute Tribunal requesting it to suspend execution of the decision.

4. Following an oral hearing, the Dispute Tribunal in Geneva ordered the Administration to submit, by 18 December 2009, a signed confirmation from the Secretary-General that he made the decision to place Mr. Calvani on administrative leave without pay pursuant to provisional staff rule 10.4. This is the contested order.

Submissions

Appellant

5. The appellant contends that his appeal is receivable since the contested order creates a legal obligation for one party. The appeal must be found receivable in order to submit to the Appeals Tribunal the issue of whether or not the Dispute Tribunal has exercised its authority appropriately. Exceptions to the principle of the receivability of interlocutory decisions must be interpreted strictly.

6. The appellant argues that the Dispute Tribunal, in considering that no evidence had been submitted establishing the authority for the decision to place Mr. Calvani on administrative leave without pay, despite the fact that the Administration had submitted to the Dispute Tribunal a letter dated 15 December 2009 signed by the Deputy Secretary-General,*** disregarded General Assembly resolution 52/12 B setting out the responsibilities of the Deputy Secretary-General**** in management of the Secretariat. The appellant also claims that on the date on which the signed confirmation from the Secretary-General was to be submitted to the Tribunal, that is,

* *Translator's note:* The French original reads "18 décembre 2009".

** *Translators' note:* The French original reads "Sous Secrétaire Générale chargé du management".

*** *Translator's note:* The French original reads "Secrétaire Générale Adjointe".

**** *Translator's note:* The French original reads "Secrétaire Générale Adjoint".

by 18 December 2009, the duties of the Secretary-General prevented him from executing the contested order.

Respondent

7. The respondent asserts that the contested order was merely an interim measure not subject to appeal. The present appeal constitutes a procedural abuse used as a delaying tactic.

Considerations

8. Pursuant to article 9, paragraph 1, of the statute of the Dispute Tribunal, “[t]he Dispute Tribunal may order production of documents or such other evidence as it deems necessary”. Article 18, paragraph 2, of the rules of procedure of the Dispute Tribunal provides that: “The Dispute Tribunal may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings”. Article 19 of the rules of procedure provides that “[t]he Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”.

9. It follows from these provisions that the Tribunal has discretionary authority in case management and the production of evidence in the interest of justice. Should the Tribunal have committed an error in ordering the production of a document that was immaterial, non-existent or deemed confidential under the relevant provisions of the Organization, or have drawn erroneous conclusions in law or in fact in the final judgment handed down at the request of an applicant as a result of failure to produce a relevant document, it would be the responsibility of the respondent to appeal that judgment.

10. We view as non-serious the argument that the Dispute Tribunal exceeded its authority in issuing the contested order and that the order is thus subject to appeal. The Dispute Tribunal decided on a measure of inquiry, the necessity of which it had sole authority to assess. We do not see any basis in the internal system of justice of the Organization or that it is in the interest of that system of justice for considering an appeal against a simple measure of inquiry receivable.

Judgment

11. Consequently, the appeal is rejected.

(Signed) Judge Courtial, Presiding

(Signed) Judge Weinberg de Roca

(Signed) Judge Painter

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: French

Entered in the Register on this 26th day of April 2010
in New York, United States.

(Signed) Weicheng Lin, Registrar, UNAT