



UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Villamorán

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)



JUDGE INÉS WEINBERG DE ROCA, Presiding.

**Synopsis**

1. The Appeals Tribunal has consistently emphasized that appeals against most interlocutory decisions, such as decisions on matters of evidence, procedure, and trial conduct, will not be receivable. An interlocutory appeal is only receivable in cases where the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) has clearly exceeded its jurisdiction or competence.<sup>1</sup>

2. Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of the Rules of Procedure of the UNDT (UNDT Rules) have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

3. The Appeals Tribunal finds that the UNDT's Order of a preliminary suspension of the implementation of two administrative decisions for a period of five days, pending its consideration of the suspension request under Article 13 of the UNDT Rules, was properly based on Articles 19 and 36 of the UNDT Rules. The UNDT did not exceed its competence in making the impugned Order. The appeal is therefore not receivable.

4. The Appeals Tribunal further emphasizes that Article 8(6) of the Rules of Procedure of the Appeals Tribunal does not apply to interlocutory appeals. It falls to the Appeals Tribunal to decide whether the UNDT exceeded its jurisdiction in rendering an interlocutory order and the Administration cannot refrain from executing

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<sup>1</sup> *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062; *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.

an order by filing an appeal against it on the basis that the UNDT exceeded its jurisdiction.

**Facts and Procedure**

5. On 19 January 2007, Teresita Villamorán (Villamorán) joined the Organization as a Human Resources Officer at the P-3 level with the Department of Field Support (DFS). Her appointment was extended on multiple occasions, until 8 July 2009, when she was placed on a one-year fixed-term appointment, which was subsequently also extended several times until 7 July 2011.

6. On 18 January 2011, the Assistant Secretary-General, Office of Human Resources

been regularized through a competitive selection process would be extended under a temporary appointment with no break in service.

8. At that time, Villamoran had applied for several vacancies and was placed on a roster of candidates pre-approved by the CRB, but she had not been regularized through a competitive selection process.

9. Villamoran submits that, after the town hall meeting, the managers in her department confirmed the information that she had received from the Administrative

appointment and their new temporary appointment". The memorandum also stated that "[n]o exceptions apply".

15. According to Villamoran, despite having requested a copy of the memorandum of 17 June 2011 from her Executive Office, she did not receive it prior to the commencement of the proceedings before the UNDT. She was only able to access the document as a result of it being included as an annex to the Secretary-General's reply to her application for suspension of action.

16. By letter dated 21 June 2011, the Executive Officer of DPKO/DFS informed Villamoran that "[b]y its resolution 63/250, the General Assembly approved a new contractual framework and provided for a new set of Staff Rules effective 1 July 2011 for a two-year period".

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## Submissions

### Secretary-General's Appeal

23. The Secretary-General submits that the appeal is receivable pursuant to Article 2(1) of the Statute of the Appeals Tribunal. He submits that the UNDT exceeded its competence in ordering the suspension of two contested decisions without making any finding as to whether the requirements of a suspension of action under Article 2(2) of the UNDT Statute and Article 13(1) of the UNDT Rules were satisfied; and by ordering the suspension of the implementation of the two contested decisions on legally unsustainable grounds.

24. The Secretary-General submits that, notwithstanding the UNDT's conclusions in its subsequent Judgment, the appeal of the Order is not moot. The actions of the UNDT in this case and other recent cases may be construed as creating a precedent that permits the UNDT to suspend administrative decisions for periods ranging from five days to one month even when there has been no examination of whether the criteria for the suspension of action have been fulfilled. In the present case, the UNDT found in its Judgment that Villamoran's request for a suspension of the decision to place Villamoran on a temporary appointment upon the expiry of her fixed-term appointment was without merit. However, it only made this determination after the Organization had already executed the Order and was liable to pay Villamoran for five days on a fixed-term appointment beyond the expiry of her appointment.

25. The Secretary-General submits that the implementation of General Assembly resolution 63/250 affects hundreds of staff members all of whose fixed-term appointments granted under the transitional arrangements will be expiring in 2011 at the end of the transitional period. He submits that allowing such a practice to stand frustrates the Administration's implementation of the human resources management reform detailed in resolution 63/250 and may potentially result in substantial losses for the Organization. He submits that ordering the Organization to incur any financial expenses in cases where the UNDT has undertaken no examination of the criteria for suspension of an administrative decision is not an appropriate use of public funds.

26. The Secretary-General submits that the UN



in accordance with the jurisprudence of the Appeals Tribunal, has inherent jurisdiction to take decisions to safeguard the integrity of the internal justice system.

32. Villamoran submits that the Secretary-General's contention that the Organization undergoes considerable expense in complying with the UNDT's suspension of action orders such as the one in the current case is irrelevant and should not form part of the Appeals Tribunal's considerations.

33. Finally, Villamoran submits that the appeal against an order rendered by the UNDT should not entitle the Secretary-General to refrain from executing it, if he appeals the order on the basis that the UNDT exceeded its jurisdiction in issuing it.

### Considerations

34. The Appeals Tribunal needs to establish whether it has competence under Article 2 of its Statute to hear the present interlocutory appeal. Article 2 inter alia provides that the Appeals Tribunal is "1. ... competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has exceeded its jurisdiction".

37. In the present case, the Secretary-General submits that the UNDT exceeded its competence in ordering the suspension of the twn549.5 cm 0 0 m 45u, 9.48 321m352Tc 15.21



of Villamoran's fixed-term appointment was notified to her only on 23 June 2011. She made her request for management evaluation the same day and filed her request for suspension one week later, on 1 July 2011. The UNDT Registry informed her that she had used the wrong form and Villamoran refiled her submission, using the correct form, on 5 July 2011, two days prior to the date the decision would be implemented. In light of the foregoing, we do not find that the urgency was self-created.

45. With respect to the second decision, the decision to place Villamoran on a temporary appointment following the expiration of her fixed-term appointment, we agree with the Secretary-General that the urgency was indeed self-created. We, however, do not find that the UNDT committed an error in this respect. The two decisions were closely interrelated and the UNDT did not err in suspending both of them for a preliminary period of five days.

46. It follows from the above that the UNDT's decision to order a preliminary suspension of five days pending its consideration of the suspension request under Article 13 of the UNDT Rules was properly based on Articles 19 and 36 of the UNDT Rules. We find that the UNDT did not exceed its jurisdiction in rendering the impugned Order. The interlocutory appeal is therefore not receivable.

47. In addition, the Secretary-General seeks guidance on the question of whether an order rendered by the UNDT requires execution in cases where the order is being appealed. He emphasizes that although DfS honoured the Order pending completion of management evaluation, such action should not be construed as the Secretary-General's acceptance or acquiescence in the lawfulness of the Order. He states that such execution was undertaken as it remained unclear whether there is a legal obligation to comply with an order that is under appeal.

48. Article 8(6) of the Rules of Procedure of the Appeals Tribunal provides that "[t]he filing of an appeal shall suspend the execution of the judgement contested". This provision however does not apply to interlocutory appeals. It falls to the Appeals

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