

Translated from French

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2011-236

Rawat
(Appellee/Applicant)

v.

United Nations Secretary-General
(Appellant/Respondent)

JUDGMENT

Before: Judge Jean Courtial, Presiding
Judge Kamaljit Singh Garewal
Judge Inés Weinberg de la Roca

Judgment No. 2012-UNAT-223

Date: 29 June 2012

Registrar: Weicheng Lin

Counsel for the Appellee/Applicant: Katya Melluish
Counsel for the Appellant/Respondent: Wambui Mwangi

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Judge Jean Courtial, Presiding.

Summary

1. The United Nations Appeals Tribunal (UNAT) is seized of an appeal filed on 15 July 2011 by the United Nations Secretary-General against Order No. 067 (NBI/2011) issued by the

7. On 8 July 2011 the UNDT issued Order No. 074 (NBI/2011), following a hearing held on the same day, dismissing the application filed by Mr. Rawat seeking a suspension of action on the administrative decision concerning him.

Submissions

The Secretary-General

8. The Secretary-General requests the Appeals Tribunal to consider the appeal receivable and rule that the UNDT exceeded its competence in ordering a suspension of action on the decision not to extend the appointment of Mr. Rawat.

9. The Secretary-General observes that the Appeals Tribunal has declared receivable an appeal against an interlocutory order in which the UNDT exceeded its competence. He asserts that in this ~~specific~~ case the UNDT, in ordering a suspension of action on the decision not to extend the appointment of Mr. Rawat without giving any reasons for its order based on law or fact, did exceed its competence.

10. The Secretary-General also asserts that the appeal against the order is not pointless, since there is a danger that the measures ordered in this and other recent cases may be interpreted as creating a precedent enabling the UNDT to suspend administrative decisions for periods ranging from one week to one month without even verifying that the requirements for a suspension of action are satisfied.

it and call witnesses. In issuing the order the Tribunal had not exceeded its competence.

15. As regards the Secretary-General's submission that an order to the Organization to incur financial expenditure, where the UNDT refrains from considering whether suspension of a decision not to extend an appointment is based on valid criteria, will give rise to injudicious use of public resources, Mr. Rawat affirms that the expenditure incurred by the Organization is irrelevant, since the appeal is concerned with the question of whether the UNDT has exceeded its competence, that being the only circumstance providing valid grounds for an appeal of an order.

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Statute, the Appeals Tribunal has ruled that an appeal against such a decision is receivable and founded.

22. On the other hand, the Appeals Tribunal has considered that the UNDT enjoys wide powers of appreciation in all matters relating to case management and that it must not interfere lightly in the exercise of the jurisdictional powers conferred on the tribunal of first instance to enable cases to be judged fairly and expeditiously and for the dispensation of justice. For this reason, and in accordance with the provisions of articles 2(2) and 10(2) of the UNDT Statute, appeals against decisions taken in the course of proceedings and relating to procedure, the establishment of proof or the production of documents, or ordering interim measures, are non-receivable, even where the judge of first instance has committed an error of law or fact relating to the application of the conditions to which the grant of a suspension of action is subject or a procedural error.

23. In the present case the Tribunal notes that the decision to suspend action on the contested administrative decision was taken during the management evaluation in accordance with article 2(2) of the Statute of the tribunal of first instance.

24. But the Tribunal also notes that the hearing which ended the period of suspension took place on the ninth working day following the date on which the application for suspension was served on the respondent (27 June 2011, the date mentioned in the contested order), that is to say, four days after the expiry of the period during which, under the provisions of article 13(3) of its Rules of Procedure, the UNDT was required to give a ruling on the request for an interim measure.

25. In the case of *Willamoran v. United Nations Secretary-General* this tribunal held that where execution of an administrative decision is imminent, through no

