

Onana
(Respondent/Applicant)

v.

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

JUDGMENT

[N o. 2010-UNAT-008]

Before:	Judge Inés Weinberg de Roca, Presiding Judge Jean Courtial Judge Mark P. Painter
Case No.:	2009-009
Date:	30 March 2010
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant: Katya Melluish

Counsel for Appellant/Respondent: Phyllis Hwang

THE UNITED NATIONS APPEALS TRIBUNAL

Case No. 2009-009

6. Article 2(1) of UNAT's Statute provides that UNAT "shall be competent to hear

10. First, the UNDT exceeded its competence by suspending the implementation of the contested administrative decision until the UNDT issued a judgment on the merits of the application. Article 2(2) of the UNDT Statute and Rule 13.1 of the UNDT Rules of Procedure only authorize the UNDT to order suspension of the implementation of a contested administrative decision “during the pendency of the management evaluation”. The Secretary-General submits that the management evaluation was expected and was communicated to Onana on 12 October 2009. UNDT had therefore no authority under Article 2(2) to order a suspension of the contested administrative decision beyond 12 October 2009.

11. Secondly, the Secretary-General submits that even assuming that Onana had filed an application with the UNDT requesting the suspension of the contested decision on 13 October 2009, the UNDT would have had no authority to order a suspension of the contested decision. Article 10(2) of the UNDT Statute states that administrative decisions relating to appointment, promotion or termination may not be suspended by the UNDT. Because the contested decision involves the non-renewal of a fixed-term appointment, the UNDT could not have suspended the decision during the proceedings on the merits before it.

12. The Secretary-General claims that the UNDT exceeded its competence in ordering Onana to file his substantive application within 15 days of the service of the judgment. It maintains that a decision whether or not to file an application with the UNDT lies within an applicant’s discretion and should not be ordered by the UNDT.

Onana’s Answer

13. Onana responds that OLA’s appeal is not receivable because UNDT’s Statute clearly prohibits appeals against interlocutory orders made under Articles 2(2) and 10(2).

14. On the merits, Onana argues that to preclude the UNDT from ordering the suspension of the implement7(on)Td [(6aing t)7(hc19 Tc -0n0 to fil)5eTJ -0.1TJ 0.0002 Tc 0.295 Tw

of Article 2(2) merely reflect that the UNDT may issue an order suspending the implementation of the contested decision without imposing any limitation on the duration of the order.


15. Onana further argues that if the Dispute Tribunal had no power to suspend the implementation of a contested decision beyond the completion of management evaluation under Article 2(2), it would effectively render obsolete Article 10(2) of the UNDT Statute, if at the completion of the management evaluation, the Administration can proceed to implement the decision.

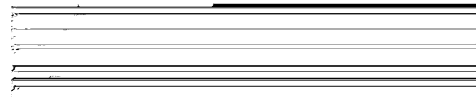
16. In response to OLA's contention that the limitations of Article 10(2) of UNDT's Statute apply in the present case, Onana submits that Article 10(2) merely precludes the Dispute Tribunal from ordering suspension of action in cases of "appointment, promotion and termination". The present case, namely the non-extension of a contract, does not fall under these limitations.

17.

Judgment

24. The contested decision is annulled.





Judge Weinberg de Roca, Presiding

Judge Courtial

Judge Painter

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

Original: English

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

Weicheng Lin, Registrar, UNAT