



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Case Nos. 2011-214 & 2011-219

Igbinedion

(Respondent/Applicant)

v.

Secretary-General

JUDGE LUIS MARÍA SIMÓN , Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) reiterates its jurisprudence that the exclusion of the right to appeal a decision to suspend the execution of an administrative decision constitutes an exception to the general principle of the right to appeal and must therefore be narrowly interpreted. As a result, this exception applies only to jurisdictional decisions ordering the suspension of an administrative decision *pending* a management evaluation and not beyond its date. When dealing with an appeal against a jurisdictional decision of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) rendered on the basis of Article 2(2) of its Statute and Article 13 of its Rules of Procedure, the Appeals Tribunal needs to decide whether the Dispute Tribunal has respected the limitations of its scope of jurisdiction under those provisions. In a situation in which the Appeals Tribunal is led to observe that the Dispute Tribunal has exceeded its competence, the appeal will be judged receivable.

2. In the present case, the first Order under appeal extended the suspension of action until 13 May 2011, beyond the date on which the management evaluation was in fact completed. The UNDT should have granted a suspension until 13 May 2011 or until the completion of management evaluation, if the latter was earlier. By fixing a date without taking into account that the management evaluation might be completed earlier, the UNDT exceeded its jurisdiction and committed an error of law.

3. The second Order under appeal extended the suspension until the final determination of the case, and therefore beyond the completion of management evaluation.

4. Both Orders therefore violated Article 2(2) of the UNDT Statute, which provides for suspension of the implementation of a contested decision only “during the pendency of the management evaluation”, and Article 10(2) of the UNDT Statute, which prohibits the suspension of the implementation of an administrative decision during the proceedings before the UNDT, in cases of appointment, promotion, or termination.

Igbinedion's Answer

13. Igbinedion responds that the Dispute Tribunal did not exceed its mandate in ordering the suspension of action until his case was determined on its merits and that under Article 2(2) of the UNDT Statute “[t]he decision of the Dispute Tribunal on such an application shall not be subject to appeal”.

14. Igbinedion submits that the Dispute Tribunal was aware of the response of the Management Evaluation Unit before issuing Order No. 33 (NBI/2011), that the Order was based on evidence submitted during the hearing, and that the Dispute Tribunal has yet to adjudicate on the non-renewal of the contract.

15. Igbinedion further contends that Article 7(5) of the Statute of the Appeals Tribunal that states that the filing of an appeal will suspend the execution of a judgment is not applicable seeing that only orders and decisions have been issued in his case, with a judgment pending the determination of the main application.

Considerations

16. The Appeals Tribunal stated in *Onana*:

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The Appeals Tribunal further held:

In order to give full effect to paragraph 28 of General Assembly resolution 63/253, when dealing with an appeal against a jurisdictional decision of the Dispute Tribunal rendered on the basis of article 2 (2) of its Statute and article 13 of its Rules of Procedure, the Appeals Tribunal needs to decide, whether the Dispute Tribunal has respected the limitations of its scope of jurisdiction under those provisions. In a situation in which the Appeals Tribunal is led to observe that the Dispute Tribunal has exceeded its competence, the appeal will be judged receivable.

17. Article 2(2) of the Statute of the UNDT, laying out the general structure and jurisdiction of the UNDT, grants the power to suspend the implementation of an administrative decision *during the pendency of management evaluation*.

18. Article 10(2) of the Statute of the UNDT provides that the UNDT may adopt interim measures at any time of the proceedings, that is to say, once judicial proceedings have been initiated. Among those measures, it provides for the suspension of implementation of administrative decisions and prohibits the adoption of such suspension *in cases of appointment, promotion, or termination*. These cases are also subject to special treatment under Article 10(5)(a) of the UNDT Statute, which provides for compensation as an alternative to the rescission of administrative decisions.

the Statute since, otherwise, the legislative texts, spirit, and goals underlying them would be ignored or violated.

21. In the present case, the first Order under appeal was issued before the completion of the management evaluation. The Order, however, extended the suspension until 13 May 2011, beyond the date the management evaluation was in fact completed. The UNDT should have granted a suspension until 13 May 2011 or the completion of management evaluation, if the latter was earlier. By fixing a date without taking into account that the management evaluation might be completed earlier, the UNDT exceeded its jurisdiction and committed an error of law. The appeal against the Order is therefore receivable and upheld on its merits.

22. The second Order extended the suspension until the final determination of the case on its merits. Article 10(2) of the UNDT Statute clearly excludes the possibility of such an order in cases of appointment, promotion, or termination. Hence, the Judge exceeded his jurisdiction. The appeal against the Order is therefore receivable and upheld on its merits.

23. Both Orders therefore violated Article 2(2) of the UNDT Statute, which provides for suspension of the implementation of a contested decision only “during the pendency of the management evaluation”, and Article 10(2) of the UNDT Statute, which prohibits the suspension of the implementation of an administrative decision, during the proceedings before the UNDT, in cases of appointment, promotion, or termination.

24. The Judge’s Orders are even more surprising in light of the clear jurisprudence of the Appeals Tribunal in *Tadonki, Onana*

Judgment

26. The Appeals Tribunal vacates the two UNDT Orders under appeal.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 29^h day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar