



Before: Judge Alexander W. Hunter, Jr.
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

AUDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT
ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant, a former United Nations staff member with Department for General Assembly and Conference Management, filed an application in which he contested the alleged decision of the Registrar of the United Nations Dispute Tribunal in New York to “reject his application for interim relief without informing him.”

2. As a preliminary issue, the Tribunal will examine the receivability of the application as it raises an issue of *ratione materiae*, notably of whether this is a type of decision over which this Tribunal has jurisdiction and therefore competence under the Dispute Tribunal Statute.

Facts

3. On 27 July 2016, the Applicant filed his application in which he summarized the facts of the case as follows:

... On Thursday, 23 June 2016, the Applicant filed an application for interim relief under Article 10.2 of the Statute of the UNDT through the eFiling portal immediately following the filing of an application on merits. The submissions were properly made in accordance with the rules of procedure of the UNDT and duly acknowledged by emails from the New York Registry on 23 June 2016, respectively at 4:49 pm and 4:53 pm. The two notification emails were identical and stated (*emphasis added*): “Your application has been received and is currently under review. *You will be sent an email notification after it has been ascertained that the application is in compliance with article 8 of the Rules of Procedure of the United Nations Dispute Tribunal.*”

... On Friday, 24 June 2016 at 3:30 pm, the Applicant inquired about the status of the applications filed. At 5:59 pm, the Applicant received an email from the New York Registry which acknowledged the filing of the application on merits under Case No. UNDT/NY/2016/028 and transmitted it to the Respondent. This was followed by another email from the Registry at 6:04 pm which requested the Applicant to refile the motion for interim measures under Case No.

UNDT/NY/2016/028, which was done instantly. Afterwards, the Applicant received at 6:26 pm an automatically generated notification that the Applicant has made a filing (type: Motion for interim measures) to Case No. UNDT/NY/2016/28 without specifying the submission date.

... By email dated Monday, 27 June 2016 at 11:47 am, the New York Registry acknowledged receipt of a motion for interim measures “filed by the Applicant on 24 June 2016 at 6:26 p.m. through the eFiling portal”. The email further advised that the Respondent was to file his reply, if any, by 1:00 p.m. on Wednesday, 29 June 2016.

... On the same day, Monday, 27 June 2016 at 5:06 pm, the Applicant wrote to the New York Registry providing a timeline of the applications filed and stating:

“Noting the time elapsed since the initial filings, it follows from the above that the date of filing of the motion for interim measures should be 23 June 2016, as it is not up to the Applicant to determine under which case a motion should be submitted or where it should be supposedly filed, all of which are technical tasks fulfilled by the Registry concerned.”

Having received no response from the Registry, the Applicant followed up on the matter by an email on Tuesday day 28 June 2016 at 12:19 pm.

... On Wednesday, 29 June 2016 at 11:07 am, the New York Registry responded to the Applicant (*emphasis added*):

“As instructed by Judge Greceanu, the Registry confirms that the application on the merits, given case number UNDT/NY/2016/028, was filed on 23 June 2016. The document entitled “application for interim relief”, filed in a separate case eventually *rejected*, was also received on 23 June 2016. *In accordance with article 14 of the Rules of Procedure, a motion for suspension of action during the proceedings must be filed within the substantive case and thus you were requested by the Registry to refile the motion in case number UNDT/NY/2016/028. We appreciate your diligence in refiling the motion on 24 June 2016.*

In order to clarify the acknowledgement sent on 27 June 2016, the Tribunal confirms that both the application on the merits and the “application for interim relief” were received on 23 June 2016 in two separate cases.”

... The chain of email exchanges referred to above is given in Annex 1.

... On 22 July 2016, the Applicant submitted a request for management evaluation of the arbitrary and baseless decision of the New York Registry of the United Nations Dispute Tribunal (UNDT) to reject the Applicant's application for interim relief without informing him (Annex 2). The Management Evaluation Unit (MEU) acknowledged the request and provided the management evaluation in a single correspondence on 26 July 2016 (Annex 3) that the Applicant's request is not receivable.

4. Appended to his application, the Applicant filed an email exchange with the New York Registry, the Applicant's request for management evaluation, and the acknowledgement and response of the Management Evaluation Unit.

Consideration

Recusal

5. As no question of conflict of interest exists, the Tribunal finds that a transfer of the case is not necessary (see also *Bastet* 2014-UNAT-423, para. 15, in which the Appeals Tribunal found that "the Dispute Tribunal's decision to transfer his case to Geneva falls squarely within the jurisdiction and competence of the [Tribunal]").

Receivability

6. It is the consistent jurisprudence of the Appeals Tribunal that under its Statute and Rules of Procedure, the Dispute Tribunal is competent to review its own jurisdiction even if this is not contested by any of the parties (see, for instance, *O'Neill* 2011-UNAT-182, *Christensen* 2013-UNAT-335, and *Tintukasiri et al.* 2015-UNAT-526). When reviewing the application of the present case the Tribunal, therefore, also examined whether it is receivable on its own terms and if the Tribunal may rule upon this issue without first instructing the Respondent to file a reply in accordance with art. 10.4 of the Dispute Tribunal's Rules of Procedure and issue a summary judgment in accordance with art. 9 of the Rules of Procedure (similarly, see the Dispute Tribunal in *Kalpokas Tari* UNDT/2013/180 and *Ibom* UNDT/2014/084).

7. Article 2.1 of the Dispute Tribunal's Statute provides that that the Secretary-General as the Chief Administrative Officer of the United Nations will act as the respondent in all cases before the Tribunal and lists the type of decisions which the Tribunal may examine, notably "administrative decision[s]" or enforcement of "the implementation of an agreement reached through mediation." The issue in the present case is therefore whether the contested decision is an administrative decision that is appealable to the Dispute Tribunal.

8. The Applicant contends that the contested decision was decided by the Registrar of the Dispute Tribunal in New York on 29 June 2016 and refers to it as follows, "The arbitrary and baseless decision of the New York Registry of the United Nations Dispute Tribunal (UNDT) to reject the Applicant's application for interim relief without informing him."

9. As per the application, and as also corroborated by the case record, the contested decision was set out in the 29 June 2016 email from the New York Registry to the Applicant, which stated as follows:

As per specific instructions from Judge Greceanu, please be advised that no direct correspondence is allowed between the Judge assigned to the case and the parties.

As instructed by Judge Greceanu, the Registry confirms that the application on the merits, given case number UNDT/NY/2016/028, was filed on 23 June 2016. The document entitled "application for interim relief", filed in a separate case eventually rejected, was also received on 23 June 2016. In accordance with article 14 of the Rules of Procedure, a motion for suspension of action during the proceedings must be filed within the substantive case and thus you were requested by the Registry to refile the motion in case number UNDT/NY/2016/028. We appreciate your diligence in refiling the motion on 24 June 2016.

In order to clarify the acknowledgement sent on 27 June 2016, the Tribunal confirms that both the application on the merits and the "application for interim relief" were received on 23 June 2016 in two separate cases.

10. From the Registry's 29 June 2016 email, it follows without question that the rejection of creating a "separate case" for the Applicant's motion for interim relief was decided in Case No. UNDT/NY/2016/028.

11. The current system of internal justice at the United Nations, including the Dispute Tribunal, was established by the General Assembly in its resolution on "Administration of Justice at the United Nations" of 4 April 2007 (A/RES/61/261). Paragraph 4 of the General Assembly's resolution states that the system is to be "independent" and, in para. 19, it is further written that "the formal system of administration of justice should comprise two tiers, consisting of a first instance, the United Nations Dispute Tribunal, and an appellate instance, the United Nations Appeals Tribunal, rendering binding decisions and ordering appropriate remedies."

12. The competent entity to review and adjudicate on appeals against decisions of the Dispute Tribunal is the Appeals Tribunal which is mandated by the Appeals Tribunal Statute, which in art. 1 provides that, "A tribunal is established by the present statute as the second instance of the two-tier formal system of administration of justice, to be known as the United Nations Appeals Tribunal". Article 2.1 further provides that, "[t]he Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal." According to the consistent jurisprudence of the Appeals Tribunal, the Appeals Tribunal's competence in this regard is a question of whether the Dispute Tribunal has "clearly exceed it jurisdiction or competence" (see *Wamalala* 2013-UNAT-300, para 18) and the Appeals Tribunal has "repeatedly held that when the [Dispute Tribunal] acts in excess of its jurisdiction and authority, the aggrieved party may bring an appeal, regardless of whether the ruling is called an order or a judgment" (see *Wu* 2013-UNAT-306, para. 19).

13. As such, the present Tribunal does therefore not have jurisdiction and is not competent to assess and determine whether the Dispute Tribunal erred or not when declining to open a separate case for the Applicant's motion for interim measures under art. 10.2 of its Statute and art. 14 of its Rules of Procedure and requesting the

Applicant to instead file the said motion under the correlated substantive case. Since this is clear from the application, it is not necessary to instruct the Respondent to file a reply.

Conclusion

14. The application is rejected as not receivable *ratione materiae*.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 4th day of August 2016

Entered in the Register on this 4th day of August 2016

(Signed)

Morten Albert Michelsen, New York Registry, Officer-in-Charge