



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2015-864

Siri

(Respondent)

v.

Secretary-General of the United Nations

(Appellant)

ORDER No. 245 (2015)

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it a “Motion for expedited review of the appeal of UNDT Order No. 306 (NBI/2015)” filed by the Secretary-General in the case of *Siri v. Secretary-General of the United Nations* on 23 October 2013. On 9 November 2015, Mr. Guy Siri filed his comments on the Motion. The Appeals Tribunal also has before it a “Motion providing additional information in support of the motion for expedited review of the appeal” filed by the Secretary-General on 23 November 2015. On 1 December 2015, Mr. Siri filed his comments.

2. Mr. Siri is the Director of Mission Support of the United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), serving at the D-2 level. In February 2005, he was informed that based on a review of the record and in accordance with Staff Regulation 9.2, his mandatory date of separation would be 30 September 2015 when he reached the age of 60.

3. On 13 August 2015 and 25 September 2015, respectively, Mr. Siri requested management evaluation of the Administration’s decision not to renew his appointment beyond 30 September 2015 and the decision to undertake a recruitment exercise in relation to his post. By memorandum dated 25 September 2015, Mr. Siri was informed that the Management Evaluation Unit had decided to uphold both decisions.

4. On 28 September 2015, Mr. Siri filed with the UNDT an application for suspension of action together with a substantive application on the merits. By Order No. 306 (NBI/2015) dated 30 September 2015, the UNDT granted Mr. Siri’s request for

interim relief and ordered the suspension of the non-renewal and the recruitment decisions until the determination of the merits of the case. The UNDT also informed the parties that it would issue an order setting an accelerated hearing date for early November 2015.

5. On 23 October 2015, the Secretary-General filed an appeal against Order No. 306 (NBI/2015) and Mr. Siri filed his perfected answer on 1 December 2015.

6. By Order No. 379 (NBI/2015) dated 24 November 2015, the UNDT *inter alia* vacated paragraph 106 of Order No. 306 (NBI/2015) scheduling an accelerated hearing date for early November and scheduled an oral hearing on the merits of the case for 22 and 23 March 2016.

7. The Secretary-General submits that Order No. 306 (NBI/2015) is not only contrary to Article 10(2) of the UNDT Statute, but its implementation also has a direct, negative, and continuing impact on the effective and efficient functioning of the Organization, which is particularly affected when the recruitment process for the appointment of a replacement for a staff member mandatorily separating due to age is suspended for an indeterminate, and potentially lengthy, period of time pending the adjudication of a matter on the merits by the UNDT. The Secretary-General contends that these exceptional circumstances warrant an expedited review of his appeal by the Appeals Tribunal.

8. Mr. Siri requests that the Motion for expedited review be dismissed. The Secretary-General is appealing an interlocutory order which has been properly issued pursuant to Article 10(2) of the UNDT Statute and which is not subject to appeal. Should the Appeals Tribunal find the appeal receivable, Mr. Siri contends that the Secretary-General's request is unwarranted in the present case. The detriment the Secretary-General fears as a result of the suspension of the separation and recruitment decisions has not been established. Moreover, contrary to the Secretary-General's assertion, neither the separation nor the recruitment decision has been suspended for an "indeterminate, and potentially lengthy, period of time" and there is no reason to believe that the UNDT will not dispose of the merits of the case in a timely manner.

9. Article 10(2) of the Statute of the UNDT provides that the UNDT may adopt interim measures at any time during the proceedings or once judicial proceedings have been initiated. Among those measures, it provides for the suspension of the implementation of a contested administrative decision, but prohibits such suspension in cases of appointment, promotion, or termination. The Appeals Tribunal has consistently held that, as a general rule, only appeals against final judgments are receivable. Appeals against decisions or orders taken in the course of the proceedings are not receivable except in the exceptional cases where the UNDT has clearly exceeded its jurisdiction or competence.¹

10. In the present case, the Appeals Tribunal determines that the Secretary-General has met his burden to show good cause to grant his motion for an expedited review of the appeal. The determination of Mr. Siri's mandatory age of separation was intricately linked to a matter of appointment. Moreover, by Order No. 379 (NBI/2015), the UNDT decided to hear the merits of the case on 22 and 23 March 2016.

11. Accordingly, the Secretary-General's Motion for expedited review should be granted. In light of the foregoing, the Appeals Tribunal need not consider the Secretary-General's second Motion providing additional information in support of the motion for expedited review.

IT IS HEREBY ORDERED that the Secretary-General's Motion for Expedited Review **IS GRANTED**.

¹ *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.

Original and Authoritative Version: English

Dated this 4th day of December 2015
in Buenos Aires, Argentina.

(Signed)
Judge Weinberg de Roca,
Presiding

Entered in the Register on this 4th day of
December 2015 in New York, United States.

(Signed)
Weicheng Lin, Registrar