

UNDT/2012/114, Applicant

UNAT Held or UNDT Pronouncements

The inherent jurisdiction of the Tribunal confers it with power to deal with contemptuous conduct and is necessary to safeguard its judicial functions. This power need not be defined in the Tribunal's Statute or in its Rules of Procedure. Willful disobedience of the Tribunal's orders is contempt and is a direct attack upon the jurisdiction of the Tribunal and its power to undertake the responsibilities with which it has been entrusted in its Statute by the General Assembly. UNON management while disregarding the authority of UNAT in Villamoran on the duty of parties to comply with interlocutory orders even where an appeal had been filed, refused to obey the orders of the Tribunal and continued to adopt every means to alter the status quo ante. UNON officials by their actions in this case have engaged in strong arm tactics and acted as if they make their own laws in a way that no decent organization can be proud of, least of all the United Nations Secretariat. As a global organization that, among other things, has set up at least a unit whose mandate is the promotion of the rule of law worldwide, the Secretary-General's attention needs to be called to the actions of those of his officials who trample on the enduring principle of the rule of law and thereby enthrone and elevate impunity. It is trite law that even if Counsel should believe that the Court order is incorrect he/she must still comply promptly or risk the imposition of sanction. Counsel did not bother to maintain the status quo before deciding to advice disobedience of the Tribunal's Order. The argument that counsel was intending to appeal and therefore could alter the status quo is, to say the least, farfetched. A Court Order can only be reversed by an appellate Court. Counsel cannot take the law into their own hands and settle the clients rights according to his/her notion of what is right. The Director General of UNON has overall authority in all decisions and actions taken by the UNON management. This means that she is accountable for such actions and decisions. The Director General is accountable for the unprofessional conduct and high-handedness exhibited in this case by UNON's Legal Counsel under her watch.

Accountability referral: the Tribunal referred the case to the Secretary-General, under art. 10(8) of its Statute, for the purpose of considering what action should be taken in respect of the conduct of a) the Director General of UNON in dealing with the complaints made by the Applicant and disregarding the Tribunal's orders, and b) the UNON's Legal Adviser in advising disobedience of the Tribunal's orders.

Decision Contested or Judgment/Order Appealed

The Applicant joined the Joint Medical Services (JMS) at the United Nations Office at Nairobi (UNON) on 8 June 2010 pursuant to an Agreement between UNON and the members of the United Nations Country Team Somalia (UNCT) dated 5 March 2010. On 6 June 2012 she was informed that her appointment would not be renewed. She filed a request for management evaluation and a suspension of action application which was granted by the Tribunal. On 14 June 2012, the Applicant filed a Motion titled "Motion for directions, referral for accountability requesting the Tribunal to clarify its suspension of action orders by confirming that it intended that UNON immediately undertake all reasonable steps to suspend the effect of the non-renewal of the Applicant's employment contract and that UNON's managers be referred to the Secretary-General pursuant to art. 10(8) of the Statute of the Dispute Tribunal for the enforcement of accountability.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNON

Case Number(s)

UNDT/NBI/2012/035

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

31 Jul 2012

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Judgment-related matters

Procedure (first instance and UNAT)

Referral for accountability

Applicable Law

GA Resolutions

- A/RES/61/261
- A/RES/66/237

Other UN issuances (guidelines, policies etc.)

- Report of the Redesign Panel on the UN System of Administration of Justice
- Report of the Secretary-General on the Rules of Law

UNDT Statute

UNRWA DT Statute

- Article 10.8