

# 2011-UNAT-160, Villamoran

## UNAT Held or UNDT Pronouncements

The Secretary-General appealed the UNDT order. UNAT held that, where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of UNDT RoP have elapsed, and where UNDT is not in a position to make a decision under Article 2. 2 of the UNDT Statute, i. e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2. 2 of the UNDT Statute and Article 13 of UNDT RoP meaningless in cases where the implementation of the contested administrative decision is imminent. UNAT concluded that UNDT did not exceed its jurisdiction in rendering the impugned order and the Secretary-General's interlocutory appeal was, therefore, not receivable. UNAT held that Article 8. 6 of the UNAT RoP, which provides that "the filing of an appeal shall suspend the execution of the judgment contested", does not apply to appeals of interlocutory orders rendered by UNDT and that any orders rendered by UNDT require execution even in cases where the order is being appealed. It falls to UNAT to decide whether UNDT exceeded its jurisdiction in rendering an interlocutory order and the Administration cannot refrain from executing an order by filing an appeal against it on the basis that UNDT exceeded its jurisdiction.

## Decision Contested or Judgment/Order Appealed

UNDT Order: The staff member requested the suspension of two administrative decisions: (i) the decision to place her on a temporary appointment after the expiration of her fixed-term contract; and (ii) the decision to require her to take a break in service of 31 days prior to her placement on a temporary appointment. UNDT noted that under Article 13 of UNDT RoP, UNDT had five days from the service of an application of suspension of action on the respondent to consider the application; and that in this case, the contested administrative decision was due to be implemented before the five-day period. UNDT determined that further submissions were required for the fair and expeditious disposal of the application and to do justice to the parties. Therefore, UNDT ordered a preliminary suspension of the implementation of the contested decisions pending the final determination of the application for suspension of action.

## Legal Principle(s)

Where the implementation of an administrative decision is imminent and takes place before the five-day period provided for under Article 13 of UNDT RoP has elapsed, UNDT has the discretion to grant a preliminary suspension of action pending its consideration of the application for suspension of action. Such an order rendered by UNDT requires execution even in cases where the order is being appealed.

## Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Villamoran

Entity

DFS

Case Number(s)

2011-234

Tribunal

UNAT

Registry

New York

Date of Judgement

3 Oct 2011

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Interlocutory or interim appeal / Appeal of UNDT order to UNAT

Execution of order pending appeal

Suspension of action

Applicable Law

UNDT RoP

- Article 13
- Article 19
- Article 8.6

UNDT Statute

- Article 2.2

Related Judgments and Orders

UNDT/2011/126

2010-UNAT-062

2010-UNAT-011

2010-UNAT-008

2010-UNAT-005