

2012-UNAT-255, Igunda

UNAT Held or UNDT Pronouncements

UNAT considered an appeal against UNDT Orders No. 082 (NBI/2011) and No. 083 (NBI/2011) by the Secretary-General. UNAT held that the main motivation for ordering the suspension of action in Order No. 82 was to grant access to justice to the staff member and that the Order could be sustained because a certain degree of discretion had to be awarded to UNDT to consider and resolve urgent matters such as interim measures. On Order No. 83, which extended the suspension of action until 12 August 2011, in breach of the five working days restrictive period to render the decision, UNAT held that UNDT had erred in law and exceeded its jurisdiction. UNAT held that with this outcome, further submissions made by the Secretary-General (i. e. the issues related to OSLA representation of the Applicant) were not essential to the case and did not need to be examined in the present judgment. UNAT dismissed the appeal against Order No. 082 and affirmed the Order. UNAT upheld the appeal against Order No. 083 and vacated the Order.

Decision Contested or Judgment/Order Appealed

The Applicant filed an application of suspension of action of the decision not to renew his appointment based on his performance ratings. During the hearing, UNDT noted that the Applicant was unable to further elucidate his claim and expressed concerns about his access to justice. A legal officer from the Office of Staff Legal Assistance (OSLA) joined the proceedings and informed UNDT that he would be willing to assist the Applicant in re-filing his application, as an officer of the Tribunal. In Order No. 082 (NBI/2011), UNDT ordered the suspension of the non-renewal decision until 5 August 2011, when a further hearing would be held and then, in Order No. 083 (NIB/2011) and following a hearing on the Applicant's redrafted application, UNDT granted the suspension until 12 August 2011, until UNDT issued a reasoned and written decision based on all the evidence and all the submissions made by the parties on or by that date.

Legal Principle(s)

When dealing with an appeal against a jurisdictional decision of UNDT rendered based on Article 2. 2 of its Statute and Article 13 of its Rules of Procedure, UNAT needs to decide whether UNDT has respected the limitations of its scope of jurisdiction under those provisions. In a situation in which UNAT is led to observe that UNDT has exceeded its competence, the appeal will be judged receivable. A party is not allowed to refuse the execution of an order issued by UNDT under the pretext that it is unlawful or was rendered in excess of that body's jurisdiction, because it is not for a party to decide about those issues. Proper observance must be given to judicial orders and the absence of compliance may merit contempt procedures.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Igunda

Entity

MONUSCO

Case Number(s)

2011-244

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Interlocutory or interim appeal / Appeal of UNDT order to UNAT

Suspension of action

Jurisdiction / receivability (UNAT)

Interlocutory appeal

Suspension of action / interim measures

Applicable Law

GA Resolutions

- A/RES/63/253

UNDT RoP

- Article 13.3

UNDT Statute

- Article 2.2

Related Judgments and Orders

2011-UNAT-160

2010-UNAT-008