

2012-UNAT-256, Benchebbak

UNAT Held or UNDT Pronouncements

UNAT considered the three appeals by the Secretary-General against the UNDT Orders. UNAT held that the appeals were receivable because: (1) UNDT exceeded its jurisdiction under Article 2. 2 of the UNDT Statute by ordering the suspension of the contested decision beyond the date of completion of management evaluation; and (2) UNDT exceeded its jurisdiction under Article 10. 2 of the UNDT Statute by ordering, during the proceedings, a suspension of the contested decision as an interim measure in a case of appointment. UNAT held that Order No. 129 suspended the contested decision beyond management evaluation and Order No. 136 confirmed Order No. 129 even though management evaluation had been finalized. UNAT held that UNDT thereby violated Article 2. 2 of the UNDT Statute and Article 13 of the UNDT RoP, which provide for suspension of the implementation of a contested decision only during the pendency of the management evaluation. UNAT held that Order No. 142 decided a suspension in a matter of appointment during UNDT proceedings and thereby violated Article 10. 2 of the UNDT Statute, which prohibits the suspension of the implementation of an administrative decision in cases of appointment, promotion, or termination. UNAT upheld the Secretary-General's appeals and vacated UNDT Orders.

Decision Contested or Judgment/Order Appealed

Mr Benchebbak requested management evaluation of the decision not be extend his appointment and later requested UNDT to suspend the implementation of the contested decision, pending management evaluation. UNDT issued Order No. 129 ordering the suspension of the contested decision until 10 November 2011, to allow the filing of the Respondent's comments, the hearing and the determination of this matter. The Secretary-General requested that the Order be discharged. Later Mr Benchebbak filed an application on the merits as well as a request for interim relief. UNDT issued Order No. 136 rejecting the Secretary-General's request to have Order No. 129 discharged. UNDT issued Order No. 142 by which it disposed of Mr Benchebbak's application for suspension of action under Article 14 of the UNDT RoP. UNDT found the application receivable as the contested decision amounted to a non-renewal rather than a termination. UNDT accordingly found that the prohibition of the suspension of decisions on appointment, promotion, and termination provided for in Article 10. 2 of the UNDT Statute and Article 14 of the UNDT RoP did not apply. UNDT found that the criteria for suspending the contested decision were met and consequently ordered the continued suspension of the contested decision, pending the determination of the case on the merits.

Legal Principle(s)

In cases where UNDT has clearly exceeded its jurisdiction, UNAT will exceptionally receive the appeal, e.g.: (1) where UNDT has exceeded its jurisdiction under Article 2.2 of UNDT Statute and Article 13 of UNDT Rules of Procedure by ordering the suspension of the contested decision beyond the date of completion of management evaluation; and (2) where UNDT has exceeded its jurisdiction under Article 10.2 of the UNDT Statute and Article 14 of the UNDT Rules of Procedure by ordering during the proceedings suspension of the contested decision as an interim measure in a case of appointment, promotion or termination.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Benchebbak

Entity

MINURSO

Case Number(s)

2011-267

2011-271

2011-276

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNAT)

Interlocutory appeal

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Suspension of action / interim measures

Receivability

Applicable Law

UNDT RoP

- Article 13
- Article 14

UNDT Statute

- Article 10.2
- Article 2.2

Related Judgments and Orders

2011-UNAT-159

2010-UNAT-008

2011-UNAT-160

2010-UNAT-005

2010-UNAT-011