

B6 Judge Adams
R New York
R Hafida Lahiouel

WASSERSTROM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

~~DELEGATION~~
~~ADJUTANT GENERAL~~
AEAL

C11p
Mary Dorman

C11p
Susan Maddox, ALS

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1. On 3 February 2010 I decided that the Dispute Tribunal had jurisdiction to consider the applicant's application in respect of a decision made by the Ethics Office and ordered production of certain documents to the Tribunal and on 17 March 2010 I repeated and clarified the order for production (Orders Nos. 19 and 52 (NY/2010) respectively). The respondent has now appealed against these orders to the UN Appeals Tribunal and seeks both a stay of the orders and an adjournment of the proceedings, pending determination of the appeal.

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2. The respondent submits that, as the appeal "addresses the fundamental issue of whether the Dispute Tribunal has jurisdiction" to proceed in the case, "it cannot proceed in such a manner as to pre-judge or lead to a decision of the very question before the Appeals Tribunal". It is also submitted that continuing to hear the case "would interfere with the jurisdiction of the Appeals Tribunal to decide whether or not the Dispute Tribunal has exceeded its jurisdiction". Accordingly, it is contended, "the Dispute Tribunal does not have subject matter jurisdiction over the ... action pending the outcome of the respondent's appeal".

3. On behalf of the applicant, counsel submits that the respondent has not complied with the order for production of the documents (including the investigation report) and should not be able to seek orders in effect relieving it of its obligation to do so. It is also submitted that the respondent is guilty of contempt and the attorney's fees incurred by this conduct should be ordered to be paid.

4. In response to the applicant's arguments, the respondent notes that "the Appeals Tribunal has recently indicated that it would accept an appeal of the Tribunal's decision which was not a final judgment". I do not understand this submission or its factual basis. I assume it is a reference to filing an appeal in the Registry of the Appeals Tribunal. For obvious reasons, this determines nothing.

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5. It will have been noted that the respondent submits, in effect, that the Dispute Tribunal has no discretion as to whether to grant the adjournment and the stay sought, since, in effect, it has no jurisdiction to continue with the case given the appeals. This argument has no merit. There is no preemption of the jurisdiction of the Appeals Tribunal to determine the appeals in whatever way that Tribunal thinks right. Nor is there any question of pre-judgment. The Dispute Tribunal must necessarily proceed upon its view of the law pursuant to its duty to determine cases brought before it. There can be no doubt that the Dispute Tribunal must, in an appropriate case, make decisions as to whether it has jurisdiction to consider an application. In short, it has jurisdiction to determine if it has jurisdiction—art 2.6 of the Dispute Tribunal’s Statute states this in no uncertain terms. Once it has decided that it must go on to try the case, the mere fact that a party has lodged an appeal cannot, in principle, bring its jurisdiction to do so to an end. There is nothing in either the Dispute Tribunal or the Appeals Tribunal statutes that suggests such a surprising conclusion and counsel for the respondent does not identify or attempt to rely on any such provision. The decision of the Appeals Tribunal one way or the other on the validity of the appeal or its outcome should not be assumed; certainly not by the Dispute Tribunal. It follows that it is not arguable that the Dispute Tribunal does not have jurisdiction to come to a final judgment upon the substance of the case.

6. It is obvious that if, as a matter of law, the Appeals Tribunal does not have jurisdiction to consider a preliminary or interlocutory judgment, then it would be wrong to adjourn proceedings in the Dispute Tribunal for the purpose, in that event, of permitting the Appeals Tribunal to reject the appeal. This would be a simple waste of time; indeed, an abuse of process. In another case I have held that interlocutory judgments of the Dispute Tribunal cannot be appealed and it is not necessary to repeat those reasons here: see *Bertucci* Order No. 59 (NY/2010).

7. At the same time, the Dispute Tribunal has undoubted power to control its own proceedings, including adjournments and staying its own orders. In this case,

