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**JUDGE ROSALYN C**

to the consideration of the General Assembly and that a decision on the proposal would be made in December 2013.

... The proposed programme budget for the OUSG/DM for the biennium 2014-2015 was published on 18 April 2013 and it included the proposal to abolish [Ms. Lee]'s post and that of Associate Programme Management Officer in MSS. (See A/68/6(Sect. 29A).

... On 1 May 2013, [Ms. Lee] was offered a post as Management Analysis Assistant in Umoja for a duration of 8 months, expiring 31 December 2013.

... On 28 August 2013, [Ms. Lee] received an email from the Executive Office, informing her of the [pending] abolishment of her post and encouraging her to apply for other job openings.

... In September 2013, [Ms. Lee] was informed of her selection to fill a temporary post as an Administrative Assistant in the Office of Information and Communication Technology ("OICT"). In addition, she was further informed that she was being released by Umoja to take up the temporary assignment at OICT as from 5 October 2013 to 31 December 2013 and that due to the pending abolition of her post, she was encouraged to apply for other positions.

... On 11 October 2013, [Ms. Lee] submitted a request for management evaluation of the decision to abolish her post in MSS, OUSG/DM.

... On 14 October 2013, [Ms. Lee] was informed by the Administrative Officer EO/DM that she had no lien on her post in Umoja.

...

... On 19 November 2013, [Ms. Lee] received a reply to her Management



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decisions. So even if the General Assembly has decided to abolish [Ms. Lee]’s post, her application should be rejected as not receivable”.

11. On 6 January 2014, Ms. Lee filed appeals of Orders Nos. 182, 183 and 199 and Summary Judgment No. UNDT/2013/147.<sup>5</sup> On 10 February 2014, the Secretary-General filed his answer to the appeals of Orders Nos. 182, 183 and 199, and on 10 March 2014, he filed his answer to the appeal of Summary Judgment No. UNDT/2013/147.

12. On 14 September 2014, Ms. Lee filed her Motion and on 26 September 2014, the

17. The appeal of Order No. 183 is not receivable because the UNDT has broad discretion in the management of cases and, in issuing Order No. 183, the UNDT did not exceed its competence or jurisdiction. To the contrary, Ori -19(citesset f)3(o -17(rth. )5.4i)-3.5nu

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27. Under her fixed-term appointment, Ms. Lee does not have any “expectancy, legal or otherwise, of renewal or conversion” of her appointment. In light of the nature of her

(Rules). However, oral proceedings and the taking of oral evidence are not the same thing under the Appeals Tribunal Statute and Rules. The taking of oral evidence is governed by Article 2(5) of the Statute, which precludes the Appeals Tribunal from taking oral testimony. Assuming Ms. Lee is requesting an oral hearing under Article 8(3) of the Statute and Article 18(1) of the Rules, the Appeals Tribunal does not find that an oral hearing “would assist in the expeditious and fair disposal of the case”. Thus, the request is denied.

#### Confidentiality

34. Ms. Lee made a request for confidentiality in her appeals and again in the Motion. The Appeals Tribunal denies the request for confidentiality, as did the UNDT. Article 10(9) of the Appeals Tribunal Statute provides that “[t]he judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal”. Thus, it is clear that one of the purposes or goals of the new internal justice system is to assure that the Appeals Tribunal judgments are public documents that are published and widely made available to the Organization’s staff and the general public. Other purposes or goals of the new internal justice system are to promote transparency and accountability in the operations of the Organization, as well as the new internal justice system. Thus, Article 20 of the Appeals Tribunal Rules provides that “[t]he published judgements will normally include the names of the parties”. As we have stated, “[t]he names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and, indeed, accountability”.

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The merits of the claims in the application are not before the Appeals Tribunal. Thus, the documents Ms. Lee seeks to submit would not assist this Tribunal in reaching an efficient and expeditious resolution of the appeal. In light of this, it cannot be said that exceptional circumstances exist to receive these documents or that their admission into evidence is required in the interest of justice. Thus, the request is denied.

*Production of Documents*

39. Under Article 8(1) of the Statute, the Appeals Tribunal has the authority to order the production of evidence, subject to Article 2. Ms. Lee seeks an order for the production of certain correspondence, e-mails, and the like, the “[l]egal basis for the Respondent’s statement” that the General Assembly has authority to abolish posts, and the “[l]egal references ... distinguishing the role of the General Assembly from the Secretary-General on ‘administrative and budgetary matters.’” Initially, Ms. Lee does not seek evidence when she seeks legal authority for statements by the Secretary-General in his answer. Further, Ms. Lee has not explained why the evidence she seeks is relevant to the issue on appeal. As noted above, the matter before the Tribunal is a matter of law. Thus, Ms. Lee’s motion for the production of documents is denied.

*Orders Nos. 182 & 199*

40. Generally, our jurisdiction provides that “only appeals against final judgments will be receivable.”<sup>9</sup>

41. The Dispute Tribunal Statute, however, provides that in addition to issuing final judgments in cases, the UNDT may also issue decisions under Article 2(2) regarding

an application ... to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

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<sup>9</sup> *Mpacko v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-314, para. 15, quoting *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160, para. 35 and *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005, para. 8.

42. When considering an appeal of a UNDT decision on an application for a suspension of action pending management evaluation, the Appeals Tribunal has consistently held that the appeal, regardless of whether it is from a judgment or an order, “will be receivable only if th[e] [Dispute] Tribunal, in adjudicating on such [an] application[], exceeded its competence or jurisdiction”.<sup>10</sup>

43. Ms. Lee claims that the UNDT erred on questions of law and failed to exercise its jurisdiction in issuing Orders Nos. 182 and 199. She does not, and cannot, claim that the UNDT exceeded its competence or jurisdiction in issuing these orders. This is not sufficient to allow an appeal of these orders and “to bypass the exception to the right to appeal set out in Article 2(2) of the UNDT Statute”.<sup>11</sup> Moreover, a review of the record shows that the UNDT did not exceed its competence or jurisdiction in issuing Orders Nos. 182 and 199 denying Mr. Lee’s two applications to suspend action. Thus, the appeals of these orders are not receivable *ratione materiae*.

*Order No. 183*

44. The Secretary-General similarly argues that Ms. Lee cannot file an interlocutory appeal of this Order denying her request for confidentiality. He is correct. Once again, Ms. Lee does not, and cannot, claim that the UNDT exceeded its competence or jurisdiction in issuing Order No. 183; she claims only that the UNDT made an error of law and failed to exercise its jurisdiction. Moreover, a review of the record again shows that the UNDT did not exceed its

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... [T]he UNDT enjoys wide powers of discretion in all matters relating to case management and ... [the Appeals Tribunal] must not interfere lightly in the exercise of the jurisdictional powers conferred on the tribunal of first instance to enable cases to be judged fairly and expeditiously and for the dispensation of justice. For this reason, and in accordance with Articles 2(2) and 10(2) of the UNDT Statute, appeals against decisions taken in the course of proceedings and relating to procedure ... are not receivable, even where the judge of first instance has committed an error of law or fact.

*Summary Judgment No. UNDT/2013/147*

46. The Dispute Tribunal issued summary judgment on its own initiative, without awaiting the Secretary-General's answer to Ms. Lee's application, pursuant to Article 9 of the UNDT Rules, which provides: "A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate."

47. On appeal, Ms. Lee does not contest the Dispute Tribunal's application of Article 9 of the UNDT Rules. The Dispute Tribunal summarily concluded that Ms. Lee's application was not receivable *ratione materiae*. Initially, the UNDT determined that the application challenged "only the decision to abolish [her] post ... , Management Analysis Assistant (G-5)".<sup>13</sup> Next, the UNDT found that "the abolition of [Ms. Lee]'s post has not yet been formally approved by the General Assembly. ... [And] the abolition of [her] post ... is nothing more than a proposal that the General Assembly could decide not to entertain."<sup>14</sup> Finally, the UNDT determined that the budgetary proposal made to the General Assembly to abolish Ms. Lee's post was not an administrative decision subject to judicial review within the meaning of *Andronov*<sup>15</sup> because it did not produce "direct legal consequences" on Ms. Lee's terms and conditions of employment; thus, the decision was not receivable *ratione materiae*.

48. The Dispute Tribunal correctly concluded that Ms. Lee's application was not receivable *ratione materiae* because it challenged a decision that was not an administrative decision subject to judicial review. In reaching this conclusion, the UNDT correctly applied the definition of administrative decision set forth in *Andronov*:

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<sup>13</sup> Impugned Judgment, para. 23.

<sup>14</sup> *Ibid.*, para. 27.

<sup>15</sup> Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), cited with approval in *Al Surkhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304.







Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2014 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Faherty

Entered in the Register on this 22<sup>nd</sup> day of December 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar