



**JUDGE DEBORAH THOMAS-FELIX, PRESIDING.**

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3. On 15 June 2016, the same day Mr. Wilson filed his application for suspension of the contested decision with the UNDT, he filed a motion for production of evidence, seeking an extensive disclosure of records in relation to his claims. The Secretary-General opposed the motion on the ground of relevance.

4. On 20 June 2016, the UNDT issued Order No. 147 (NY/2016), suspending the selection decision pending management evaluation after finding that the cumulative tests of Article 2(2) of the UNDT Statute had been met. As a preliminary matter, the UNDT determined that the contested selection decision had not yet been implemented and Mr. Wilson's application for suspension was thus receivable. In making this determination, the UNDT noted that "whilst the selected candidate's email of 27 May 2016 confirms his continued interest and availability, no records have been tendered or indeed any submission made that a formal offer ha[d] been made to the selected candidate or that he ha[d] accepted any such offer".<sup>2</sup> It further noted that the case involved a promotion of an internal candidate and, following earlier UNDT cases, held that although the contested decision had been communicated on 3 June 2016, it could not be implemented until 1 July 2016, as per Section 10.2 of Administrative Instruction ST/AI/2010/3 dated 21 April 2010 entitled "Staff selection system".<sup>3</sup> In its Order, the UNDT also rejected Mr. Wilson's motion for production of evidence, finding it not necessary and taking into account the urgent nature of proceedings for suspension of action.<sup>4</sup>

5. As noted above, on 1 July 2016, the Secretary-General appealed and, on 18 July 2016, Mr. Wilson answered.

6. On 30 August 2016, the Management Evaluation Unit (MEU) responded to Mr. Wilson's request of 7 June 2016 and informed him that the contested decision had been rescinded.

7. On 8 September 2016, the Secretary-General

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evaluation, and the Organization would risk defending a claim for its failure to effect a selected candidate's promotion, which the candidate accepted, on the statutorily-determined date.

14. The Secretary-General requests that the Appeals Tribunal find the appeal receivable, review it on an expedited basis, find that the UNDT exceeded its competence and jurisdiction under both Article 2(2) and Article 10(2) of the UNDT Statute and annul the impugned Order.

**Mr. Wilson's Answer**

15. Nothing in this case or in the Secretary-General's appeal supports the contention that the UNDT "clearly" exceeded its competence. Article 2(2) of the UNDT Statute and Article 13(4) of the UNDT Rules of Procedure provide that the UNDT is competent to hear and suspend any contested administrative decision subject to an ongoing management evaluation and that such matters "shall not be subject to appeal". Neither provision excludes cases of appointment, promotion or termination, which may thus be suspended during the pendency of management evaluation.

16. The argument that Article 10(2) modifies Article 2(2) of the UNDT Statute is without merit. These provisions have different scopes intentionally, with the goal of eliminating long suspensions while awaiting a judgment on the merits. The cases cited by the Secretary-General are cases where the UNDT clearly exceeded its competence. This is not the case here where a management evaluation request was timely filed, the UNDT found the cumulative requirements of Article 2(2) were met, and the suspension was ordered pending the management evaluation, not beyond it.

17. Nor is there any error by the UNDT with respect to its finding that 1 July 2016 was the date of implementation, pursuant to Section 10(2) of ST/AI/2010/3. The UNDT has taken the same position in other cases, which have not been appealed by the Secretary-General.

18. The Secretary-General seeks to uphold an unlawful decision by appealing a suspension of action order, opting to pay compensation when rescission is ordered. This does not speak well of the Administration's use of the Organization's justice system and resources. Without enforcement of accountability, co

19. Mr. Wilson requests that the Appeals Tribunal dismiss the appeal in its entirety.

**The Secretary-General’s “Motion for Consideration”**

20. Even though the appeal has been rendered moot by the issuance of the management evaluation, the Secretary-General requests that the Appeals Tribunal (i) determine that this case falls within the exception to the mootness doctrine recognized by many jurisdictions<sup>5</sup>, and (ii) exercise its discretion to review the issues raised on appeal in order to provide the Organization and the UNDT with guidance on the fundamental issues of law concerning the UNDT’s jurisdiction *ratione materiae* which significantly impacts the Organization’s staff selection process.

21. An exception to the mootness doctrine exists where there is a significant public interest in settling issues of law, particularly in disputes capable of repetition while evading review. This appeal (i) concerns the finality of selection decisions that are of significant importance to the Organization; (ii) raises issues that require judicial review yet which are unlikely to come before

administration of justice system, and the jurisprudence cited by the Secretary-General is not binding upon the Appeals Tribunal.

24. Even assuming the Appeals Tribunal could exercise jurisdiction, the Secretary-General has not put forward any compelling reason or “public interest” for an exception. The argument that these issues have a significant impact on the staff selection process is unfounded. It is far more important to the justice system that decisions are carried out properly than rushed through without oversight. The purpose of a suspension of action under Article 2(2) of the UNDT Statute was fulfilled in this case where, because of it, the Secretary-General could review the contested decision. This resulted in its rescission and the assessment process being remanded to a new assessment panel, thereby removing the need to issue any payment of compensation.

### **Considerations**

25. On 30 August 2016, the MEU responded to Mr. Wilson’s request for management evaluation of 7 June 2016 and informed him that the contested decision had been rescinded. As a result, there is no live issue before the Appeals Tribunal requiring it to pass judgment. Therefore, there is no need to rule on the question of whether execution of a jurisdictional decision of the UNDT is imperative if it is appealed. This Tribunal has consistently held that in the United Nations system of administration of justice, the Appeals Tribunal was established to

**Judgment**

28. The appeal is dismissed.



