



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Ms. Susan Lee Servas of Judgment No. UNDT/2012/195 in the case of *Servas v. Secretary-General of the United Nations*, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 11 December 2012.

#### Facts and Procedure

2. Ms. Servas joined the International Trade Centre (ITC), Geneva, on 20 January 2009 as a locally-recruited G-5 Programme Assistant on a short-term appointment, which was renewed through 19 July 2009. As of 20 July 2009, she was reappointed to the same post on a temporary contract. She served as a Programme Assistant at the G-5 level until 31 May 2010.

3. Ms. Servas was retroactively appointed, effective 1 June 2010, as an Associate Programme Adviser at the P-2 level, pursuant to a Settlement Agreement signed on 29 June 2011 under the auspices of the Office of the United Nations Ombudsman and Mediation Services (UNOMS).

4. On 27 October 2011, Ms. Servas filed an application before the UNDT (Case No. UNDT/GVA/2011/068) to enforce the Settlement Agreement. On 16 February 2012, the UNDT entered Judgment No. UNDT 2012/027, partially

Agreement. On 26 March 2012, the Ethics Officer refused to grant protection to Ms. Servas on the grounds that the Settlement Agreement did not constitute a protected activity within the scope of the Secretary-General's Bulletin ST/SGB/2005/21 ("Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations").

6. On 2 April 2012, Ms. Servas filed an application with the UNDT challenging the Ethics Office's decision of 26 March 2012. The Secretary-General filed his answer to the application on 3 May 2012, raising the defenses that the application was not receivable because: (i) decisions of the Ethics Office are not administrative decisions that are reviewable under Article 2(1)(a) of the UNDT Statute and the Ethics Office is independent of the Secretary-General; and (ii) Ms. Servas had failed to seek

Submissions

Ms. Servas' Appeal

10. The UNDT failed to attach sufficient weight to the exceptional circumstances of Ms. Servas' case which preclude the necessity of a management evaluation.

11. The UNDT failed to exercise its jurisdiction to remand the case for procedural correction in view of the UNDT Statute, the Rules of Procedure of the UNDT and in the interests of justice.

12. The UNDT erred in rejecting Ms. Servas' application on its merits and ignoring all considerations giving rise to a legitimate expectation that the Settlement Agreement is a protected activity.

13. The UNDT erred in failing to consider the rationale of Order No. UNDT/NBI/025, *Kasmani* (2010), which established that the UNDT's jurisdiction to find protected activity is not strictly limited to conditions in the Secretary-General's Bulletin, but can be interpreted in the interests of justice.

14. The UNDT failed to exercise jurisdiction to find *prima facie* retaliation in light of the evidence before it.

15. The UNDT erred in refusing a request for confidentiality without giving due consideration to the confidentiality clause in the Settlement Agreement.

Secretary-General's Answer

16. The UNDT correctly denied Ms. Servas' claim that management evaluation of the contested administrative decision is not required and correctly concluded that the application was not receivable, *ratione materiae*, due to her failure to seek management evaluation prior to bringing the application.

17. Article 10(4) of the UNDT Statute is not the basis for the UNDT to stay and hold in abeyance an application while the staff member seeks management evaluation. That provision applies only to errors by the Administration, not a staff member and, in any event, requires the Secretary-General to concur to the remand.

18. Statements made by the UNDT in the Judgment addressing the merits of the Ms. Servas' claims are *obiter dicta* since the UNDT correctly found that the application was not receivable. These *obiter dicta* statements cannot be the basis of an appeal of the Judgment.

Considerations

*Receivability*

19. On appeal, Ms. Servas contends that the UNDT erred in holding her application was not receivable because she had not requested management evaluation *before* filing it. She contends that, in light of the exceptional circumstances of her case, wherein she did submit a request for management evaluation within the requisite 60 calendar days of the administrative decision, the UNDT should have found her application to be receivable.

20. The UNDT determined that the application was not receivable *ratione materiae* under Article 8(1)(c) of the UNDT Statute. In reaching this determination, the UNDT noted

**THE UNITED N**

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of June 2013 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Simón

(Signed)

Judge Lussick

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar