



TRIBUNAL D 'APPEL DES NATIONS UNIES

Case No. 2010-066

Wasserstrom
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before: hDC 70d0-.61n C 90g0-.C 6.7.Tc9.95836.742P L0-.31i0-.31n C 90 BT /P <</MCID

JUDGE LUIS MARÍA SIMÓN , Presiding.

Synopsis

1. The Secretary-General has filed an interlocutory appeal against the decision of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) that the determination by the Director of the Ethics Office that no retaliation occurred constitutes an administrative decision that fell within the jurisdiction of the UNDT; and against its order to disclose the investigation report of the Office of Internal Oversight Services (OIOS) to James Wasserstrom (Wasserstrom). With regard to the first decision, going directly to the merits, and the second decision, concerning evidentiary matters, the Appeals Tribunal holds that the interlocutory appeals against both decisions are not receivable.

Facts and Procedure

2. In May 2007, Wasserstrom was informed that his appointment would not be continued due to a reduction of posts in the United Nations Interim Administration Mission in Kosovo (UNMIK). He then concluded an employment contract with Pristina Airport and Post Telecom Kosovo, which was to commence following the completion of his assignment with UNMIK on 1 July 2007. On 31 May 2007, Wasserstrom was informed that he was under investigation for concluding the employment contract. On 3 June 2007, Wasserstrom filed a complaint with the Ethics Office, claiming that the actions taken by the Organization not to extend his appointment and to initiate an investigation against him amounted to retaliation.

3. The Ethics Office referred his case to the OIOS for investigation, which, on 8 April 2008, concluded that there was no retaliation, and that the Organization's actions were justified. Based on the OIOS investigation report, the Ethics Office determined that "there cannot be a finding of retaliation in this case". This conclusion, together with a summary of the findings of the OIOS investigation, was sent to Wasserstrom by the Director of the Ethics Office in a letter dated 21 April 2008.

4. On 21 May 2008, Wasserstrom requested an administrative review of the outcome of the investigation into his request for protection from alleged retaliation. The request

was rejected on 8 August 2008 because the Administrative Law Unit considered that the letter of 21 April 2008 did not constitute an administrative decision that was susceptible to challenge. Wasserstrom's appeal before the Joint Appeals Board was subsequently transferred to the UNDT.

5. On 3 February 2010, the UNDT issued an Order in which it addressed the receivability of Wasserstrom's application and ordered the production of documents by the Secretary-General. The UNDT found that the decision of the Director of the Ethics Office that no retaliation occurred constituted an administrative decision and that the application was receivable.

6. On 22 March 2010, the Secretary-General filed an appeal against the Order. Wasserstrom filed his answer on 6 May 2010. The Secretary-General filed "observations" on 21 May 2010. On 27 May 2010, Wasserstrom responded to the "observations".

Submissions

Secretary-General's Appeal

7. The Secretary-General submits that the impugned Order is a judgment within the meaning of Article 2(1) of the Appeals Tribunal's Statute (Statute), and that the appeal is therefore receivable.

8. The Secretary-General submits that the UNDT erred in law and exceeded its jurisdiction in concluding that the determination by the Director of the Ethics Office that no retaliation had occurred constituted an administrative decision that fell within the jurisdiction of the UNDT.

9. The Secretary-General alleges that the UNDT exceeded its competence by ordering the Ethics Office to disclose the OIOS investigation report to Wasserstrom. He further alleges that the UNDT erred on a question of law in finding that the Director of the Ethics Office should have sought the views of Wasserstrom before concluding that no retaliation had occurred.

THE UNITED NATIONS APPEALS TRIBUNAL

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Judgment No. 2010-UNAT-060

