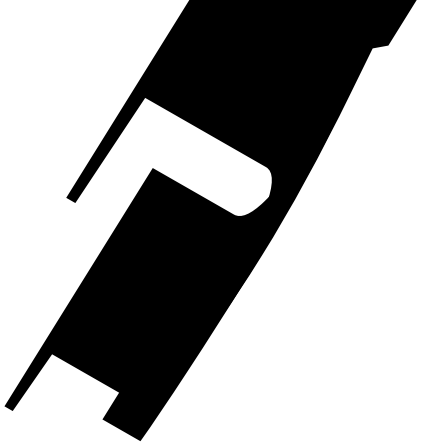

Case No.:

SECREEMC 21

Facts

1. On the morning of 16 October 2009, the UNDT Registry received an application for suspension of action in respect of

5. Also on 3 Novemb

order to suspend an administrative decision. It is by no means an easy test to meet. The Tribunal has previously held that an application for suspension

> will only succeed where the Applicant is able to establish a *prima facie* case on a claim of right, or where he can show that *prima facie*, the case he has made out is one which the opposing party would be called upon to answer and that it is just, convenient and urgent for the Tribunal to intervene, and that unless it so intervenes at that stage, the Respondent's action or decision would irreparably alter the status quo. Of course, the onus of establishing a case for a suspension of action order lies on the Applicant.[1]

11. The threshold to be met being what it is, suspension is obviously not an order which a court will be minded to grant lightly. An appeal against such an order would clearly impede the smooth progress of a case, and is hardly conducive to the efficient and expeditious conduct of proceedings. The wisdom of the stipulation in Article 2(2) of the Statute, and Articles 13 and 14 of the Rules prohibiting an appeal against an order for suspension of action is therefore easily understood. As the Appeals Tribunal stated in *Tadonki*, "one goal of our new system is timely judgments. This Court holds that generally, only appeals against final judgments will be receivable. Otherwise, cases could seldom proceed if either party was dissatisfied with a procedural ruling."[2]

12. In the instant case, therefore, that an appeal against an interim order (2009/63) has been received and decided upon by the Appeals Tribunal, on a case which has been heard and adjourned for judgement, places the Dispute Tribunal in most difficult situation.

13. The Appeals Tribunal's reading of the Rules in effect means that a judicial finding of *prima facie* unlawfulness may be reversed, or in any case come to nought, by a decision of the Management Evaluation Unit of the Department of Management of the Secretariat. It is difficult to see why a court must be seised of an application to suspend when its decision can, in anything from 30 to 45 days, be reversed by a decision of the administration endorsing its own impugned decision. The framers of the new system and drafters of the Statute could not have intended for

[1] *Omondi v Secretary General of the United Nations*, UNDT/NBI/O/2010/017, 11 February 2010.
[2] *Tadonki v Secretary General of the United Nations*, UNAT Case No. 2009-006, at para. 8.

the new system

annulled the Order. Two out of the three Judges comprising the Bench are not in a position to read the UNAT Judgement issued in French.

17. While the Applicant has not argued the instant motion on the basis of Article 10(8), it is clear to the Tribunal from the submissions of the Parties that a notice was sent to the Applicant on 29 April 2010 informing him of his immediate separation from service on the basis of a judgment he does not understand. For its part, a majority of the Bench in this case finds itself in the curious position of not being able to understand the submissions being relied on by counsel for the Respondent. That Counsel for the Applicant has not made reference to the reasoning of

21. On the facts of the present case, the Tribunal cannot be seen to be forcing a contractual relationship between an employer and an employee. This principle does not, in any way, diminish the fact that the Tribunal has made preliminary findings of wrongful conduct on the part of the employer. In the circumstance that those findings are found to be proven to the appropriate standard on the basis of the evidence tendered at the substantive hearing, the remedy for the employee can only take the form of compensation for the injuries that ha