



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/GVA/2009/27

Judgment  
No: UNDT/2009/023

Date: 24 September 2009

Original: English

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**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** Victor Rodríguez

SHEYKHIYANI

v.

SECRETARY-GENERAL OF THE UNITED  
NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

none

**Counsel for Respondent:**

Shelly Pitterman, DHRM/UNHCR

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 and Article 31 of the Rules of Procedure of the UNDT.

## **Judgment**

1. The Application is dismissed.

## **Facts**

2. The Applicant originally worked as an Interpreter under several fixed-term appointments. After having written a letter to her supervisor which contained the words ‘my resignation’ and was considered as such the Applicant was separated from service on 22 August 2008.
3. Having requested an administrative review which was not in her favor the Applicant filed on 28 January 2009 an appeal before the Geneva Joint Appeals Board (JAB) against her separation from the service seeking as remedy to “return back to work in UNHCR”.
4. On 8 April 2009 the Applicant was informed that she could present any observations in view of the Respondent’s reply dated 6 April 2009 not later than by 8 June 2009. On 19 June 2009 the JAB Secretary reminded the Applicant that she had not submitted any observations until then.
5. On 22 June 2009 the Applicant answered that she wished she had the chance of hiring an international lawyer to defend her. “I am not able to do so and I prefer to stop and forget what has happened to me.”
6. On 17 July 2009 the United Nations Dispute Tribunal (UNDT) Registry informed the Applicant that her case had been transferred to UNDT and that she was asked to confirm if she would withdraw her case or if she wished to pursue it and have it examined by a Judge of the Dispute Tribunal.
7. The Applicant replied on 19 July 2009 “Refer to my e-mail in which I announced my doubt about continuation of my case follow up, I want to clarify still I am not confident to take any action in this regard again.”
8. After being informed that the Dispute Tribunal intended to decide on the case by summary judgment the Applicant wrote on 17 September 2009 “as I have already announced I do not want to follow up about my case”.

## Considerations

9. According to art. 9 of the Rules of Procedure of the United Nations Dispute Tribunal (UNDT RoP), which are based on art. 7.2 of the Statute of the United Nations Dispute Tribunal (UNDT Statute), the Dispute Tribunal may determine, on its own initiative, that summary judgment is appropriate. This may usually happen when there is no dispute as to the material facts and judgment is restricted to a matter of law. The crucial question in this case - if and when the Applicant could withdraw her application - is such matter of law.
10. According to art. 8. 1 (b), 3.1 and 2.1 of the UNDT Statute any case in front of the Dispute Tribunal has to be filed by way of individual application. As no case may arise *ex officio* but only by way of individual decision to apply, it is also clear that every action can be waived as *actus contrarius* of the application.
11. As no specific rules on withdrawal exist neither in UNDT Statute nor in the UNDT RoP the principles of withdrawal of action shall be dealt with by decision of the Dispute Tribunal on the particular case by virtue of the powers conferred on it by art. 7 UNDT Statute (cf. art. 36.1 UNDT RoP).
12. According to general principles of procedural law any statement of intention toward the court - firstly - has to be clear and without any preconditions, and – secondly – cannot be withdrawn in general.
13. As for clarity it is a matter of judicial interpretation how a written statement may and shall be understood. In this regard - of course - the wording of the statement as well as the intention of the author have to be taken into account.

14. With reference to these criteria there are no reasonable doubts that the Applicant has withdrawn her action already by her e-mail dated 22 June 2009 saying that she prefers “to stop and forget what has happened”. In particular as a reaction to the JAB’s reminder that no objections of the Applicant in view of the Respondent’s reply had been received until then, these words and their meaning can only be understood as the clear expression of the Applicant’s wish to finish with her case immediately and without any further action.

15. Once sent to the court a withdrawal of action cannot be made undone. In general procedural law does not tolerate to turn back the clock, as reasons of security and reliability tie the parties to their statements unless they were in error about their meaning. As the Applicant does not argue that she did not know what she said when she wrote that she preferred “to stop and forget what has happened”, it is irrelevant that in her e-mail dated 19 July 2009 the Applicant now wanted to clarify still she was “not confident to take any action in this regard again”. Although the Applicant may - at that time - have had second thoughts about her position and potentially wanted to keep her case ongoing, it was and is not possible to withdraw the withdrawal. As such, the Applicant’s last e-mail saying that she does not want to follow up about her case has no legal effect but is only of declaratory character.

### **Conclusion**

16. For the reasons described above the application has to be dismissed on withdrawal by the Applicant.

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*(Signed)*

Judge Thomas Laker

Dated this 24<sup>th</sup> day of September 2009

Entered in the Register on this 24<sup>th</sup> day of September 2009

*(Signed)*

Víctor Rodríguez, Registrar, Geneva