



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

JAEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Nicholas Christonikos

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Sarahi Lim Baró, ALS/OHRM, UN Secretariat

1. On 13 January 2011 the Applicant, a staff member of the International Civil Service Commission, submitted an application for suspension of action of the decision not to continue her special post allowance (“SPA”) for the month of January 2011 and thereafter. The Applicant asserted that this decision would go into effect on 17 January 2011 as she had been informed by the Accounts Division in the Office of Programme Planning, Budget and Accounts of the United Nations Secretariat that her salary would be paid without the SPA unless a personnel action form extending the SPA was processed on or before 17 January 2011.

2. The Respondent filed his reply on 14 January 2011. On 17 January 2011 the Dispute Tribunal held a hearing on the application for suspension of action. On the same day the Tribunal issued Order No. 13 (NY/2011), by which it granted the requested suspension of action of the contested decision during the pendency of the management evaluation, directing the Respondent to “ensure that appropriate and immediate administrative arrangements [were] made to implement [Order No. 13 (NY/2011)]”. On 1 February 2011 the Tribunal issued Order No. 29 (NY/2011), setting out the reasons for its decision to grant the suspension of action. In accordance with the practice of the Tribunal, Case No. UNDT/NY/2011/005 thereafter remained open in anticipation of a possible subsequent application that could have been filed by the Applicant under art. 2.1 of the Statute of the Dispute Tribunal.

3. The Applicant had a previous matter with the Tribunal concerning the Administration’s decision not to reclassify the P-2 post encumbered by her to the P-3 level (Case No. UNDT/NY/2009/098). That matter was disposed of by Judgment No. UNDT/2010/165, rendered on 17 September 2010. Thereafter, on 28 December 2010, the Applicant submitted an application contesting the decision to deny her request for conversion of her fixed-term appointment to a permanent appointment (Case No. UNDT/NY/2010/103). Therefore, as at 24 February 2011, the Applicant had two active matters pending before the Tribunal—

Case No. UNDT/NY/2010/103 (concerning the conversion of her appointment) and Case No. UNDT/NY/2011/005 (concerning her SPA).

4. It appears that, at some point in February 2011, the parties went to mediation, although no notice to this effect was provided to the Tribunal. In this regard, both parties are reminded that, pursuant to art. 15.3 of the Rules of Procedure, they were required to promptly inform the Registry of the Dispute Tribunal of their decision to seek mediation. Failure to do so resulted in a waste of judicial resources and time.

5. On 14 February 2011 the Tribunal received an email from the Director of Mediation Services, Office of the United Nations Ombudsman and Mediation Services, informing the Tribunal that any outstanding matters were resolved to the satisfaction of both parties. The email stated (emphasis in original):

I am writing to advise that with the assistance of the UN Office of the Ombudsman and Mediation Services, [the Applicant] has participated in informal dispute resolution proceedings which have resulted in a successful resolution of any and all applications that [the Applicant] has or may have pending with the UN Dispute Tribunal.

Although our office is not aware of the precise status of matters that [the Applicant] may have pending in the UN Dispute Tribunal, I have attached a copy of [the Applicant]'s signed letter in which she states in pertinent part, "I request that **any and all applications** that I have filed with the UN Dispute Tribunal be withdrawn".

6. Attached to the Director's email was a letter signed by the Applicant and dated 10 February 2011, requesting that "any and all applications that [she has] filed with the UN Dispute Tribunal be withdrawn".

7. The Applicant's letter of 10 February 2011, however, did not identify the case numbers of the cases she sought to withdraw. Accordingly, on 14 February 2011, pursuant to my directions, the New York Registry of the Dispute Tribunal requested the Applicant to file and serve separate signed notices of withdrawal in relation to each case she intended to withdraw, clearly identifying the case number.

8. On 24 February 2011 the Applicant filed a notice of withdrawal in relation to Case No. UNDT/NY/2011/005. The notice stated:

As a result of mediation proceedings conducted by the UN Office of the Ombudsman and Mediation Services, the International Civil Service Commission and I have reached a resolution of all issues. Accordingly, I request that case UNDT/NY/2011/005 (Jaen) be withdrawn.

Conclusion

9. In the circumstances, there is no longer any matter for adjudication by the Dispute Tribunal and Case No. UNDT/NY/2011/005 is therefore closed.

(Signed)

Judge Ebrahim-Carstens

Dated this 25th day of February 2011

Entered in the Register on this 25th day of February 2011

(Signed)

Santiago Villalpando, Registrar, UNDT, New York