



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/025

Judgment No.: UNDT/2011/072

Date: 25 April 2011

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

NAVAL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Bart Willemsen, OSLA

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Introduction

1. On 8 January 2011 the Applicant filed an application before the Tribunal contesting the imposition of the disciplinary sanctions of a written censure, a loss of two steps in grade, and a deferral for two years of his eligibility for salary increment (“the Impugned Decision”). These measures were imposed following the Respondent’s finding that the Applicant had received and stored emails containing inappropriate materials and had failed to report that other staff members were receiving, distributing and/or storing these emails.

2. In the statement of facts attached to the application form, the Applicant averred that he never solicited the receipt of such emails and that he was placed on a distribution list without his consent. He further denied that his acts or omissions constituted storage of such emails, and stated that the Respondent erred in finding that his failure to report other staff members constituted misconduct.

3. The Applicant also contended that the sanction of deferment of eligibility for salary increment is *ultra vires*, as it was not one of the sanctions foreseen by former staff rule 110.3, applicable at the time of the alleged misconduct. For the same reason, he submitted that the sanction of demotion without the possibility of promotion for two years was also *ultra vires*.

4. Finally, the Applicant contended that his due process rights were violated during the investigation stage and thereafter by the Respondent’s failure to take into account mitigating circumstances. He also averred, *inter alia*, that he was misled and never informed that he was the “subject” of misconduct allegations at the start of the

interview, that he was denied access to counsel during the interview with Office of Internal Oversight Services, that insufficient or no regard was had to mitigating circumstances, and that a delay of more than 24 months was prejudicial to him.

5. The Applicant requested the Tribunal to rescind or modify the Impugned Decision and to award appropriate compensation for the violation of his due process rights and associated mental stress and anxiety.

6. By email dated 8 April 2011, the Registry of the Tribunal in New York acknowledged receipt of the application, served it on the Respondent, and instructed the Respondent to file and serve his reply by 9 May 2011. The Registry also requested the Applicant to re-file and serve the completed application form in the appropriate manner by 12 April 2011.

7. On 11 April 2011 Counsel for the Applicant filed a motion for withdrawal of the application informing the Tribunal that, “By the present motion, [the Applicant] respectfully withdraws his application”. No explanation was provided for the withdrawal of the matter and no further application, pleading or correspondence has been received by the Tribunal from either party to the proceedings.

Conclusion

8. In light of the Applicant's withdrawal of his application, there is no longer any matter for adjudication by the Dispute Tribunal and Case No. UNDT/NY/2011/025 is therefore closed without determination of its merits.

(Signed)

Judge Ebrahim-Carstens

Dated this 25th day of April 2011

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

(Signed)

Santiago Villalpando, Registrar, New York