



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

GAUTHIER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON WITHDRAWAL**

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**Counsel for Applicant:**  
Brian Gorlick, OSLA

**Counsel for Respondent:**  
Jorge Ballesterro, UNICEF

## **Introduction**

1. In her application dated 9 December 2010, the Applicant challenged the administrative decision dated 30 June 2010 of the United Nations Children's Fund ("UNICEF") not to renew her fixed-term contract beyond 31 July 2010. The Applicant contended that she was not provided a proper reason for her non-renewal.

2. Following the filing of the Respondent's reply, and further pleadings by order of the Tribunal, the question of liability was decided on the papers upon agreement by the parties. On 28 February 2013, the Tribunal issued Judgment No. UNDT/2013/039 in which it found that the Applicant's claim succeeded in that the Respondent had been unable "to justify in law or on the facts the reason given for the non-renewal of the Applicant's fixed-term appointment".

3. On 14 May 2013, the Respondent filed and served a motion informing the Tribunal that, whilst not conceding the merits of an appeal, due to particular prevailing circumstances in this case, the parties had settled the issue of relief, and that the case should be formally closed upon confirmation by the Applicant of such settlement.

4. By motion dated 14 May 2013, the Applicant informed the Tribunal that, the parties had reached a settlement on relief and signed an agreement on 6 May 2013. The outstanding issue of relief having been satisfied, the Applicant requested that "all other proceedings and claims relating to this case be closed".

### **Discontinuance of proceedings**

5. As the Tribunal stated in *Giles* UNDT/2012/194, although its Rules of Procedure contain a provision for summary judgment (see art. 9 of the Rules and also art. 7.2(h) of the Tribunal's Statute), there are no specific provisions in the Tribunal's Statute or Rules of Procedure regarding discontinuance, abandonment, want of prosecution, postponement, or withdrawal of a case. However, abandonment of proceedings and withdrawal of applications are not uncommon in courts and generally result in a dismissal of the case either by way of an order or a judgment. In this regard, reference can be made to art. 19 of the Tribunal's Rules of Procedure, which states that the Tribunal "may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties". Also, art. 36 of the Tribunal's Rules of Procedure provides that all matters that are not expressly provided for in the Rules 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 of its Statute.

6. The desirability of finality of disputes within the workplace cannot be gainsaid (see *Hashimi* Order No. 93 (NY/2011) and *Goodwin* UNDT/2011/104). Equally, the desirability of finality of disputes in proceedings requires that a party should be able to raise a valid defence of *res judicata* which provides that a matter between the same parties, involving the same cause of action may not be adjudicated twice (see *Shanks* 2010-UNAT-026bis, *Costa* 2010-UNAT-063, *El-Khatib* 2010-UNAT-066, *Beaudry* 2011-UNAT-129). As stated in *Bangoura* UNDT/2011/202, matters that stem from the same cause of action, though they may be couched in other terms, are *res judicata*, which means that the applicant does not have the right to bring the same complaint again.

7. In this instance, the merits of the case were disposed of in favour of the Applicant by Judgment No. UNDT/2013/039, the only remaining issue for determination was the relief to be granted to the Applicant. The Respondent apparently wishes to place on record that, ordinarily, the aforesaid judgment would have triggered an appeal, but a settlement was entered into because of current personal circumstances pertaining to this case. Once a matter has been determined with finality on all the issues, parties should not be able to re-litigate the same issues. An issue, broadly speaking, is a matter of fact or question of law in a dispute between two or more parties which a court is called upon to decide and pronounce itself on in its judgment.

8. The Tribunal finds that the aforesaid request by the Applicant is an unequivocal withdrawal with informed consent, premised on a full and final signed agreement of settlement of any claims whatsoever and howsoever pertaining to the remaining issue of relief, without liberty to reinstate or appeal. The Tribunal also understands that by settling the outstanding issue of relief, on “humanitarian grounds”, the Respondent waives the right to appeal liability in this particular case, as it is the firm intention of both parties to put this matter to final rest.

9. The Tribunal is satisfied that the parties have amicably resolved the outstanding issue of relief for confidential reasons that are best known and kept to the parties, and commends Counsel for their efforts in resolving the case amicably.

### **Conclusion**

1. The merits having already been decided, the Applicant has withdrawn the remaining issues of the dispute in finality due to the settlement agreement between

the parties. There no longer being any determination to make, this case is closed without liberty for either party to reinstate or appeal.

*(Signed)*

Judge Ebrahim- Carstens

Dated this 17<sup>th</sup> day of May 2013

Entered in the Register on this 17<sup>th</sup> day of May 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York