UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2012/071
Judgment No.: UNDT/2013/082
Date: 22 May 2013
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

GARCIA-WEBSTER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON WITHDRAWAL

Counsel for Applicant:
Miles Hastie, OSLA

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. On 10 August 2012, the Applicant submitted an application appealing the decision "that ST/AI/2007/3 [(After-service health insurance)] would apply to [her] instead of ST/AI/394, thus rendering [her] ineligible for After Service Health Insurance".

2. The same day, the Tribunal acknowledged receipt of the application and informed the Respondent that, pursuant to art. 10 of the Rules of Procedure, the reply was due on 11 September 2012.

3. On 10 September 2012, the Respondent submitted a request for extension of time to file his reply until 2 October 2012 in order "to explore settlement options with the Applicant".

4. On 12 November 2012, after the Respondent was granted several time extensions to file his reply, the Applicant filed and served a notice of withdrawal indicating that "[p]ursuant to the terms and conditions of a settlement agreement, the Applicant withdraws all of her allegations and claims in the proceedings".

Withdrawal of application

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. Once a matter has been determined with finality, parties should not be able to re-litigate the same issue. An issue, broadly speaking, is a matter of fact or question of law in dispute between two or more parties which a court is called upon to decide and pronounce itself on in its judgment. Article 2.1 of the Tribunal's Statute states that the Tribunal "shall be competent to hear and pass judgment on an application filed by an individual" as provided for in art. 3.1 of the Statute. Generally, a judgment involves a final determination of the proceedings, or of a particular issue

in those proceedings. The object of the *res judicata* rule is that "there must be an end to litigation" in order "to ensure the stability of the judicial process" (*Meron* 2012-UNAT-198) and that a litigant should not have to answer the same cause twice. Therefore, a determination on a technical or interlocutory matter is not a final disposal of a case, and an order for withdrawal is not always decisive of the issues raised in a case.

8. The Tribunal finds that the aforesaid notice of withdrawal 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 Applicant's case, without liberty to reinstate or appeal.

9. The Applicant having confirmed that she is indeed withdrawing the matter fully, finally and entirely, including on the merits, without right of reinstatement or appeal, closure of the case with a view to finality of proceedings is the most appropriate course of action.

10. In view of the nature of the claim in dispute and the costs already incurred, as well as potential costs of subsequent litigation, the Tribunal commends both parties and their Counsel for their efforts in resolving the case amicably. The Tribunal notes that such efforts should be encouraged as amicable resolution of cases saves the valuable resources of staff and the Organization and contributes to the harmonious working relationship between the parties.

Order

11. The dispute having been settled by way of a settlement agreement, the Applicant has withdrawn the matter fully, finally and entirely, including on

the merits. 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 22nd day of May 2013

Entered in the Register on this 22nd day of May 2013

(*Signed*)

Hafida Lahiouel, Registrar, New York