



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

HASSANIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Lennox S. Hinds

Counsel for Respondent:

Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. On 18 May 2011, the Applicant, a Document Clerk in the Publishing Section, Meeting and Publishing Division, Department for General Assembly and Conference Management (“DGACM”), filed an application contesting the decision to send him to the United Nations Climate Change Conference, Cancun, Mexico, with a reduced daily subsistence allowance (“DSA”) and reduced overtime compensation. The Respondent filed his reply on 16 June 2011.

Relevant background

2. On 19 November 2013, the parties informed the Tribunal that “they [have] agreed to attempt informal resolution of th[e] matter through the Mediation Division of the United Nations Office of the Ombudsman and Mediation Services (“UNOMS”) and request the Dispute Tribunal to suspend the proceedings pending efforts to settle the matter in 30 days”.

3. The Tribunal by Order No. 319 (NY/2013) dated 20 November 2013 granted the parties’ request to suspend the proceedings until 18 December 2013 at which time the parties were to inform it whether or not the case had been resolved.

4. On 17 December 2013, 16 January 2014, 19 February 2014, 26 February 2014 and 27 March 2014, UNOMS, on behalf of the parties, requested additional suspension of the proceedings for the purpose of enabling the parties to consider settlement offers and the Tribunal granted these requests.

5. On 7 April 2014, UNOMS informed the Tribunal that “due to the good faith efforts of all parties, the matter was settled in mediation”, and the Applicant confirmed on 10 April 2014.

Consideration

6. The Tribunal congratulates both parties for their good faith efforts in resolving the case amicably.

7. By Order No. 50 (NY/2014) dated 28 March 2014, the Tribunal directed the Applicant, in case this matter was to be resolved by 10 April 2014, to confirm in writing that his application was withdrawn fully, finally and entirely, including on the merits until. The Applicant has not filed a withdrawal request by the imparted deadline.

8. Article 8.2 of the Dispute Tribunal's Statute states that: "[a]n application shall not be receivable if the dispute arising from the contested decision had been resolved by an agreement reached through mediation. ...".

9. The Tribunal finds that this legal provision does not distinguish between reaching an agreement through mediation before or after the filing of an application with Dispute Tribunal. Consequently, the Tribunal considers that art. 8.2 applies to all cases where the parties reach an agreement through mediation regardless of when that occurs. In accordance with the general principle of law: *ubi lex non distinguit, nec nos distinguere debemus*, where the law does not making a distinction, the interpreter (Judge) cannot make a distinction either.

10. In the present case the parties reached an agreement through mediation after the application was filed and the Tribunal will reject the application as being non-receivable.

Conclusion

In the light of the foregoing, the Tribunal DECIDES

11. The application is rejected as non-receivable.

(Signed)

Judge Alessandra Greceanu

Dated this 10th day of April 2014

Entered in the Register on this 10th day of April 2014

(Signed)

Hafida Lahiouel, Registrar, New York