



Before: Judge Coral Shaw

Registry: Geneva

Registrar: René M. Vargas M.

ZHANG-OSMANCEVIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Cristiano Papile, ALS/OHRM, UN Secretariat

Susan Maddox, ALS/OHRM, UN Secretariat

Introduction

1. On 29 October 2013, the Geneva Registry of the United Nations Dispute Tribunal received an application from the Applicant, a former staff member of the Department of Safety and Security, United Nations Office in Vienna, contesting the Secretary-General's decision dated 22 July 2013 to dismiss him from service under staff rule 10.2(a)(ix). The Application was registered under Case No. UNDT/GVA/2013/061 and assigned to Judge Thomas Laker.

2. The Tribunal, by Court Case Management System (CCMS) notification of 29 October 2013, acknowledged receipt of the application and requested the Applicant to fill in, duly sign and submit the correct application form, which was attached to the notification. It further stressed that any annexes to the application should be listed and attached to it, with the corresponding name and number. The Tribunal also provided the Applicant with the *Guidelines on the filing of submissions through the eFiling portal*.

3. On 31 October 2013, the Applicant filed through CCMS the relevant application form duly signed; he failed, however, to properly organize the annexes to the application. After two subsequent CCMS notifications from the Registry, requesting the Applicant to correctly organize his submission and to which the Applicant did not react, the Tribunal undertook to number and organize the annexes filed by the Applicant.

4. The application was served to the Respondent on 14 March 2014.

5. In his reply, submitted on 14 April 2014, the Respondent argues that the present application, in its entirety, is time-barred and, therefore, not receivable.

6. By Order No. 25 (GVA/2015) of 3 February 2015, following a reassignment of the case to the undersigned Judge, the Applicant was requested to file his arguments in relation to the preliminary question of receivability by Tuesday, 10 February 2015. As per the Tribunal's standard practice, the order was notified to the parties by CCMS notification sent to the email address on record provided by each of them. The Applicant did not make any filing by the set deadline.

7. By CCMS notification of 16 February 2015, also sent to the Applicant's email address on record, the Tribunal's Registry in Geneva reiterated its request to the Applicant to file his submission pursuant to the above-referenced Order, extending the deadline for making it to Friday, 20 February 2015.

8. The Applicant yet again did not make any submission to the Tribunal within the prescribed deadline.

9. By Order No. 44 (GVA/2015) of 25 February 2015, the Applicant was given a last deadline, namely until Thursday 5 March 2015, to comply with Order No. 25 (GVA/2015). Additionally, the Tribunal ordered that the Applicant's failure to file within said deadline would result in the dismissal of his case for want of prosecution. As per the Tribunal's standard practice, the order was notified to the parties by CCMS notification sent to the email address on record provided by each of them. The Applicant did not make any filing by the set deadline.

Consideration

10. According to article 9 of the UNDT rules of procedure (RoP), the Tribunal may determine, on its own initiative, that summary judgment is appropriate. This may happen when there is no dispute as to the material facts of the case and judgment is restricted to a matter of law. The question of abandonment of proceedings raised by this case is such a matter of law, and the material facts relevant to determine this particular issue are not disputed.

11. In the absence of specific provisions in the Tribunal's RoP applicable in case of abandonment of proceedings, the Tribunal has dealt with it under article 36 whereby "[a]ll matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal ... by virtue of the powers conferred on it by article 7 of its statute".

12. The Tribunal has already held that the right to institute legal proceedings is a general principle of procedural law predicated upon the condition that the person using it has a legitimate interest in initiating and maintaining legal action. Access

to the court has to be denied to those who are not in need of judicial remedy, as well as to those who are obviously no longer interested in the proceedings they instituted (see *Bimo and Bimo* UNDT/2009/061).

13. The latter applies to the Applicant. He was officially requested on three occasions to submit his arguments concerning the issue of receivability of his application, was given ample time to do so and clearly warned of the consequences of his failure to come forward.

14. Although the Applicant made submissions to complete his initial Application, he failed to act upon the Tribunal's subsequent instructions on the issue of receivability of his case or even to provide a reply to its communications. The Tribunal, therefore, concludes that the Applicant is no longer interested in the outcome of the legal proceedings he instituted, which must therefore be deemed to have been abandoned.

Conclusion

15. In view of the foregoing, the present application is dismissed in its entirety, without determination of its merits and without prejudice, for abandonment of proceedings.

16. The Tribunal will only consider reopening the application upon receipt of a motion to reinstate from the Applicant providing the grounds for his failure to act, reasonably showing that his failure to respond to the Tribunal's orders was not intentional or the result of conscious indifference, and submitting evidence that it is the interests of justice to reinstate the proceedings.

(Signed)

Judge Coral Shaw

Dated this 24th day of April 2015

Entered in the Register on this 24th day of April 2015

(Signed)

René M. Vargas M., Registrar, Geneva