



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

BARRIE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON WITHDRAWAL

Counsel for Applicant:

George C. Irving

Counsel for Respondent:

Bart Willemsen, UNICEF

Introduction

1. On 16 July 2018, the Applicant, challenged her non-selection to the post of Senior Co-Ordinator, OUR UNICEF.
2. On the same day, the Registry acknowledged receipt of the application and transmitted it to the Respondent, instructing him to file a reply by 15 August 2018.
3. By Order No. 158 (NY/2018) dated 15 August 2018, the Tribunal suspended the proceedings until 1 October 2018 pursuant to the parties' joint motion for a suspension of the proceedings dated 14 August 2018.
4. By Order No. 192 (NY/2018) dated 2 October 2018, the Tribunal suspended the proceedings until 1 November 2018 pursuant to the parties' joint motion for a further suspension of the proceedings dated 1 October 2018.
5. By Order No. 218 (NY/2018) dated 1 November 2018, the Tribunal suspended the proceedings until 4 January 2019 pursuant to the parties' joint motion for a further suspension of the proceedings dated 30 October 2018.
6. By Order No. 3 (NY/2019) dated 3 January 2019, the Tribunal suspended the proceedings until 4 March 2019 pursuant to the parties' joint motion for a further suspension of the proceedings dated 21 December 2018.
7. By Order No. 42 (NY/2019) dated 28 February 2019, the Tribunal suspended the proceedings until 1 April 2019 pursuant to the parties' joint submission of 27 February 2019.
8. By Order No. 55 (NY/2019) dated 29 March 2019, the Tribunal granted a joint motion for suspension of the proceedings until 1 May 2019.
9. By Order No. 73 (NY/2019), the Tribunal granted a joint motion for suspension of the proceedings until 3 May 2019.

10. By Order No. 74 (NY/2019), the Tribunal granted a joint motion for suspension of the proceedings until 10 May 2019. The Tribunal directed the parties to inform the Tribunal, by 10 May 2019, as to the progress of the informal discussions and whether this case had been resolved, in which case, the Applicant was to inform the Tribunal that she withdrew her application.

11. On 10 May 2019, following settlement by mutual agreement between the parties, the Applicant filed a notice of withdrawal stating that she fully withdraws all of her claims in the present proceedings in finality, including on the merits, and therefore requests a discontinuance of the proceedings in Case No. UNDT/NY/2018/031.

Consideration

12. 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 persons, 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). Matters that stem from the same cause of action, though they may be couched in other terms, are *res judicata*, which means that an applicant does not have the right to bring the same complaint again.

13. 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 party should not have to answer the same cause twice. Once a matter has been resolved, a party should not be able to re-litigate the same issue. An unequivocal withdrawal means that the matter will be disposed of such that it cannot be reopened or litigated again.

14. The Applicant's clear and unequivocal withdrawal of all her claims through a final and binding mutual agreement with regard to the rights and liabilities of both parties in all respects, requires no pronouncement on the merits and concludes the current matter before the Tribunal. As the matter has now been settled by mutual agreement, there is no matter for adjudication by the Tribunal.

15. The Tribunal commends both parties, and their respective Counsel, for their good faith efforts in resolving this case amicably by mutual agreement. Such efforts should be encouraged as the amicable resolution of cases saves the Organization valuable resources and contributes to a harmonious working environment within the Organization, particularly where there is an ongoing employment relationship.

Conclusion

16. This matter having now been settled by mutual agreement and consent, Case No. UNDT/NY/2018/031 is hereby closed.

(Signed)

Judge Ebrahim-Carstens

Dated this 13th day of May 2019

Entered in the Register on this 13th day of May 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York