



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NY/2018/020
UNDT/NY/2018/022
UNDT/NY/2018/030
UNDT/NY/2019/014
Judgment No.: UNDT/2019/108
Date: 13 June 2019
Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Nerea Suero Fontecha

ABUBAKR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON WITHDRAWAL

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, an Information Systems Officer at the P-4 level with the Office of Information and Communications Technology (“OICT”) in New York, filed several claims before the Dispute Tribunal: UNDT/NY/2018/020, UNDT/NY/2018/022, UNDT/NY/2018/030, and UNDT/NY/2019/014.

2. In UNDT/NY/2018/020, the Applicant contested OICT’s failure, since 2016, to assign him meaningful work commensurate with his qualifications and experience. The Respondent replied that the Applicant did not identify an administrative decision capable of being reviewed and that the Applicant was assigned work but that he refused to cooperate fully with his supervisor to discuss work assignments. The case was referred to the Mediation Division of the United Nations Ombudsman and Mediation Services (“UNOMS”) on 31 May 2018.

3. In UNDT/NY/2018/022, the Applicant contested the Administration’s failure to properly address his complaint of abuse of authority, dated 21 April 2014. The Respondent replied that the application was time-barred as the Applicant failed to file an application within three years of receiving notification from the Under-Secretary-General for Management. This case was referred to UNOMS on 31 May 2018.

4. In UNDT/NY/2018/030, the Applicant contested the Administration’s failure to properly address his complaint of abuse of authority dated 11 January 2018. The Respondent replied that the application was not receivable because there has been no final administrative decision as the formal procedures under ST/SGB/2008/5 were ongoing. This case was referred to UNOMS on 24 July 2018.

5. At the request of the mediator, the Tribunal granted several requests to stay proceedings pending a resolution but to no avail. On 28 January 2019, the above three cases were referred back to the Tribunal for appropriate action.

6. Subsequently, the Applicant filed an application in UNDT/NY/2019/014, claiming that the management denied him work despite his repeated requests. The Respondent replied that the application was not receivable as the Applicant failed to identify an administrative decision capable of being reviewed and that the Applicant previously filed an application raising the same cause of action.

7. On 21 May 2019, the cases were reassigned to the undersigned Judge.

8. By Order No. 91 (NY/2019) issued on 22 May 2019, the Tribunal ordered the parties to attend a Case Management Discussion (“CMD”) to be held on 29 May 2019.

9. At the CMD, the Respondent was represented by Counsel Mr. Alan Gutman in all four cases and the Applicant was represented by Ms. Patricia Nemeth, the President of the United Nations Staff Union in New York.

10. The Tribunal recalls that General Assembly Resolution 63/253, adopted on 24 December 2008, provides as follows:

9. *Commends* the role that volunteers have traditionally played in representing employees in the dispute resolution process under the existing system;

10. *Notes* that some current and former United Nations staff have been reluctant to represent their fellow staff members in the dispute resolution process because of the burden that such service would place on them;

11. *Requests* the Secretary-General to provide incentives to encourage current and former staff to assist staff members in the dispute resolution process;

...

16. *Recalls* paragraph 55 of the report of the Secretary-General, and requests the Secretary-General to work with staff associations to develop incentives to enable and encourage staff to continue to participate in the work of the Office of Staff Legal Assistance, including by providing volunteer professional legal counsel;

...

11. The Tribunal welcomed the assistance being provided by Ms. Nemeth and informed the parties that before discussing the issues raised in each of the cases pursuant to a just and expeditious disposal, it was necessary to explore with the parties the possible benefits of alternative dispute resolution (“ADR”) having regard to the importance of preserving the employment relationship.

12. It appeared to the Tribunal that the parties were not averse to having exploratory discussions on the basis of a fresh review notwithstanding previous abortive attempts at reaching a resolution. The Tribunal reminded the parties that so long as all good faith efforts were being made to resolve their differences, by a proactive and constructive dialogue, the Tribunal would allow time for discussions by adjourning the CMD for a limited period. However, time was of the essence and the parties would know in a matter of days whether there may possibly be a realistic prospect of reaching agreement, failing which the Tribunal would proceed to issue the appropriate orders and directions for a judicial determination in one or more of the cases, before the end of June 2019.

13. Following appropriate advice and guidance by the Tribunal the parties were granted a brief adjournment to discuss the way forward. Having done so they informed the Tribunal that they wished to explore fully the possibility of a resolution.

14. Accordingly, the CMD was adjourned to allow the parties a further opportunity to explore the possibility of achieving ADR.

15. On 3 June 2019, the CMD was resumed. The parties indicated that significant progress was being made towards a resolution and they requested additional time to continue discussions. The CMD was adjourned to 10 June 2019.

16. On 10 June 2019, the Respondent advised the Tribunal that there had been significant progress in the discussions and requested two additional days to complete their discussions.

17. On 12 June 2019, the Tribunal was notified that the parties had signed a confidential settlement agreement to resolve all pending claims.

18. On 13 June 2019, the Applicant filed separate notices of withdrawal of his claims: UNDT/NY/2018/020, UNDT/NY/2018/022, UNDT/NY/2018/030, and UNDT/NY/2019/014.

19. The Tribunal considers that, although each claim was being dealt with separately, given the resolution agreed between the parties, these claims be subject to an order for combined proceedings and the Tribunal so orders.

20. The foregoing brief description illustrates the benefits of proactive case management as envisaged by the General Assembly in Resolution 70/112, adopted on 14 December 2015, which provides:

29. Notes with concern the increase in the number of pending cases before the Dispute Tribunal and the high cost to the Organization due to financial compensation paid to staff, and in this regard encourages further efforts to handle cases in an effective and efficient manner, including through enhanced cooperation between the formal and informal parts of the system of administration of justice and proactive case management by the judges of the Tribunal;

21. The key to resolving such seemingly intractable problems is the willingness of all concerned to respond positively to the guidance offered by the Tribunal. The

Tribunal notes with approval the support given to the Applicant by colleagues and the efforts made by the United Nations Staff Union in New York towards achieving an amicable resolution as well as the cooperation of counsel for the Respondent.

Conclusion

22. The Applicant having withdrawn all four claims there is no longer a matter for judicial consideration and determination in these cases,

Judgment

23. It is ordered that Case numbers UNDT/NY/2018/020, UNDT/NY/2018/022, UNDT/NY/2018/030, and UNDT/NY/2019/014 be closed.

(Signed)

Judge Goolam Meeran

Dated this 13th day of June 2019

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

(Signed)

Nerea Suero Fontecha, Registrar, New York