



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/064

Judgment No.: UNDT/2020/042

Date: 18 March 2020

Original: English

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**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

ACQUATELLA CORRALES

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON DISMISSAL FOR WANT OF  
PROSECUTION**

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**Counsel for Applicant:**

Aleksandra Jurkiewicz, OSLA

Dorota Banaszewska, OSLA

**Counsel for Respondent:**

Elizabeth Gall, ALD/OHR, UN Secretariat

Romy Batrouni, ALD/OHR, UN Secretariat

## **Introduction**

1. On 30 June 2017, the Applicant, an Economic Affairs Officer at the Economic Commission for Latin America and the Caribbean, filed an application contesting the decision to separate him from service on the grounds of misconduct.
2. On 16 September 2019, pursuant to Order No. 118 (NY/2019), the parties filed a joint submission in which the Applicant requested a hearing in the matter.
3. By Order No. 135 (NY/2019)/Corr.1, dated 9 October 2019, the Tribunal ordered the parties to attend a hearing on 20 November 2019.
4. On 15 November 2019, the Applicant's Counsel filed a motion to adjourn the hearing, submitting that she has been unable to contact the Applicant and confirm his presence during the upcoming hearing.
5. By Order No. 164 (NY/2019), dated 18 November 2019, the Tribunal granted the motion to adjourn the hearing and ordered the parties to attend a hearing on 19 December 2019.
6. On 6 December 2019, the Applicant filed a submission confirming his attendance at the 19 December 2019 hearing.
7. On 13 December 2019, the Applicant's Counsel filed a motion to adjourn the hearing to an alternate date after 20 March 2019. The Applicant's Counsel submitted a medical certificate, dated 13 December 2019, stating that the Applicant's health has significantly deteriorated and that the doctor recommended to postpone the hearing when the Applicant's medical condition would be stabilized, which would need at least three months.

8. On 17 December 2019, by Order No. 179 (NY/2019), the Tribunal granted the Applicant's Counsel's second motion to adjourn the hearing and ordered the parties to attend a half day hearing in the week of 30 March to 3 April 2020. The Tribunal further ordered the Applicant's counsel to file a submission informing the Tribunal by 9 March 2020 whether the Applicant is able to appear at the hearing the week of 30 March 2020. In the event the Applicant is not able to appear, the Tribunal ordered that the submission should confirm whether, in the circumstances, the hearing may go ahead in order to hear only the testimony of the witness proposed by the Applicant, or if the case may be decided on the papers.

9. On 9 March 2020, the Applicant's Counsel filed a third motion to adjourn the hearing. The Applicant's counsel submitted that despite having made numerous attempts to contact the Applicant via e-mail and phone, she has not heard back from him. The Applicant's Counsel was therefore unable to confirm the Applicant's availability for the hearing. The Applicant's Counsel further submitted that it is in the interest of justice for the Applicant to have an opportunity to appear before the Tribunal in person and have his testimony heard.

10. On 9 March 2020, by Order No. 48 (NY/2020), the Tribunal directed the Applicant to file a signed submission by 16 March 2020, indicating whether he maintains his claims, and if so, why he failed to file a submission pursuant to Order No. 179 (NY/2019). The Tribunal further cautioned that in the event of non-compliance with the Tribunal's Order, the application stood to be dismissed for want of prosecution.

11. On 16 March 2020, the Applicant's Counsel filed a submission informing the Tribunal that she has not received any further instructions from the Applicant concerning the submissions pursuant to the Tribunal's Order No. 179 (NY/2019). Nor

has she been able to contact her client despite numerous attempts to reach him by e-mail and phone. In her submission, the Applicant's Counsel submitted a fourth motion to adjourn the hearing stating that based on her last exchange with the Applicant in December 2019, Applicant's Counsel submits that her client maintains his claims. The Applicant's Counsel further submitted that the Applicant had been deemed unfit by his physician until at least 20 March 2020 and on this basis she requested the Tribunal to adjourn the hearing for a further three months to allow the Applicant to fully recover and to allow Applicant's Counsel to establish contact with her client.

### **Consideration**

12. The Dispute Tribunal has on several occasions pronounced on the principle of procedural law that the right to institute and pursue legal proceedings is predicated upon the condition that the person exercising this right has a legitimate interest in initiating and maintaining legal action and that access to the Dispute Tribunal has to be denied to those who are no longer in need of judicial remedy, or no longer interested in the proceedings (*Bimo and Bimo* UNDT/2009/061; *Saab-Mekkour* UNDT/2010/047; *Zhang-Osmancevic* UNDT/2015/034).

13. The latter applies in the present case, as the Applicant has been ordered on two occasions to make the necessary submissions for finalization of his case. The Applicant was given sufficient time to comply with the Tribunal's orders, and clearly warned of the consequences of his failure to do so. Due to the Applicant's noncompliance with Order No. 179 (NY/2019) dated 17 December 2019, the Tribunal directed, by Order No. 48 (NY/2020) dated 9 March 2020, the Applicant to confirm whether he maintained his claim, failing which he was warned his application stood to be dismissed for want of prosecution. On 16 March 2020, the Applicant's Counsel filed a submission informing the Tribunal that she has not received any further instructions

from the Applicant concerning the submissions pursuant to the Tribunal's Order No. 179 (NY/2019), and for the third time the Applicant's Counsel requested accommodation for her client due to her being unable to make contact with the Applicant. It follows that the Applicant's Counsel has had no instructions in respect to the conduct of this case.

14. As of the date of this Judgment, the Applicant has failed to comply with the above-mentioned Orders. The Tribunal notes that the medical certificate submitted by the Applicant on 13 December 2019 states that his medical condition will prevent him from participating in the hearing on 19 December 2019 and the physician advises a three-month postponement of the hearing to allow the Applicant's condition to stabilize. The medical certificate does not mention that the Applicant would be unfit for communication as submitted by his Counsel. The Applicant has not submitted an updated medical certificate explaining his failure to comply with Order No. 179 (NY/2019) and Order No. 48 (NY/2020) and the Tribunal is not satisfied that these proceedings can continue when Counsel is not instructed by her client.

15. The Tribunal, therefore, can only conclude that the Applicant is no longer interested in the pursuit and outcome of these legal proceedings, which must therefore be deemed to have been abandoned, and this matter therefore stands to be dismissed for want of prosecution.

### **Judgment**

16. In light of the foregoing, but without determination of its merits, the Applicant's application is dismissed for want of prosecution.

17. The Tribunal will only consider reinstating the proceedings if the Applicant shows sufficient grounds justifying his failure to act, and submits evidence that it is in the interests of justice to reinstate the proceedings.

*(Signed)*

Judge Joelle Adda

Dated this 18<sup>th</sup> day of March 2020

Entered in the Register on this 18<sup>th</sup> day of March 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York