



UNITED NATIONS DISPUTE TRIBUNAL

Cases Nos.: UNDT/GVA/2014/065
UNDT/GVA/2014/066
UNDT/GVA/2014/067
Order No.: 205 (GVA/2015)
Date: 21 October 2015
Original: English

Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

H Aidari
Zahoor
Zamani

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. By three individual applications dated 23 July 2013, the Applicants, former staff members of the Security Section with the United Nations Assistance Mission in Afghanistan (“UNAMA”), contest the non-renewal of their fixed-term appointments, which they consider to constitute disguised disciplinary measures.
2. On 23 August 2013, the Respondent submitted his replies to the applications and, on 18 October 2013, the parties filed joint statements of facts and issues in all three cases.
3. By Order No. 119 (GVA/2015) of 16 June 2015, the Tribunal convened a hearing on the merits to be held on 22, 23 and 24 June 2015. The hearing was conducted in the presence of Counsel for the Applicants and for the Respondent.
4. On 23 June 2015, Counsel for both parties filed a joint motion for adjournment of the proceedings in all three cases for six weeks, pending informal settlement negotiations.
5. On 24 June 2015, at the beginning of the hearing, the parties confirmed their wish to engage in settlement discussions, and indicated to the Tribunal that the referral of the matter to the United Nations Ombudsman and Mediation Services was not necessary.
6. By Order No. 131 (GVA/2015) of 24 June 2015, the Tribunal ordered that the hearing in Cases No. UNDT/GVA/2014/065, UNDT/GVA/2014/066 and UNDT/GVA/2014/067 be adjourned and proceedings before the Tribunal be suspended in all these cases until 4 August 2015. Upon the parties’ request, the Tribunal further adjourned the proceedings by several consecutive orders (i.e. Order No. 148 (GVA/2015), Order No. 157 (GVA/2015) and Order No. 178 (GVA/2015)), until 21 October 2015.
7. On 9 October 2015, Counsel for the Applicants filed a motion for withdrawal of the application, in each of the three cases.

Consideration

8. The Tribunal sees no obstacle to the withdrawal of the cases. Since the applications have been withdrawn, there is no longer any matter for adjudication before the Tribunal.

Necessary Observations

9. The Tribunal notes that the applications and the personnel/official status files (“OSF”) of the Applicants indicate *prima facie* that the responsible staff members in the Security Section, UNAMA, who deal with investigations and checkout forms, may lack the required knowledge with respect to due process rights of staff members. The Tribunal observes that training in such matters is very important for all managers and those involved in dealing with investigations and issues which are potentially of a disciplinary nature. It therefore most strongly recommends that this matter be examined generally by the Organization.

10. Furthermore, during the proceedings, the Tribunal had directed the Respondent to provide it with a certified copy of the Applicants’ OSFs. It noted that the pages of the OSFs were not numbered consecutively, or at all, which may permit untraceable changes to files, through addition or removal of documents. The Tribunal notes with concern that this puts both the Organisation and staff members at significant risk and that the removal or addition of documents needs to be transparent and fully traceable to ensure the complete integrity of all OSFs. Such document addition or removal on files may have an adverse impact upon the administration of justice.

11. Indeed, the fact of the removal of documents from the OSFs in this matter was a serious concern. It is to be noted that once a matter is before the Tribunal, no piece of evidence should be changed in any manner whatsoever, without the express authorisation of the Tribunal being first obtained. In this connection, Counsel for the Respondent is to be commended for bringing to the attention of the Tribunal the fact that some documents had been removed from the Applicants

OSFs in these matters. Such was consistent with Counsel for the Respondent acting as a model litigant and as an officer of the Tribunal.

12. Finally, the Tribunal will now discharge the Chief of Mission, UNAMA, of the responsibility to safe keep the OSF of each of the Applicants referred to in its Order No. 128 (GVA/2015); the OSFs are to be returned to the Department of Human Resources, UNAMA.

Conclusion

13. In view of the foregoing, it is ORDERED that:

- a. The Chief of Mission, UNAMA, return the OSF of each of the Applicants to the Department of Human Resources, UNAMA; and
- b. Cases No. UNDT/GVA/2014/065, UNDT/GVA/2014/066 and UNDT/GVA/2014/067 be closed.

(Signed)

Judge Rowan Downing

Dated this 21st day of October 2015

Entered in the Register on this 21st day of October 2015

(Signed)

René M. Vargas M., Registrar, Geneva