



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/039/
JAB/2008/080
Order No.: 209 (NY/2011)
Date: 30 August 2011
Original: English

Before: Judge Memooda Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

BERTUCCI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
François Lorient

Counsel for Respondent:
Susan Maddox, ALS/OHRM, UN Secretariat

Introduction

1. In Judgment *Bertucci* UNDT/2010/080, Judge Adams found in favour of the Applicant on the basis that the decision of the Secretary-General concerning the appointment of the Assistant Secretary-General, Department of Economic and Social Affairs, was unlawful and in breach of the contract of employment of the Applicant. In the Judgment on compensation, *Bertucci* UNDT/2010/117, Judge Adams subsequently determined the quantum of compensation.

2. In its Judgment *Bertucci* 2011-UNAT-121, the United Nations Appeals Tribunal set aside both of the above judgments, remanding the case to the then President of the Dispute Tribunal or a Judge designated by him. On 20 April 2011, Counsel for the Applicant wrote to the President of the Dispute Tribunal “to explore the possibility of referring the matter to mediation”.

3. By Order No. 65 (GVA/2011) of 6 May 2011, the President of the Dispute Tribunal assigned the case to the undersigned Judge.

4. On 18 May 2011, a case management hearing was held. Counsel for the Applicant attended via telephone, and Counsel for the Respondent attended in person. At this hearing, Counsel for the Applicant indicated to the Tribunal that he was instructed to seek mediation or other informal settlement of the matter. Counsel for the Respondent indicated to the Tribunal that she did not at that stage have firm instructions as to whether the Respondent consented to the matter being referred to mediation, or to attempting to settle the matter by other informal means.

5. At the same case management hearing, the Dispute Tribunal noted that, in light of *Bertucci* 2011-UNAT-121 and the recent jurisprudence of the Dispute Tribunal, the matter appeared one where there existed the potential for the parties to reach a mutually acceptable settlement. By Order No. 137 (NY/2011) of 18 May 2011, the Respondent was directed to file and serve a statement confirming

whether he consented to a suspension of the proceedings to attempt to resolve the matter informally, through mediation or *inter partes* discussions.

6. On 26 May 2011, the Respondent filed and served a submission consenting to a suspension of proceedings to attempt to resolve the matter by mediation, to be conducted through the Office of the Ombudsman and Mediation Services.

7. By Order No. 145 (NY/2011), the Tribunal referred this matter to the Office of the Ombudsman and Mediation Services for mediation, pursuant to article 15 of the Tribunal's Rules of Procedure. The Tribunal ordered that the proceedings be suspended for a period of sixty days, until 26 July 2011.

8. On 15 July 2011, the Director of Mediation Services in the Office of the Ombudsman and Mediation Services wrote to the Tribunal, stating that, due to the schedules of several participants involved in the in-person mediation proceedings, it was necessary to request an extension of time in which to conduct the mediation, until 30 September 2011. This request was signed by the Director of Mediation Services on behalf of the parties, who were copied on the correspondence.

9. In Order No. 179 (NY/2011) of 15 July 2011, the Tribunal granted the extension of time, instructing Counsel for the Applicant to file and serve a statement concerning the status of the mediation efforts by 1 October 2011.

10. By email of 23 August 2011, the Director of Mediation Services informed the Tribunal that "a successful resolution was reached" between the Applicant and the Respondent and that according to the settlement agreement the Applicant would be filing a request for dismissal of the present case.

11. On the same date, Counsel for the Applicant notified the Tribunal, by letter dated 19 August 2011, that the present case had been settled out of court through the Office of the Ombudsman and Mediation Services and that the Applicant moved to withdraw his application.

IT IS ORDERED THAT—

12. Since the application has been withdrawn, there is no matter for consideration by the Tribunal and the case is closed without adjudication of its merits.

(Signed)

Judge Ebrahim-Carstens

Dated this 30th day of August 2011