



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2012/005

Order No.: 113 (NY/2014)

Date: 8 May 2014

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

SPRAUTEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
George G. Irving

Counsel for Respondent:
Kong Leong Toh, UNOPS

Introduction

1. On 20 January 2012, the Applicant, a former staff member of the United Nations Office for Project Services (“UNOPS”), who was employed by the Organization for over 20 years until his separation from service in February 2009, filed an application contesting the decision not to pay him a termination indemnity after his separation from UNOPS. This decision was communicated to the Applicant on 31 August 2011 by the UNOPS General Counsel in compliance with *Sprauten* UNDT/2011/094, which ordered, *inter alia*, that UNOPS determine by 1 September 2011 “whether [the Applicant] was wrongly deprived of a standard enhanced separation package of 18 months’ net base salary” (see para. 87 of *Sprauten* UNDT/2011/094).

2. On 2 February 2012, the Respondent filed a motion for leave to file a reply limited to the question of the receivability of the application. In this motion, the Respondent contended that the Applicant’s application is time-barred and requested leave to first file submissions regarding the receivability of the application and to later file submissions regarding the merits of the application, if the Tribunal were to find the application receivable.

3. By Order No. 18 (NY/2012), dated 3 February 2012, the Tribunal granted leave to the Respondent to file and serve a reply limited to the issue of receivability. The Tribunal also allowed the Applicant to file and serve a response to the reply on receivability. Both parties duly filed their submissions.

4. On 11 April 2014, the Tribunal rendered *Sprauten* UNDT/2014/039, finding the application receivable and ordering the parties to file a joint submission stating whether they agree to attempt resolving this case informally.

Notice of withdrawal

5. On 7 May 2014, the Applicant filed a submission, stating:

In view of the fact that agreement has now been reached and finalized through the execution of a settlement agreement of all outstanding claims related to the application, the Applicant wishes to request the withdrawal of his application fully, finally, and entirely on the understanding that this will constitute a final determination on the merits, and is without appeal.

Consideration

6. 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). As stated in *Bangoura* UNDT/2011/202, matters that stem from the same cause of action, though they may be couched in other terms, are *res judicata*, which means that the applicant does not have the right to bring the same complaint again.

7. 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 issue, broadly speaking, is a matter of fact or question of law in a dispute between two or more parties which a court is called upon to decide and pronounce itself on in its judgment. Of course, a determination on a technical or interlocutory matter does not

result in the final disposal of a case, and an order for withdrawal is not always decisive of the issues raised in a case. An unequivocal withdrawal means that the matter will be disposed of such that it cannot be reopened or litigated again. In regard to the doctrine of *res judicata*, the International Labour Organization Administrative Tribunal (“ILOAT”) in Judgment No. 3106 (2012) stated at para. 4:

The argument that the internal appeal was irreceivable is made by reference to the principle of *res judicata*. In this regard, it is argued that the issues raised in the internal appeal were determined by [ILOAT] Judgment 2538. As explained in [ILOAT] Judgment 2316, under 11:

Res judicata operates to bar a subsequent proceeding if the issue submitted for decision in that proceeding has already been the subject of a final and binding decision as to the rights and liabilities of the parties in that regard.

A decision as to the “rights and liabilities of the parties” necessarily involves a judgment on the merits of the case. Where, as here, a complaint is dismissed as irreceivable, there is no judgment on the merits and, thus, no “final and binding decision as to the rights and liabilities of the parties”. Accordingly, the present complaint is not barred by *res judicata*.

8. In the instant case, the Applicant has confirmed that he is withdrawing the matter “fully, finally and entirely on the understanding that this will constitute a final determination on the merits, and is without appeal”. The Applicant’s unequivocal withdrawal of the merits signifies a final and binding resolution with regard to the rights and liabilities of the parties, requiring no pronouncement on the merits but concluding the matter *in toto*. Therefore, dismissal of his case with a view to finality of proceedings is the most appropriate course of action.

Conclusion

9. The Applicant has withdrawn this case in finality, including on the merits, with the intention of resolving all aspects of the dispute between the parties. There no longer being any determination to make, this application is dismissed in its entirety without liberty to reinstate.

(Signed)

Judge Ebrahim-Carstens

Dated this 8th day of May 2014