UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2014/078
Order No.:	350 (NY/2014)
Date:	30 December 2014
Original:	English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

GITTENS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
Lennox S. Hinds

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 21 March 2014, six staff members in the Meeting and Publishing Division, Publishing Section of the Department for General Assembly and Conference Management ("DGACM"), filed a joint application contesting the decision to abolish their respective posts, effective 1 January 2014, resulting in the termination of their permanent appointments. This application was registered by the Registry of the Dispute Tribunal in New York as *Crotty et al.* UNDT/NY/2014/018. The Applicants state that, in February 2014, they were informed that the date of termination of their appointments was postponed until 20 April 2014.

2. By Order No. 61 (NY/2014), dated 10 April 2014, the Tribunal rejected the Applicants' motion for expedited consideration on the grounds, *inter alia*, that the Applicants and the Respondent were "actively involved in order to avoid a termination of the employment contracts on 20 April 2014".

3. The Respondent's reply to the joint application was filed on 21 April 2014. The Respondent submitted that at least some of the Applicants were currently considered for job openings and, if selected, their claims would be rendered moot.

4. On 6 May 2014, by Order No. 107 (NY/2014), the Tribunal ordered that the Applicants file and serve a submission indicating their current appointment and contractual status, advising also whether they maintained their claims, either in full or in part.

5. On 14 May 2014, Applicants' Counsel filed a response to Order No. 107 informing the Tribunal that Applicant Gittens was withdrawing his claim, and briefly advising the Tribunal of the status of the remaining Applicants.

6. In view of the apparently diverse situation of Applicant Gittens and the remaining Applicants, the Tribunal held a Case Management Discussion ("CMD") on 11 July 2014 to identify precisely the status and claims of each

Applicant, the factual and legal issues arising therefrom, whether any claim was to be withdrawn, whether the individual claims should be severed, and any other relevant matters to ensure the most fair and expedient process with a view to judicial economy. Following the CMD and the Tribunal's Order No. 193 (NY/2014), dated 15 July 2014, Applicants' Counsel filed a response on 11 August 2014 confirming that Applicant Gittens was withdrawing his claim.

7. Pursuant to the Tribunal's direction in Order No. 303 (NY/2014), dated 6 November 2014, Applicant's Counsel filed, on 14 November 2014, a formal notice of withdrawal stating that Applicant Gittens was withdrawing his case in finality, including on the merits, without liberty to reinstate, and with the intention of resolving all aspects of the dispute between the parties.

8. Considering that the Applicants' causes of action and relief are differently situated, for reasons of judicial economy and expeditious disposal, the Tribunal conducted a further CMD on 21 November 2014 to discuss whether the matter of Gittens should be separated from *Crotty et al.* in order to render a separate, final, and enforceable judgment or order on each cause or claim that is differently situated. Counsel for the parties agreed at the CMD that the various claims could be severed and considered individually.

9. In this respect, by Order No. 337 (NY/2014) dated 11 December 2014, the Tribunal ordered the case of Applicant Gittens be severed from *Crotty et al.* to be determined and/or disposed individually as *Gittens* UNDT/NY/2014/078.

Consideration:

10. The desirability of finality of disputes within the workplace cannot be gainsaid (see *Hashimi* Order No. 93 (NY/2011), dated 24 March 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."fresh"

11. 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.*

12. In the instant case, Applicant *Gittens*, through his Counsel of record, filed a notice confirming that he is "withdrawing from the matter fully, finally, and

entirely, including on the merits without liberty to reinstate and with the intention of resolving all aspects of the dispute between the parties".

13. The Applicant's unequivocal withdrawal of the merits signifies a final and binding resolution with regard to the rights and liabilities of the parties in all respects in his case, 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.

14. The benefits of judicial intervention and active and vigorous case management cannot be gainsaid, and in this case have borne fruition by the withdrawal of this matter, thus saving valuable time and costs. Amicable resolution of disputes is an essential component of the new system of internal justice, not only saving valuable resources of the Organization but contributing also to a harmonious working environment and culture.

Conclusion

15. The Applicant has withdrawn the present 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 30th day of December 2014