



Before: Judge Ebrahim-Carstens
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

KOVACS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON ABANDONMENT

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, seven 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 *Alsado et al.* UNDT/NY/2014/019. 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. 62 (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. 108 (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. In view of the apparently diverse situation of Applicant Kovacs 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the status and claims of each Applicant, the factual and legal issues arising therefrom, whether any claim was to be withdrawn, whether the individual claims should be severed, and any other relevant matters to ensure the most fair and expedient process with a view to judicial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. 194 (NY/2014), dated 15 July 2014, Applicants' Counsel filed a response on 11 August 2014 stating that Applicant Kovacs "did not return Counsel's numerous telephone calls and email correspondence. Consequently, they are deemed to have abandoned and withdrawn their claims".

6. Pursuant to the Tribunal's direction in Order No. 304 (NY/2014), dated 6 November 2014, Applicant's Counsel filed, on 14 November 2014, a formal notice of abandonment "reiterating that Applicant Kovacs has failed to respond [to] Counsel's correspondence and phone calls. As a consequence of Applicant Kovacs's failure to respond Applicants' Counsel's repeated communications, Counsel is left with the inescapable conclusion that Applicant Kovacs does not wish to pursue his claim and therefore does not maintain his legal action".

7. 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 Kovacs should be separated from *Alsado 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.

8. In this respect, by Order No. 336 (NY/2014) dated 11 December 2014, the Tribunal ordered the case of Applicant Kovacs be severed from *Alsado et al.* to be determined and/or disposed individually as *Kovacs* UNDT/NY/2014/083.

Consideration:

9. As the Dispute Tribunal stated in *Giles* UNDT/2012/194, although its Rules of Procedure contain a provision for summary judgment (see art. 9 and also art. 7.2(h) its Statute), there are no specific provisions in the Dispute Tribunal's Statute or Rules of Procedure regarding discontinuance, abandonment, want of prosecution, postponement, or withdrawal of a case. However, abandonment of proceedings and

withdrawal of applications are not uncommon in courts and generally result in a dismissal of the case either by way of an order or a judgment. In this regard, reference can be made to art. 19 of the Dispute Tribunal's Rules of Procedure, which states that the Dispute Tribunal "may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties". Also, art. 36 of the Dispute Tribunal's Rules of Procedure provides that all matters that are not expressly provided for in the Rules shall be dealt with by decision of the Dispute Tribunal in that particular case, by virtue of the powers conferred on it by art. 7 of its Statute.

10. The Dispute Tribunal has on several occasions enunciated the cardinal 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 court has to be denied to those who are no longer interested in the proceedings or are no longer in need of judicial remedy (*Bimo and Bimo* UNDT/2009/061, *Saab-Mekhour* UNDT/2010/047).

11. In the instant case, the Applicant's legal representative and Counsel of record, has filed an unequivocal notice of abandonment of proceedings on behalf of Applicant Kovacs, indicating that his client has abandoned the proceedings and is either no longer interested in the proceedings, or no longer in need of judicial remedy.

12. The Applicant having abandoned the proceedings in his case, and considering that in order "to ensure the stability of the judicial process, there must be an end to litigation" (*Meron* 2012-UNAT-198), this matter stands to be dismissed.

Conclusion

13. This matter is hereby dismissed for want of prosecution, without determination on the merits.

(Signed)

Judge Ebrahim-Carstens

Dated this 30th day of December 2014