



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2014/067  
Order No.: 7 (NY/2015)  
Date: 16 January 2015  
Original: English

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

BAUER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON  
WITHDRAWAL**

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**Counsel for Applicant:**  
Robbie Leighton, OSLA

**Counsel for Respondent:**  
Stephen Margetts, ALS/OHRM, UN Secretariat  
Sarahi Lim Baro, ALS/OHRM, UN Secretariat

## **Introduction**

1. By application dated 10 November 2014, the Applicant, an Associate Child Protection Officer employed at the P-2 level, step-4 by DPKO in New York, contests the “[d]ecision not to reset the clock on [her] request for rental subsidy on re-employment at a duty station where she had previously served”. On 10 November 2014, the New York Registry transmitted the application to the Respondent, informing that the reply was due on Wednesday, 10 December 2014.

2. On 10 December 2014, the Respondent duly filed his reply contending, *inter alia*, that not only was the Applicant’s claim without merit as she had received the full entitlement sought, but also that it was not receivable since the application was time-barred.

3. On 13 January 2015, the Tribunal, by Order No. 2 (NY/2015), requested that the Applicant file a submission addressing the alleged satisfaction of her claim/s and the issue of receivability raised in the Respondent’s reply.

4. On 15 January 2015, the Applicant filed a response to Order No. 2 stating that, although she had filed a request for management evaluation on 27 September 2013, she had never received a management evaluation letter from the Management Evaluation Unit, nor an explanation of the impugned decision until the filing of the Respondent’s reply on 10 December 2014. Following the filing of the reply, having now had the opportunity to review and consider the Organization’s explanation for the contested decision, the Applicant wished to withdraw her application, fully and finally, including on the merits.

## **Consideration:**

5. 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.

6. 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 unequivocal withdrawal means that the matter will be disposed of such that it cannot be reopened or litigated again.

7. In the instant case, the Applicant filed a motion stating that she accepts that the full and final withdrawal of her case, including on the merits, “will bring an end to any rights to challenge the decision that was the subject of her management evaluation request in the formal system”.

8. 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, the dismissal of his case with a view to finality of the proceedings is the most appropriate course of action.

9. Early case management by the Tribunal has resulted in the withdrawal of this application, which in all probability would not have been filed if the pertinent issues had been clarified in good time. Timeous consideration of claims can avoid unnecessary litigation, save valuable resources of the Organization and also contribute to a harmonious working environment and culture.

**Conclusion**

10. 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 16<sup>th</sup> day of January 2015