



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

MAUNG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON ABANDONMENT

Counsel for Applicant:

Lennox S. Hinds

Didier Sepho

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 Publishing Section, Meeting and Publishing Division, 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. The case was assigned Case No. UNDT/NY/2014/018.

2. The Respondent’s reply to the application was filed on 21 April 2014. The Respondent contended that at least some of the Applicants were currently considered for positions and, if selected, their claims would be rendered moot.

3. 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.

4. On 14 May 2014, Counsel for the Applicants filed a response to Order No. 107 (NY/2014) informing the Tribunal that the Applicant had been on certified sick leave since December 2013.

5. In view of the apparently diverse situation of each Applicant, on 11 July 2014 and 21 November 2014, respectively, the Tribunal held a Case Management Discussion (“CMD”) 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the status and claims of each Applicant, the factual and legal issues arising therefrom, whether any claim was to be withdrawn, whether the individual claims should be severed, and any other relevant matters to ensure the most fair and expedient process with a view to judicial economy.

6. Following the parties’ agreement at the 21 November 2014 CMD, by Order No. 337 (NY/2014) dated 11 December 2014, the Tribunal ordered the claims of each of the six applicants of Case No. UNDT/NY/2014/018 to be severed and considered

individually. The case of the Applicant herein was subsequently assigned Case No. UNDT/NY/2014/079.

7. By Order No. 193 (NY/2015) dated 24 August 2015, the Tribunal ordered the parties to attend a CMD to discuss the current status of the cases stemming from Case No. UNDT/NY/2014/018 and for the further conduct of proceedings. At the CMD on 2 September 2015, Counsel for the Applicant informed the Tribunal that despite several attempts to contact the Applicant by email and telephone, he had not been able to reach him and that Counsel had therefore not received any instructions from the Applicant. Respondent's Counsel, however, informed the Tribunal and Counsel for the Applicant that Applicant had been separated on disability in May 2015. By Order No. 212 (NY/2015) of 2 September 2015, the Tribunal ordered Counsel for the Applicant to file and serve notices of abandonment or withdrawal for those of the applicants for whom this may be relevant.

8. By notice of abandonment dated 10 September 2015, Counsel for the Applicant stated that:

... Following the CMD Counsel for Respondent ... informed Counsel for Applicants that [the Applicant] was separated from service on May 8, 2015 and his permanent appointment was terminated for reasons of health.

Therefore, Applicants' Counsel files this notice of abandonment, reiterating that [the Applicant] has failed to respond to Counsel's correspondence and phone calls. As a consequence of [the Applicant's] failure to respond to Applicants' Counsel's repeated communications, Counsel is left with the inescapable conclusion that [the Applicant] does not wish to pursue his claim and therefore does not maintain his legal action.

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) of 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-Mekkour* 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 the Applicant, 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" (*Merón* 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 14th day of September 2015