UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2015/017
Order No.:	56 (NY/2016)
Date:	29 February 2016
Original:	English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

AL-MIDANI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. On 10 March 2015, the Applicant, a Public Information Assistant at the G-6 level serving on a permanent appointment in the Department of Public Information, filed an application contesting the decision not to select him for the position of Senior Editorial and Desktop Publishing Assistant (Arabic) in the Department of General Assembly and Conference Management. He contends, in essence, that the selected candidate did not have the minimum required professional experience and that the results of the recruitment exercise were predetermined. The Applicant seeks rescission of the contested decision or, in the alternative, compensation for the loss of higher salary, as well as compensation for non-pecuniary harm.

2. The Respondent submitted his reply on 10 April 2015, stating that the application is without merit in that the Applicant was fully and fairly considered for the position, the selected candidate met all the eligibility requirements, and the selection exercise fully complied with ST/AI/2010/3 (Staff selection system).

3. By Order No. 65 (NY/2015), dated 14 April 2015, the Tribunal directed that the case join the queue of pending cases and await assignment to a judge in due course.

4. The case was assigned to the undersigned Judge on 13 January 2016.

5. By Order No. 22 (NY/2016), dated 29 January 2016, the Tribunal directed the parties to file, by 19 February 2016, a jointly-signed statement responding under separate headings to a number of issues.

6. On 18 February 2016, Counsel for the Applicant (Office of Staff Legal Assistance or “OSLA”) filed a motion to withdraw OSLA representation.

7. On 19 February 2016, Counsel for the Respondent and the Applicant (self-represented) filed a joint request for variation of Order No. 22 (NY/2016), requesting to extend the deadline for the filing of the jointly-signed statement to 26 February 2016.

8. By Order No. 44 (NY/2016), dated 19 February 2016, the Tribunal granted the requested extension of time.

9. On 26 February 2016, the Applicant filed a motion for withdrawal, stating that he was "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".

Consideration

10. 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.

11. With 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, the Applicant is withdrawing the matter fully and finally, including on the merits. 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 her 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.

Conclusion

13. The Applicant having withdrawn his application pursuant to the terms and conditions of a settlement agreement between the parties, there no longer being any determination for the Tribunal to make, this application is dismissed in its entirety without liberty to reinstate.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 29th day of February 2016