



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

BILBROUGH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:

Duke Danquah, OSLA

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 25 September 2015, the Applicant, an Investigator at the P-4 level in the Office of Internal Oversight Services serving in Port-au-Prince, Haiti, filed an application contesting the decision to recover alleged overpayment of salary.

2. On 22 October 2015, before a reply to the application was filed, the parties filed a joint motion requesting the Tribunal to suspend the proceedings for two months to enable them to explore the possibility of an informal resolution of the present case.

3. By Order No. 275 (NY/2015), dated 26 October 2015, the Tribunal granted the parties' request and suspended proceedings until 28 December 2015.

4. On 28 December 2015, the parties filed a joint motion requesting the Tribunal to suspend the proceedings for an additional six weeks in light of the holiday period and the efforts made in order to resolve the case.

5. By Order No. 315 (NY/2015), dated 29 December 2015, the Tribunal granted the parties' request and suspended proceedings for a further six weeks.

6. On 5 February 2016, the parties filed a joint motion requesting the Tribunal to suspend proceedings for a further three weeks.

7. By Order No. 35 (NY/2016), dated 5 February 2016, the Tribunal granted the parties' request and suspended proceedings until 26 February 2016.

8. On 26 and 29 February 2016, respectively, the Respondent and the Applicant filed separate responses to Order No. 35 (NY/2016). Both parties indicated that progress had been made towards achieving an amicable resolution of the present case. The Applicant requested that the Tribunal grant the parties another week to pursue settlement discussions.

9. By Order No. 57 (NY/2016), dated 29 February 2016, the Tribunal granted the Applicant's request and suspended proceedings until 7 March 2016. The parties were ordered to inform the Tribunal whether the present case had been resolved by this date and, if so, the Applicant was to confirm, in writing, that his application is withdrawn.

10. On 7 March 2016, the Applicant filed a motion for withdrawal of application, stating that informal resolution had been successful and the case had been resolved to his satisfaction. The Applicant confirmed that he wished to withdraw his application fully, finally, and entirely, including on the merits.

Consideration

11. 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.

12. 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*.

13. In the present case, the Applicant is withdrawing the matter fully and finally, including on the merits. The Applicant’s unequivocal withdrawal on 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

14. The Applicant having withdrawn his application and 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 8th day of March 2016