



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

BASNYAT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON WITHDRAWAL**

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**Counsel for Applicant:**  
George Irving

**Counsel for Respondent:**  
Fabrizio Mastrogirolamo, UNDP

## **Introduction**

1. On 21 July 2016, the Applicant, a Special Advisor at the D-2 level with the United Nations Development Programme, filed an application contesting the “decision to impose a reprimand after closing the disciplinary case against the Applicant and [the] failure to restore [him] to a position comparable to his prior posting”.

2. On the same date, the Registry of the Dispute Tribunal in New York acknowledged receipt of the application and transmitted it to the Respondent, instructing him to file a reply pursuant to art. 10 of its Rules of Procedure by 22 August 2016.

## **Case management**

3. By joint motion dated 9 August 2016, the parties requested of the Tribunal that “the proceedings in [the present case] be suspended for one month, in order for the Parties to pursue the informal resolution of the case”.

4. By Order No. 193 (NY/2016) dated 10 August 2016, the Tribunal ordered suspension of the proceedings in this case and directed the parties to inform the Tribunal by 19 September 2016 whether the matter has been resolved amicably.

## **Withdrawal motion**

13. On 29 August 2016, the Applicant filed a motion to withdraw the application, stating:

Following successful efforts to find an amicable solution, the Applicant hereby withdraws all of his allegations and claims in

the present proceedings before the Dispute Tribunal fully, finally and entirely, including on the merits.

### **Consideration**

14. 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.

15. 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*.

16. In the instant case, the Applicant has confirmed in writing that he 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 his case, requiring no pronouncement on the merits but concluding the matter *in toto*. Therefore, dismissal of the case with a view to finality of proceedings is the most appropriate course of action.

17. The Tribunal commends both parties for resolving this matter without the need for a final judicial determination. Amicable resolution of disputes saves valuable resources and contributes to a harmonious working environment.

### **Conclusion**

18. 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 for the Tribunal to make, this application is therefore dismissed in its entirety without liberty to reinstate.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 30<sup>th</sup> day of August 2016