



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

DIENES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
Mariam Munang, OSLA

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Introduction

1. On 7 October 2016, the Applicant, a Liaison Officer at the P-3 level with the United Nations Office on Sport for Development and Peace, contested “the decision to recover \$22,380.28 as overpayment of dependency benefit”.

2. On 10 October 2016, the application was transmitted to the Respondent who was instructed to file his reply on Wednesday, 9 November 2016. On 10 October 2016, the case was assigned to the undersigned judge.

3. On 18 October 2016, the Counsel for the Applicant filed a motion to discontinue and withdraw proceedings, stating, *inter alia*, that, “... On 18 October 2016, the Applicant received the outcome of his management evaluation request ... The Applicant hereby seeks to withdraw his [Dispute Tribunal] Application in this case”.

Consideration

4. The Tribunal commends the Applicant for withdrawing the present case based on the outcome of the management evaluation. This saves valuable resources and contributes to a harmonious working relationship between the parties.

5. The Tribunal considers that each person has the fundamental human right to free access to justice, which includes the right to file an application in front of an impartial tribunal, and therefore also the right to withdraw that application.

6. An application represents the materialization of an applicant’s right to appeal the contested decision. This is the first procedural act by which an applicant invests the Tribunal of dealing with the appeal. The whole procedural activity will take place within its limits and the application must be filed by the person who has the right to

appeal the contested decision (*ratione personae*), within the applicable time limit (*ratione temporis*) and in front of the competent Tribunal (*ratione loci*).

7. Consequently, to be legally valid, a request for the withdrawal of an application has to be formulated by the applicant and/or by her counsel and must consist of the unconditional expression of the applicant's free will to close her case before a judgment is issued.

8. An application can be withdrawn orally and/or in writing, partially or entirely. The withdrawal request can refer either to the pending application (as a procedural act) or to the right to appeal itself.

9. If an identical application is filed by the same applicant against the same party after she or he waived her or his right to appeal the matter, the exception of *res judicata* can be raised by the other party or *ex officio* by the court itself. *Res judicata* requires three cumulative elements: (i) same parties; (ii) same object; and (iii) same legal cause, and has both negative and positive effects: it is blocking the formulation of a new identical application and guarantees that it is not possible to rule differently in the same matter.

10. *Res judicata* is a reflection of the principle of legal certainty and does not prejudice the fundamental right to a fair trial since the access to justice is not absolute and can be subjected to limitations resulting from the application of the other principles. The principle of rule of law and the principle of legal certainty, expressed also by *res judicata*, require, *inter alia*, that an irrevocable decision given by the Tribunal not to be further questioned (*non bis in idem*) (see *Shanks* 2010-UNAT-026bis; *Costa* 2010-UNAT-063; *Meron* 2012-UNAT-198). As stated by the United Nations Appeals Tribunal in *Meron* that "there must be an end to litigation" in order to ensure the stability of the judicial process.

11. The Applicant clearly expressed, in his motion to discontinue and withdraw proceedings of 18 October 2016, his free will to fully and finally withdraw his application and thereby end the pending litigation.

12. In conclusion, the object of the withdrawal request is the right to appeal itself and represents the Applicant's free will to end the litigation. Since the Applicant has withdrawn his application, the Tribunal no longer needs to make a determination on the merits and takes note of the withdrawal.

IT IS ORDERED THAT:

13. The Applicant has withdrawn the matter in finality, including on the merits. There being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2016/049 is hereby closed without liberty to reinstate.

(Signed)

Judge Alessandra Greceanu

Dated this 20th day of October 2016