



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

SHEHADEH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:

Daniel Trup, OSLA

Counsel for Respondent:

Alistair Cumming, ALS/OHRM, UN Secretariat

Introduction

1. On 8 February 2017, the Applicant, a Senior Political Affairs Officer for the Department for Political Affairs (“DPA”) serving at the P-5 level in New York, filed an application challenging the Administration’s refusal to accord him nationality designation with the State with which he is most closely associated with, pursuant to staff rule 4.3(b). The Applicant requested that the decision of the Administration refusing to recognize his lawful nationality for the purposes of the Staff Regulations and the Staff Rules be rescinded, and that he be assigned the nationality of the State with which he is most closely associated.

2. Pursuant to art. 8.4 of the Dispute Tribunal’s Rules of Procedure, the application was transmitted to the Respondent, advising, pursuant to art. 10 of the Rules of Procedure, that the reply be filed by 5:00 p.m. on Friday, 10 March 2017.

3. On 8 March 2017, prior to the deadline for the filing of the reply, the Applicant, through his Counsel, filed a request for withdrawal of proceedings stating :

Following the decision of the Administration to designate [Applicant’s] nationality Palestinian, the Applicant hereby withdraws all of his allegations and claims in the present proceedings before the United Nations Dispute Tribunal in finality, including on the merits, and with no right of reinstatement and therefore requests a discontinuance of the proceedings.

Consideration

4. 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.

5. 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*.

6. In the instant case, following the decision of the Administration to designate the Applicant’s nationality as Palestinian, the Applicant has confirmed in writing that he is withdrawing the matter without liberty to reinstate. The Applicant’s informed and 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.

7. As there is no pronouncement on the merits, the Tribunal will proceed by way of order rather than judgment. Nevertheless, this is a judicial decision which disposes of the case before the Dispute Tribunal, the consequences of which is equivalent to the effect of a final judgment (see *Charles* 2014-UNAT-437).

8. The Tribunal commends the parties for their good faith efforts at resolving the case amicably. Such efforts are encouraged as amicable resolution of disputes is an essential component of the new system of internal justice, not only saving the valuable resources of the Organization but contributing also to a harmonious working environment and culture.

Conclusion

9. 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 23rd day of March 2017