



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:

Daniel Trup, OSLA

Counsel for Respondent:

Susan Maddox, ALS/OHRM

Sophie Lange, ALS/OHRM

Introduction

1. On 31 March 2017, the Applicant, a former staff member with the United Nations, filed an application contesting, “The decision of the Administration to unilaterally amend [Chapter] X of the Staff Rules and Regulations covering Disciplinary Measures and then threaten to notify [the Applicant’s] new employer, of an incomplete disciplinary investigation”. As a remedy, the Applicant requested “that the Administration’s decision to threaten to contact his new employer [...] to disclose contents of an outstanding investigation be rescinded”. As part of his application, the Applicant further requested to have “his name anonymised in any orders or final judgment”.

2. Together with his application, the Applicant also filed a motion for interim measures pursuant to art. 10.2 of the Dispute Tribunal’s Statute and art. 14 of its Rules of Procedure, requesting that the contested decision be suspended during the proceedings before the Dispute Tribunal. Referring to arts. 19 and 36.1 of the Dispute Tribunal’s Rules of Procedure and the Appeals Tribunal’s judgment in *Villamorán* 2011-UNAT-160, the Applicant also requested the Tribunal to suspend the contested decision during the Tribunal’s deliberation of his motion for interim measures.

3. On 31 March 2017, the Registry served the application and transmitted the motion for interim measures to the Respondent, instructing him, on behalf of the Tribunal, to file a response to the motion by 1:00 p.m. on 4 April 2017 and, pursuant to art. 10 of the Dispute Tribunal’s Rules of Procedure, to file a reply to the substantive application by 1 May 2017.

4. By Order No. 68 (NY/2017) dated 3 April 2016, the Tribunal: (a) suspended the implementation of the contested decision pending its consideration of the Applicant’s motion for interim measures; and (b) granted the Applicant’s request for anonymity.

5. On 4 April 2017, the Respondent filed his response to the motion for interim measures, claiming that the motion was not receivable and that, in any event, it was groundless.

6. By Order No. 72 (NY/2017) dated 7 April 2017, the Tribunal granted the Applicant's motion for interim measure and suspended the contested decision pending the Dispute Tribunal's proceedings. The Tribunal further ordered that anonymity would remain as per Order No. 68 (NY/2017).

7. On 26 April 2017, the Respondent filed his reply, claiming that the application was not receivable *ratione materiae* because, in essence, it did not concern an appealable administrative decision and that, even if so, the decision was lawful.

8. On 16 May 2017, Counsel for the Applicant filed a "Notice of Withdrawal", stating that:

... On 31 March 2017, the Applicant submitted to the Tribunal the Application, UNDT/NY/2017/024.

... The matter has now been settled and accordingly, the Applicant hereby submits its notice of withdrawal of the Application and all his allegations and claims before the Dispute Tribunal.

9. Much of the background, history and legal submissions in this matter have been previously set out in Order No. 62 (NY/2017) dated 30 March 2017 and in Order Nos. 68 and 72 (NY/2017) which, for the purpose of this Order, the Tribunal sees no reason to reiterate herein.

Consideration

13. 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.

14. 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*.

15. In the instant case, by withdrawing “all his allegations and claims before the Dispute Tribunal”, 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.

16. The Tribunal commends both parties for resolving this matter without the need for a final judicial determination. Amicable resolution of disputes saves valuable resources.

Conclusion

17. 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.

(Signed)

Judge Ebrahim-Carstens

Dated this 23rd day of May 2017