



Before: Judge Ebrahim-Carstens
Registry: New York
Registrar: Elizabeth A. Turchi, Officer-in-Charge

DUONG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
Brandon Gardner, OSLA

Counsel for Respondent:
Camila Nkwenti, UNEP

Introduction

1. On 16 August 2017, the Applicant, an Associate Database Administrator at the P-2 level with the United Nations Environment Programme in Montreal, filed an application in which she “contests the decision of the Administration to recover the difference of 18 months of salary between steps P-2/6 and P-2/2 on the basis that it mistakenly appointed [her] at a higher step than was warranted.” The Applicant requests that the contested decision be rescinded.

2. On 21 August 2017, the Tribunal received a notification that the Applicant had apparently filed a notice of withdrawal of proceedings. However on inquiry by the Tribunal’s Registry, Counsel for the Applicant clarified by email on 5 September 2017 that the withdrawal of proceedings had been wrongly uploaded on the Applicant’s name, and that it had actually been submitted on behalf of a different staff member. The email stated that “the [Applicant] has never requested the withdrawal of proceedings in regard to her case and continues to stand behind the viability of her UNDT application.”

3. On 7 September 2017, the Applicant, filed a request for withdrawal of proceedings confirming that “[f]ollowing the signing of a Settlement Agreement between the parties, [the Applicant] withdraws all of her allegations and claims in the present proceedings before the United Nations Dispute Tribunal in finality, including on the merits, and therefore requests a discontinuance of the proceedings.” The request is dated 7 September 2017 and is duly signed by Counsel for the Applicant.

Consideration

4. The Tribunal commends the Applicant for withdrawing the present case based on informal resolution. This saves valuable resources of the Organisation and also contributes to a harmonious working environment and culture.

5. The desirability of finality of disputes within the workplace cannot be gainsaid (see *Hashimi* Order No. 93 (NY/2011), dated 24 March 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 an applicant does not have the right to bring the same complaint again.

6. The object of the *res judicata* rule is that "there must be an end to litigation" in order "to ensure the stability of the judicial process" (*Meron* 2012-UNAT-198) and that a party should not have to answer the same cause twice. Once a matter has been resolved, a party should not be able to re-litigate the same issue. An unequivocal withdrawal means that the matter will be disposed of such that it cannot be reopened or litigated again.

7. 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*.

8. In the instant case, the Applicant filed a motion stating that she “withdraws all of her allegations and claims in the present proceedings before the United Nations Dispute Tribunal in finality, including on the merits”.

9. 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 her case, requiring no pronouncement on the merits but concluding the matter *in toto*. Therefore, the dismissal of her case with a view to finality of the proceedings is the most appropriate course of action.

Conclusion

10. The Applicant has withdrawn the present case in finality, including on the merits. 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 September 2017