



Before: Judge Ebrahim-Carstens
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

MENEKSE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On Saturday, 16 September 2017, the Applicant, an Information and Communications Technology (“ICT”) Auditor in the Office of Internal Oversight Services (“OIOS”) in New York, filed an application contesting that her “application to the P-5 Chief of ICT Audit Section ([Job Opening] 73526) post in the Internal Audit Division of OIOS was not released to the hiring manager by [the Office of Human Resources Management, “OHRM”] on the basis that [she] did not meet the lateral move requirements”.
2. On 19 September 2017, the Registry acknowledged receipt of the application and, in accordance with art. 8.4 of the Rules of Procedure, transmitted it to the Respondent, instructing him to submit his reply by 19 October 2017.
3. On 9 October 2017, the Applicant filed a submission titled, “Withdrawal of application” in which she stated as follows (references to annexes and emphasis omitted):

On 2 October 2017, I received a memorandum from Management Evaluation Unit [“MEU”] indicating closure of my request for Management evaluation and stated that “This is in reference to your correspondence dated 21 July 2017 and addressed to the Management Evaluation Unit (MEU), requesting a management evaluation with respect to the decision to “not release [your] application to the hiring manager” to compete for the post of P-5 (Chief of ICT Audit Section, JO 73526) in the Internal Audit Division of the Office of Internal Oversight Services (OIOS). The MEU has been informed that your two lateral moves have been recorded by the Executive Office OIOS [...] in UMOJA and IMIS, and your application to JO#73526 has been released for hiring manager’s review and consideration. The MEU considers that the above information renders moot the matter raised in your request/or a management evaluation. We are proceeding to close your file on that basis”. [...]

Again on 2 October 2017, I received an e-mail from OIOS Administration inviting me to the written assessment for the JO 73526, which I had applied. This invitation proved that OHRM released my job application to the hiring manager. [...]

I checked my personal record in Umoja and observed that Personal Actions were recorded in Umoja which satisfies my lateral move requirements to apply to P-5 posts. [...]

On the basis of these actions taken by OHRM and OIOS, I am requesting to withdraw my Application UNDTINY/2017/091.

Consideration

4. The Tribunal notes that the core functions of the Management Evaluation Unit (“MEU”) are to conduct an impartial and objective evaluation of an administrative decision to assess whether it was made in accordance with the rules and regulations, and thereafter to make recommendations to the Under-Secretary General for Management, also proposing appropriate remedies in case of improper decisions. More particularly, ST/SGB/2010/9, sec. 10, provides that:

Section 10 Management Evaluation Unit

10.1 The Management Evaluation Unit is headed by a Chief, who is accountable to the Director of the Office of the Under-Secretary-General for Management.

10.2 The core functions of the Unit are as follows:

(a) Conducting an impartial and objective evaluation of administrative decisions contested by staff members of the Secretariat to assess whether the decision was made in accordance with rules and regulations;

(b) Making recommendations to the Under-Secretary-General for Management on the outcome of the management evaluations and proposing appropriate remedies in case of improper decision made by the Administration;

(c) Communicating the decision of the Under-Secretary-General for Management on the outcome of the management evaluation to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York;

(d) Proposing means of informally resolving disputes between staff members and the Administration; making recommendations to the Under-Secretary-General for

Management on extending the deadlines for filing requests for management evaluation by staff members or for extending the deadlines for completing a management evaluation pending efforts for informal resolution by the Office of the Ombudsman;

(e) Conducting a timely review of an application to suspend the implementation of a contested administrative decision until the management evaluation has been completed in cases involving separation from service; making a recommendation to the Under-Secretary-General on the outcome of such review; and communicating the decision of the Under-Secretary-General on the outcome of the review to the staff member;

(f) Monitoring the use of decision-making authority and making recommendations to the Under-Secretary-General for Management to address any discerned trends;

(g) Assisting the Under-Secretary-General for Management to strengthen managerial accountability by ensuring managers' compliance with their responsibilities in the internal justice system.

5. The record indicates in this case that following the evaluation of the administrative decision by the MEU and upon its intervention and recommendations, this matter was resolved in accordance with the applicable rules and regulations and to the satisfaction of the Applicant. The Tribunal commends the parties for resolving this matter and the Applicant for withdrawing the present case. This saves valuable resources of the Organisation and also contributes to a harmonious working environment and culture.

6. 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.

7. 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.

8. 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*.

9. In the instant case, the Applicant filed a motion stating that she "withdraw[s] [her] application" as set out above.

10. 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

11. 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 11th day of October 2017