



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/029
Order No.: 261 (NY/2017)
Date: 30 November 2017
Original: English

Before: Judge Alessandra Greceanu
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

BRIGHT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alexandre Tavadian, Legal Affairs Service, UNHCR
Louis-Philippe Lapicerella, Legal Affairs Service, UNHCR

Introduction

1. On 14 April 2017, the Applicant, a Senior Administrator/ Finance Associate of the United Nations High Commissioner for Refugees (“UNHCR”) at the GS-7, step 13, level, filed an application, contesting the following administrative decisions:

a. The “[n]on-granting of the downgraded position from G7: Snr. Admin/Finance Assistant to G5 Snr. Finance Assistant (Inconsistencies with the hiring process)”;

b. The “[t]ermination during Certified Medical Leave with Fixed Termination Date while Applicant’s diagnosis and treatment continues, is within sick leave entitlement”.

2. On 17 April 2016, this case was assigned to the undersigned Judge and the application was transmitted to the Respondent, instructing him to file a reply by 17 May 2017.

3. The Respondent filed his reply on 17 May 2017.

4. On 14 August 2017, the parties filed a joint motion to suspend the proceedings pending informal settlement discussions under the auspices of the UNHCR Ombudsman’s Office for an initial period of three months, until 2 November 2017.

5. By Order No. 160 (NY/2017) dated 15 August 2017, granted the parties' motion and suspended the proceedings until 2 November 2017.

6. On 1 November 2017, the Applicant filed a motion to discontinue and withdraw proceedings, indicating that the parties "have reached an agreement and formally resolved the Application".

Consideration

7. The Tribunal commends the Applicant for withdrawing the application in the present case under the given circumstances. This saves valuable resources and contributes to a harmonious working relationship between the parties.

8. 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.

9. 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*).

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

11. 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.

12. 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: (a) same parties; (b) same object; and (c) 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.

13. *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-026; *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.

14. The Applicant clearly expressed, in the withdrawal request of 1 November 2017, his free will to fully withdraw his application and thereby end the pending litigation.

15. 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.

16. In light of the foregoing,

IT IS ORDERED THAT:

17. 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/2017/029 is hereby closed without liberty to reinstate.

(Signed)

Judge Alessandra Greceanu.

Dated this 30th day of November 2017