



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/105
Order No.: 278 (NY/2017)
Date: 20 December 2017
Original: English

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

RESTREPO

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 20 October 2017, the Applicant, a staff member serving as a Senior Spanish Conference Interpreter at the P-5, step 11, level in the Department for General Assembly and Conference Management in New York, filed an application on the merits contesting:

... the notice by DGACM/Interpretation Service/Spanish Boot [Human Resources] Partner [...] that a) she was going to retroactively apply a clarification obtained by her on 2017-06-07 in reference to the non-validity of the Certified Sick Leave (CSL) reports I had been submitting and uploading to UMOJA within the Time Management Period March 2016-March 2017, [...] and b) that I had to convert these CSLs into Uncertified Sick Leave (USL) or Annual Leave.

2. On the same day, the case was assigned to the undersigned Judge.

On 18 December 2017, the Applicant filed a motion, entitled “Motion for Withdrawal”, in which she stated that, “This is to withdraw case UNDT/NY/2017/105, as my case before the Management Evaluation Unit has been amicably resolved.”

3. On 18 December 2017, the Respondent filed his reply.

Consideration

4. The Tribunal commends the Applicant for withdrawing the present case based on the informal communications between the parties. This saves valuable resources and contributes to a harmonious working relationship between the parties.

5. 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.

6. 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*).

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

8. 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.

9. 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: (i) same parties; (ii) same object; and (iii) 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.

10. *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-026bis; *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.

11. The Applicant expressed in her motion her will to withdraw her application and thereby to end the pending litigation.

12. 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 her application, the Tribunal no longer needs to make a determination on the merits and takes note of the withdrawal.

IT IS ORDERED THAT:

13. The Applicant has withdrawn the matter in finality. There being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2017/105 is hereby closed without liberty to reinstate.

(Signed)

Judge Alessandra Greceanu

Dated this 20th day of December 2017