



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/069
Order No.: 2 (NY/2018)
Date: 5 January 2018
Original: English

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

ROY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM
Alister Cumming, ALS/OHRM

Introduction

1. On 4 December 2016, the Applicant, a staff member with the Department of Public Information serving at the G-5 level, and who has been in the service of the Organization since 18 September 2001, filed an application challenging the decision dated 17 June 2016 not to select her for the position of Library Assistant at the G-6 level (Job Opening No. 49714). As remedies, the Applicant sought compensation for “the adverse effects on [her] morale, and for emotional stress, anxiety and mental anguish” and compensation by way of a Special Post Allowance to the G-6 level, retroactive to January 2012 and continuing for as long as the Applicant would perform higher-level functions, or in the alternative, a reclassification of the Applicant’s current post at the G-5 level to the G-6 level, in recognition of the Applicant’s current duties.

2. On 10 November 2016, the Respondent filed a reply stating that the application was without merit as the Applicant received full and fair consideration and there was no bias or procedural error in the selection process. Further, the Respondent submitted that as the selection decision was lawful, the Applicant was not entitled to any remedy, nor has the Applicant provided any evidence to show that she suffered any harm as a result of the contested decision. The Respondent contended that the medical reports submitted by the Applicant did not show any link between the Applicant’s health issues and the contested decision.

3. On 2 November 2017, by Order No. 246 (NY/2017), the Tribunal instructed the Applicant to file and serve comments or additional submissions, if any, addressing the contentions raised in the Respondent's reply, including on the issue of damages.

4. On 28 November 2017, the Applicant filed a submission titled "Comments addressing the Respondent's reply".

5. On 12 December 2017, the Applicant filed a submission titled, "Motion for Withdrawal of Application" in which she stated as follows:

1. Subsequent to my submission dated 28 November 2017, I was notified by OHRM that my request for an agreed termination had been approved, and that the Secretary-General had decided to terminate my permanent appointment under the provisions of Staff Regulation 9.3(a)(vi), effective 30 November 2017, c.o.b.
2. Consistent with the final stipulation of the Memorandum of Understanding provided to me by OHRM, and which I signed, I hereby withdraw any and all claims and appeals I have pending against the Organization

[...]

Consideration

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 agrees to “hereby withdraw any and all claims and appeals [she has] pending against the Organization” as set out above.

10. The Applicant attached to her motion for withdrawal, a copy of the Memorandum of Understanding signed by her on 30 November 2017 setting out the terms and conditions of the agreed termination of her permanent appointment, and consequent withdrawal of her claim. The Tribunal is confident that the parties shall adhere to the agreed terms and conditions, if they have not already done so.

11. 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.

12. The Tribunal commends the parties for resolving this matter and the Applicant for withdrawing the present case. This saves valuable resources all round and also contributes to inculcating a harmonious working environment and culture within the Organization.

Conclusion

13. 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 5th day of January 2018