



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

STEFANIZZI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. On 10 June 2016, the Applicant filed the application in the present case (Case No. UNDT/NY/2016/023) contesting the Administration's decision "to exclude [the Applicant] from generic recruitment exercise for Chief Service Delivery D-1 [Generic Job Opening #15-LOGFMADFS-45021-P-Field Locations, "GJO 45021"]".

2. On 11 July 2016, the Respondent duly filed his reply in the present case, submitting that the application is not receivable as the contested decision was a preparatory step and not a final administrative decision, as the selection process for the relevant job opening had not yet been completed. The Respondent further submitted that, *inter alia*, the Applicant's claim is without merit as she does not meet the minimum requirements for the Chief Service Delivery position in terms of relevant work experience.

3. On 10 October 2016, pursuant to Order No. 233 (NY/2016), the Applicant filed a submission addressing the contentions raised in the Respondent's reply.

4. On 24 October 2016, pursuant to Order No. 233 (NY/2016), the parties filed a joint submission setting out a list of each parties' agreed facts, characterization of legal issues and informing the Tribunal that the parties agreed to have the present case decided on the papers.

5. On 28 October 2016, the Applicant filed a motion for Case No. 2016/023 to be held in abeyance. The Applicant informed the Tribunal that "that on 10 August 2016 she received an official communication informing her that recruitment for [GJO 45021] was complete and that her application had been unsuccessful. [...] Given the Respondent's arguments regarding receivability in this case the Applicant was obliged to challenge that decision by way of management evaluation requested on

27 September 2016 [...] and the Applicant will challenge [the decision of the management evaluation unit] by way of [Dispute Tribunal] Application”. The Applicant further submitted that a decision by the Tribunal in relation to the present case would have the potential to create procedural issues if it was followed by a further case arguing the same issue. The Applicant, therefore, requested that in order to prevent such issues and in the interests of judicial economy, the application in the present case be held in abeyance pending a further application “on the case currently subject to management evaluation review such that the cases can be joined”.

6. On 9 December 2016, the Applicant filed an application contesting the Administration’s decision “to find the Applicant did not meet the minimum requirements for participating in the rostering exercise - for the Generic Job Opening of Chief Service Delivery D-1 [GJO 45021] and being screened out of the rostering exercise for that post.” This case was registered under Case No. UNDT/2016/072.

7. On 9 January 2017, the Respondent filed a reply to the application in Case No. UNDT/NY/2016/072, submitting that the application is without merit arguing that the Applicant did not meet the minimum requirements for the position of CSD at the D-1 level and that the hiring manager, therefore, lawfully excluded her from further assessment.

8. On 9 January 2017, the Respondent filed a response to the Applicant’s motion for the present case to be held in abeyance, submitting that Applicant’s motion was moot, and that, as the Applicant has since filed an application in Case No. UNDT/NY/2016/072 challenging the decision to not select her for GJO 45021, there were no reasons for the present case to either be held in abeyance or joined with Case No. UNDT/NY/2016/072.

9. By Order No. 70 (NY/2018) dated 28 March 2018, the Tribunal ordered the Applicant to file a response to the Respondent's submission dated 9 January 2017 by 13 April 2018, indicating, *inter alia*, that

... The Applicant's principle contention in both applications [in the present case and in Case No. UNDT/NY/2016/072] is that she was unlawfully excluded from the selection process for GJO 45021 as a result of the decision to screen her out of the selection process on the basis that she did not meet the minimum requirements for the position. In both applications, the Applicant requests rescission of the contested decision, or in the alternative, damages in the amount of the difference in salary over a two-year period.

10. On 6 April 2018, the Applicant filed his response to Order No. 70 (NY/2018) stating that:

... By Order No. 70 (NY/2018) the Tribunal requested the Applicant file a response to the Respondent's submission dated 9 January 2017 indicating if any amendment to pleadings were required and whether the Applicant still requested that Case No. 2016/023 be held in abeyance or joined with Case No. 2016/072.

... The Applicant agrees with the Tribunal's assessment that the two cases have a common factual background and essentially contest identical decisions. The only difference between the cases being the characterisation of when a reviewable administrative decision was communicated.

... The Applicant had initially considered that clarity as to whether Case No. 2016/023 was receivable might be desirable. However, in the interests of judicial economy, the Applicant no longer seeks such a determination.

... The Applicant notes that no receivability issue is argued by the Respondent in relation to Case No. 2016/072.

... As a result the Applicant no longer seeks for the cases to be joined or for Case No. 2016/023 to be held in abeyance.

... The Applicant respectfully seeks leave to withdraw Case No. 2016/023. The Applicant seeks a determination from the Tribunal only in relation to the second Application - Case No. 2016/072.

Consideration

11. The Applicant states that the two cases he has filed regarding GJO 45021 “have a common factual background and essentially contest identical decisions. The only difference between the cases being the characterisation of when a reviewable administrative decision was communicated”. The Applicant further states that in the interests of judicial economy, he no longer seeks a determination as to whether the instant Case No. UNDT/NY/2016/023 is receivable, and therefore no longer seeks for the cases to be joined, or for the instant case to be held in abeyance.

12. To that extent, the Applicant has filed a motion stating that he seeks to withdraw the present case and that he only seeks the Tribunal to make a determination in relation to Case No. UNDT/NY/2016/072. The Tribunal notes that this would be without prejudice to the Applicant’s right to rely on the pertinent facts and submissions in the case being withdrawn, in so far as they may be applicable in his other pending matter.

Conclusion

13. The Applicant having withdrawn the present case and there no longer being any receivability or other determination for the Tribunal to make in this particular instance, this case is closed.

(Signed)

Judge Ebrahim-Carstens

Dated this 6th day of April 2018