



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

LESSER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
Mohamed Abdou, OSLA

Counsel for Respondent:
Cornelius Fischer, UNOG
Bettina Gerber, UNOG

Introduction

1. On 28 March 2018, the Applicant filed an application contesting the decision not to pay her a relocation and assignment grant following her reassignment to New York and, alternatively, the decision not to implement the promise to reassess her entitlements following her selection for a temporary position through Inspira (a United Nations online jobsite).

2. By notification dated 28 March 2018, the New York Registry of the Dispute Tribunal (“the Registry”) acknowledged receipt of the application and transmitted it to the Respondent. The parties were informed that the application had been registered under Case No. UNDT/NY/2018/015 and assigned to the undersigned Judge. The Respondent was instructed to submit his reply by 27 April 2018.

3. On 27 April 2018, the parties filed a motion to suspend the proceedings, informing the Tribunal that:

... On 6 April 2018, [C]ounsel for the Applicant was advised of the Administration’s intention to pay the Applicant the benefits sought in her [Dispute Tribunal’s] application.

... On 10 April 2018, the Management Evaluation Unit (“MEU”) informed the Applicant that it has received confirmation from the Human Resources Management Service, United Nations Office at Geneva (UNOG), that she will be paid the entitlements requested. On the basis of these assurances, the [MEU] found that the case has become moot and proceeded with closing the Applicant’s file.

... On 26 April 2018, [C]ounsel for the Applicant was advised that payment was being processed by the relevant department and that a few more days may still be required for the funds to be released to the Applicant’s bank account.

4. The parties jointly requested “a limited suspension of proceedings, without prejudice to any party, until 4 May 2018 to implement the agreement and amicably resolve the matter”.

5. By Order No. 92 (NY/2018) dated 27 April 2018, the Tribunal suspended the proceedings until 7 May 2018 and requested the parties to inform the Tribunal, by the same date, as to the progress of the mediation discussions and/or whether this case has been resolved.

6. On 4 May 2018, Counsel for the Applicant filed a motion of withdrawal, stating that:

... The Applicant hereby notifies the Tribunal that she has received her full entitlements on 28 April 2018, including relocation and assignment benefits. The Applicant acknowledges that her [Dispute Tribunal] application is now moot and would therefore respectfully request that the case be closed.

... The Applicant further confirms that the withdrawal of her application is full, final and covers the merits of the instant case.

Consideration

7. The Tribunal commends the Applicant for withdrawing the present case based on the informal resolution between the parties. 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 his/her Counsel and must

consist of the unconditional expression of the applicant's free will to close his/her 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 Tribunal 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*, "there must be an end to litigation" in order to ensure the stability of the judicial process.

14. The Applicant expressed in her motion her will to withdraw her application and thereby to 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 her application, the Tribunal no longer needs to make a determination on the merits and takes note of the withdrawal.

IT IS ORDERED THAT:

16. The Applicant has withdrawn the matter in finality. There being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2018/015 is hereby closed without liberty to reinstate.

(Signed)

Judge Alessandra Greceanu

Dated this 7th day of May 2018