



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2015/052
Order No.: 33 (NY/2016)
Date: 5 February 2016
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

CHUA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:

Jiries Saadeh, OSLA

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a staff member of the Department for General Assembly and Conference Management. She joined the Organization in 1995 and has a permanent appointment. She contests the decision “not to apply the provisions of [sec.] 3.1 of ST/AI/2009/1 [Recovery of overpayments made to staff members] ... with respect to the recovery of dependency allowances paid to her in support of her mother for 2010”. It appears from the documents filed that the final amount recovered from the Applicant was USD1,318.
2. On 2 December 2015, the Tribunal issued Order No. 298 (NY/2015), directing the parties to consider informal resolution of the matter.
3. On 16 December 2015, the parties filed a joint motion seeking a one-month suspension of the proceedings. The parties stated that they were “confident that they will be able to settle the case over the coming few weeks”.
4. By Order No. 307 (NY/2015), dated 17 December 2015, the Tribunal suspended the proceedings for one month and directed the parties to file a joint submission, by 18 January 2016, informing the Tribunal whether the case has been resolved.
5. On 18 January 2016, the parties filed a jointly-signed submission requesting the Tribunal to suspend the proceedings for an additional month. The request was granted by Order No. 12 (NY/2016), dated 19 January 2016.
6. On 5 February 2016, the Applicant filed a notice of withdrawal of her case, stating:

[P]ursuant to the terms and conditions of a confidential settlement agreement, the Applicant hereby withdraws her Application dated 25 August 2015 in Case No. UNDT/NY/2015/052. This withdrawal includes all of the

Applicant's allegations and claims in Case No. UNDT/NY/2015/052. ... This is a full, final and entire withdrawal, including on the merits, with no right of reinstatement.

Consideration

7. The desirability of finality of disputes within the workplace cannot be gainsaid (see *Hashimi* Order No. 93 (NY/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 the Applicant does not have the right to bring the same complaint 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 is therefore withdrawing the matter fully and finally, including on the merits. 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, dismissal of her case with a view to finality of proceedings is the most appropriate course of action.

10. As the Tribunal noted in Order No. 298 (NY/2015), in which it invited the parties in this case to consider amicable resolution of the dispute, this case not only presented a very particular set of circumstances, but also concerned a dispute over the sum of USD1,318. It is regrettable that this matter ended up in litigation before the Tribunal, considering all the particular circumstances, the sum involved, and the numerous exchanges generated between the Applicant and the Administration on this issue. In the Tribunal’s considered view, the cost of the proceedings before it—even taking the present withdrawal into consideration—certainly outweighed the recovery amount in question. It would be advisable if similar types of cases were resolved even before the initiation of formal proceedings. As the present motion demonstrates, amicable resolution of these types of cases is clearly feasible, and in many cases there is no good reason for the Administration and staff to wait until the institution of formal proceedings to attempt such informal resolution.

11. The Tribunal commends the parties for their good faith efforts at resolving the case amicably. Such efforts are encouraged as amicable resolution of disputes is an essential component of the new system of internal

justice, not only saving valuable resources of the Organization but contributing also to a harmonious working environment and culture.

Conclusion

12. The Applicant having withdrawn her application pursuant to the terms and conditions of a settlement agreement between the parties, 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 February 2016