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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/049

Judgment No.: UNDT/2018/127

Date: 14 December 2018

Original: English

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**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

WIENER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON WITHDRAWAL**

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**Counsel for Applicant:**

Daniel Trup, OSLA

Natalie Dyjakon, OSLA

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

Alister Cumming, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a Legal Officer in the Office of Legal Affairs in New York holding a fixed-term appointment and serving at the P-3 level, step 11, filed an application in which he contests the “decision of the Administration to reduce [his] contracted salary and the manner of the implementation of the Unified Salary Scale”. The Applicant requests rescission of the contested decision and to receive outstanding pay backdated accordingly.

2. In his response, the Respondent contends that the application is not receivable and, in any event, without merit.

## **Procedural history**

3. On 17 May 2017, the Applicant filed the application.

4. On 17 May 2017, in accordance with art 8.4 of the Dispute Tribunal’s Rules of Procedure, the Registry transmitted the application to the Respondent, instructing him to file his reply by 16 June 2017.

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

6. On 16 June 2017, the Respondent filed his reply.

7. On 30 June 2017, the parties in Case No. UNDT/NY/2017/025 (Camera) filed their joint submission in response to Order No. 127 (NY/2017), providing a list of cases under Category 2 (“Non-dependent spouse and dependent children”) as follows: UNDT/NY/2017/033 (Porret), UNDT/NY/2017/035 (Coello Martin), UNDT/NY/2017/047 (Rodriguez-Garcia), UNDT/NY/2017/049 (Wiener), UNDT/NY/2017/051 (Kim), UNDT/NY/2017/055 (Lee), UNDT/NY/2017/057 (Moreau), UNDT/NY/2017/061 (Pala-Krishnan), UNDT/NY/2017/065 (Alford), UNDT/NY/2017/067 (Elbaz), UNDT/NY/2017/070 (Grenfell), UNDT//NY/2017/072

(Cummings-John) and UNDT/NY/2017/074 (Lopez Posse). The legal issues raised in all the cases in Category 2 were identified as follows:

1. Whether the Administration breached the terms and conditions of the staff member's employment in not seeking his/her consent prior reducing his/her salary, thereby violating an acquired right.
  2. Whether the Administration's implementation of the Transitional Allowance was discriminatory in nature on the grounds that this benefit would depreciate annually as compared with staff members who receive the single Parent Allowance or Spouse Allowance.
8. By Order No. 164 (NY/2017) issued on



19. On 19 January 2018, the Applicant filed a submission regarding his financial loss.

20. By Order No. 13 (NY/2018) issued on 19 January 2018, the Tribunal provided the following orders:

... By **5:00 p.m. on Wednesday, 14 February 2018**, the Applicants are to file, if not done already, a copy of their statement of earnings and deductions for December 2017 and January 2018.

... By **5:00 p.m. on Wednesday, 14 February 2018**, the parties are to file additional submissions and supporting documentation based on the review of the following documents:

a. The ICSC's recommendations included in its 2015 and 2016 reports regarding the implementation methodology of the compensation package;

b. The General Assembly resolutions 70/244 and 71/264 (United Nations common system) and the related provisions of Staff Regulation and Rules (ST/SGB/2017/1);



with a different or with a similar/identical object with the application(s) in other case(s) pending before the same Tribunal or before the United Nations Appeals Tribunal, which may have a direct legal effect on the case requested to be suspended,

accordance with the terms and conditions specified [...] and subject to the provisions of the Staff Regulations and Staff Rules, together with such amendments as may from time to time be made to such Staff Regulations and Staff Rules and administrative instructions”. In the Letter of Appointment was stated that the indicated assessable salary could increase subject to satisfactory service and that the salary shown did not include any allowance to which he might be entitled.

31. By Order No. 134 (NY/2018) issued on 2 July 2018, the Tribunal ordered the Respondent to file additional relevant information and documentation by 16 July 2018 and the Applicant to file a response, if any, by 30 July 2018.

32. On 16 July 2018, the Respondent duly filed the available documentation, as instructed by the Tribunal in Order No. 134 (NY/2018).

33. On 26 July 2018,



## **Consideration**

36. The Tribunal commends the Applicant for withdrawing his application in the present case. This saves valuable resources and contributes to a harmonious working relationship between the parties.

37. 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.

38. 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*).

39. 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.

40. 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.

41. The Applicant expressed in his motion of 14 September 2018 his will to withdraw his application and thereby to end the pending litigation.

42. In conclusion, the withdrawal request represents the Applicant's free will to end the litigation. Since the Applicant has withdrawn his application, the Tribunal no longer needs to make a determination on the merits and takes note of the withdrawal.

**Conclusion**

43. In the light of the above, the Tribunal DECIDES:

44. The Applicant has withdrawn the application. There being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2017/49 is hereby closed.

*(Signed)*

Judge Alessandra Greceanu