



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/047
UNDT/NY/2012/009
UNDT/NY/2012/067
Order No.: 155 (NY/2015)
Date: 21 July 2015
Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

KAMARA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:

George. G. Irving

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. These cases have been subject to numerous judicial orders, including Order No. 256 (NY/2013), dated 16 October 2013, by which they were subject to an order for combined proceedings with Cases No. UNDT/NY/2011/089 and UNDT/NY/2012/008, brought by another applicant.
2. The Tribunal ordered the parties to attend a number of case management discussions (“CMD”) to identify relevant documents, clarify the issues in dispute, and to identify witnesses who could assist the Tribunal in reaching a judicial determination of the claims.
3. The Tribunal also issued two orders suspending proceedings to give the parties time to engage in discussions with the aim of achieving an alternative resolution to their dispute (“ADR”).
4. The Tribunal postponed a hearing on the merits of these cases three times to accommodate the needs of the parties, particularly the Applicant. The latest hearing was scheduled to commence on 13 July 2015.
5. On 10 July 2015, the applicant in Cases No. UNDT/NY/2011/089 and UNDT/NY/2012/008 filed a Notice of withdrawal and by Orders No. 144 (NY/2015) and 145 (NY/2015), dated 16 July 2015, those cases were closed.
6. The hearing on 13 July 2015 was adjourned because the Applicant was not present. The Tribunal was concerned to note the difficulties which the Applicant stated he was experiencing with his travel arrangements given the additional checks on passengers following the most recent outbreak of Ebola. The Applicant indicated that he would be able to attend the hearing if a short postponement was granted because he expected to arrive in the United States on 15 July 2015.

7. The Tribunal acceded to the Applicant's request for an adjournment of the hearing partly because of the Applicant's travel difficulties and the fact that the parties were continuing ADR discussions.

8. The Tribunal ordered the parties to attend a CMD at 2:00 p.m. on 16 July 2015 and for the Applicant to appear in person. The Applicant did not attend the CMD. A second CMD was held at 4:15 p.m. on 16 July 2015. The Applicant participated via telephone link. The Tribunal expressed its concern at the Applicant's failure to attend the CMD that had been scheduled for earlier that afternoon. The Applicant was informed that, taking into account his non-attendance at previous hearings, and the difficulties caused by what appeared to be a continuing pattern of conduct, the manner in which he was conducting these proceedings could be construed as a manifest abuse of process. The Tribunal did not propose to complicate the ADR discussions but warned the Applicant that, regardless of whether the parties reached an agreement to settle or whether the cases proceeded to a judicial determination, the issue of costs under art. 10.6 of the Dispute Tribunal's Statute would be dealt with as a separate issue. The Applicant was informed that he would be given a full opportunity to explain why an order for costs should not be made.

9. On 17 July 2015, the Applicant filed a Notice of withdrawal stating that, pursuant to the terms and conditions of a recently concluded settlement agreement, he requested the discontinuance of proceedings in these cases.

10. By Order No. 151 (NY/2015), dated 20 July 2015, the Applicant was ordered to attend a hearing on 21 July 2015 to give him an opportunity to show cause why an order for costs should not be made against him for manifest abuse of proceedings under art. 10.6 of the Dispute Tribunal's Statute.

11. At 2:37 a.m. on 21 July 2015, the Tribunal received an email from the Applicant providing an explanation for his absence at the hearing on 13 July 2015 and his failure to participate in the first CMD on 16 July 2015, and offering an

apology for his failure to communicate with the Tribunal regarding his non-attendance on 16 July 2015.

12. The Applicant participated in the hearing on 21 July 2015 via telephone link and apologised for his conduct. The Tribunal accepted the Applicant's email as a full explanation for what had appeared to be a contemptuous attitude to the processes of the Tribunal. Having heard the Applicant's apology during the hearing, and having noted the Applicant's responses to several questions put to him by the Tribunal, the Tribunal accepted that he was genuinely contrite, and ruled that his apology had purged his apparent contempt for the proceedings of the Tribunal. In those circumstances, the Tribunal decided not to make an order for costs against the Applicant.

13. At the hearing, all parties confirmed that a final settlement had been reached, that there were no outstanding matters, and that these cases could be closed in accordance with the Notice of withdrawal filed on 17 July 2015.

14. These cases exemplify the value of pro-active case management in clarifying the issues in dispute and supporting parties in their endeavours to achieve ADR.

15. The assistance and cooperation of Counsel Mr. Margetts and Mr. Irving in resolving five difficult and long-standing cases is a good example of how the internal justice system can work to resolve disputes notwithstanding the time it has taken to achieve finality.

16. There being no further matters for judicial consideration in this case,

IT IS ORDERED THAT:

17. There is no order for costs against the Applicant under art. 10.6 of the Dispute Tribunal's Statute.

18. Cases No. UNDT/NY/2011/047, UNDT/NY/2012/009, and UNDT/NY/2012/067 be closed.

(Signed)

Judge Goolam Meeran

Dated this 21st day of July 2015