
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/029
Order No.: 261 (NY/2017)
Date: 30 November 2017
Original: English

Before:

Introduction

1. On 14 April 2017, the Applicant, a Senior Administrator/ Finance Associate of the United Nations High Commissioner for Refugees (UNHCR) at the GS-7, step 13, level, filed an application, contesting the following administrative decisions:

a. The [n]on-granting of the downgraded position from G7: Snr.

with the hiring process) ;

b. t]ermination during Certified Medical Leave with Fixed Termination Date

10. Consequently, to be legally valid, a request for the withdrawal of an application has to be formulated by the applicant and/or by her/his counsel close the 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 An application can be withdrawn orally and/or in writing, partially or entirely.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 court 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 re WBT/F1 12 Tf1 0 0 1 176.42 237.17 Tm0 g0 G[(-)] TJ re WBT/F1 12 T

14. The Applicant clearly expressed, in the withdrawal request of 1 November 2017, his free will to fully withdraw his application and thereby end the pending litigation.

15. In conclusion, the object of the withdrawal request is the right to appeal
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the Applicant has withdrawn his application, the Tribunal no longer needs to