
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/108
Order No.: 68 (NY/2018)
Date: 28 March 2018
Original: English

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

PERRY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON WITHDRAWAL

Counsel for Applicant:
Daniel Trup, OSLA

Counsel for Respondent:
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 9 November 2017, the Applicant, a Security Officer at the S-2 level in the application contesting the Special Post Allowance, in light of him performing higher level duties and functions within the Special Investigation Unit.

2. By notification dated 10 November 2017, the Respondent was instructed by the Tribunal, pursuant to art. 8 of the Rules of Procedure, to submit his reply no later than 11 December 2017.

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

4. are in the process of concluding an agreement to resolve the dispute informally. The parties further noted that the agreement is awaiting implementation, which is due to take place within the next 30 days, and requested the Dispute Tribunal to suspend proceedings until Monday, 8 January 2018.

5. By Order No. 264 (NY/2017) dated 5 December 2017, the Tribunal suspended the proceedings until 8 January 2018 and requested them 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 8 January 2018 in response to Order No. 264 (NY/2017) that the parties have concluded an agreement to resolve the dispute informally. The agreement is awaiting implementation. Further efforts are being made to secure full implementation with the office concerned . The parties requested a further suspension of proceedings until 5 February 2018.

7. By Order No. 4 (NY/2018) dated 9 January 2018, the Tribunal suspended the proceedings until 5 February 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.

8. On 5 February 2018, in response to Order No. 4 (NY/2018) the parties have concluded an agreement to resolve the dispute informally. The agreement has been implemented in part. Further efforts continue to be made to secure full implementation with the office concerned
5 March 2018.

9. By Order No. 29 (NY/2018) dated 6 February 2018, the Tribunal suspended ~~the~~ ~~unus~~ ~~sit~~ ~~he~~ ~~0~~ ~~ET~~ ~~qu~~ ~~29~~ ~~s-3~~ ~~(e)~~ ~~448~~ ~~BT~~ ~~1~~ ~~792~~ ~~rh~~ ~~ave~~ ~~7~~ ~~(pro)~~ ~~-6~~ ~~(g)~~ ~~.~~ ~~gr~~ ~~s~~ ~~u~~ ~~s~~ ~~p~~ ~~e~~ ~~n~~ ~~d~~ ~~e~~ ~~d~~ ~~0~~ ~~.~~ ~~0~~ ~~0~~ ~~0~~ ~~0~~ ~~0~~ ~~9~~ ~~1~~ ~~2~~ ~~0~~ ~~6~~ ~~1~~ ~~2~~ ~~7~~ ~~9~~ ~~2~~ ~~re~~ ~~BT~~ ~~F~~

Consideration

13. The Tribunal commends the Applicant for withdrawing the present case based on the informal communications between the parties. This saves valuable resources and contributes to a harmonious working relationship between the parties.

14. 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.

15. 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*).

16. 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 before a judgment is issued.

17. 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.

18. 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.

19. 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-026bis; Costa 2010-UNAT-063;