UNITED NATIONS DISPUTE TRIBUNAL

| | |
|---|---|
| Case Nos.: | UNDT/NY/2017/063<br>UNDT/NY/2017/102<br>UNDT/NY/2017/103<br>UNDT/NY/2017/115 |
| Judgment No.: | UNDT/2019/091 |
| Date: | 22 May 2019 |
| Original: | English |


**Before:** Judge Goolam Meeran

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

WILSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

# JUDGMENT

# ON WITHDRAWAL

**Counsel for Applicant:**
Self-represented
Setondji Roland Adjovi (Co-Counsel)

**Counsel for Respondent:**
Alan Gutman, ALD/OHR, UN Secretariat

**Introduction**

1. The Applicant, who is currently Chief, Financial Policy and Internal Controls at the D-1 level with the Office of Programme Planning, Finance and Budget, filed several claims before the Dispute Tribunal reflecting his concerns about the manner in which he has been treated over a course of time in relation to a number of applications he made for promotion or lateral transfer. In presenting his cases he made various allegations regarding individual as well as institutional failures in giving full and proper effect to the letter and spirit of the staff selection system.

2. It should be noted that these allegations were denied by the Respondent so it was for the Tribunal to make factual determinations on the merits of the opposing contentions and to apply the law. As a necessary pre-requisite to performing this task the cases had to be subjected to proactive and detailed case management by the Tribunal to include consideration as to whether the cases were amenable to an alternative resolution of the dispute ("ADR").

3. On 1 April 2019, the following cases were reassigned to the undersigned Judge: UNDT/NY/2017/102, UNDT/NY/2017/103, and UNDT/NY/2017/115. On 8 May 2019, case UNDT/NY/2017/063 was added to this list.

4. In UNDT/NY/2017/063, the Applicant contested the cancellation of Temporary Job Opening 52485 for the position of Director, Information Systems and Technology at the D-2 level in the Office of Information and Communications Technology ("OICT") and of Job Opening ("JO") 54326 for the same position and which was filled by a lateral transfer of another staff member after cancellation of the JO for reasons which the Applicant believed he had reasonable grounds to challenge. The Respondent replied that the contested decisions were a result of a bona fide

restructuring within OICT and submitted that the Applicant failed to prove that the decisions were tainted by improper considerations.

5. In UNDT/NY/2017/115, the Applicant contested the selection decision in Job Opening 58836 for the position of Director, Global Services Division at the D-2 level in OICT. The Applicant alleged that the recruitment process was manipulated to ensure a certain outcome in favour of a particular candidate. The Respondent replied that the Applicant was given full and fair consideration in the selection process and that he was not selected because of his unsatisfactory performance at a competency-based interview and that in any event his claim of bias was not supported by the evidence.

6. In UNDT/NY/2017/102, the Applicant contested the selection decision relating to Job Opening 61747, Chief Operating Officer at the D-1 level in the then Investment Management Division of the United Nations Joint Staff Pension Fund ("UNJSPF"). The Applicant was not shortlisted because he did not meet the desirable qualification of work experience in an investment environment. The Applicant alleged that this criterion was applied arbitrarily and unfairly and that UNJSPF was biased against him due to a previous Tribunal claim challenging the outcome of a different UNJSPF selection exercise. The Respondent replied that the Applicant was fully and fairly considered and that the application of the desirable criterion was legitimate and job related.

7. In UNDT/NY/2017/103, the Applicant contested the selection decision for the generic job opening of Chief of Service, Information Systems and Telecommunications at the D-1 level in the then Department of Field Service (Job Opening 71042). The Applicant was not shortlisted because he did not meet the desirable qualification of one-year field experience, and the Applicant alleged that he had in fact accumulated more than one-year experience in field missions through

short assignments and that this criterion was discriminatory. The Respondent replied that the Applicant's experience in the form of short assignments was insufficient to meet this criterion which required an actual deployment and installation in field missions. Further, the Respondent submitted that the desirable criterion was included to establish a viable roster and is consistent with General Assembly Resolution 63/250 which invited the Secretary-General to fully consider the relevant field experience of the candidates when appointing officials at the D-1 and D-2 levels that provide backstopping and/or policy guidance to field missions.

8. Following a series of CMD's at which the issues in the cases were discussed, it appeared to the Tribunal that the ongoing litigation between the parties may not necessarily be in the best interest of the individual staff member or the Organization. In particular, the Tribunal noted that an unusual feature of these cases was that the Applicant was not seeking financial recompense but was taking a principled approach to highlight what he regarded as individual and systemic failures to uphold the high standards set by art. 101.3 of the Charter of the United Nations, which provides:

> The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

9. Although the Applicant was concerned and distressed by the manner in which he had been treated, he made it plain that he was keen to explore, in a constructive manner, a resolution of his complaints but also had in mind the ancillary benefit to other staff members if the issues of principle that he had raised were properly addressed. Following several CMD's the Tribunal encouraged ADR and gave appropriate guidance to the parties notwithstanding that previous attempts at a resolution were unsuccessful.

10. An opportunity arose in the course of the hearing in case UNDT/NY/2017/103 for the Tribunal to take the initiative to share with the parties certain observations based on an overview of all these cases, and having regard to General Assembly Resolution 70/112, adopted on 31 December 2015, which provides:

> 29. *Notes with concern* the increase in the number of pending cases before the Dispute Tribunal and the high cost to the Organization due to financial compensation paid to staff, and in this regard encourages further efforts to handle cases in an effective and efficient manner, including through enhanced cooperation between the formal and informal parts of the system of administration of justice and proactive case management by the judges of the Tribunal;

11. The Tribunal took into account that the Applicant was being assisted by Co-Counsel, a former staff member Mr. Setondji Roland Adjovi, and that for some weeks he was being assisted by Ms. Patricia Nemeth, the President of the United Nations Staff Union in New York, in attempts at reaching an amicable resolution. The Tribunal recalled that General Assembly Resolution 63/253, adopted on 24 December 2008, provides as follows:

> 9. *Commends* the role that volunteers have traditionally played in representing employees in the dispute resolution process under the existing system;
>
> 10. *Notes* that some current and former United Nations staff have been reluctant to represent their fellow staff members in the dispute resolution process because of the burden that such service would place on them;
>
> 11. *Requests* the Secretary-General to provide incentives to encourage current and former staff to assist staff members in the dispute resolution process;
>
> …
>
> 16. *Recalls* paragraph 55 of the report of the Secretary-General, and requests the Secretary-General to work with staff associations to develop incentives to enable and encourage staff to continue to

> participate in the work of the Office of Staff Legal Assistance, including by providing volunteer professional legal counsel;

12. During the case management discussions and at the hearing in case UNDT/NY/2017/103, the Tribunal reminded the parties that the clear policy of the General Assembly is the encouragement of alternative dispute resolution and in the circumstances of this case the Tribunal expressed the view that there was much to gain by a proactive exploration by both parties of the benefits of an alternative resolution to the dispute in these cases.

13. On 16 May 2019, during a short recess during the hearing in UNDT/NY/2017/103, the Tribunal saw the parties in chambers to explore a constructive way forward without encroaching on the respective roles and professional responsibilities of the participants. It was clear to the Tribunal that all concerned were committed to finding a mutually acceptable resolution without prejudice to an impartial consideration and determination by the Tribunal in the event that ADR discussions were unsuccessful.

14. Following proactive case management by the undersigned Judge and the parties' exploration of an alternative dispute resolution with the assistance of Mr. Gutman, Counsel for the Respondent, Mr. Adjovi and Ms. Nemeth, the President of the United Nations Staff Union in New York, the Applicant stated through Mr. Adjovi that the parties had agreed a constructive way forward to address the issues of principle that had been identified in these cases and that in the circumstance the Applicant wished to withdraw all these cases.

15. On the same day, the Applicant filed separate notices of withdrawal of his claims: UNDT/NY/2017/063, UNDT/NY/2017/102, UNDT/NY/2017/103, and UNDT/NY/2017/115.

16. The Tribunal considers that, although each claim was being dealt with separately, given the resolution agreed between the parties, these claims be subject to an order for combined proceedings and the Tribunal so orders.

17. The foregoing brief description illustrates the benefits of proactive case management as envisaged by the General Assembly in Resolution 63/253. The key to resolving such seemingly intractable problems is the willingness of all concerned to respond positively to the guidance offered by the Tribunal after a detailed analysis of the issues.

**Judgment**

18. There being no matter for judicial consideration and determination in these cases, it is ordered that case numbers UNDT/NY/2017/063, UNDT/NY/2017/102, UNDT/NY/2017/103, and UNDT/NY/2017/115 be closed.

*(Signed)*

Judge Goolam Meeran

Dated this 22nd day of May 2019

Entered in the Register on this 22nd day of May 2019

*(Signed)*

Nerea Suero Fontecha, Registrar, New York