



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/006
Order No.: 46 (NY/2018)
Date: 1 March 2018
Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

MCCREERY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON WITHDRAWAL

Counsel for Applicant:
Self-represented

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

Introduction

1. On 19 February 2018, the Applicant, a staff member serving as an Associate Administrative Officer at the P-2, step 13, level in the Department of Public Information in New York, filed an application on the merits contesting the decision which he described as, “Non-selection to [Job Opening] 17-Information Management Systems-[Office for the Coordination of Humanitarian Affairs]-71563-R-New York”.
2. On 20 February 2018, the case was assigned to the undersigned Judge.
3. On the same day, the Registry acknowledged receipt of the application and the Respondent’s reply was due on 22 March 2018.
4. On 26 February 2018, the Applicant filed a motion, entitled, “Motion to Discontinue and Withdraw Proceedings”, in which he stated that “the parties reached a settlement agreement in this matter [and] the Applicant hereby seeks to withdraw his [Dispute Tribunal] Application in case UNDT/NY/2018/006”.

Consideration

5. 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.
6. 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.
7. 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*).

8. 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 case before a judgment is issued.

9. 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.

10. 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: (i) same parties; (ii) same object; and (iii) 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.

11. *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; *Meron* 2012-UNAT-198). As stated by the United Nations Appeals Tribunal in *Meron* that "there must be an end to litigation" in order to ensure the stability of the judicial process.

12. The Applicant expressed in his motion his will to withdraw his application and thereby to end the pending litigation.

13. In conclusion, the object of the withdrawal request is the right to appeal itself and 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.

IT IS ORDERED THAT:

14. The Applicant has withdrawn the matter in finality. There being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2018/006 is hereby closed without liberty to reinstate.

(Signed)

Judge Alessandra Greceanu

Dated this 1st day of March 2018