



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/134
Judgment No.: UNDT/2010/074
Date: 29 April 2010
Original: English

Before: Judge Memooda Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

MONAGAS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Carmen Artigas

Counsel for respondent:
Jorge Ballester, UNICEF

1. The applicant, a former UNICEF staff member, was charged with misconduct and summarily dismissed in September 2008. He appeals the Secretary-General's decision not to accept the findings of the Joint Disciplinary Committee of 22 October 2008, which recommended that he be separated rather than summarily dismissed.
2. The applicant filed his application dated 8 October 2009 on 13 October 2009 with the UN Dispute Tribunal, Geneva Registry. The application was transferred thereafter to the New York Registry.
3. The respondent filed his reply with the New York Registry on 7 December 2009. Counsel of record for the applicant advised the Tribunal on several occasions that she had had difficulty in contacting the applicant, and at her request, the case management hearing scheduled for December 2009 was adjourned to 23 March 2010. On 23 March 2010, Counsel for the applicant, appearing by telephone, informed the Tribunal that that she had been instructed by her client, the applicant, that he wished to withdraw his case. Counsel for the applicant further informed the Tribunal that the applicant intended to commence proceedings against the Organisation in the national courts of Venezuela, where he currently resides.
4. Bearing in mind the Convention on the Privileges and Immunities of the United Nations 1946 I enquired whether the applicant was aware as to the status of the United Nations before national courts, the fact that the United Nations retained a discretion regarding its own immunity, and therefore the hurdles the applicant might face regarding seeking relief in such a manner. Further, that notwithstanding that the matter has not been canvassed on the merits, it would be unlikely for it to be reinstated once dismissed. Counsel for the applicant informed the Tribunal that she had legally advised the applicant of the risks inherent in adopting the proposed course of action, as well as the fact that, once withdrawn, the application before the Dispute Tribunal was unlikely to be able to be reinstated. Counsel for the applicant advised further that the applicant had already engaged the services of external counsel in respect of the proposed proceedings in Venezuela.

5. In the interests of finality of this dispute, I proposed to both Counsel that I was minded to issue a rule nisi stating that if the Tribunal did not receive notification from the applicant that he intended to pursue his case within a certain period, the case would be deemed to have been abandoned and would thereafter be dismissed on the grounds of lack of prosecution. Both Counsel consented to the proposed course of action and to the self-execution of this order on expiry of a prescribed period. Accordingly, I ordered in Order No. 55 (NY/2010) that the applicant was to show cause, by close of business on or before 26 April 2010, why this matter should not be dismissed for want of prosecution. No correspondence or objection has been received from the applicant or his Counsel since the dispatch of Order No. 55 (NY/2010) on 25 March 2010.

6. In this regard, I note the Judgment of Judge Cousin of this Tribunal in UNDT/2010/047 *Saab-Mekkour*, where he found the application of—

[a] general principle of procedural law that the right to institute legal proceedings is predicated upon the condition that the person using this right has a legitimate interest in initiating and maintaining legal action. Access to the court has to be denied to those who are no longer interested in the proceedings they instituted.

Conclusion

7. On the basis of the matters set out herein, the application is dismissed in its entirety for want of prosecution.

(Signed)

Judge Ebrahim-Carstens

Dated this 29th day of April 2010

Entered in the Register on this 29th day of April 2010

(Signed)

Hafida Lahiouel, Registrar, New York