



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

BUFFLER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON WITHDRAWAL

Counsel for Applicant:

Daniel Trup, OSLA

Natalie Puchalka, OSLA

Counsel for Respondent:

Elizabeth Gall, AAS/ALD/OHR, UN Secretariat

Introduction

1. On 26 April 2017, the Applicant, a Chief of Section at the P-5 level with the Department of Management, filed an application in which he contested the “decision of the Administration to reduce [his] contracted salary and the manner of the implementation of the Unified Salary Scale”. As a remedy, the Applicant requested that “the administrative decision to reduce his salary be rescinded, and that he receive the outstanding backdated pay accordingly”. As part of the application, the Applicant requested an “expedited hearing”. This case forms part of a group of cases commonly referred to as the salary scale cases that were filed before the undersigned Judge.

2. On 30 May 2017, the Respondent filed the reply. He submitted that the application is not receivable and that, in any event, the impugned decision was lawful.

3. By Order No. 120 (NY/2018) dated 7 June 2018, the Tribunal instructed the parties to file a jointly signed submission by 12 June 2018 in which they were to inform the Tribunal of their views on whether reading all the salary scale cases before the undersigned Judge:

a. It would be beneficial to consolidate the proceedings of, at least some of, the present cases. If so, the parties are to outline and list the categories of cases that may appropriately be handled together;

b. If, as a matter of judicial economy, it would be appropriate to order a stay of proceedings in any of the possible categories of cases until the Appeals Tribunal has issued its judgment(s) in some similar cases that are currently pending before it.

4. On 12 June 2018, the parties filed a joint submission as per Order No. 120 (NY/2018), listing the salary scale cases into three categories of cases, namely: staff members with a non-dependent spouse and dependent children including a 21-year old (Group 1); staff member with a non-dependent spouse and dependent children (Group 2); and staff members with a dependent spouse (Group 3).

5. On 29 June 2018, the Appeals Tribunals issued its judgments in *Lloret Alcañiz et al.* 2018-UNAT-840 and *Quijano-Evans et al.* 2018-UNAT-841.

6. By Order No. 25 (NY/2019) dated 1 February 2019, the Tribunal instructed (a) the parties to file a submission addressing the implications, if any, of the Appeals Tribunal judgments in *Lloret Alcañiz et al.* and *Quijano-Evans et al.* and (b) in particular, if the Applicant wished to withdraw his claims, he should state this in clear and unequivocal terms.

7. On 11 February 2019, the Applicant filed a “notice of withdrawal” in which he stated that he “seeks to withdraw all of his allegations and claims before the Dispute Tribunal” with respect to the present case.

8. On 15 February 2019, the Respondent filed a submission in which, *inter alia*, he stated that,

... On 29 June 2018, the Appeals Tribunal issued its judgment in the case of *Lloret Alcañiz et al.* [reference to footnote omitted]. In that case, the affected staff members challenged the payment of their salary and related allowances according to the unified salary scale and the transitional allowance approved by the General Assembly. The Appeals Tribunal held that it was lawful for the Secretary-General to introduce a new unified salary scale. The Appeals Tribunal also held that any challenge to introduction of the transitional allowance was not receivable.

... The Applications raise identical arguments to those already examined and rejected by the Appeal Tribunal. The Dispute Tribunal is bound by the Appeals Tribunal’s judgment in *Lloret Alcañiz et al.* and should dismiss the Applications.

Consideration

9. The desirability of finality of disputes within the workplace cannot be gainsaid (see *Hashimi* Order No. 93 (NY/2011) and *Goodwin* UNDT/2011/104).

10. In the instant case, the Applicant filed a submission stating that he “seeks to withdraw all of his allegations and claims before the Dispute Tribunal” with respect to the present case.

11. The Applicant’s clear and unequivocal withdrawal of all of his allegations and claims signifies a final and binding resolution with regard to the rights and liabilities of the parties in all respects in his case, requiring no pronouncement on the merits but concluding the current matter before the Tribunal. As the Applicant has withdrawn the application and decided to end the pending litigation, there is no matter remaining for adjudication by the Dispute Tribunal. The Respondent’s submissions of 15 February 2019 to the effect that the application should be dismissed on its merits, in essence requesting that the Tribunal proceed to a determination of the matter despite the Applicant’s withdrawal, is specious and therefore rejected.

Conclusion

12. As the Applicant has withdrawn all his allegations and claims, there being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2017/042 is hereby closed.

(Signed)

Judge Ebrahim-Carstens

Dated this 21st day of February 2019

Entered in the Register on this 21st day of February 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York