



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

GOUIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON DISMISSAL FOR WANT OF
PROSECUTION**

Counsel for Applicant:
Self-Represented

Counsel for Respondent:
Steven Dietrich, ALD/OHR, UN Secretariat

Introduction

1. On 11 September 2017, the Applicant, a P-4 Human Rights Officer serving with the United Nations Stabilization Mission in Haiti (“MINUSTAH”), filed an application before the Dispute Tribunal challenging the decisions to deny him "participation in a substantive test or competency based interview" in relation to the following nine job openings: (i) 73013, 71914, 71729, and 69982, P-5, Senior Political Affairs Officer; (ii) 72085, P-5, Senior Protection of Civilian Officer; (iii) 71462, P-5, Senior Human Rights Officer; (iv) 71975, P-4, Human Rights Officer (2 Posts); and (v) 70737, 70731, P-4, Political Affairs Officer.

2. On 11 October 2017, the Respondent filed a reply contending, *inter alia*, that the application is not receivable *ratione materiae* as the selection exercises for the contested job openings are still ongoing and no final selection decisions have been made. Should the Dispute Tribunal find the application receivable, the Respondent contends that the Applicant's rights have not been breached. The Applicant's job applications have been fully and fairly considered.

3. On 1 July 2019, the case was assigned to the undersigned Judge.

4. On 16 July 2019, by way of Order No. 108 (NY/2019), the Tribunal ordered the Respondent to file a submission updating the Tribunal on the status of the contested job openings and the status of the Applicant's candidacy for each one by 30 July 2019, and the Applicant to file a submission addressing the contentions raised in the Respondent's reply and further submission by 13 August 2019.

5. The Respondent duly filed a submission on 30 July 2019.

6. The Applicant did not file his submission by 13 August 2019.

7. On 14 August 2019, the Registry emailed the Applicant noting that no filing had been submitted by him pursuant to Order No. 108 (NY/2019), and informing him that further to the undersigned Judge's instructions, he is ordered to file his submission by 20 August 2019, together with an explanation for the reasons for the delay in filing. On the same day, the Registry further contacted the Applicant via telephone at 11.56 a.m. The Applicant apologized for overlooking the deadline of 13 August 2019 and stated that he would check his email and file his submission by the new deadline of 20 August 2019.

8. The Applicant did not file any submission by the new deadline of 20 August 2019 and did not give any explanation of the reasons for why he did not comply with the Tribunal's order.

9. On 26 August 2019, by Order No. 121 (NY/2019), the Tribunal directed the Applicant to file a signed submission by 6 September 2019, indicating whether he maintains his claims, and if so, why he failed to file a submission pursuant to Order No. 108 (NY/2019). The Tribunal further ordered that in the event of non-compliance with the Tribunal's Order, the application stood to be dismissed for want of prosecution.

10. The aforesaid Order was transmitted via the e-filing portal notification of 26 August 2019 per usual to the Applicant's email address on record and by registered mail to the address on file for the Applicant. The Applicant did not make any submission to the Tribunal within the prescribed deadline.

Consideration

11. The Dispute Tribunal has on several occasions pronounced on the principle of procedural law that the right to institute and pursue legal proceedings is predicated upon the condition that the person exercising this right has a legitimate interest in

initiating and maintaining legal action and that access to the Dispute Tribunal has to be denied to those who are no longer in need of judicial remedy, or no longer interested in the proceedings (*Bimo and Bimo* UNDT/2009/061; *Saab-Mekkour* UNDT/2010/047; *Zhang-Osmancevic* UNDT/2015/034).

12. The latter applies in the present case, as the Applicant has been ordered on two occasions to make the necessary submissions for finalization of his case, in addition to emails and phone calls by the Registry. The Applicant was given sufficient time to comply with the Tribunal's orders, and clearly warned of the consequences of his failure to do so. Due to the Applicant's noncompliance with Order No. 108 (NY/2019) dated 16 July 2019, the Tribunal directed, by Order No. 121 (NY/2019) dated 26 August 2019, the Applicant to confirm whether he maintained his claim, failing which he was warned his application stood to be dismissed for want of prosecution.

13. However, as of the date of this Judgment, no submission or further correspondence has been received by the Registry from the Applicant. The Tribunal, therefore, can only conclude that the Applicant is no longer interested in the pursuit and outcome of these legal proceedings, which must therefore be deemed to have been abandoned, and this matter therefore stands to be dismissed for want of prosecution.

Judgment

14. In light of the foregoing, but without determination of its merits, the Applicant's application is dismissed for want of prosecution.

(Signed)
Judge Joelle Adda

Dated this 10th day of September 2019

Entered in the Register on this 10th day of September 2019

(Signed)
Nerea Suero Fontecha, Registrar, New York