



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2014/040  
Order No.: 186 (NY/2015)  
Date: 17 August 2015  
Original: English

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**Before:** Judge Goolam Meeran

**Registry:** New York

**Registrar:** Hafida Lahiouel

DE GRAAFF

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON WITHDRAWAL**

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**Counsel for Applicant:**

Gerard Kennedy

**Counsel for Respondent:**

Stephen Margetts, ALS, OHRM, UN Secretariat  
Fabrizio Mastrogirolamo, UNDP

## **Introduction**

1. Following the assignment of this case to the undersigned Judge on 15 July 2015, four case management orders have been issued and a case management discussion (“CMD”) held.

2. By Order No. 148 (NY/2015), dated 20 July 2015, the Tribunal ordered the Applicant to show cause why: (a) this application should not be struck out on the grounds that it is misconceived and has no reasonable prospects of success; and (b) why costs should not be awarded against him for filing a considerable volume of documents which appeared to be irrelevant to the fundamental questions of fact and law to be determined by the Tribunal.

3. The Applicant responded to the order on 27 July 2015 and, on the same day, the Tribunal ordered the parties to attend a CMD on 30 July 2015.

4. Given the apparent weaknesses identified in the Applicant’s case, the Tribunal considered it appropriate at the CMD to draw attention to art. 10.6 of the Statute of the Dispute Tribunal, which provides that:

Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.

5. By Order No. 173 (NY/2015), dated 31 July 2015, the Tribunal ordered the parties to file closing submissions.

6. On 7 August 2015, the Applicant filed a submission requesting a “without costs withdrawal” of his application. However, given the content of the Applicant’s submission, in which he maintained his legal position that the contested decision was unreasonable and that sec. 5.1(d) of ST/AI/2007/3 (After-service health insurance) was potentially unlawful, the Tribunal considered that the request for withdrawal of the application was equivocal. The request was refused. The Tribunal informed the

parties that, in the circumstances, the case would be most appropriately disposed of by a judgment.

7. By Order No. 183 (NY/2015), dated 12 August 2015, amending Order No. 173 (NY/2015), the Tribunal again ordered the parties to file closing submissions.

8. On 13 August 2015, the Applicant filed a notice stating that he is unequivocally withdrawing his application. The Tribunal accepts this notice of withdrawal.

9. The Tribunal considers that the Applicant acted appropriately in taking note of the Tribunal's guidance at the CMD on 30 July 2015 that, in view of the fundamental misconstruction and misapplication of the applicable legal principles, the application had no reasonable prospect of success unless Counsel was able to advance, on behalf of the Applicant, a creative interpretation of the facts and the law, which appeared unlikely based on the documents and arguments advanced to date.

10. The Applicant, who was legally represented, acted very unwisely in commencing proceedings which were doomed to fail *ab initio* for more fundamental reasons than those advanced in the Respondent's reply. However, one of the purposes served by a CMD is the opportunity to have a frank discussion with the parties at the earliest possible opportunity and for the Tribunal to draw attention to any matter of concern, including the application of the relevant legal principles. Counsel for the Applicant acted sensibly, following guidance given at the CMD, by requesting time to have discussions with the Applicant.

11. The applicable test as to whether costs should be ordered, set out at para. 4 above, is a matter wholly for the Tribunal and not for the opposing party. The unequivocal withdrawal of the claim, in light of guidance offered by the Tribunal, effectively disposes of the Tribunal's concern that the manner in which the Applicant was conducting these proceedings amounted to a manifest abuse of process. The Tribunal has decided that, in all the circumstances, there should be no order for costs.

12. This case exemplifies the value of proactive case management in the resolution of disputes, as emphasized by the General Assembly in para. 27 of resolution A/RES/69/203 (Administration of justice at the United Nations), adopted 18 December 2014.

13. There being no further matters for judicial consideration in this case,

IT IS ORDERED THAT:

14. There be no order for costs against the Applicant under art. 10.6 of the Statute of the Dispute Tribunal.

15. Case No. UNDT/NY/2014/040 be closed.

*(Signed)*

Judge Goolam Meeran

Dated this 17<sup>th</sup> day of August 2015