



Before: Judge Alessandra Greceanu
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in Charge

GILES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON WITHDRAWAL

Counsel for Applicant:
Ms. Marisa MacLennan, OSLA

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On 31 July 2017, the Applicant, a staff member serving as an Intergovernmental Affairs Officer at the P-4, step 8 level in the Department for General Assembly and Conference Management (“DGACM”) in New York, filed an application contesting her non-selection for job opening # 69122, P-5, Senior Intergovernmental Affairs Officer (Secretary of the Fourth Committee), and the improper scoring of her written assessment.

2. On the same date (31 July 2017), the Registry acknowledged receipt of the application and, in accordance art. 8.4 of the Rules of Procedure, transmitted it to the Respondent, instructing him to file a reply by 13 October 2017 and the case was assigned to the undersigned Judge.

3. On 31 July 2017, the Respondent informed the Registry that Mr. Alan Gutman had been assigned as Counsel to the case.

4. On 30 August 2017, the Respondent filed his reply arguing that the application is without merit as the Applicant was fully and fairly considered for the post and that the selection process was carried out in accordance with the relevant ICSC selection exercises procedures.

5. On 7 December 2017, the Applicant filed a motion, entitled “Motion for Withdrawal” stating

“[...] a settlement agreement has been reached between the Parties, and that the Applicant respectfully requests this Tribunal to grant her motion to withdraw her application.”

Consideration

6. The Tribunal commends the Applicant for withdrawing the present case based on the settlement negotiated between the parties. This saves valuable resources and contributes to a harmonious working relationship between the parties.

7. 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.

8. 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*).

9. 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 her case before a judgment is issued.

10. 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.

11. 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.

12. *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.

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

14. 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 her application, the Tribunal no longer needs to make a determination on the merits and takes note of the withdrawal.

IT IS ORDERED THAT:

15. The Applicant has withdrawn the matter in finality. There being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2017/045 is hereby closed without liberty to reinstate.

(Signed)

Judge Alessandra Greceanu

Dated this 8th day of December 2017