
Case No.: UNDT/NY/2012/084

Judgment No.: UNDT/2013/049

Date: 13 March 2013



Introduction

1. On 28 November 2012, the Applicant, a staff member with the Department of Public Information in New York, filed an application contesting the decision not to select her for a temporary position at the P-4 level in her Department. The Respondent's reply, stating that the Applicant's claims were without merit, was filed on 27 December 2012.

2. On 7 February 2013, the Applicant filed a motion requesting "authorization to withdraw her application".

3. On 12 March 2013, the Tribunal issued Order No. 69 (NY/2013), directing the Applicant to confirm whether she was withdrawing her application in its entirety, that is fully and finally, including on the merits, with no right of reinstatement.

4. On 13 March 2013, the Applicant filed a submission confirming "that her application is withdrawn in its entirety, that is fully, and finally, including on the merits, with no right of reinstatement".

Withdrawal of application

5. As the Tribunal stated in *Giles* UNDT/2012/194, although its Rules of Procedure contain a provision for summary judgment (see art. 9 of the Rules and also art. 7.2(h) of the Tribunal's Statute), there are no specific provisions in the Tribunal's Statute or Rules of Procedure regarding discontinuance, abandonment, want of prosecution, postponement, or withdrawal of a case. However, abandonment of proceedings and withdrawal of applications are not uncommon in courts and generally result in a dismissal of the case either by way of an order or a judgment. In this regard, reference can be made to art. 19 of the Tribunal's Rules of Procedure, which states that the Tribunal "may at any tim

on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”. Also, art. 36 of the Tribunal’s Rules of Procedure provides that all matters that are not expressly provided for in the Rules shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by art. 7 of its Statute.

6. The desirability of finality of disputes within the workplace cannot be gainsaid (see

8. For example, a judgment on the exception that a claim discloses no cause of action can support a plea of *res judicata*, but not a judgment upholding an exception on a purely technical ground. Similarly, an order of absolution from the instance is ordinarily not decisive of the issues raised, as it decides nothing for or against either party and it is accordingly not a final judgment capable of sustaining a plea of *res judicata*.

9. Therefore, a determination on a technical or interlocutory matter is not a final disposal of a case, and an order for withdrawal is not always decisive of the issues raised in a case. In *Monagas* UNDT/2010/074, the Tribunal dealt with a withdrawal by the applicant on the grounds that he intended to commence proceedings against the Organization in the national 38 TD.0006 TNt.2446 Tw[a24.23i0339 Tw(24(/2010/0()Venezuela

Conclusion

11. The Applicant has withdrawn the matter fully, finally and entirely, including on the merits, with the intention of resolving the dispute between the parties in finality. There no longer being any determination to make, this application is dismissed in its entirety without liberty to reinstate.

(Signed)

Judge Ebrahim-Carstens

Dated this 13th day of March 2013

Entered in the Register on this 13th day of March 2013

(Signed)

Hafida Lahiouel, Registrar, New York