UNITED NATIONS DISPUTE TRIBUNAL	Case No.:	UNDT/NY/2016/071
	Order No.:	115 (NY/2018)
	Date:	1 June 2018
	Original:	English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

CHOHAN

v.

Introduction

1. On 6 December 2016, the Applicant, a Legal Officer at the P-4, step-11 level, New York, filed an application contesting [electronic performance appraisal]

> Applicant before the UNDT. The Applicant was further informed that the earliest that such mediation could resume would be January 2017.
>
> As a result of these events and in order to fully present her case before the UNDT, the Applicant requests that the UNDT Judge grants her request for leave to supplement or amend her Application with the attached Brief.
>
> The Applicant would like to emphasise she has been endeavouring since July 2016 to resolve this matter through mediation and remains committed to returning to mediation.

4. On 6 January 2017, the Respondent filed his reply arguing, *inter alia*, that the application should be dismissed on the grounds that it is not receivable *ratione materiae* since the Applicant has not identified an administrative decision impacting upon the terms of her appointment. The Respondent submits that comments and ratings for individual values and competencies in an otherwise satisfactory e-Pas are not administrative decisions, accordingly the application is not receivable. If found receivable, the application should be dismissed for lack of merit because the Applicant was assessed lawfully in compliance with the procedures set out in ST/AI/2010/5.

5. On 13 April 2017, by Order No. 75 (NY/2017), the Tribunal noted that the mediation efforts between the parties had been suspended pending the application. The Tribunal stated that since the Respondent had filed his reply, it would be appropriate to inquire whether mediation efforts have resumed, and if so, whether the parties request the Tribunal to suspend the proceedings in this case. The Tribunal ordered that the motion of 27 December 2016 to amend the application be refused, noting that the Applicant however, in the interests of justice, would have the opportunity to file a

17. On 15 May 2018, a Senior Mediator from the UNOMS submitted a letter to the Tribunal advising that the parties have reached and signed an agreement this evening and the matter was settled in mediation. A notice of withdrawal of the Application will be forthcoming in due course

18. On 31 May 2018, the Applicant filed a notice of withdrawal in which she stated, Pursuant to both Section 19 of Order No. 93 and section 6 of the Settlement Agreement dated 15 May 2018, the Applicant hereby confirms to the UNDT that her application before the UNDT concerning the instant case is withdrawn fully, finally and entirely, including on the merits .

Consideration

19. The desirability of finality of disputes within the workplace cannot be gainsaid (see *Hashimi* Order No. 93 (NY/2011), dated 24 March 2011, and *Goodwin* UNDT/2011/104). Equally, the desirability of finality of disputes in proceedings requires that a party should be able to raise a valid defence of *res judicata*, which provides that a matter between the same persons, involving the same cause of action, may not be adjudicated twice (see *Shanks* 2010-UNAT-026bis, *Costa* 2010-UNAT-063, *El-Khatib* 2010-UNAT-066, *Beaudry* 2011-UNAT-129). As stated in *Bangoura* UNDT/2011/202, matters that stem from the same cause of action, though they may be couched in other terms, are *res judicata*, which means that an applicant does not have the right to bring the same complaint again.

20. The object of the *res judicata* rule is that there must be an end to litigation in order to ensure the stability of the judicial process (*Meron* 2012-UNAT-198) and that a party should not have to answer the same cause twice. Once a matter has been resolved, a party should not be able to re-litigate the same issue. An unequivocal withdrawal means that the matter will be disposed of such that it cannot be reopened or litigated again.

21. With regard to the doctrine of *res judicata*, the International Labour stated at para. 4:

> The argument that the internal appeal was irreceivable is made by reference to the principle of *res judicata*. In this regard, it is argued that the issues raised in the internal appeal were determined by [ILOAT] Judgment 2538. As explained in [ILOAT] Judgment 2316, under 11:
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> > *Res judicata* operates to bar a subsequent proceeding if the issue submitted for decision in that proceeding has already been the subject of a final and binding decision as to the rights and liabilities of the parties in that regard.

involves a judgment 0 gJET1 612 792 reW*nBT/F12*c 612 792 re n.00000912 0 612 792 reW*nBT/