



Judgment No.: UNDT/2013/074

Date: 30 April 2013

8. On 30 November 2012, the Tribunal issued Order No. 248 (NY/2012), extending the suspension of the proceedings until 14 December 2012.

9. Despite being granted three orders previously for suspension of proceedings, and an extension of time until 14 December 2012, neither the parties nor the Mediation Division reported the status of

14. Following a reminder from the Tribunal to the parties after the expiration of the deadline, the Mediation Division on 4 April 2013, sent a communication to the Tribunal requesting a further two-month extension of time until 4 June 2013 to complete mediation, stating that “the ~~dis~~ of the agreement are contingent on certain factors being achieved which ~~is~~ more time consuming than was first anticipated”.

15. On 5 April 2013, the Tribunal issued Order No. 85 (NY/2013), noting that art. 15.6 of its Rules of ~~Pr~~cedure, approved by the ~~Gene~~ Assembly in resolution 64/119 of 16 December 2009, states that “[i]t shall be the responsibility of the Mediation Division to apprise the ~~Dis~~pute Tribunal of the outcome of the mediation in a timely manner”. The ~~Tri~~nal observed that the last two deadlines set by it were not complied with by the ~~pa~~rties, and reminded the Mediation Division of the need to report back to the Tribunal.

16. The Tribunal further observed in ~~Or~~der No. 85 (NY/2013) that the mediation in this case had commenced more than

18. On 22 April 2013, the Tribunal received a communication from the Mediation Division, stating that “due to good faith efforts of all parties, the matter was settled in mediation”.

19. On 29 April 2013, the Applicant filed notice of withdrawal, stating that “[i]n view of the fact that the mediation ended successfully and the Applicant is satisfied that the remedies that he sought in this application will eventually be met, and given that he has no further need to pursue the claims contained in his application with the Tribunal, he now seeks permission of the Tribunal under [art.] 19 of the [Tribunal’s] Rules of Procedure to withdraw the application *in toto*”.

Effect of successful mediation

20. Pursuant to art. 8.2 of the Tribunal’s Statute, “[a]n application shall not be receivable if the dispute arising from the contested administrative decision had been resolved by an agreement reached through mediation”.

21. The desirability of finality of disputes within the workplace cannot be gainsaid (see *Hashimi* Order No. 93 (NY/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 Judge Boolell 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 the applicant does not have the right to bring the same complaints again.

22. Once a matter has been determined, parties should not be able to re-litigate the same issue. An issue, broadly speaking, matter of fact or question of law in a dispute between two or more parties which a court is called upon to decide and

any determination to make, this application is dismissed in its entirety without liberty to reinstate, and without prejudice to the Applicant's right, if necessary, to file an application under arts. 2.1(c) and 8.2 of the Tribunal's Statute seeking to "enforce the implementation of [the] agreement reached through mediation".

(Signed)

Judge Ebrahim-Carstens

Dated this 30th day of April 2013

Entered in the Register on this 30th day of April 2013

(Signed)

Hafida Lahiouel, Registrar, New York