

Case No. UNDT/NY/2012/070

Judgment No. UNDT/2013/125

7. In regard to the doctrine of *res judicata* the International Labour Organization Administrative Tribuna

the Tribunal can or should make if the matter is being withdrawn. The Applicant further states that he has worked for the Organization for thirteen years and throughout his career has demonstrated the highest standards of integrity. The Applicant states that by granting his request to place the entire case file under seal, the Tribunal would be acting consistently with Order No. 123 (GVA/2013), issued in an unrelated case, in which the Tribunal closed the case on withdrawal and directed the Registry to place the case file under seal.

10. The Applicant further submits that the Respondent has no objections to his request, but does not stipulate whether this is part of a settlement agreement. In any event, the simple agreement of the parties without acceptable justification does not necessarily result in an order to place records under seal, since such procedures are in most jurisdictions reserved for exceptional cases. For example Rule 2.551(a) of the 2013 California Rules of Court stipulates that “[a] record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on

12. The purpose of placing specific documents or entire record under seal and the rationale behind this procedure are explained in the Guidelines on the Filing of Submissions through the eFiling Portal (available on the Tribunal's website²):

Under seal filings

19. In the context of the Dispute Tribunal, filing a document under seal means that only the filing party, the non-filing party to the proceedings, and the Tribunal will have access to it. No third party will have access to the protected document unless it is unsealed by an order of the Tribunal.

20. The option of filing under seal is reserved for filings that require additional protection against disclosure to third parties. Specifically, should at any point in time the Tribunal issue an order granting access to a case file to a third party, any filings under seal in that case would remain confidential unless a separate order is issued by the Tribunal specifically granting access to them.

13. The additional protective measure of placing specific sensitive documents under seal is generally used in cases involving security interests or other exceptional circumstances justifying imposition of measures preserving the confidentiality of evidence. The above Guidelines pertain to under seal documents at the time of filing, whereas in this instance the application is made on withdrawal of the matter some months later, for the placement under seal of the entire record, and not of specific documents. The Tribunal finds that in view of the already confidential status of the Tribunal's case files (as explained below), and the reasons offered by the Applicant, which do not warrant placing the entire case file under seal, the Applicant's request to place the case record under seal should not be granted.

² See http://www.un.org/daaj/files/undt/basic/guidelines_on_efiling.pdf.

Confidentiality

14. Practice Direction No. 6 (“On Records of the Dispute Tribunal”, adopted on 27 April 2012 and available on the Tribunal’s website³) explains in para. 13 that the Tribunal’s case files are not available to the public and that access to them can only be granted by a Judge. Specifically, Practice Direction No. 6 states:

13. Access to materials other than judicial issuances pertaining to cases other than those to which one is a party can only be granted by a Judge. Written requests to this effect should be submitted through the Registrar using the generic form available on the Tribunal’s website, or some other means acceptable to the Registrar.

15. As the Tribunal stated in Order No. 59 (NY/2011) in Case No. UNDT/NY/2011/012, “the parties’ written pleadings before the Dispute Tribunal are generally not available to the public and ... the Tribunal’s case records are kept confidential and secure in its Registry”. The parties shall also maintain confidentiality and are expected to ensure that the written pleadings and documentation relating to their case are not disclosed to third parties.

Request for anonymity

16. Taking into consideration the particular circumstances of this case, the Tribunal considers it appropriate for the Applicant’s name to be redacted from the judgment.

³ See http://www.un.org/ohaj/dispute/pdf/practice_direction_no6.pdf.

Conclusion

17. The Applicant has withdrawn this case in finality, including on the merits, with the intention of resolving all aspects of the dispute between the parties. There no longer being any determination to make, the application under Case No. UNDT/NY/2012/070 is dismissed in its entirety without liberty to reinstate.

18. The parties shall keep all documents and submissions contained in the present case confidential, in particular, they shall not disclose, use, show, convey, disseminate, copy, reproduce or in any way communicate any of those