



Introduction

1. The Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), filed an application contesting her reassignment to a new post and the “limitation of contract extension to seven months following reassignment of post, constituting constructive dismissal”. The Applicant submitted that the limitation of her contract extension to seven months resulted in her separation from service as of 31 July 2011. She submitted that the contested decision

unfairly prejudice[d] her legitimate expectation of continued employment, violate[d] the terms of her non-reimbursable loan and the corresponding lien on the post formerly occupied by her, and [was] improperly influenced by retaliatory motives for having complained about unfair treatment and improper actions by her immediate supervisor.

2. At the time of filing, the Applicant had been in the service of the Organization for some 24 years. She submitted that the refusal, without clear justification, to provide for any continuation of her services either on loan/secondment to her government or with the UNICEF India Office was a violation of the terms of her loan/secondment, and a means of forcing her imbercicont8(e)p

the present application receivable. The Tribunal further stated that, in its considered view, the present case was amenable to amicable resolution. The Tribunal invited both parties to consider whether informal dispute resolution was possible, stating:

In the Tribunal's considered view, the present case is amenable to amicable resolution. The Tribunal is of the firm view that if both parties take a reasonable, pragmatic, and fair-minded approach, amicable resolution of all outstanding matters is within their reach. The parties are to consider seriously whether informal dispute resolution is possible, and promptly advise the Tribunal in the event they wish to attempt it.

Procedural matters

6. On 10 December 2013, the parties filed a joint statement, pursuant to *Shrivastava* UNDT/2013/148, saying that they were willing to attempt informal resolution of the matter. The parties requested the Tribunal to suspend the proceedings until 17 January 2014. The requested suspension was granted by Order No. 336 (NY/2013).

7. On 17 January 2014, the parties filed a joint requested for an extension of time to continue their discussions. They request a further suspension of the proceedings until 14 February 2014, "in which period all efforts will be made to find an amicable resolution or to conclude that no amicable resolution can be found". The extension was granted by Order No. 14 (NY/2014).

8. On 12 February 2014, the parties filed a joint request for a further extension of time of three weeks to continue their efforts to find an amicable resolution. The parties explained that they were awaiting feedback from one of the units of the United Nations and shared the view "that an amicable resolution is still within reach". The extension was granted by Order No. 16 (NY/2014).

judgment. Of course, a determination on a technical or interlocutory matter does not result in the final disposal of a case, and an order for withdrawal is not always decisive of the issues raised in a case. An unequivocal withdrawal means that the matter will be disposed of such that it cannot be reopened or litigated again. In regard to the doctrine of *res judicata*, the International Labour Organization Administrative Tribunal (“ILOAT”) in Judgment No. 3106 (2012) 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:

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.

A decision as to the “rights and liabilities of the parties” necessarily involves a judgment on the merits of the case. Where, as here, a complaint is dismissed as irreceivable, there is no judgment on the merits and, thus, no “final and binding decision as to the rights and liabilities of the parties”. Accordingly, the present complaint is not barred by *res judicata*.

13. In the instant case, the Applicant has confirmed that she is withdrawing the matter “fully, finally and entirely on the understanding that this will constitute a final determination on the merits, and is without appeal”. The Applicant’s unequivocal withdrawal of the merits signifies a final and binding resolution with regard to the rights and liabilities of the parties, requiring no pronouncement on the merits but concluding the matter *in toto*. Therefore, dismissal of her case with a view to finality of proceedings is the most appropriate course of action.

14. The Tribunal commends both parties, particularly their learned counsel, for their good faith efforts to resolve this case amicably. The case file in this matter consisted of over 250 pages, with the application itself having 37 annexes

appended thereto. No doubt a joint bundle, including further documents, would have been required for a hearing, and due to the alleged hostile environment and