



**World Bank Administrative Tribunal**

**2009**

**No. 394**

**AH,  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**AH,  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, and Judges Francisco Orrego Vicuña, Sarah Christie, and Florentino P. Feliciano. The Application was received on 25 August 2008. The Applicant's request for anonymity was granted on 17 September 2008.

2. This case arises from the aftermath of the Applicant's filing of a harassment claim with the Department of Institutional Integrity ("INT") against a Bank manager. She alleges that the latter retaliated against her by (i) improperly disclosing the fact of her complaint to other staff members, with the intent to damage her reputation and (ii) impeding her job search within the Bank, which he was able to do given his status as a Human Resources ("HR") officer. The Bank objects to her Application on the grounds of inadmissibility. This judgment deals solely with that objection.

3. The Applicant seeks (i) the invalidation of the Bank's decision not to renew her employment contract and (ii) redress for breach of confidentiality and retaliation.

#### RELEVANT FACTS

4. For the purposes of the present judgment, it is assumed *pro tem* that the Applicant's version of events is accurate.

5. The Applicant unsuccessfully sought employment at the Bank in 2002. She nevertheless pursued her interest by consulting with Mr. X, a senior HR officer in the Bank. She subsequently secured a two-year Term appointment beginning on 3 May 2004.

6. The Applicant alleges that Mr. X “aggressively pursued a relationship with me before and after I joined the World Bank.” She says that her working environment was stressful. In March 2005 she filed a complaint against Mr. X with INT, and an investigation was duly initiated. She asserts that one of Mr. X’s subordinates told her in July 2005 that Mr. X was carrying out a “smear campaign” against her in reaction to her complaint.

7. In October 2005 the Applicant “reluctantly” requested to be placed on administrative leave. This request was granted. In January 2006 the Bank informed her that her appointment would be allowed to expire. It did so on 2 May 2006.

8. Mr. X was placed on administrative leave on 17 May 2006. Following the conclusion of the INT investigation on 14 August that year, the Bank imposed on Mr. X the disciplinary sanction of termination.

9. On 31 August 2006, the Applicant filed a Statement of Appeal in which she requested the Appeals Committee to uphold her challenge to the non-renewal of her contract and her claim of harassment in the wake of her complaint to INT.

10. On 2 February 2007, the Appeals Committee issued its Decision on the Bank’s Jurisdictional Challenge. The Committee concluded that its jurisdiction was limited “to reviewing only whether the [Bank] abused its discretion in the manner in which it considered and disposed of the [Applicant’s] employment applications during the period

June 2, 2006 through August 31, 2006” – i.e., during the 90-day period leading up to the filing of her Statement of Appeal. All other claims were dismissed for lack of jurisdiction. In particular, the Committee excluded from its review the Applicant’s claims regarding the non-renewal of her contract, of which she was notified in January 2006, as well as any claims of alleged harassment occurring prior to 2 June 2006.

11. After further submissions from the parties and a hearing held in November 2007, the Appeals Committee submitted its Report on the appeal to the Bank’s Managing Director on 25 January 2008. The Committee’s unanimous recommendation was to dismiss all of the Applicant’s claims. By memorandum dated 24 March 2008, the Managing Director informed the Applicant that she had reviewed the Appeals Committee’s Report and decided to accept its recommendation in its entirety.

#### THE UNTIMELINESS OF THE APPEAL

12. Article II, Section 2 of Tribunal Statute provides in relevant part that:

No ... application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

(i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and

(ii) the application is filed within one hundred and twenty days after the latest of the following:

(a) the occurrence of the event giving rise to the application;

(b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or

(c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

13. Staff Rule 9.03, para. 5.01 provides that a staff member may appeal an “administrative decision” within (i) 90 calendar days of receiving the written decision; or (ii) 30 calendar days following the termination of a mediation which failed to resolve the issue arising from the decision.

14. Pursuant to Staff Rule 9.03, Annex B, Part III, Section 10a:

An administrative decision is a decision that allegedly alters or is in breach of the terms of appointment or conditions of employment, or any formal disciplinary action based on misconduct, e.g., formal reprimands.

15. The Tribunal has repeatedly held that timely exhaustion of internal remedies is necessary if an application is to be admissible. The “exhaustion of internal Bank remedies requires recourse to the Appeals Committee in a timely manner.” *Motabar*, Decision No. 346 [2006], para. 12. Internal Bank remedies “include timely recourse to the Appeals Committee. ... The Applicant must formally and in a timely manner invoke and exhaust available internal remedies in order that the allegedly improper Bank decisions may be challenged in an application before the Tribunal.” *Malekpour*, Decision No. 320 [2004], para. 20.

16. The Tribunal has however also held that the time limit may be abated in exceptional circumstances. For example, in *Mustafa*, Decision No. 195 [1998], para. 7, the Tribunal held, invoking *Yousufzi*, Decision No. 151 [1996], para. 28, that the statutory requirement of timely action may be “relaxed in exceptional circumstances” and that such circumstances

are determined by the Tribunal from case to case on the basis of the particular facts of each case. In deciding that exceptional circumstances exist the Tribunal takes into account several factors, including, but not limited to, the extent of the delay and the nature of the excuse invoked by the Applicant.

17. In this case, the Applicant asserts that the administrative actions resulting from the alleged retaliation include (1) non-renewal of her contract, (2) interference in her job search (decision not to short-list the Applicant after each job application), and (3) breach of confidentiality. The Tribunal can readily dispose of the first and third of these.

18. *Non-renewal of job contract.* The Applicant was notified in writing that her two-year Term appointment would not be renewed on 13 January 2006. The 90-day time limit for filing an appeal contesting this decision was triggered on that day, as per Staff Rule 9.03, para. 5.01. It expired in April 2006, long before the Applicant filed her Statement of Appeal on 31 August 2006. Furthermore, the Applicant noted in her Application that she specifically did not ask to renew her contract because she did not want to remain in her position as long as Mr. X remained in his. Accordingly, it appears that the Applicant did not bring her action in a timely manner.

19. *Breach of confidentiality.* The Applicant alleges that the breach occurred soon after she filed her complaint with INT, between July and November 2005. Again, the 90-day time limit for filing her appeal would have expired long before August 2006.

20. *Interference with job search.* The relevant date with respect to this allegation is more difficult to pin down. On one view, the trigger date for the purposes of admissibility would be the date she was informed that she was not short-listed with respect to each of her job applications. However, the Applicant might not have had reason to conclude after a single failure to make the short list – or even a few such failures – that it was the result of retaliation. The Applicant applied for several positions and would have had to file a Statement of Appeal after being notified that she was not short-listed for each of her job applications. It seems an improper use of the Appeals

Committee's or the parties' time to impose such a requirement as the substantive discussions would be repetitive: whether the Applicant was not short-listed because of her lack of qualifications, or as a result of the same retaliation pursued in each instance.

21. A more legitimate approach would be to view the Applicant's series of unsuccessful job applications as a continuum, and to assess whether it was credible for the Applicant not to form her conclusion that she was the victim of retaliation until the failure of a job search which became known to her at a point of time within the 90-day period prior to her Statement of Appeal. Even applying this reasoning, however, the Applicant would have been untimely, since according to her own account she expressed her concerns about retaliation to INT in March 2006.

22. Accordingly the Applicant can proceed only if the Tribunal deems that her case presents "exceptional circumstances."

#### EXCEPTIONAL CIRCUMSTANCES?

23. The Bank points out that in July 2007 it gave the Applicant the option to bypass the Appeals Committee and to bring her grievance straight to the Tribunal and thus avoid the issue of timeliness. She did not take that option, and as a result should face the consequences, e.g., the objection of untimeliness which the Bank had not waived once she insisted on going before the Appeals Committee.

24. The Tribunal is not persuaded by this argument. The Applicant apparently wished to avail herself of the opportunity to present herself before the Appeals Committee. That was her right. Her choice to do so does not invalidate her invocation now of "exceptional circumstances."

25. The Applicant explains that she had wanted to bring her case much sooner, but several staff members told her to wait until the INT investigation was completed. She

followed that advice only to be told by the Appeals Committee that her application was untimely. She argues that she was misled.

26. The Tribunal gave the Applicant an opportunity to prove the allegation that she was influenced by various staff members to adopt this wait-and-see stance. She accordingly sent e-mail messages to 14 persons, including a former Vice President of HR (“HRSVP”), a former senior HR manager, a former INT Director, a former Manager of the Office of Mediation, two former Ombudsmen, a former Staff Association Chair, a former Staff Association Counselor, the Lead Institutional Integrity Officer of INT, a Staff Association officer, two HR officers, an Adviser in the Managing Director’s office, and the Acting Secretary of the Appeals Committee. The purpose of these e-mail messages was to elicit confirmation of the Applicant’s contention that she had been advised to stay her hand pending the outcome of the INT investigation of Mr. X. If her case were now thrown out for untimeliness, she argues, it was the result of misleading advice by the Bank’s staff.

27. Few of these persons responded to the Applicant’s query. Of those that did, all but one were unhelpful to the Applicant, whether out of genuine forgetfulness or a disinclination to be of assistance. The one exception was a former Ombudsman who wrote as follows: “This is to confirm that I was advised by several parties within the Bank that no measures would be considered concerning your employment situation until the conclusion of INT’s investigation and [HRSVP’s] decision.” He also referred to the confidentiality that necessarily attends the work of the Ombudsman, and stated that he was unable to say any more on this issue.



28. The Bank states in its Rejoinder on admissibility that “the Bank’s investigation of Mr. X for potential misconduct was a separate matter from any administrative relief the Applicant might seek through the Appeals Committee or Tribunal,” and that the claims she brought to the Appeals Committee should therefore have been brought earlier, while the INT investigation was ongoing. But the Applicant’s argument is precisely that this distinction was not reflected in the advice she received. According to her, she was advised that no claims related to her situation in general would be considered by the Conflict Resolution System (“CRS”) until the conclusion of the INT investigation, as shown in the e-mail message from the former Ombudsman confirming that advice was given “by several parties within the Bank that no measures would be considered concerning your employment situation until the conclusion of INT’s investigation and [HRSVP’s] decision.” The phrase “employment situation” may be read broadly to support the Applicant’s understanding that none of the various claims referred to in her Application would be entertained since they all relate to the difficulties she alleges with Mr. X. These claims include those that the Appeals Committee found inadmissible, such as retaliation by hindering her job prospects while the investigation was still ongoing, the non-renewal of her contract and the breach of confidentiality before her employment was terminated.

29. At the conclusion of the investigation pertaining to Mr. X, it appears that HR determined that no compensation would be given to the Applicant. The Applicant then sought to bring a claim with respect to matters related to the INT investigation only to be told that she was out of time. She argues that since she had been told that no claims relating to her “employment situation” would be addressed prior to the conclusion of the

investigation, she had not brought those claims earlier. She therefore maintains that the time began to run from 14 August 2006, when she was informed of the Managing Director's decision after the conclusion of the INT investigation. She filed her Statement of Appeal on 31 August 2006, which under her reasoning was within the 90-day limit.

30. The Bank argues that the former Ombudsman's e-mail message should be disregarded "out of respect for the confidentiality of the Ombudsman function." The Tribunal sharply disagrees. The former Ombudsman did not make any disclosures of matters communicated to him in confidence with respect to the substance of controversial matters. What he revealed was advice given *about the process*. His transparent response in this context should be commended, not criticized. This is all the more so as the advice he says was given to the Applicant makes sense. There is no denying that the outcome of the INT investigation was of considerable potential significance to the Applicant's own case. If Mr. X had been comprehensively exonerated, she would perhaps have concluded that her chances were very remote. To hold that she was bound to seek redress without knowing whether the INT (whose role is that of a neutral fact-finder) would corroborate her version of events, on pain of being foreclosed, is to confront staff members in her situation with a regrettable incentive to bring contentious proceedings before their grievances mature in their own mind.

31. True enough, the Applicant could have protected her position better had she memorialized her understanding of the advice she says was given to her by writing to the Bank something along these lines: "in accordance with your suggestion I reserve my right to seek redress pending the outcome of the INT investigation." Yet the Tribunal is loath to require staff members to exhibit such a degree of tactical punctiliousness, especially in

circumstances of possible stress – and all the more so as the expected proper behavior might just as well have been for the experienced manager of the Bank to warn the Applicant in writing that any grievance of hers would be viewed as “separate” from Mr. X’s case.

32. The Tribunal is willing in these circumstances to consider that the untimeliness of the Application is not attributable to the Applicant, similarly to the case in *Mustafa*, Decision No. 195 [1998], para. 10, where the Tribunal found that “the untimeliness of the application is not the Applicant’s fault.” There was no “negligence [or] lax handling of the case” (*Guya*, Decision 174 [1997], para. 11) or any suggestion that the untimeliness is due to the Applicant’s “casual treatment of the relevant legal requirements” (*Agerschou*, Decision No. 114 [1992], para. 45). The Applicant’s allegation is precisely the opposite, namely that it was her keenness to ensure that she took the right decisions regarding the filing of her claim, by inquiring of all individuals she believed were in a position to advise her, that led her to receive conflicting advice. Although there can hardly be certainty in this respect, the Tribunal considers the Applicant’s version of events to be plausible and that her posture was in any event logical. It accordingly rejects the Bank’s objection. Whether her complaints are well-founded remains to be seen; the Tribunal sees no need even to form a preliminary view, but considers that the Applicant is entitled to the opportunity of proving each of her claims insofar as they involve alleged events and behavior which occurred subsequently to the initiation of the INT investigation of Mr. X after her complaint in March 2005.

#### DECISION

The Tribunal hereby declares that:

- (i) the Application is admissible with respect to all of Applicant's claims insofar as they relate to actions occurring between March 2005 and August 2006;
- (ii) the issue of costs is reserved; and
- (iii) the dates for the filing of pleadings on the merits will be determined by the President of the Tribunal and communicated to the parties.

/S/ Jan Paulsson  
Jan Paulsson  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, DC, 25 March 2009