



World Bank Administrative Tribunal

2009

No. 401

**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, composed of Jan Paulsson, President, and Judges Zia Mody, Stephen M. Schwebel, and Francis M. Ssekandi. The Application was received on 25 August 2008. The Applicant's request for anonymity was granted on 17 September 2008. On the same day, the Bank raised a preliminary objection to the admissibility of the Application. In *AH*, Decision No. 394 [2009], the Tribunal found the Application to be admissible with respect to actions occurring between March 2005 and August 2006.

2. The Applicant alleges in her Application that the Bank (1) failed to provide her with a work environment free of harassment and abuse of authority from September 2004 to May 2006; (2) failed to protect her after she raised her concerns with the Bank; (3) breached her confidentiality and defamed her character from 2004 through 2007; (4) retaliated against her for filing a complaint with the Department of Institutional Integrity ("INT") by interfering with her job search; and (5) failed to renew her contract of employment.

3. The Applicant seeks monetary relief in the amount of \$168,750, attorney's fees, reinstatement, replenishment of her pension which she cashed out to pay for living expenses, lost wages and benefits, and the inclusion in her personnel records of the

confirmation of her employment during her tenure and a sample of work she completed while employed.

4. The Applicant joined the Bank on 3 May 2004 on a two-year Term appointment as a Senior Partnership Specialist, Level GG, in the Knowledge and Learning Partnership Unit of the World Bank Institute (“WBIKP”). Her first overall performance evaluation (“OPE”) covered the period between 3 May and 31 August 2004. Her next OPE covered the period between 1 April 2004 and 31 March 2005. While she received largely favorable assessments for her work, the latter OPE highlighted certain performance issues, which she disputed. However, she and her reviewing manager agreed in both OPEs that her job was “not a good fit” and she indicated that she would be seeking a more fitting assignment.

5. In March 2005 management obtained a new assignment for her in the Finance and Private Sector Development unit in WBI (“WBIFP”), which was made possible by a combination of funding sources. The Applicant was informed that the assignment would be temporary. Her last OPE covered her new assignment in WBIFP between 5 March and 6 September 2005. The OPE was followed by the confirmation of her position as of 8 September 2005. She was also given a salary increase of 2%. The OPE rated her “Superior” in one category under Results Assessment and one category under Behavioral Assessment. In all other categories, the Applicant was rated “Fully Successful”. Her supervisor noted that the Applicant was

most at home in an environment where she can capitalize on her networking skills. ... While the type of work we have to offer does not fully fit her natural abilities and interests, she has got private sector experience and has made a good effort to contribute [S]he would likely feel most comfortable, and be able to make a fuller contribution, in an EXT type of environment.

The Reviewing Manager added on 26 October 2005

Taking into consideration your contributions over the review period, we are confirming you within your current contract. However, as you are aware, *there is no long term prospect for a continuing position in WBIFP for you beyond your current contract.* Thanks for your contributions and I wish you all success in your search for a suitable position. (Emphasis added.)

6. In May and June 2005 the Applicant contacted INT and provided statements and supporting documents alleging misconduct on the part of Mr. X. INT began a formal investigation of Mr. X in August 2005. The Applicant requested and was granted administrative leave as of October 2005. She was granted access to an office in the building where she remained until the end of her contract, which she used to submit applications in search of another job within the Bank.

7. On 13 January 2006 the Applicant received official notice that her contract would not be renewed. In March 2006 she met with a Senior Human Resources (“HR”) Officer, and a Manager in External Affairs, Communications Network, to discuss her unsuccessful job search. Around the same time, she communicated to the then INT Director her frustrations at her unsuccessful job search and lack of assistance from HR. She sought help from the Vice President of Human Resources (“HRSVP”), the then Acting Secretary of the Appeals Committee, and the Ombudsman, but it appears that she was told that no action would be taken while the INT investigation was pending. She took her case to the Office of Mediation on three occasions but no agreeable solution was reached.

8. In early April 2006 she again contacted INT accusing Mr. X of retaliation, alleging that he was responsible for the failure of her job search. She later asked for this

investigation to be closed, which INT did before making any findings. The Applicant's contract of employment ended on 2 May 2006. On 18 May 2006 INT concluded its investigation and sent its Report to the Managing Director, at which time Mr. X was placed on administrative leave pending the Managing Director's decision.

9. The Applicant's initial complaint to INT against Mr. X involved allegations of sexual harassment, in respect of which INT, after a preliminary inquiry, determined that there was no basis for a formal investigation. INT however found grounds to investigate abuse of authority, failure to follow Bank norms and standards, and conflict of interest between May 2003 and February 2005. The second set of allegations consisted of charges of retaliation by Mr. X following her complaints to INT against him, asserting that her job search was frustrated by Mr. X, who, as HR Officer, allegedly sat on most of the panels considering her applications. The Applicant had met Mr. X before joining the Bank, having been introduced to him as a resource person during her search of a position in the Bank. Mr. X had assisted her with securing the position in WBIKP as well as the transfer to WBIFP. INT concluded that because the two parties had an intimate relationship that developed while the Applicant was seeking employment at the Bank there was sufficient evidence of conflict of interest and abuse of authority during that time, but no evidence of abuse of authority after the Applicant joined the Bank. The rest of the investigation proceeded on other aspects of Mr. X's behavior that were found to be in conflict with his official duties, but those findings were not particularly favorable to the Applicant's present case.

10. The Applicant filed a Statement of Appeal with the Appeals Committee on 31 August 2006, in which she challenged the non-renewal of her contract as retaliatory and

contended that she was harassed following her complaint to INT. The Bank objected that her appeal was untimely and in February 2007, the Appeals Committee concluded that it was “limited to reviewing only whether the Bank abused its discretion in the manner in which it disposed of the Applicant’s employment applications during the period June 2, 2006 through August 31, 2006.” All other claims were dismissed as untimely.

11. In July 2007 the Applicant approached the Office of the Senior Vice President and General Counsel which offered the Applicant to “waive any objections as to timeliness concerning [her] claims that Mr. [X] caused [her] not to be selected for positions at the Bank that [she] applied for through the Bank’s formal application system ... during the period [she was] employed, which is May 3, 2004 through May 2, 2006” if she “promptly” took her case to the Tribunal and terminated the Appeals Committee proceedings.

12. She was given until 31 August 2007 to accept the offer, but she rejected it and proceeded with her appeal on the basis set out by the Appeals Committee. The Appeals 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.” In that regard, the Appeals Committee found insufficient evidence to support her claim and on 25 January 2008 issued its recommendation dismissing all her claims. The Managing Director concurred in March 2008.

13. The Tribunal found the Application to be admissible with respect to actions occurring between the time the Applicant contacted INT in March 2005 and the time the Applicant filed her Statement of Appeal in August 2006.

THE CONTENTIONS OF THE PARTIES

The Applicant's contentions

14. The Applicant's primary allegation is that the Bank treated her in an unfair and unreasonable manner, in that:

(a) the Bank failed to protect her from harassment and abuse of authority in her work environment from September 2004 to May 2006;

(b) the Bank breached her confidentiality and defamed her character from 2004 through 2007;

(c) the Bank retaliated against her for filing a complaint with INT by interfering with her job search; and

(d) the Bank failed to renew her contract of employment.

15. In support of her contentions, the Applicant states that she was highly qualified for each of the positions she held while employed at the Bank, as well as for the positions for which she applied. Her qualifications are apparent in her curriculum vitae, in her employment history, in the volume of work she completed while at the Bank and the positive comments she received from her colleagues at the Bank. The Applicant insists that any negative comments were limited to responsibilities she undertook due to the change in her position. She also blames any negative comments from her supervisors on Mr. X's "harassment and smear campaign."

16. She contends that, contrary to the Bank's arguments, she performed her job "ably" and was never given any indication by her supervisor that her performance was not satisfactory. She left her unit of her own will, as recognized by her managing supervisor. Further, her OPEs clearly demonstrated that she performed satisfactorily, but

they also indicated a “disconnect” between her position and her skills, experience, and professional interests. Furthermore, she argues, contrary to the conclusions of the INT Report, her position was confirmed and she received a 2% pay increase as a result of her overall positive performance.

17. She also contends that because of the breach of confidentiality of her complaint to INT she did not want to stay in her position at WBIFP but was looking for a position elsewhere at the Bank. She argues that even though INT did not find evidence of retaliation during its initial investigation of the issue, Mr. X’s attempts to investigate her for the purpose of undermining her credibility “irreversibly tainted her chances to get a job within WBI and elsewhere in the Bank.”

18. Finally, the Applicant complains that her job search was hampered by the disclosure of the INT investigation which was used as an excuse not to provide her any special help from other departments at the Bank.

The Bank’s response to the Applicant’s contentions

19. The Bank submits that while under Staff Rule 8.01 managers and other staff are expressly prohibited from engaging in retaliation, allegations of retaliation must be proved by sufficient evidence and the staff member that alleges such retaliation bears the burden of proof. The Bank contends that, on her own admission, the Applicant’s tenure in WBI was short-lived because the job she had applied for and secured turned out not to be “a good fit for her” and, in fact, it was the Bank which “went to considerable effort and expense” to help her find an alternative assignment within WBI. However, even in this new assignment her skills were found not to be those required for the new position and her contract was allowed to expire without being renewed.

20. The Bank also argues that the Applicant did not submit any evidence to justify her contention that her contract was not renewed due to Mr. X's retaliation against her or that Mr. X interfered with her job search. The Bank states that according to the Appeals Committee findings, Mr. X was on administrative leave after mid-May 2006 and witnesses who testified concerning the short-listing process either had not heard of Mr. X or did not know about the Applicant's complaint. The Appeals Committee concluded that the Applicant's job applications were reviewed with impartiality and without prejudice and that there was no evidence that Mr. X was involved in the short-listing process for the applications submitted by the Applicant. The Bank thus submits that the evidence in the record is clear that the reason she was not short-listed was her lack of competitiveness compared to other candidates.

21. Furthermore, the Bank argues that, contrary to the Applicant's assertions, there was no evidence that confidentiality had been breached by any official of the Bank. According to the Bank, it was the Applicant herself who spread information around the Bank about her complaint in her various correspondence and conversations with Bank staff.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

22. The gravamen of the Applicant's complaint is that the Bank failed to protect her from a hostile work environment where, after she filed with INT a complaint against Mr. X for sexual harassment, he retaliated against her affecting the success of her job search for alternative assignments in the Bank and causing non-renewal of her contract.

23. On the issue of sexual harassment, her complaint to INT was the subject of a preliminary inquiry, in which she and Mr. X were interviewed and evidence of their

relationship evaluated. INT determined that the facts as presented did not warrant a formal investigation of sexual harassment.

24. The INT investigation which began in August 2005 and concluded in August 2006 revealed other misconduct on the part of Mr. X leading to the termination of his employment. INT found that the Applicant and Mr. X had been engaged in a consensual relationship concurrently with her initial attempts to secure employment with the Bank. Mr. X pointed her way to an available position for which she successfully applied and accepted in May 2004. This relationship, according to INT, continued during the Applicant's service in WBIPK and when her stay in that job appeared in danger on performance grounds, Mr. X was able to assist her to secure a new assignment in WBIFP in March 2005. The Applicant seeks to argue that the termination of Mr. X's employment is proof of her sexual harassment allegations to INT, but this is not the case. If anything, the INT investigation and conclusions were adverse to her current allegations that the Bank failed to protect her from a hostile environment caused by Mr. X's harassment. The Tribunal is satisfied that on this score the Applicant's complaint has no merit. The Tribunal will now examine the other complaints raised by the Applicant.

Failure to protect the Applicant from a hostile work environment

25. The Applicant alleges that after she complained to INT about Mr. X, she did not receive any special help from the Bank; instead she was ignored, rebuffed or told to wait until the investigation was completed. She also alleges that Mr. X was not placed on administrative leave as he should have been after she complained, which kept her in an environment of harassment and abuse.

26. Regarding the work environment, the record shows that between May 2004 and March 2005, the Applicant received a fairly favorable evaluation of her work which noted significant weaknesses. This led the Applicant and her immediate supervisor to conclude that the work was not a good match for her qualifications and experience. In the period between March 2005 and August 2006, the Applicant received her best OPE which included some superior ratings; she was then confirmed and granted a 2% salary increase. She had already filed her complaint against Mr. X with INT. She then applied and was granted administrative leave which enabled her to search for another job. As mentioned above, her managers at WBIFP had found that the work they had for her did not quite fit her “natural abilities and interest” and upon hiring her had alerted her to the fact that WBIFP did not have a long-term position for her beyond the term of her contract. As regards her job search while on administrative leave, the record shows that she was given access to a private room and a computer, as well as to the Bank’s Job World, its job listing database. An HR Manager was asked to assist her as necessary during that time. She remained on administrative leave until her contract of employment expired.

27. The Applicant also exchanged a number of e-mail communications over several months with various HR individuals as well as the Ombudsman, in which the Bank spent what appears to be substantial time advising her with regard to her job search. For example, on 14 October 2005 she was advised not to blame “everything on [Mr. X]. Approach your job search in a balanced manner; otherwise ... it may negatively reflect on your candidacy for other positions.” With respect to a particular position in which she was interested, she was informed on 15 August 2005 that:

Bank management was looking for someone with extensive experience within the Bank, someone who knew the Bank well and understood very clearly how things worked and who best could resolve certain issues. My understanding was that those shortlisted had a stronger background in the above areas; your candidacy was not as competitive as a result.

28. During her service in the Bank, Mr. X worked as her HR contact only, and was not involved in her day-to-day work in WBIKP or WBIFP. She does not appear to make any complaints against her immediate supervisors, with whom she seemed to agree on her suitability for the available job. Her primary allegations in this Application were directed against Mr. X who she alleges retaliated against her. The Tribunal finds that the record does not support the Applicant's contentions on this issue.

29. With respect to the Bank's alleged failure to place Mr. X on administrative leave, the evidence also fails to support the Applicant's allegation. In any event, as correctly noted by the Bank, placing a staff member on administrative leave is a matter of managerial discretion. The Tribunal will only interfere with the decision if it finds that the Bank's action was an abuse of authority. The Tribunal explained in *AE*, Decision No. 392 [2009], para. 25, that:

With respect to reviewing discretionary managerial decisions, such as HRSVP's decision to place the Applicant on administrative leave, the Tribunal has consistently held that: "The Tribunal's general approach to decisions involving the exercise of discretion is that it will not interfere or substitute its own judgment unless the decision constitutes an abuse of discretion." ... Here, HRSVP's decision would be an abuse of discretion if it lacked a reasonable basis, or was arbitrary or carried out in violation of a fair and reasonable procedure.

30. The Tribunal is not satisfied that the Bank treated the Applicant in an unfair or unreasonable manner or that she was subjected to a hostile work environment.

Breach of confidentiality

31. Two specific Staff Rules address confidentiality issues when a staff member files a misconduct complaint with INT. Most relevant is Staff Rule 8.01, para. 5.01, which provides in relevant part that:

A staff member who reports suspected misconduct to INT or otherwise under this Rule may choose to remain anonymous or request that his or her name be kept confidential. ... Confidentiality means that a staff member provides his or her name, but the Bank Group will not reveal the source of the allegations to anyone outside of the investigative team unless the staff member consents to disclosure

32. Furthermore, Staff Rule 2.01, para. 4.01 applies to the identity of a staff member accused of misconduct in order to protect his or her reputation until the investigation is concluded. It provides in relevant part:

A staff member who has brought an allegation of misconduct against another staff member may be informed of any disciplinary measures imposed ... as a result of the allegation. ... *A staff member informed under this section shall not disclose the information to any other person.* In addition, the Vice President, Human Resources, may decide that information about disciplinary measures in a particular case should be disclosed to other staff members when the circumstances warrant. (Emphasis added.)

33. The Applicant alleges that Mr. X breached Staff Rule 8.01, para. 5.01. He allegedly told people of the Applicant's complaint to INT against him, and insulted her in front of other Bank staff members. The only evidence she proffers is the testimony of one temporary employee who worked with Mr. X for a short period of time (October through November 2005) and appeared to have been unhappy in his position. His testimony before INT appeared to be hearsay and unfounded. In the absence of any other evidence to substantiate the Applicant's allegations, the Tribunal finds that no breach of the Applicant's confidentiality has been established.

34. The Applicant filed a formal complaint with INT against Mr. X in August 2005. Mr. X was informed about the complaint by INT as part of its investigation. The record also indicates that prior to the submission of the formal complaint, in March 2005, the Applicant had approached INT. She was interviewed several times between May and August 2005 and she had initially asked INT to hold off on a formal investigation. Importantly, however, it appears that Mr. X knew of the complaint before it was filed because the Applicant had approached his assistant in an attempt to have her join in the complaint. The assistant apparently shared the information with Mr. X who went to his manager. Thereafter, the Ombudsman and INT were notified of the incident. In view of the fact that the Applicant informed Mr. X's assistant of her intent to file a complaint with INT it is difficult for the Tribunal to conclude that it was the Bank that breached the Applicant's confidentiality.

35. Furthermore, the Applicant also alleges that people outside the Bank knew about the complaint and that it was detrimental to her career and reputation. Yet, a person who was allegedly aware of the information was on the Board of the entity which hired her after she was unable to secure a position at the Bank. That person also failed to confirm the Applicant's allegations that others were aware of the complaint.

Retaliation resulting in inability to find another position in the Bank

36. Staff Rule 8.01 specifically prohibits managers and other staff from engaging in any form of retaliation against anyone reporting misconduct. Allegations of retaliation are taken seriously by the Bank; the burden of proof on the person alleging retaliation is correspondingly substantial. It is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person.

There must be a direct link between the alleged motive and the adverse action to amount to retaliation.

37. In this case, the Applicant complains of retaliation on two main accounts, firstly, that Mr. X used his position to frustrate her efforts to secure another job in the Bank, due to her INT complaint, and secondly, that the Bank did not renew her contract because of her INT complaint.

38. *Frustration of the Applicant's job search.* The record does not support the Applicant's allegations. She had held two jobs during her two years of employment at the Bank and had received adequate notice that none of the positions had proved a proper fit for her. She was in the course of another job search which did not bear fruit. There is no evidence that directly connects her failure to secure another position in the Bank with any action taken by Mr. X. Given the Bank's recruitment procedures, to assume that he was able to influence the Applicant's non-selection in the several jobs for which she applied would be to attribute to Mr. X powers and authority he did not actually have.

39. It appears from the positions listed by the Applicant that Mr. X would have been the HR contact person responsible for less than a third of the approximately 50 positions for which she applied. The remaining positions were in areas where he would not have been involved. Importantly, she applied for a wide range of positions, at both the Bank and at the International Finance Corporation ("IFC"), including, *inter alia*, Ombudsman, Private Sector Development Specialist, Strategy Officer, Corporate Communications Manager, Senior Communications Officer in INT, and Deputy Special Representative. As a result, a senior staff member who was advising her of opportunities at the Bank advised her to focus her job applications on particular jobs for which she was a strong

candidate and not apply to any open position. She was also told that while her experience was impressive, she was not competitive for the jobs to which she applied.

40. While the Applicant points to her high qualifications and notes that her performance was more than satisfactory and not shaky as implied by the Bank, a staff member's qualifications of themselves are not sufficient to require being short-listed. Short-listing is a competitive process. Ordinarily several qualified applicants apply for a job, but only a handful are interviewed. That does not mean that the other candidates are not qualified, only that the ones selected are better fits for a particular position.

41. In any case, the Tribunal held in *Riddell*, Decision No. 255 [2001], para. 23, that "no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position." The Tribunal further explained in *Jassal*, Decision No. 100 [1991], para. 30, that "[t]he decision to select an applicant for a particular position, or to include him or her in a list of candidates, is discretionary and the Tribunal will not overturn such a decision unless it finds that it is tainted by bias or abuse of discretion." Finally, in *Rittner*, Decision No. 339 [2005], para. 50, the Tribunal concluded that "[t]he fact that [a staff member] was not shortlisted for an interview cannot, by itself, be regarded as evidence of unfair and arbitrary evaluation."

42. Other than alleging retaliation, the Applicant did not submit any evidence to substantiate her claim and show that failure to be short-listed was an abuse of discretion. Her claims on this ground also fail.

43. *Retaliation resulting in non-renewal of contract.* The Applicant held a two-year term appointment. In the first few months she worked in WBIKP, which she admitted was not a good fit for her qualifications and skills. The record shows, although the

Applicant disputes it, that her OPEs while in WBIKP were not exceptional, recognizing that the job she was performing was not the one she was hired to do. She then obtained a position in WBIFP where her performance improved. At the time she was given the position, she was advised that this was a temporary assignment as shown in her second OPE. In her third OPE, she was alerted that there was no possibility of future employment within that group after her contract expired.

44. Other than her allegations, the Applicant did not submit any evidence showing any grounds for any expectation of renewal of her contract once it expired. Even if her performance had been without blemish, she would still not have been entitled to renewal of her contract. *Rittner*, Decision No. 339 [2005], para. 33, makes it clear that:

[A]s explained in *Carter*, at para. 13, the Tribunal stated that “there may be something in the surrounding circumstances which creates a right to the renewal of a [Fixed-Term] appointment.” That “something” should in principle be constituted by, on the one hand, a promise, express or implied, to extend or renew on the part of the Bank and, on the other hand, reliance thereon or acceptance of such promise on the part of the staff member. (See, e.g., *Degiacomi*, Decision No. 213 [1999], para. 28; *Visser*, Decision No. 217 [2000], para. 35.) Absent such circumstances, the Tribunal in *Kopliku*, at para. 10, expressly noted that

simply performing to an expected level of performance does not entitle a staff member on a Fixed-Term contract to renewal or extension. As the Tribunal concluded in McKinney, Decision No. 187 [1998], para. 16: “Whenever a person is initially employed by the Bank, it is assumed that his or her performance will prove to be satisfactory. Performing at that level cannot reasonably give rise to an expectation of greater employment rights than those expressly provided in the contract of employment.” (Emphasis added.)

DECISION

For the reasons given above, the Tribunal dismisses the Applicant’s claims.

/S/ Jan Paulsson

Jan Paulsson
President

/S/ Olufemi Elias

Olufemi Elias
Executive Secretary

At Washington, DC, 7 October 2009