



World Bank Administrative Tribunal

2014

Decision No. 495

**AI (No. 3),
Applicant**

v.

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

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

**AI (No. 3),
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.
2. The Application was received on 28 October 2013. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. Invoking Article XIII of the Tribunal's Statute, the Applicant seeks the revision of two judgments of the Tribunal.

FACTUAL BACKGROUND

4. On 15 September 2008, the Applicant filed an application with the Tribunal raising three main claims: (i) the Bank breached its promises to make him the Global Manager of the International Comparison Program ("ICP") and to propose him for promotion to level GH; (ii) the Bank discriminated against him and did not give him the ICP Global Manager title because of his race and origin as a "black Sub-Saharan African"; and (iii) the Bank retaliated against him because he filed an appeal with the Appeals Committee. On 23 March 2010, the Tribunal rendered its judgment on the first application, in which it dismissed all of the Applicant's claims (*see AI*, Decision No. 402 [2010]).
5. On 30 November 2009, the Applicant filed a second application with the Tribunal challenging the Bank's decision to terminate his employment for unsatisfactory

performance. On 29 October 2010 the Tribunal rendered its judgment and concluded that the Bank's termination decision was an abuse of discretion. The Tribunal awarded the Applicant compensation in the amount of three years' salary, net of taxes; and costs and expenses in the amount of \$10,000 (*see AI (No. 2)*, Decision No. 437 [2010]). According to the Bank, the compensation awarded "amounted to almost half a million dollars."

6. In his second application, the Applicant requested the Tribunal to "revisit" the judgment in *AI*, Decision No. 402 [2010], which he characterizes as "my discrimination case." He stated: "I appeal to the Tribunal to revisit its judgment of my discrimination on moral and ethical grounds because the judgment contains more than a dozen factually wrong assertions that have long and enduring damage to my career prospects." The Tribunal addressed this request in *AI (No. 2)*, Decision No. 437 [2010], para. 71, stating that:

The Tribunal recalls that the Applicant made allegations of racial discrimination in his first application. Those allegations relate to his non-appointment as the ICP Global Manager. The allegations have been considered by the Tribunal and are irreceivable under the principle of *res judicata* (*see AI*, Decision No. 402 [2010], paras. 38-77). No new facts or arguments regarding racial discrimination, beyond his bare assertions, have been provided by the Applicant.

7. The Applicant is not satisfied with the Tribunal's judgments. He filed the present Application on 28 October 2013 seeking revision of the two judgments (Decision Nos. 402 and 437) under Article XIII of the Tribunal's Statute.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's main contentions

8. In support of this Article XIII Application, the Applicant advances the following main arguments:

First, on August 29, 2013, Respondent admitted on the record that, at least in one case, what it used in its defense during the Tribunal's proceedings was false. On September 9, 2013, Respondent provided [the Applicant]

with copies of his “official HR record” containing more information that is materially different from what Respondent used in its defense during the Tribunal’s proceedings. The file also shows that Respondent went as far as erasing a section of [the Applicant’s] OPE.

Second, Respondent refused to retract the false testimonies and submissions, hiding behind the finality principle embodied in Article XI of the Tribunal’s Statute.

Third, Respondent’s willful misrepresentation of [the Applicant’s] professional standing that is published in the Tribunal’s judgment has condemned him to a permanent unemployment status in international development work.

Fourth, the Tribunal’s judgment contains significant material omissions and manifest errors of fact that has occasioned a miscarriage of justice.

Fifth, the Tribunal erred in its application of law regarding [the Applicant’s] retaliation claims to facts that are not in dispute. Considering that (i) racial discrimination constitutes a grave human rights violation, and (ii) the problem is systemic and entrenched in the World Bank, the manifest denial of due process demands a review on moral and legal grounds.

[The Applicant] also requests for a review of the Tribunal decision on *AI (No. 2)*, Decision No. 437, which deals with racial discrimination and retaliation (termination). If the judgment on *AI* is reconsidered and the unfair OPE evaluation that was used as a pretext to put [the Applicant] on a PIP is ruled arbitrary, as it should be, then the PIP and the ensuing termination should be declared null. The application to review *AI (No 2)* also stands on its own merits.

9. As remedies he requests the following in his Application:

1. \$966,000 representing no less than seven years’ salary for the Applicant’s moral injury and personal distress, as well as harm to his professional and personal life and reputation or a higher amount to be determined by the Tribunal. ...
2. \$90,000 in lost income based on 4.5 annual raise from December 2009 to December 2013 (the amount is calculated taking total lost income less the three years’ salary he was awarded by the Tribunal plus very limited income he made since his termination).

3. Lost pension benefits including potential accrued interest lost to be estimated by Respondent covering the period December 2009 to present.
4. Reinstatement at the GH level. ...
5. Should the Tribunal consider an alternative compensation or if Respondent refuses to reinstate him he asks compensation in the amount of \$1,199,000.
6. In the event of Respondent's refusal to reinstate the Applicant at the GH level, he should also be compensated for lost pension benefits as a result of the Applicant separating 6 years prior to his mandatory retirement date due to the Respondent's discriminatory and retaliatory actions. This is in addition to what he has requested in item 3 above.
7. Legal fees and related costs incurred by the Applicant during the last seven years.

The Bank's main contentions

10. The Bank raises a preliminary objection and requests the Tribunal to summarily dismiss the Application for lack of jurisdiction. The Bank advances the following arguments.

11. The Bank states that the Applicant refused to accept the decisions of the Tribunal as final and has been pressuring the Bank to have his case re-litigated through what he terms "external arbitration." The Bank adds that "[t]o that effect, he has engaged in an incessant, incontinent and very public campaign against the Bank, its official and offices, as well as against the Tribunal and the panel of judges that heard his cases." The Bank further states that the Applicant "has threatened to commit suicide, embark on a hunger strike or maim himself, possibly to gain leverage in his grievance against the Bank." The Bank states that it has communicated to the Applicant that it is not prepared to re-litigate his case in whatever forum; he cannot re-litigate the decided issues before the Tribunal.

12. The Bank asserts that the communication received by the Applicant on 29 August 2013 does not contain any "newly discovered facts which might have had a decisive

influence on the judgment of the Tribunal.” The Bank states that the Tribunal’s disposition of the Applicant’s two applications did not revolve on whether his entry on duty (“EOD”) date was 1993 or 1995. The EOD date of 1995 was a typographical error in one of the Bank’s submissions in the Applicant’s first application. The Bank states that the Applicant presents no new and decisive facts that might trigger Article XIII.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

13. Article XI of the Tribunal’s Statute provides that: “Judgments shall be final and without appeal.” In *van Gent (No. 2)*, Decision No. 13 [1983], para. 21, the Tribunal held that:

Article XI lays down the general principle of the finality of all judgments of the Tribunal. It explicitly stipulates that judgments shall be “final and without appeal.” No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal’s judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

14. The Tribunal has also stated that: “This rule of finality of the Tribunal’s judgments is essential to the operation of the Bank’s internal justice system. Once the Tribunal has spoken, that must end the matter; no one must be allowed to look back to search for grounds for further litigation.” *Mpoy-Kamulayi (No. 7)*, Decision No. 477 [2013], para. 27.

15. The Statute provides a sole exception to this principle of finality. Article XIII provides that:

A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

16. The Tribunal has stated in a number of its judgments that “the powers of revision of a judgment are strictly limited and may be exercised only upon compliance with the conditions set forth in Article XIII.” *Skandera*, Decision No. 9 [1982], para. 7. In *Kwakwa* (No. 2), Decision No. 350 [2006], paras. 18-19, the Tribunal held that

the character of Article XIII as a very limited exception should be obvious. Its requirements are not fulfilled unless the Tribunal is satisfied that newly discovered facts are potentially decisive.

It is difficult to define in a phrase the nature of factual revelations which might justify the disruption of a *res judicata*; it is a matter to be determined in the particular circumstances of each case. If it were left to any disappointed litigant to assess the relevance and decisiveness of subsequently discovered facts, the ingenuity of pleaders would ensure that few, if any, judgments would ever be final. Unless some restrictive principle fulfills a rigorous screening function, the availability of revision would subvert a fundamental rule of tribunals such as this one: namely that its judgments are definitive. To ensure that Article XIII does not wreak havoc with the rule of finality, enshrined in Article XI, the former must be recognized as available only in exceptional circumstances. The “new fact” must shake the very foundations of the Tribunal’s persuasion; “if we had known that,” the judges must say, “we might have reached the opposite result.”

17. The present Application must be viewed in light of these fundamental statutory rules of the Tribunal and its related jurisprudence.

18. The Applicant refers to an e-mail he received from a Bank official dated 29 August 2013 as “the discovery of a fact” that should trigger the operation of Article XIII. He adds that: “on August 29, 2013, Respondent admitted on the record that, at least in one case, what it used in its defense during the Tribunal’s proceedings was false.” In that e-mail the Bank official wrote to the Applicant stating, *inter alia*, that:

It remains our understanding that you have requested to see your career file, which as a former staff member you are entitled to review. In addition, you have the right to submit a written request for the correction or clarification of the career file, any such request is then made a part of the career file.

I note that your e-mail alludes to what you believe to be an inaccuracy in the career file regarding the year your Bank employment began. The Bank's records confirm your understanding that your Bank employment began in 1993. My review of the record shows that it has the start of your employment (at that time, as a Long Term Consultant) as April 1, 1993. Any verification of former employment from the World Bank would refer to this date as the start date of your employment with the Bank.

You also refer to a "falsified version" of you employment history appearing on the "Bank's internet." Your reference is puzzling, as all career files are confidential under World Bank policy, and you have not provided a link or reference to the specific site where the employment history is alleged to appear. The only place we could find on the World Bank internet website where there is a discussion of your employment history is the official reported decision in your case as published by the World Bank Administrative Tribunal in keeping with the Administrative Tribunal's practice to publish all its decisions on its website. The decision in your case, however, is not identified under your name, as you requested and were granted anonymity by the Tribunal. Accordingly, it is difficult for us to understand how you could have been harmed by the publication of the decision which does not refer to you by name.

I would like to conclude by assuring you that the Bank will be happy to provide a letter of verification of former employment, which would include the start and end-date of employment, your title and appointment type at the time your employment ended, and the unit for which you worked at that time.

19. In explaining the significance of the discovery of this fact for the purposes of Article XIII, the Applicant states:

The change of Applicant's EOD from 1993 to 1995 was an integral part of Respondent's fraudulent narrative that the people whom he was accusing of racial discrimination were the ones who hired him in 1995 and continued to support him. The year 1995 was chosen because it was when Applicant's director became responsible for the management of ICP.

To give credence to Respondent's claim, Applicant's EOD needed to be aligned to the director's entry date into the department. The Tribunal had before it two conflicting stories and believed the one presented by Respondent. The Tribunal did not "replicate" an honest "typographical error" committed by Respondent. It was defrauded by Respondent on a matter that Respondent at the time presented as evidence to rebut Applicant's racial discrimination claim. In August 29, 2013, Applicant received an e-mail communication from Mr. Marcelis (Lead HR Officer),

which confirmed that Respondent's claim of 1995 as Applicant's EOD was not true. It is this damaging revelation and admission that Respondent tries to undermine by suggesting it is a minor issue and a mere typographical error.

20. The Tribunal finds that the Bank has never questioned the fact that the Applicant worked for the Bank before 1995. In its Answer of 14 November 2008 (received on 17 November 2008) responding to the first application, the Bank stated at paragraph 1 that the Applicant "joined the World Bank ("Respondent") in June 1993 as a Consultant." In its Answer of 1 February 2010 responding to the second application, the Bank again stated at paragraph 1 that the Applicant "joined the World Bank ("Respondent") in June 1993 as a Consultant." The Bank made reference to 1995 when it referred to the year the Applicant joined the Development Economics Data Group ("DECDG").

21. The Tribunal and the parties were aware that the Applicant started working for the Bank before 1995. During the proceedings of the first application, on 10 August 2009, the Tribunal ordered the Bank to provide the Tribunal with the Applicant's employment history. On 31 August 2009, the Bank responded to this order and provided the Applicant's employment history stating that he started as a consultant in 1993. The document also showed that he started working for DECDG since 1995. This document entitled "Applicant's Employment History" was shared with the Applicant by a letter of the Tribunal dated 15 September 2009.

22. The brief factual background set out in the two Tribunal judgments were never intended to be a complete recital of the Applicant's employment history. In both judgments the Tribunal recited facts beginning in 1995, the year Applicant started working for DECDG, because the issues that were before the Tribunal arose while he was at DECDG. Paragraph 3 of both judgments states:

The Applicant, who holds a Ph.D. in economics and had several years of relevant experience, joined the Bank's Development Economics Data Group ("DECDG") in 1995 as a consultant. In 1999 he received a Term appointment as an Economist at the GG level. In 2000 his title changed from Economist to Senior Economist to conform to the nomenclature for

grades and titles in the Bank. In 2003 his Term appointment was converted to an Open-Ended appointment.

23. Given the Bank's Answers to the two applications that stated that he joined in 1993 and the document "Applicant's Employment History" that were all part of the record, the Tribunal was not "defrauded" in respect of the Applicant's EOD. The quotation above does refer to his "several years of relevant experience."

24. In any event, it is clear that the debate of 1993 versus 1995 had and still has absolutely no relevance for the two applications the Applicant filed before the Tribunal. In both applications, in completing the Tribunal's application forms, the Applicant himself stated "1 July 2000" as his "Date of Employment." Surely no one should assume an ulterior motive on the part of the Applicant in this respect. In both applications, he recited facts dating from 1999 in reference to his role in building ICP. Whether his employment began in 1993 or 1995 was not a decisive factor even in the Applicant's own submissions.

25. The Applicant's other arguments for revisions of the two judgments relate to his opinion that the Tribunal got the facts, evidence and law wrong in both cases. The Applicant has a right to express his opinion about the judgments in Decision Nos. 402 and 437, just as the Bank has the same right. But what the parties cannot do is to re-litigate decided matters by invoking Article XIII. As in *van Gent (No. 2)*, the Tribunal stated:

No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal's judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

In a judgment on an application for revision, rejecting the application in applying similar provision like the Tribunal's Article XIII, the United Nations Appeals Tribunal observed in Judgment No. 2013-UNAT-393, para. 15, that:

The request filed by the Applicant constitutes, in fact, a disguised way to criticize the Judgment or to expose grounds to disagree with it, a recourse

against a final judgment that is not provided for in the Statute of this Court.

26. The Application also refers to post-judgment expressions of views about the two judgments described above. The Tribunal finds that these expressions of views do not constitute new decisive facts warranting a revision of the judgments pursuant to Article XIII.

27. In view of the foregoing, the Tribunal dismisses the current Application.

DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D.C., 28 February 2014