



**World Bank Administrative Tribunal**

**2012**

**Decision No. 465**

**BU,  
Applicant**

**v.**

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

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

**BU,  
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), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Francis M. Ssekandi, and Ahmed El-Kosheri.

2. The Application was received on 9 September 2011. The Applicant was represented by Marie Chopra of James & Hoffman, P.C., and the Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 19 June 2012.

3. The Applicant claims that the Bank failed to: (i) investigate his allegations of "double-dipping" in his unit; (ii) investigate his allegations of retaliation; and (iii) provide him with whistleblowing protection. The Bank raised preliminary objections stating that these claims had been waived pursuant to a "Mutually Agreed Early Out Separation: Retirement" agreement ("MAS"). The present judgment deals only with the Bank's preliminary objections.

#### FACTUAL BACKGROUND

4. The Applicant joined the Bank in August 2000. His Open-Ended appointment was confirmed in May 2002. He worked as a Senior Communications Officer, grade level GG, in the Development Communications Unit ("EXTCD") of the External Affairs Department of the Bank ("EXT").

5. During the course of his work in 2008, the Applicant became concerned about the management of trust funds in EXTCD. The Applicant states that he is a whistleblower and explains in his Application the concerns that he reported to management as follows:

During the course of his work, [the Applicant] became aware of a fraudulent practice whereby his unit billed the trust funds for coterminous staff hired to do specific work for the funds and simultaneously charged the Bank's regions and networks for the same work using the names of open ended staff (whose salaries were already covered by EXTCD's budget). [The Applicant], who never cross-supported his work with trust fund money, found out that his name was being used to double charge for a task performed by a trust funded coterminous staff member, whose participation was already fully covered by the trust fund. Thus, EXTCD received double payments for the same work and personnel.

[The Applicant] believed such "double-dipping" practices were fraudulent, particularly when they had been previously detected and "flagged" to stop the abuse, but nonetheless continued through the use of open ended staff names to conceal the double billing.

6. In September 2008, the Applicant raised his concerns with the Trust Fund Manager at the Bank's Trust Funds Operational Department, and with the Senior Manager at the Trust Quality Assurance and Compliance Unit ("TQC"). According to the Applicant, the Senior Manager of TQC assured him that the Senior Manager "would take care of the matter." The Applicant adds that the Senior Manager also called a Program Manager of the Bank's Office of Ethics and Business Conduct ("EBC"), and "asked her to follow up with [the Applicant] as there was a high likelihood of retaliation against him."

7. The Applicant met with EBC in September 2008 and again in April 2009 to discuss his concerns about the trust funds, and to discuss concerns that he was suffering retaliation as a result of his whistleblowing. The Bank states that EBC informed the Applicant during these meetings that it did not have the mandate to investigate allegations of staff misconduct during the relevant time in 2008 and that EBC therefore referred the Applicant to the Department of Institutional Integrity ("INT") with regard to the trust fund issues, and to appropriate mechanisms within the Bank's internal justice system with regard to his concerns about possible retaliation.

8. The Applicant met with INT in April 2009 to report the trust fund management issues and his retaliation concerns. INT subsequently conducted a preliminary inquiry

into his allegations of misconduct, and in due course informed him that it did not find further investigation of his allegations warranted.

9. When a new Director arrived in EXT in early 2009, the Applicant presented his information on the alleged misuse of trust funds to this new Director. In turn, the Director referred the Applicant's allegations to the Bank's Internal Audit Department, which ultimately resulted in an audit being conducted in the fall of 2009. The report of the audit is not in the record before the Tribunal.

10. The Applicant states that instead of supporting him, the Director became increasingly unfriendly and removed his work assignments. The Applicant then decided to leave the Bank because, according to him, he became "[f]rustrated with his inability to get the attention of managers, EBC, or INT to seriously investigate his charges of misconduct" and also because he was "facing increasing retaliation." In July 2009 the Applicant and the Bank arranged the MAS, which the Applicant signed on 3 August 2009.

11. The MAS states, in pertinent part, as follows:

1. As agreed, you will separate from the Bank Group with the last day of service being September 15, 2009 ... .

2. On or about your last day of service, you will be paid a lump sum corresponding to six months of your then net pay, a lump sum payment for outplacement support corresponding to three months of your then net salary, and a lump sum in respect of your accumulated annual leave, up to a maximum of 60 days, as of the close of business of your last day of service. There will be no severance payments associated with this agreement. You will also receive any termination and/or resettlement benefits to which you may be entitled ... .

3. [Your] reappointment will be subject to the Staff Rules applicable to Bank retirees/former staff in effect at the time of any such reappointment.

...

6. In accepting these terms and conditions, you fully and finally settle and release all claims you might otherwise have against the Bank Group

concerning your separation, or otherwise arising out of circumstances occurring or decisions taken on or before the date of your acceptance. You understand that the settlement of these claims includes relinquishing of the right to appeal to the Appeals Committee, the Workers' Compensation Administrative Review Panel and the World Bank Administrative Tribunal.

12. Pursuant to the MAS, the Applicant separated from the Bank on 15 September 2009.

13. The Applicant states that his separation did not end the retaliation by the Bank. He states that certain events that occurred in 2011 prompted him to come to the Tribunal. He adds that as part of the retaliation, the Bank continued to delay completing his 2009 Overall Performance Evaluation ("OPE"), which was only finalized on 18 May 2011. He also states that on 11 April 2011 and 8 June 2011 he received two e-mail messages from the Program Manager of EBC informing him that EBC "had not pursued his allegations of whistleblowing and retaliation" and that "EBC had closed the investigations." The Applicant adds that around the same time in 2011 he "received information that the World Bank had not considered any of his first four applications for employment even though he was eminently qualified for the positions."

14. These events in 2011 led the Applicant to file this Application with the Tribunal on 9 September 2011. In the Application he describes the decisions that he is challenging before the Tribunal as follows:

EBC's failure to investigate [the Applicant's] whistleblowing allegations of corruption.

EBC's failure to investigate [the Applicant's] allegations of retaliation.

Failure to provide whistleblowing protections.

15. The Applicant seeks the following remedies: (i) specific performance (EBC or INT conduct a full investigation into the charges of fraud and misconduct in EXTCD and into the charges of retaliation); (ii) appropriate compensation and (iii) attorneys' costs.

## THE BANK'S PRELIMINARY OBJECTIONS

16. The Bank states that the Application is inadmissible because the Applicant knowingly and willingly entered into the MAS pursuant to which he expressly agreed to settle and release all of his claims against the Bank arising out of his separation and out of circumstances occurring on or before the date of his acceptance of the MAS.

17. The Bank states that the Applicant erroneously asserts that his Application is admissible because his claims arose after he signed the MAS on 3 August 2009. Specifically, the Bank adds, the Applicant relies on two e-mail messages he received from EBC in 2011, one dated 11 April and the other 8 June. The Bank states that the Applicant is attempting to use his post-separation communications with EBC to get around the fact that he waived his claims when he accepted the MAS in 2009. The Bank explains that as described in detail in EBC's e-mail message to the Applicant dated 11 April 2011, "his concerns were addressed — though not in the manner which he desired — in 2008 and 2009 when Applicant first reported his allegations to EBC." The Bank adds that, in the 8 June 2011 e-mail message, EBC again reminded the Applicant that the concerns he raised with EBC in 2008 and 2009 "were dealt with in accordance with EBC's mandate at that time" and directed the Applicant to contact INT if he had any questions about their handling of his complaints. The Bank contends that EBC's April and June 2011 communications to the Applicant do not represent "new" decisions which would fall outside the parameters of the MAS settlement and release; rather, EBC simply restated the same information which was previously communicated orally to the Applicant.

18. The Bank asserts that: "Contrary to Applicant's assertions, waiver of a claim under the MAS is not determined by the date on which an actual claim exists but rather by the date on which the circumstances which give rise to the claim occur." The Bank explains that the Applicant's present claims all "arise out of circumstances" occurring as early as September 2008, when he first raised allegations about his unit's trust fund billing practices with the Senior Manager of TQC and the Program Manager of EBC. As such, the Bank claims that the Applicant waived these claims pursuant to paragraph 6 of the MAS.

19. The Bank contends that it must be able to rely on a signed release of claims to bring an end, fully and finally, to disputes raised by staff members; staff should not be allowed to accept the benefits provided by a mutually agreed outcome but, at the same time, avoid the consequences. The Bank states that by accepting jurisdiction here, the Tribunal would be allowing the Applicant to revive previously settled and released claims where there are no new facts or circumstances arising outside the waiver period. Accordingly, the Bank urges the Tribunal to decline to review the Applicant's claims which he waived pursuant to the MAS and requests the Tribunal to hold the Application inadmissible.

#### THE APPLICANT'S RESPONSE

20. The Applicant argues that his current claims involve EBC's failure to investigate his reported misuse of trust funds "as well as later claims of retaliation from which EBC should have provided a shield." He contends that none of these claims are barred by the waiver he signed on 3 August 2009 because they all arose after the date of that waiver. The Applicant claims that:

[The Bank] ... attempts to push back the date on which "the circumstances which give rise to the claim occur[ed]" to September 2008 when [the Applicant] first raised his allegations about his unit's misuse of funds. This argument defies logic. How can [the Applicant], in August 2009, have waived his claims against EBC (not against his unit) for its failure to investigate, when such a circumstance has not arisen. He surely cannot be held to have waived a claim that did not exist and which he could not possibly have guessed might exist at some point in the future? A waiver of claims must be a knowing act; and [the Applicant] could not possibly have known that this particular claim would arise much later.

Of course, the flaw in the [the Bank's] argument is that his claims against EBC did not arise out of his unit's misuse of funds, but rather arose out of EBC's investigation - or lack thereof. They therefore arose after [the Applicant] had signed the MAS.

21. The Applicant states that his "discovery in April and June 2011 that EBC had in fact done nothing to investigate and had closed the cases was therefore not at all a reiteration of a decision which may have been made before EBC arguably lacked the authority

to investigate staff misconduct. Instead, he argues, it was a shocking revelation of EBC's abandonment of its responsibilities under Staff Rule 3.00." The Applicant explains that:

At the time [the Applicant] signed the MAS with the Bank, on August 3, 2009, EBC had not conducted its investigation, had made no report to [the Applicant], and had given him absolutely no reason — either through action or inaction — to object or complain. Since EBC had taken no decision of any kind by August 3, 2009, or informed him of its investigation or lack thereof, [the Applicant] cannot have waived his right to appeal from future decisions, actions, or inactions by EBC. There was nothing for him to waive at that time.

22. Moreover, the Applicant states that the retaliation with respect to the Applicant's OPE and EBC's failure to investigate such retaliation also happened after he signed the MAS. Thus, the Applicant asserts that none of his claims are barred by the waiver he signed on 3 August 2009.

23. The Applicant requests the Tribunal to find jurisdiction in this case and order the Bank to submit an answer on the merits.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

24. The Tribunal has recognized that staff members and the Bank may execute agreements whereby staff members waive or release their claims against the Bank. The Tribunal has in previous cases accepted the validity of such waivers and given effect to them. In the first of these cases, *Mr. Y*, Decision No. 25 [1985], para. 26, the Tribunal explained the rationale for giving effect to such release provisions as follows:

In an enterprise employing as many staff members as does the World Bank Group, it is inevitable that there will be claims of improper treatment, as witness the appeals to the Appeals Committee and applications to this Tribunal. It would unduly interfere with the constructive and efficient resolution of these claims if the Bank could not negotiate — in exchange for concessions on its part — for a return promise from the staff member not to press his or her claim further. If such an agreed settlement were not binding upon the affected staff member, there would be little incentive for the Bank to enter into compromise arrangements, and there might instead be an inducement to be



unyielding and to defend each claim through the process of administrative and judicial review. It is therefore in the interest not only of the Bank but also of the staff that effect should be given to such settlements.

25. The Tribunal, of course, would not enforce such a waiver or release clause if the Tribunal finds that a particular MAS is invalid, for example, because it was concluded under duress. *See id.* para. 32. In this case, the Applicant does not question the validity of the MAS or the waiver clause. He makes clear that he “is not arguing that his waiver should not be enforced; he knows that he reached that agreement and will live with it.”

26. The contested issue before the Tribunal is the scope of the waiver. Paragraph 6 of the MAS executed between the Bank and the Applicant on 3 August 2009 states as follows:

In accepting these terms and conditions, you fully and finally settle and release all claims you might otherwise have against the Bank Group concerning your separation, or otherwise arising out of circumstances occurring or decisions taken on or before the date of your acceptance. You understand that the settlement of these claims includes relinquishing of the right to appeal to the Appeals Committee, the Workers’ Compensation Administrative Review Panel and the World Bank Administrative Tribunal.

27. The question is whether the claims raised in the Application are encompassed by the phrase “all claims you might otherwise have against the Bank Group concerning your separation, or otherwise arising out of circumstances occurring or decisions taken on or before the date of your acceptance.”

28. In his Application, the Applicant describes the circumstances that led to the execution of the MAS as follows:

In September 2008, [the Applicant] discussed his concerns with ... the Trust Fund Manager at the Trust Funds Operational Department (“TFO”), and with ... the Senior Manager at the Trust Fund Quality Assurance and Compliance Unit (“TQC”) in the Bank. [The Senior Manager] assured [the Applicant] then, and in subsequent meetings, that he would take care of the matter. [The Senior Manager] also called ... [the Program Manager] of

EBC, and asked her to follow up with [the Applicant] as there was a high likelihood of retaliation against him.

Although [the Senior Manager] did, apparently, take actions on [the Applicant's] information, he refused to provide [the Applicant] with detailed information of the actions taken and the procedures in place — if any — to prevent recurrence. Moreover, [the Senior Manager] refused to continue to meet with [the Applicant], particularly after he requested that the matter be brought to the attention of INT.

After raising the issues with [the Senior Manager], [the Applicant] met with [the Program Manager] of EBC repeatedly in 2008 and 2009, when he was constantly assured that an investigation was “in progress.” As time passed and the investigations were supposedly in progress, [the Applicant] also told EBC that he was suffering retaliation as a result of his whistleblowing, that his managers were removing his work assignments, and that his immediate supervisor ... had lowered his ratings and included controversial criticisms in his 2009 OPE. EBC, however, advised [the Applicant] to “lay low” and “move on.”

Soon after his new Director ... arrived in EXTHQ in early 2009, [the Applicant] presented his information on the double billing situation to him. Instead of supporting [the Applicant], however, [the new Director] became increasingly unfriendly and removed work assignments.

Frustrated with his inability to get the attention of managers, EBC, or INT to seriously investigate his charges of misconduct and to be transparent about the matter, and facing increasing retaliation resulting in less and less work, [the Applicant] decided to leave the Bank. His management — apparently only too happy at his departure — took just two days to arrange for an “early out” agreement. The Mutually Agreed Early Out Separation Agreement was dated July 20, 2009 and resulted in [the Applicant's] separation from the Bank on September 15, 2009.

29. According to the Applicant, as of 3 August 2009, the date when he signed the waiver clause, the following circumstances existed: (i) he had reported the “double-dipping” with respect to trust funds to the Bank’s management in September 2008, but the Bank’s management had failed to take proper action; (ii) following his report to management, he had become a victim of retaliation and management, EBC and INT had failed to protect him from such retaliation; and (iii) he had tried to get the attention of the

managers, EBC and INT to “seriously investigate his charges of misconduct” but he was “frustrated” by their actions or inactions.

30. In his present Application, the Applicant raises the following claims:

EBC’s failure to investigate [the Applicant’s] whistleblowing allegations of corruption.

EBC’s failure to investigate ... allegations of retaliation.

Failure to provide whistleblowing protections.

31. Considering the terms of paragraph 6 of the MAS, and the circumstances that existed at the time the MAS was signed as described by the Applicant himself, it is evident that the Applicant’s claims in this Application are encompassed by that paragraph. In other words, they come within the waiver’s coverage of “all claims you might otherwise have against the Bank Group concerning your separation, or otherwise arising out of circumstances occurring or decisions taken on or before the date of your acceptance.”

32. The Applicant takes the position that his claims in the present Application arose after he signed the MAS in August 2009. He explains that the specific forms of retaliation, such as the delay in completing his OPE or the failure to consider his job applications, occurred in 2011, and also that in that year EBC told him that it “had not pursued his allegations of whistleblowing and retaliation” and that it “had closed the investigations.” In the Applicant’s view, the MAS has only the effect of waiving his specific claims that arose before 3 August 2009, and not claims related to anything that happened after that date.

33. The Tribunal cannot accept such a narrow interpretation of the waiver clause. The interpretation of the waiver clause must be based on the plain, ordinary and generally accepted meaning of the words used. The claims the Applicant contends occurred in 2011 plainly arise out of the circumstances occurring before 3 August 2009. It is uncontroverted that, by 3 August 2009, the Applicant concluded that he was suffering retaliation and found that EBC and INT failed to investigate his “charges of misconduct.”

The Applicant's argument that the specific events of 2011 fall outside the circumstances occurring on or before 3 August 2009 is untenable. When he signed the MAS including the waiver clause, the Applicant not only waived the actual claims that existed before 3 August 2009, he also waived potential claims that stem directly from the circumstances that existed on or before 3 August 2009. Accordingly, the waiver bars his claims being pursued before the Tribunal.

34. The Tribunal is conscious of the fact that the Bank recently adopted Staff Rule 8.02 "intended to enhance the Bank Group's current handling of whistleblowing reports and claims of whistleblowing retaliation." Whether the Bank in fact failed to provide the Applicant protection from retaliation is, however, a question that could only be decided on the merits. The Applicant's signing of the waiver clause in exchange for monetary consideration precludes the Tribunal from examining the merits of his claims. As the Applicant concedes, he signed a waiver clause and "he will live with it," and so he must.

#### DECISION

The Application is inadmissible.

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

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Paris, France, 27 June 2012