



World Bank Administrative Tribunal

2016

Decision No. 541

**DT,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**DT,
Applicant**

v.

**International Finance Corporation,
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 23 October 2015. The Applicant was represented by Stephen Schott of Schott Johnson, LLP. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant was granted anonymity.
3. The Applicant is challenging the denial of the World Bank Group's Claim Administrator of her claim to Workers' Compensation and the decision of the IFC to uphold that denial.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 1989 as a Researcher. Between 1990 and 1993 she held Long-Term Consultant appointments. From 1993 until 1996, she held a Fixed-Term appointment as a Section Chief, followed by Short-Term Consultant (STC) appointments until 2007 when she became a Senior Procurement Specialist. In 2009, the Applicant became a Senior Operations Specialist. In June 2010, the Applicant took an STC appointment. According to the Applicant, during her service for the Bank, she suffered from a series of work-related stressful situations which affected her health. In 2007, she was placed on Short-Term disability leave due to ill health. The Applicant states that she returned to work, although she continued to be in a lot of pain. She states that she converted to STC status in 2010 due to health reasons.

5. On 18 April 2012, the IFC offered the Applicant an STC appointment to assist IFC with an initial review of a project of the Government of Country L (GoL). The Letter of Appointment (LOA) stated that the Applicant's appointment would be with [Public Private Partnership (PPP) – Africa] and that her Task Team Leader (TTL) for the assignment was Ms. C who would be responsible for determining the Applicant's terms of reference and for providing guidance, supervising, and confirming the completion of her work. The manager of the unit to which the Applicant was assigned was Mr. N. The LOA also stated, *inter alia*, that: (i) the total World Bank Group Short Term Consultant and/or Short Term Temporary (STT) assignments may not exceed 150 days or 1200 hours (inclusive of overtime for STT) per fiscal year; (ii) the IFC expected to need the Applicant's services for about 30 days from 23 April 2012 to 30 June 2012; (iii) the IFC had no obligation to extend the appointment or to offer new appointment, but it might do so if agreed to in writing at the time of the expiration of the appointment; and (iv) the IFC would remunerate the Applicant in an amount of US\$950.00 gross per day worked.

6. Furthermore, the LOA stated that the World Bank Group also provided Workers' Compensation insurance.

7. In an exchange of communications with the Applicant in August 2012, the Applicant's TTL, Ms. C, informed her that the IFC would be able to renew her contract for a further 30 days to cover her fees for work done in June, July and August 2012 as well as an additional mission to Country L to follow up with the Permanent Secretary (PS) in the GoL. However, Ms. C continued, once this IFC contract was completed, her unit would have difficulty raising additional funding for the assignment. She informed the Applicant that the PS in GoL wished to enter into a contract with the Applicant directly for follow-on work and the Applicant agreed to work directly with the GoL "to help get the job done."

8. The Applicant's STC appointment with the IFC was extended for an additional 30 days of work in the following fiscal year. The records show that the Applicant worked and was paid for a total of 30 days by the IFC during FY13 (17 days between 23 July and 22 August 2012, 12 days between 23 August and 13 September 2012 and 1 day between 31 July and 31 August

2012). The Applicant's travel records show that her last mission travel for the IFC took place from 29 August 2012 until 13 September 2012.

9. In October 2012, the Applicant went on a follow-up mission to Country L, her third visit there. The Applicant has stated that this October 2012 mission proved to be highly political and rife with corrupt interests of powerful political figures. She alleges that she uncovered corrupt activities during her mission and left the country a week before her scheduled departure, concerned about her safety and the possibility of being attacked while in the country. The Applicant thereafter traveled to South Africa where she stayed in the house of the manager of her IFC unit, Mr. N, bedridden for three days, until she was able to return to Washington, D.C.

10. The Applicant states that she was not able to return to work when she got back to Washington D.C. In April 2013, she was diagnosed with nerve damage that caused her unbearable pain and incapacity and was hospitalized. The Applicant was then advised by her doctor to file for disability. She states that the onset of her physical disability occurred during and immediately following her mission to Country L in October 2012.

11. On 5 November 2012, the Applicant sent an email to the PS of GoL copying Mr. N and Ms. C. She attached a summary report on the work she completed during her mission in Country L.

12. On 11 November 2012 the Applicant sent an email to her primary physician, Dr. W, asking to meet with her in December and stating, *inter alia*:

I got back last week and the stress related to the work made me very ill. Actually it started as soon as I left [Country L] and in [South Africa] where I was stranded for a few days due to a storm [in the Washington, D.C. area].

13. In email exchanges in November and December 2012 between the Applicant and Mr. N, the Applicant criticized the role of the PS of GoL.

14. In October 2013, the Applicant sought to file a claim for Disability Insurance under Staff Rule 6.22, as well as a Workers' Compensation claim. On 22 October 2013, she was advised that she was not eligible for the Bank's Short-Term or Long-Term Disability programs. The Applicant was also advised that she might file a Workers' Compensation claim instead, and she did so on 23 November 2013. On the Workers' Compensation Claim Form, the Applicant answered "yes" to the question "Have you had this illness before?" In the attachment to the Form, the Applicant further stated that the illness for which she sought compensation "started in 1995-1996 when [she] was a Section Chief [...]." She added that her illness "has progressively worsened over the years finally disabling me completely in first quarter of 2013 and getting me hospitalized again in May 2013 [...]." On the Form, the Applicant also described the diagnosis of the illnesses for which she sought compensation, which included Irritable Bowel Syndrome (IBS) and pinched S1 nerve.

15. Among other things, the Applicant stated that due to the continuous and severe pain between 2010 and 2013 she had hardly been able to work but had accepted two short consultancy assignments (each less than 90 days of work) due to financial necessity on the condition that she would work from home. The Applicant explained that her last assignment (July 2012-June 2013) was with the IFC and part of the work required travel to Africa. She described her stressful experience during her last mission to Country L and stated that it was at that time that she started experiencing additional pain in the lower right side of her back and pain and numbness in her lumbar area and that, as a result, she stayed bedridden for three days in South Africa before traveling back home. The Applicant further described the medical treatment she received in 2013. However, on her Workers' Compensation Claim Form, the Applicant noted that her illness did not occur while on a mission.

16. Thereafter, the attorney for the Claims Administrator recommended that the Applicant's claim be denied on the ground that her claim had not been filed within 12 months from her knowledge of the injury as required by Staff Rule 6.11 (Workers' Compensation Program) or, in the alternative, that the Applicant's complete medical file be requested as there was no medical information in the claims file explaining the relation of the illness to her employment.

17. Subsequently, on 16 January 2014, the Claims Administrator wrote to the Applicant informing her that it was unable to approve her Workers' Compensation claim because it did not fall within the applicable guidelines. It stated:

Based upon our review we found that your illness/injury did not arise as a direct result of your employment.

Our investigation included a review of the following information:

Attending Physician Statement, completed by [Dr. W] dated November 19, 2013. [Dr. W] indicates that the staff member symptoms occurred in 1995 or 1996 and that she treated the staff member since August 3, 2007. [The diagnosis included ... chronic abdominal pain; back pain.]

Workers' Compensation Claim Form, in this form the staff member recognizes since at least 2007 that work related stress aggravates her condition. She indicates that she continued to work due to financial reasons. The staff member was clearly aware of her work related illness since at least 2007 and its relation to her employment. The staff member did not file a Workers' Compensation claim until November 23, 2013. The claim was not timely filed within 12 months of the illness as required by Staff Rule 6.11, Section 3.01, Annex A.

18. On 26 March 2014, the Applicant submitted a request for reconsideration in which she referred to the description of facts as in her attachment to the Workers' Compensation claim and added:

The actual diagnosis of "acute right S1 radiculopathy" was made on April 17, 2013 [...] and the combined effects [...] are the reason for my total disability. To this end, filing of the claim on November 23, 2013 is well within the established time under the Staff Rules.

19. In support of her request, the Applicant provided a letter written by Dr. P, her neurologist, dated 19 March 2014. In the letter, Dr. P stated that the Applicant had been under his care in 2006 for headaches, among other things, then under active interval care up until 2010 and then, after a three-year hiatus, she revisited him on 19 March 2013. Dr. P described the Applicant's pain and the study that had been performed on the Applicant which revealed findings consistent with acute right S1 radiculopathy. He diagnosed the Applicant with "right lumbar radiculopathy of unknown etiology," which had been "persistent, severe and completely/totally

disabling.” He also stated that the diagnosis of the Applicant’s condition was “the direct and proximate consequence of [the Applicant’s] work-related activities.”

20. On 30 May 2014, the Claims Administrator upheld its original denial of the Applicant’s claim on the ground that “[n]o medical information was received in the reconsideration process that the conditions were due to a direct result of employment.” It referred to a long list of “documents reviewed in the reconsideration process” including Dr. P’s letter, as well as the medical record received from Dr. W and stated:

The claim does not fall within the Worker’s Compensation guidelines as the medical condition does not arise as a direct result of employment. The medical information provided reports that the staff member has been treated for abdominal pain since 1995 and has continued to work with this condition. She did not file a claim until 2013. As well, there was documentation that the staff member had been treated for low back pain as far back as 2008 and continued to work with this condition.

There was no medical information that documents how the relationships of her health conditions were directly related to her employment with World Bank. Furthermore, the claim was not reported within a timely manner as treatment for these conditions were outside of the 12 month filing period.

21. On 24 July 2014, the Applicant, through her attorney, filed a request for administrative review by the World Bank Workers’ Compensation Administrative Review Panel (ARP).

22. In her request, the Applicant stated that she was employed by the IFC at the time of the injury and that her employment ceased on 30 June 2013. Contrary to her original assertion that she had not suffered illness during a mission, the Applicant claimed that

there is clear evidence that the onset of her physical disability occurred during and immediately following [the Applicant’s] mission to [Country L] in October 2012. On leaving for [Country L] [the Applicant] was physically able to undertake what was a difficult mission. She had no symptoms of the neurological condition that has caused her to become an invalid. And no assertion has been made that any other event outside the work place caused her medical problems. Competent medical opinion has related her medical condition to her mission to [Country L].

[The Applicant] became disabled during the term of her contract with IFC and her disability is directly attributable to the stress she underwent during her mission to

[Country L]. World Bank case law shows that a disability may arise out of a single emotional shock and may be found where a history of stress results in an incapacity. No proper evaluation was made by [the Claims Administrator] and it even disregarded the advice of its reviewing attorney. She is entitled to the full benefits of the Worker's Compensation program which is the only disability benefit to which she has recourse despite 23 years of service to the World Bank.

23. The Applicant also states that she has been bedridden since November 2013 as a result of the medical condition she sustained. The Applicant's request for administrative review was considered by the ARP, which was advised by Dr. D, an occupational medicine physician, and by its attorney. Following an exchange of comments by the Applicant and the Claims Administrator, the ARP met on 7 April 2015. Thereafter, it requested clarification from the Claims Administrator and the Bank Group regarding (i) the Applicant's employment status during her trip to Country L in October 2012, (ii) the medical record available to the Claims Administrator when it denied the Applicant's claim and request for reconsideration, as well as (iii) the Claims Administrator's undertakings to investigate her claim. Following another meeting and a request for information on the Applicant's employment status, the ARP issued its report on 27 May 2015. The ARP noted that the Applicant's travel to Country L in October 2012 was not reflected in the records provided by the Bank Group to the Claims Administrator because of a change in the Applicant's consulting contract by which her fees and expenses during that period were undertaken by the GoL. The ARP reviewed all the Applicant's ailments over the years as claimed by her and identified by Dr. W in her 19 November 2013 Attending Physician's Statement and pointed out that it was apparent from the record that the Applicant suffered from all these conditions for many years prior to her most recent employment as a consultant with the Bank from 23 April 2012 through 30 June 2013.

24. First, the ARP affirmed the finding of the Claims Administrator that the Applicant's claim was time-barred. It quoted Staff Rule 6.11, paragraph 3.01, and Annex A, paragraph 2.2, and stated that the Applicant "had received diagnoses with regard to all of her conditions and, given her own statement and the medical evidence [...], was aware or at the very least in the exercise of ordinary diligence ought to have been aware of a possible connection between these conditions and her employment, more than one year prior to of filing the claim. Such diagnoses and knowledge existed by at least 2007."

25. Regarding the Applicant's claim that the triggering event was her last trip to Country L in October 2012 when the Applicant claimed that her condition worsened and that the one year limitations period should not be deemed to have begun until April 2013 when she received a diagnosis from Dr. P, the ARP stated that the triggering event for filing a claim is defined in the Staff Rule and includes diagnoses and knowledge of a possible connection to the work. The ARP stated that Dr. P's opinion of a right lumbar radiculopathy, upon which the Applicant relied, was "but the most recent refinement of the longstanding assessments of her [...] pain and even this refinement is lacking in certainty as Dr. P went on to note that the etiology of the lumbar radiculopathy is undefined." It added that Dr. P's opinion "does not negate the facts that the [Applicant] received diagnoses and had known or ought to have known of a possible relationship between her conditions and her work more than one year prior to the filing of her claim."

26. Second, the ARP reviewed the evidence and other information including the medical opinions of Dr. W, Dr. P and Dr. B, the physician who had conducted an Independent Medical Examination of the Applicant in 2008, and affirmed the conclusion of the Claims Administrator that her injury or illness did not arise as a direct result of her employment.

27. On 27 May 2015, the ARP affirmed the determination of the Claims Administrator to deny the Applicant's claim. The Applicant was informed of the decision by email from the Chair of the ARP, on the same day. On 22 June 2015, the Applicant wrote to the Chair requesting a dated and signed copy of the ARP decision. Thereafter, mediation took place but it was closed on 10 August 2015. The Applicant was sent a dated and signed copy of the ARP decision on 3 September 2015.

28. The Applicant filed an Application on 23 October 2015. In her Application, the Applicant requests that (i) the decision to deny her claim for Workers' Compensation be rescinded; (ii) she be paid for disability under Staff Rule 6.11: (a) from and after the date in April 2013 when she was found to be medically disabled; (b) medical and rehabilitation costs incurred since 2013; and (c) compensation in the amount of one year's consultant compensation at her rate, \$950 per day on the basis of consulting days, i.e. about \$142,000, for the stress and suffering she has experienced and the serious ill effects on her health; and (iii) legal fees and costs in the amount of \$68,652.50.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

29. The current case comes on appeal to this Tribunal in accordance with Staff Rule 6.11 "Workers' Compensation Program," paragraph 12.02. The Tribunal's task is "limited to reviewing the decision of the [Administrative Review Panel], by reference to the evidence before that body, with a view to determining whether the conclusion reached by the Review Panel could be reasonably sustained on the basis of that evidence and also whether the Review Panel has acted in accordance with the relevant legal rules and procedural requirements." See *Chhabra (No. 2)*, Decision No. 193 [1998], para. 7; *Shenouda (No. 2)*, Decision No. 218 [2000], para. 14; *Hasselback*, Decision No. 364 [2007], para. 57.

30. Staff Rule 6.11, which sets forth a Workers' Compensation program applicable to all staff members, prescribes at paragraph 3.01 that:

If a staff member's injury, illness or death is believed by a claimant to arise out of and in the course of employment, a claim for applicable workers' compensation benefits may be filed with the Claims Administrator by the staff member, a surviving spouse or domestic partner, a child or an appointed guardian. A claim must be filed with the Claims Administrator within the timeline provided in Annex A, Claims Procedure, Paragraph 2.2.

31. Paragraph 2.01 of the Staff Rule gives the authority to the Claims Administrator to determine whether an injury, illness or death arises out of and in the course of employment and otherwise administer the workers' compensation program in accordance with the provisions of the D.C. Act specified in this Rule, except that where the provisions of this Rule differ from the provisions of the D.C. Act specified, the provisions of this Rule will govern. Provisions of the D.C. Act not specified in this Rule will not apply.

32. The time limits for filing a Workers' Compensation claim are set at paragraph 2.2 of Annex A of Staff Rule 6.11 which states that:

Claims must be submitted to the Bank Group's Claims Administrator within 12 months after the illness is diagnosed or the injury or death occurs, or if later, 12 months after the date when the claimant became aware, or by the exercise of

reasonable diligence should have become aware, of the relationship between the staff member's employment and his/her illness, injury or death.

33. Staff Rule 6.11 further prescribes at Annex A for a "Claims Procedure" and at Annex B for an "Appeals Procedure" which include (i) the evaluation of the claim by the Claims Administrator, (ii) the reconsideration of the claim by the Claims Administrator when the claimant contests the denial of a claim of workers' compensation benefits and (iii) the administrative review by an Administrative Review Panel of the denial of the workers' compensation claim or a decision taken in connection with the administration of a compensable claim following a request for reconsideration.

34. The record shows that, both during its initial review and at the stage of reconsideration of the Applicant's Workers' Compensation claim, the Claims Administrator did not approve her claim on the grounds (i) that her illness/injury did not arise as a direct result of her employment and (ii) that the Applicant had not filed her claim in a timely manner. Following a number of requests for information by the ARP regarding the Applicant's employment status during her trip to Country L in October 2012, and regarding her medical record, the ARP issued its report on 27 May 2015 denying the Applicant's claim and affirming the Claim Administrator's findings.

35. One of the two grounds on which the ARP based its decision to affirm the decision of the Claims Administrator not to approve the Applicant's claim was that the Applicant's injury or illness did not arise as a direct result of her employment. It noted that there was substantial evidence that supported such decision. In this respect, the Applicant has argued that disability resulting from aggravation of a pre-existing condition is compensable under workers' compensation law and according to provisions of the DC Act. As the ARP points out and as the Tribunal has found in its jurisprudence, when filing a claim for workers' compensation with the Claims Administrator the staff members have the burden of proving the compensability of their claims by a "preponderance of the evidence." (*BI (No. 2)*, Decision No. 445 [2010], para. 25 and *Hasselback*, Decision No. 364 [2007], para. 50.)

36. The other ground on which the ARP based its affirmation of the Claims Administrator's decision was that the Applicant had not filed her claim in a timely manner. The Applicant had

claimed in her request for Administrative Review that the triggering event in terms of the need to file a claim was her last trip to Country L in October 2012 when she said that her condition worsened and she started experiencing additional pains in the lower right side of her back as well as pain and numbness in her lumbar area due to the stressful situation in which she had found herself.

37. The Tribunal considers that the determination of the nature of the illness from which the Applicant is suffering as well as the moment in which it started is closely linked to the question of the starting date for the timely filing of a claim. The Tribunal, however, need not resolve these issues as there exists another ground on the basis of which the Applicant's claim of workers' compensation cannot be upheld. This ground was argued by the parties in the proceedings before the Tribunal.

38. The parties disagree as to the Applicant's employment status during her mission to Country L in October 2012. The IFC states that when the Applicant travelled to Country L in October 2012, she was not carrying out work for the IFC under her STC appointment, and was therefore not working for the IFC during this period. The Applicant claims that she was at all times under contract to the IFC and under its control and that it was only for budget reasons that the IFC asked her to accept payment directly from the GoL.

39. In its pleadings, the IFC asserted, among other things, that while the ARP dismissed the Applicant's claim on other grounds, her claim could have been dismissed on the mere fact that it does not arise from an illness arising out of and in the course of employment with the IFC, as the Staff Rule requires. The IFC points out that the Applicant bases her claim of workers' compensation on an event that allegedly occurred during a trip to Country L in October 2012. However, it states, she was not working for the IFC at the time of the incident – she was working for the GoL. It adds that the Applicant's trip to Country L was not paid for by the IFC nor did the IFC pay any compensation or provide any benefits to the Applicant with regard to her October 2012 trip. The IFC adds that during an STC appointment the consultant is only paid for days actually worked. It contends that the end date of an STC appointment only determines the time period during which the IFC may require the services of a staff member, and that it does not

follow that the staff member is continuously working for the IFC throughout the duration of the STC contract until its end date for the purpose of determining a right to workers' compensation. The IFC states that consultants working for the Bank Group regularly hold multiple appointments, and the Bank Group does not insure nor pay salaries or benefits for the time that a staff member works for another employer. According to the Staff Rule, it points out, staff members are not covered by the Bank Group's workers' compensation scheme while they are not actually working for the Bank Group. The IFC adds that in the Applicant's case, the Applicant's IFC travel records show that her final work for the IFC concluded in September 2012.

40. The Applicant disagrees and states that she had an open contract with the IFC for a duration of fifteen months from 23 April 2012 to 30 June 2013 and the assignment required her to travel to countries in Africa. She argues that the onset of the Applicant's physical disability occurred during and immediately following her follow-up mission to Country L in October 2012. The Applicant acknowledges that the IFC did not have the funds to pay her for her third trip to Country L in October 2012 and that she had agreed with the GoL on an arrangement to be paid directly by the GoL for that third mission. She alleges that this was at the instigation and with the approval of the IFC which for budgetary reasons asked her to accept payment from the GoL but claims that the source of payment did not make her an employee of the GoL, as this was a contract which provided for funding but was not a contract of employment. The contract of employment, she states, was with the IFC.

41. The Tribunal notes that while the ARP requested information on the status of the Applicant's employment at the time of her travel to Africa in October 2012, it simply noted in its report that this travel was not reflected in the records provided by the IFC to the Claims Administrator because of a change in the Applicant's consulting contract by which her fees and expenses during that period were undertaken by the GoL. It does not appear that it further inquired or addressed whether the Applicant was actually employed by the IFC at the time when she claims her injury occurred and, erroneously, based its conclusions on the fact that the Applicant was employed by the IFC at the time of her October 2012 mission.

42. In order to determine the employment relationship of the Applicant with the organization during the period in question, the Tribunal examined the Staff Rules and the Applicant's Letter of Appointment with the IFC as well as other Human Resources (HR) records.

43. Under Staff Rule 4.01 "Appointment," paragraph 2.01 (j):

Short Term Consultant Appointment is a periodic appointment, with or without pay and without benefits, at the equivalent of grades GE or above for a maximum of 150 days in a fiscal year. Service performed for the Bank Group under a Bank Group appointment will be counted towards the 150 day limit.

44. The Applicant's LOA with the IFC dated 18 April 2012 stated in pertinent part:

We are pleased to offer you a Short Term Consultant appointment to the staff of [IFC] for an assignment with the PPP-Africa. Your Task Team Lead (TTL) for this assignment will be [Ms. C], who is responsible for determining your Terms of Reference and for providing guidance, supervising, and confirming the completion of your work.

Please note that total World Bank Group Short Term Consultant and/or Short Term Temporary assignments may not exceed 150 days or 1,200 hours (inclusive of overtime for STT) per fiscal year.

We expect to need your services for about 30 days from April 23, 2012 to June 30, 2012 [...]

During this assignment you will be considered a World Bank Group staff member and will be subject to the Staff Rules currently in effect and as they may be amended from time to time. Please note that the manager of the unit to which you are assigned for is [Mr. N].

International Finance Corporation (IFC) will remunerate you in an amount of US\$950.00 gross per day worked.

45. Furthermore the LOA stated in pertinent part:

Travel may be authorized by International Finance Corporation (IFC) in connection with this assignment...

While you are in authorized official travel status on official World Bank Group business on this assignment, you will be covered by the World Bank Group's Accidental Death and Dismemberment Insurance, limited medical insurance and

Accompanying Baggage insurance policies. *The World Bank Group also provides Worker's Compensation insurance.* Please note that these insurances will not cover you while on vacation or other personal trips before, during, or after an assignment with International Finance Corporation (IFC). You are therefore advised to carry personal insurances covering such occasions. (Emphasis added.)

46. The Tribunal notes that according to the Applicant's LOA it is clear that the Applicant was initially employed by the IFC for 30 days between 23 April 2012 and the end of June 2012.

47. The HR records produced before the Tribunal which describe the Applicant's employment history indicate that the effective date of the Applicant's STC appointment was on 23 April 2012 and that the STC end of appointment date was on 30 June 2013. The IFC clarified that the Applicant's STC Letter of Appointment dated 18 April 2012, was extended for an additional 30 days of work during the following fiscal year, FY13 (1 July 2012 – 30 June 2013).

48. Pursuant to the Tribunal's request, the IFC explains that, under HR Guidelines, STC appointments are extended electronically in the Bank Group's Systems, Applications, and Products in Data Processing (SAP) system and that no new Letter of Appointment is generated at such time.

49. The records show that the Applicant worked for 17 days between 23 July and 22 August 2012, 12 days between 23 August and 13 September 2012 and 1 day between 31 July and 31 August 2012 for a total of 30 days between 23 July 2012 and 30 June 2013. Furthermore, the Applicant's travel records show that her last mission travel for the IFC took place from 29 August 2012 until 13 September 2012. The records do not show that the Applicant was paid by the IFC for any services beyond 13 September 2012.

50. On 12 August 2012, Ms. C sent the Applicant an email in which she stated among other things:

IFC is able to renew your contract for a further 30 days to cover your fees for work done in June, July and August as well as an additional mission to [Country L] to follow up with [the PS]. I know that [the PS] would like you to travel to

[Country L] as soon as possible. I will try to have your new contract issued in the next few days.

Once this IFC contract is completed, we would have difficulty raising additional funding for this ... assignment. I have discussed this with [the PS] and he wishes to enter into a contract with you directly for the follow-on work.

If this is agreeable to you, please would you discuss the terms of your contract with the GoL directly with [the PS]?

51. The next day, 13 August 2012, the Applicant responded:

I am fine with working directly with the government to help get the job done. My terms are simple enough. I use WB policy and rates for travel including the business class ticket and per diem rates.

I will inform you as soon as the IFC contract is issued.

52. It is obvious from the above emails between Ms. C and the Applicant in August 2012 that the Applicant's contract with the IFC had been extended for a further 30 days to cover her fees for work done in June, July and August 2012 as well as an additional mission to Country L to follow up with the PS and that, once the IFC contract was to be completed, the Applicant had agreed to enter into a contract directly with the government to help complete the assignment or do follow-on work on it.

53. The Tribunal called upon the parties to submit for its review a number of documents, including the Applicant's contract with the GoL. The contract with the GoL was never produced; both parties stated that it was not in their possession. However, the documents produced show that when the Applicant travelled to Country L in October 2012, the Applicant's work was carried out under her contract with the GoL and was paid for by the GoL.

54. Specifically, in an email to the PS dated 5 November 2012, the Applicant attached a summary report on her completed work during her mission to Country L in October 2012. The Applicant copied Mr. N and Ms. C to her email. In the summary report the Applicant referred to her accomplishments and activities "[u]nder the contract with the Government of [L] and as the advisor for the government transport services transition activities."

55. Furthermore the Applicant stated in the report:

Meeting with the Honorable Minister. As you are aware, my contract arrangements with the Government of [L] were finalized with the honorable minister present who agreed to the contract terms which also included my working arrangements of only coming to the office when there are meetings to attend. The honorable minister was also fully involved in my activities and was receiving updates (with you also present during the meetings) throughout my time working on the ... management services. With my involvement becoming limited, I considered it my professional responsibility to inform the honorable minister of the fact that I will be leaving the project by the end of the week and the reasons for this decision. This I considered to be of vital importance since my work was connected to IFC reputation and I did not want any misunderstandings or wrong impressions that IFC has changed positions and is now supporting the [...] return to the practices abandoned by the government ten years ago.

56. It is obvious from the above email and summary final report that, contrary to the Applicant's claim, the contract with the GoL covered much more than payment arrangements with the GoL. It also covered other contract terms including a list of completed activities and accomplishments as per the terms of the agreed contract as well as the Applicant's working arrangements according to which she was allowed to come to the office only when meetings were held.

57. The Applicant states that the references in the memorandum to her work being connected to the IFC reputation as well as emails to Mr. N and Ms. C between October and December 2012 show that she still reported to the IFC at that time and was under its direction and control. The Tribunal notes, however, that the emails to which the Applicant refers mainly show conversations that she had with Ms. C and Mr. N after her last mission to Country L as well as her respect for the IFC's reputation. In fact, the Tribunal notes that the language that the Applicant used in the emails did not establish that there were instructions from IFC or that she was under the control of IFC. Instead that language showed that she had been directly hired by the GoL.

58. The Applicant also claims that she was in fact hired by the IFC up until 8 November 2012 because the SAP records produced by the IFC so indicate. The Tribunal notes that what the record shows is that on 7 November 2012 the Applicant had submitted a request for payment for

one day's work. On 8 November 2012, the IFC paid the Applicant for work done for that one day during the period between 31 July and 31 August 2012. The Tribunal finds that the Applicant's late submission of her request for payment, i.e. after the end of her mission to Country L on 13 September 2012, does not extend her contract of employment with IFC.

59. Furthermore, in addressing the Applicant's claim that she had an "open" contract with the IFC until June 2013, the Tribunal observes that Staff Rule 4.01 clearly defines a Short-Term Consultant appointment as a "periodic" appointment for a maximum of 150 days in a fiscal year and distinguishes it from other appointments that are full-time appointments of indefinite or definite duration. In addition, the LOAs for the STCs describe the specific assignment to be carried out during these appointments and the specific amount of days needed for such assignments during a fiscal year and clearly state that such assignments may not exceed 150 days per fiscal year. Finally, the LOA for the STC appointment clearly states that only during their assignment the staff members will be considered World Bank Group staff members and will be subject to the Staff Rules currently in effect and as they may be amended from time to time.

60. Accordingly, if the Applicant's contract of employment had been "open" from 23 April 2012 or even from 23 July 2012 until 30 June 2013 it would no longer have been "periodic" and most importantly the Applicant would have been allowed to work for close to the 250 working days included in a fiscal year which are many more than the 150 permitted under the Staff Rule. Therefore, the Applicant's argument that as an STC she had an open contract throughout the fiscal year is contrary to the terms of her LOA and the Staff Rule.

61. Moreover, a review of Staff Rule 3.01 "Standards of Professional Conduct," paragraph 6.02, shows that the Applicant's claim that she was under contract with the IFC but was paid by GoL during her mission in October 2012 has no legal basis. The rule, which applies to all staff members, provides:

Except when holding Special Assignment Appointments, or if the staff member is on External Service without pay or on Leave without Pay in order to accompany a spouse on a Bank assignment, staff members may not accept any remuneration from governments or other external entities or persons in connection with their appointment to or service with the Bank Group.

62. In addition, there is no evidence that the Applicant's appointment – an STC appointment and not a full-time appointment – was a special assignment appointment which under Staff Rule 4.01, paragraph 2.01(f) is defined as

a full-time appointment without pay and except as approved by the Manager, HR Service Center, or a designated official, without benefits, of an official of a member country, regional agency, development bank, international organization, or private enterprise to the staff of the Bank Group for the purpose of receiving or using experience and contributing to the Bank's work program.

63. Therefore, and contrary to the Applicant's claim, it would have been a violation of Staff Rule 3.01, paragraph 6.02, if she had received remuneration from the Government of L in connection with her appointment to or service with the Bank Group if she were still working for the IFC in October 2012.

64. The Applicant has claimed that, if payment of expenses and fees established an employment relationship with another organization or a government of a member state, many World Bank staff members paid wholly out of designated trust funds would not be World Bank staff members. The Tribunal notes that there is no evidence of any trust fund agreement between the IFC and the GoL through which the Applicant would be paid by designated trust funds.

65. Furthermore, the Applicant has made the argument that her contract would not have allowed her to work for any government client of the World Bank Group during her consultancy and especially not on a project for which she had been hired by the IFC without having been requested to do so by the IFC. She adds that it would have been unethical for her to do work for the GoL on an IFC project on which she was working without express permission from the IFC. The IFC responds that, contrary to the Applicant's assertion, she was permitted to work for the GoL after her work for the IFC had finished because the IFC consented to her performing this work.

66. It should be noted that the Applicant's LOA stipulated:

During this assignment you will be considered a World Bank Group staff member and will be subject to the Staff Rules currently in effect and as they may be amended from time to time.

[...]

You are responsible for being familiar with the conflict of interest rules, contained in Staff Rules 3.02 and 3.03, that apply to you and members of your immediate family during your employment with the Bank and for two years after termination of your assignment.

While employed as a Short Term Consultant or Short Term Temporary you and members of your immediate family may not be employed by member governments or other entities on World Bank Group financed projects during the period of your employment with the World Bank Group, if the work is for the same country. In addition, for a period of two years after termination of such employment, you should not seek or accept work connected with projects or operations that were your direct concern or make use of material acquired during assignments, unless the prior consent of the World Bank has been obtained, as per Staff Rule 3.02.

67. Staff Rule 3.02 "Employment Outside the Bank Group," prescribes at paragraph 3.05:

Staff members holding a Short-Term Consultant or Short-Term Temporary ("STC/STT") appointment may hold concurrent assignments from other public and private employers, subject to the following:

- (a) they may not be employed by member governments or other entities to work on Bank-Group financed projects during their period of Bank Group employment if the Bank-Group financed project and the concurrent work involve the same country.

68. Under paragraph 3.05(a) and the terms of her LOA, the Applicant held an STC appointment which is a "periodic appointment" and could not have been concurrently employed by the IFC and the GoL while working on an IFC-financed project involving Country L. However, she could have been hired by the GoL following her assignment with the IFC or during a period in the fiscal year in which she was not employed by the IFC. Indeed it appears that following the Applicant's completion of a period of service under her STC contract at the end of her mission on 13 September 2012, the IFC authorized her to perform services for the

GoL pursuant to Staff Rule 3.02, paragraph 4.02(b). This Staff Rule, the language of which had been incorporated in the Applicant's LOA, states in pertinent part:

Within two years after separation from Bank Group employment, former staff members may not perform services for any other entity or person related to an activity in which the Bank Group has an interest or is a party and in which they participated personally and substantially during their employment with the Bank Group unless:

- a. nominated by the Bank Group to serve on its behalf or otherwise acting pursuant to Staff Rule 3.04, or
- b. their senior manager, in consultation with the Office of Ethics and Business Conduct grants authorization. If the staff member is a senior manager, the Vice President, Human Resources Services may grant authorization.

69. In this respect, the Applicant has also referred to an email from Ms. C to the Applicant dated 25 October 2012 in which Ms. C told her "[s]pecifically, it would be helpful if you desist from meeting with any government officials until we have had a chance to talk" and states that this is evidence of direction to the Applicant under her contract with the IFC. However, it is obvious that Ms. C did not direct but simply pleaded with the Applicant to wait to speak to her first stating that "it would be helpful." The Tribunal is also persuaded by the IFC's claim that the Applicant was working on the same project first for the IFC and subsequently for the GoL and that therefore it was logical that she communicated with IFC officials. Furthermore, statements that Ms. C and Mr. N made as well as their contemporaneous exchanges of communication with the Applicant show that the IFC had not nominated the Applicant to work with the GoL in October 2012 while representing the IFC and that she was not otherwise acting for the IFC under Staff Rule 3.02, paragraph 4.02(a) above or under Staff Rule 3.04.

70. The review of the evidence in the record and the interpretation of the applicable Staff Rules shows that the Applicant was not employed by the IFC during October 2012 nor was she under its direction or control. Instead she was under contract with the GoL to perform certain tasks and was paid directly by it. Therefore her Workers' Compensation claim should be dismissed as the Applicant's illness or injury was not sustained in the course of her employment by the IFC.

71. The evidence on record reveals that the Applicant incurred expenses in the elaborate process before the Claims Administrator and the ARP and in the attorney's fees to present her case to this Tribunal, at a time when she was facing significant health problems. It is probable that she would have avoided some of these expenses, time and possible distress had her claim been dismissed promptly on the grounds that she was not a staff member of the IFC and Staff Rule 6.11 therefore did not apply to her.

DECISION

- (1) The IFC shall contribute to the Applicant's legal fees and costs in the amount of \$22,009.75; and
- (2) All other pleas are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/Olufemi Elias

Olufemi Elias

Executive Secretary

At Washington, D.C., 4 November 2016