



World Bank Administrative Tribunal

2016

Decision No. 539

**DU,
Applicant**

v.

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

(Preliminary Objection)

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

**DU,
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 14 March 2016. The Applicant represented himself. The International Bank for Reconstruction and Development (IBRD) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.
3. The Applicant contests his supervisor's decision not to renew his contract following the end of his three-year Term appointment.
4. On 29 April 2016, the Bank filed a preliminary objection. This judgment addresses that preliminary objection.

FACTUAL BACKGROUND

5. The Applicant began working at the Bank on 26 March 2012 as a Travel Specialist on a three-year Term appointment.
6. The Applicant states that he was hired to “manag[e] the situation arising out of a failed implementation” of the Bank’s new regional travel agency for the East Asian Pacific (EAP) region. The Applicant states that he immediately “came to the conclusion that the new supplier implementation failed due to two key reasons, first [the] selection of [the] wrong supplier and second [the] mismanagement of the transition/implementation on both [the travel agency] and the Bank side.” The Applicant alleges that his supervisor did not agree with his evaluation of the travel

agency. He claims that his supervisor was not receptive to his recommendations on how to improve the agency and his decision to move the travel agency's Regional Account Manager position from the United States to Singapore. The Applicant asserts that his supervisor resisted his efforts to improve the functioning of the travel agency because she was determined to demonstrate that the unit's use of this agency for the Bank's EAP travel was successful.

7. The Applicant states that his unit engaged a third-party vendor to conduct a survey of staff members travelling within the EAP region to evaluate the travel agency. The Applicant claims that third-party vendor's original presentation of the survey's findings "identified gaps, in line with [his] earlier assessment and in summary did not show [his unit] in good light." The Applicant alleges that his unit omitted significant portions of these negative findings in its presentation distributed to internal stakeholders. The Applicant also asserts that staff members in his unit accessed the survey tool and were able to see the names and locations of Bank staff who participated in the survey and that his supervisor shared that information with the unit's management, "compromising the confidentiality of the survey/staff."

8. The Applicant states that he was purposefully excluded from a major project to "consolidate the Travel Management Company" and provide "travel services to the Bank outside of EAP and USA." The Applicant asserts that he was not selected to lead the team or even contribute to the project despite his "proven track record of successful global consolidation of Travel suppliers," because of his supervisor's bias against him.

9. Upon learning that his contract would not be renewed, the Applicant sent an email on 14 July 2014 to his supervisor contesting her decision. The email highlighted his achievements during his time with the department, outlined strategies to improve the unit's work in the EAP region, and described the minimal financial burden his renewed contract would incur. His supervisor stated in an email to the Applicant on 1 August 2014 that the decision not to renew his contract was "the result of budget cuts, as well as a change in strategy on how the [unit] is staffed."

10. In November 2015, the Applicant discovered that his former unit advertised two Travel Specialist positions to be located in Thailand and India and tasked with "the same objectives" he

indicated in his 14 July 2014 email to his supervisor. The Applicant claims that the unit's management intentionally waited until 120 days had passed since his separation to advertise these positions. The Applicant claims that the creation of two new positions in his department following the non-renewal of his contract is evidence of "retribution and retaliation for speaking the truth, which was in the Bank's interest."

11. The Applicant filed a Request for Review with Peer Review Services (PRS) on 17 December 2015 to challenge the non-renewal of his contract. On 21 January 2016, PRS notified the Applicant that his claims could not be reviewed because they were filed more than 120 calendar days after he received notice of the "Disputed Employment Matter." PRS explained that "[a] staff member receives 'notice' of a Disputed Employment Matter when he or she receives written notice or ought reasonably to have been aware that the Disputed Employment Matter occurred." In this instance, PRS stated in its response to the Applicant as follows:

The record shows that you learned no later than July 14, 2014, that your contract would not be renewed beyond March 25, 2015. Specifically, on July 14, 2014, you sent an email to [your supervisor] expressing your concerns regarding the non-renewal decision. In your Request for Review, you also acknowledge that you were aware of the 120 calendar day deadline for seeking review. Accordingly, you had 120 calendar days from July 14, 2014 to file your Request for Review [...] You filed your Request for Review on December 16, 2015, more than one year after receiving notice of your claims. Therefore, your claims regarding the non-renewal decision are untimely.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Main Contentions

12. In its preliminary objection, the Bank argues that the Applicant's claim is inadmissible because he did not exhaust available internal remedies prior to submitting his Application to the Tribunal by failing to file his claim with PRS within the 120-day time limit. The Bank argues that the Applicant's discovery of new evidence does not alter the time in which he had to file his claim. The Bank contends that the 120-day time frame began when the Applicant was notified of the administrative decision in July 2014, not when he discovered the job postings for Travel Specialists

on 2 November 2015 and believed he had sufficient evidence to challenge his supervisor's decision. The Bank notes that "a staff member must only present his claims in a timely manner, and otherwise, let PRS seek all information necessary to adjudicate the claims."

The Applicant's Main Contentions

13. In response to the Bank's preliminary objection, the Applicant argues that he was unable to file a Request for Review with PRS within 120 days of being notified of his contract's non-renewal because his supervisor intentionally withheld the fact that she was actively recruiting for two Travel Specialist positions that were "identical to [his] role." The Applicant argues that without this "critical evidence" he would not be aware of the punitive motivation behind the decision to not renew his contract. The Applicant contends that his supervisor waited until the 120-day time period expired to advertise the positions so that he could not file a claim with PRS. The Applicant also argues that the jurisdictional issue should not dictate the admissibility of his claim and that his Application ought to be heard on the merits.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

14. The Tribunal notes that applicants who challenge the managerial decision to not renew their contract may first file a Request for Review with PRS or submit an application directly to the Tribunal. Here, the Applicant chose to first file a Request for Review with PRS.

15. Article II, paragraphs 1-2 of the Tribunal's Statute provide that:

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

- (i) the applicant has exhausted all other remedies available within the Bank group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal;
- (ii) the application is filed within one hundred and twenty days after the latest of the following:
 - (a) the occurrence of the event giving rise to the application;

- (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
- (c) receipt of notice that the relief asked for or recommended will be granted if such relief shall not have been granted within thirty days after receipt of such notice.

16. Staff Rule 9.03, paragraph 7.01 states:

A staff member who wishes to request peer review must submit a Request for Review with the Peer Review Secretariat within 120 calendar days of receiving notice of the disputed employment matter.

17. The Bank argues that the Applicant failed to exhaust internal remedies prior to submitting his Application to the Tribunal because the Applicant did not file his claim with Peer Review Services (PRS) within the 120 day filing period. The Bank contends that “the filing deadline for Applicant’s Request for Review should be counted from the date on which he was notified that his contract would not be renewed.” The Bank argues that the Applicant’s discovery of new information regarding the non-renewal of his contract does not excuse the untimely filing of his Request for Review with PRS. The Bank further notes that “the information Applicant learned of on 2 November 2015 does not change the fact that he is challenging the administrative decision, of which he was notified on 14 July 2014.”

18. The Applicant contends that PRS improperly dismissed his Request for Review because he complied with the time requirement by filing his complaint within 120 days of discovering evidence that “implicate[s] the respondent.” The Applicant alleges that the “Respondent deliberately misrepresented facts and withheld important information that would [cause] me to know that the decision on my contract was improperly motivated and file my complaint within 120 days.” He states that had he not discovered that his unit was recruiting two Travel Specialists in November 2015 he “could not have proven that the respondent conspired to misuse the 120 [day] rule to violate [his] right.” The Applicant argues that he could not have complied with the prescribed time limit because if he “had approached PRS within 120 days of [his] separation from the Bank, [his] case would have been thrown out based on lack of evidence.”

19. The issue is whether the Applicant exhausted internal remedies prior to submitting his application to the Tribunal in accordance with Article II, paragraphs 1-2 of the Tribunal's Statute. It is undisputed by the parties that the Applicant filed his claim with PRS more than 120 days after receiving notice of his supervisor's decision not to renew his contract. The Tribunal may determine that PRS correctly dismissed the Applicant's Request for Review because his filing was time-barred.

20. Staff Rule 9.03, paragraph 7.02 states:

A staff member receives 'notice' of a disputed employment matter when he or she receives written notice or ought reasonably to have been aware that the disputed employment matter occurred.

21. In the present case, the Tribunal finds that the Applicant received notice of the disputed employment matter on 14 July 2014 when he sent an email to his supervisor expressing his "concerns regarding the non-renewal decision." The Applicant ought to have filed his Request for Review by 11 November 2014 for PRS to have jurisdiction to review his claim. However, the Applicant waited until 17 December 2015 to file his claim after he became aware of two job postings in his department. The Applicant alleges that these postings are "undisputable evidence of [his] management's retribution, retaliation, and misconduct and the conspiracy of not renewing [his] contract in March 2015." However, as PRS stated in its decision, the date from which the 120-day filing period begins is the date of the disputed administrative decision and "is not changed by [an] assertion of the subsequent discovery of circumstances."

22. The Tribunal has held that "the relevant date for the purposes of the Applicant's [...] claim is the date on which he was notified of the [...] decision, rather than the date on which he discovered the allegedly discriminatory nature of the decision." *DJ*, Decision No. 536 [2016], para 56.

23. Here, the Applicant's argument that he discovered new evidence regarding his manager's motivation for not renewing his contract after the 120-day filing period does not change the fact

that the underlying managerial decision that makes up the Applicant's claim is time-barred and could not be reviewed by PRS.

Conclusion

24. The Tribunal finds that the Applicant failed to file his Request for Review with PRS within the prescribed time period.

DECISION

The Applicant's claims are inadmissible.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/Olufemi Elias

Olufemi Elias

Executive Secretary

At Washington, D.C., 4 November 2016