



World Bank Administrative Tribunal

2015

Decision No. 522

**Mark Ampah,
Applicant**

v.

**International Finance Corporation,
Respondent**

(Preliminary Objection)

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

**Mark Ampah,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, and Mahnoush H. Arsanjani.

2. The Application was received on 27 February 2015. The Applicant was represented by Dave Gericke, of Gericke and Associates Inc., Pretoria, South Africa. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges, first, the May 2005 decision of the International Finance Corporation (IFC) to change his International Open contract to a Local Term contract. Second, he seeks compensation for additional work undertaken beyond his terms of reference. Third, he challenges the IFC's failure to inform him of the existence of a Disability Fund, and seeks compensation for the cost of paying for his wife to accompany him on official duties when he developed a serious medical condition, and costs associated with seeking treatment for this condition.

4. The IFC has raised a preliminary objection to the admissibility of the Application. This judgment addresses that objection.

FACTUAL BACKGROUND

5. The Applicant began working for the IFC in October 1996, as a Consultant in the Africa Project Development Facility (APDF) in Johannesburg, South Africa. He stayed in this role until 30 June 2001.

6. On 1 July 2001 the Applicant was appointed to an “Open” contract, at grade GF. He was promoted to Monitoring and Evaluation Officer, grade GG, on 1 July 2003.

CHANGE OF EMPLOYMENT STATUS

7. In 2004, the IFC concluded the activities of APDF and initiated another facility called the Private Enterprise Partnership for Africa (PEP Africa). With this change, some APDF staff had their employment terminated, while others were retained in the new facility. According to the Applicant, he was one of the few staff members retained, due to his expertise in Monitoring and Evaluation (M&E), which at that time was new at the IFC.

8. To be retained, each staff member had to undergo an interview process, and received an appointment letter if they were successful. According to the Applicant, during his own interview process with the then General Manager of PEP Africa and a representative of the Human Resources (HR) Department, he was informed that the M&E position would be a local position. The Applicant states that when he asked whether this change would affect his salary and benefits, “I was assured, verbally, that it will not be affected.”

9. The Applicant received a Letter of Appointment on 23 May 2005. Under its terms, the Applicant would be appointed as a Monitoring and Evaluation Officer, Grade GG. This appointment was stated to be “subject to local recruitment” and also “subject to the conditions of employment of the World Bank Group as at present in effect and as they may be amended from time to time.” The salary was indicated as ZAR (South African Rands) 460,000 per annum, based on the salary scale for South Africa. The benefits were stated to include retirement, medical/dental and annual/sick leave, as well as an extended assignment allowance. A summary of benefits was also attached to the Letter of Appointment.

10. The Applicant states that he was “taken aback by the terms of the Appointment letter, which was contrary to the assurance given to me during my interview,” and spoke to the General Manager of APDF, Mr. Bernard Chidzero, regarding this discrepancy.

11. On 24 May 2005, Mr. Chidzero emailed the Applicant, confirming that his new position would be a local hire, remunerated at ZAR460,000 per annum.

12. On 28 May 2005, the Applicant emailed Mr. Chidzero requesting more detail as to how his new salary had been determined.

13. The Applicant states that though the IFC HR Department “never informed me regarding redress procedures (appeal, ombudsman, mediation, Administrative Tribunal, etc.),” he sought redress himself by consulting two labor lawyers, “both of whom confirmed that this was illegal labor practices.” Having also consulted a human rights lawyer, the Applicant followed the latter’s advice and prepared a letter detailing his losses.

14. On 30 May 2005, Mr. Chidzero responded to the Applicant, informing him that his new salary was “based on the market comparator for grade G local hires,” that it also reflected other PEP Africa local Grade G level salaries, and that it would be adjusted when the new salary scales for Johannesburg were known.

15. Also on 30 May 2005, the Applicant sent a detailed email to Mr. Chidzero regarding the Letter of Appointment. He stated that:

I was informed on several occasions that switching from an international contract to a local contract would not adversely impact upon my remuneration. But it seems your offer has not taken into consideration my present earnings and is therefore totally inadequate.

16. His email also included a detailed analysis of the differences between his previous salary and that offered under the new Letter of Appointment, with respect to base salary, take home pay, lump-sum payments, and loss of other benefits including resettlement allowances, disability insurance, retirement plan, etc. In view of this analysis,

one concludes that the proposed move to a ‘local’ contract seriously prejudices me and my family’s well being. The offer contained in the letter of employment does not come anywhere close to compensating me for all the losses that I would

suffer. I am being offered a contract which treats me as if I am joining IFC for the first time and/or moving from one local contract to another local contract.

I have tried since the new PEP M&E position was classified to bring up these issues. I have done so during my job interview with Mwachofi Mwaghazi and Davide Bonzano and I also brought it up during my interview with Bernard and Julia Eziashi. On both occasions, I was assured that I would be adequately compensated whatever package I am eventually offered and that there would be no prejudice to me in the change over.

...

I wish to continue working with PEP Africa and would appreciate it if you will let me know what can be done to address my very real concerns.

17. According to the Applicant, there were also face-to-face discussions regarding his contract and, in one of these, Mr. Davide Bonzano, the HR Account Manager for the Sub-Saharan Africa Department, told the Applicant that “instead of fighting, I should rather ‘concentrate on improving my [Salary Review Increase (SRI)]’.” The Applicant interpreted this as a “veiled threat ... that I could lose my job if I pursued the issue.”

18. Mr. Chidzero emailed the Applicant on 22 June, stating as follows:

I have to be very frank here. The PEP Africa position you were reassigned to is a local hire. The international position you previously held under APDF has been eliminated. The salary and benefits you were receiving as an international hire are therefore no longer a benchmark and no comparisons can be made. Your SRI last year was 3.1 and your performance this year, quite honestly, is less than borderline at best. You will need to do a lot more to prove yourself next year.

Thus, if you are not satisfied with your new package, I would encourage you to seek alternatives within or outside IFC (and I would do my best to assist you in such endeavors).

If you opt to stay with PEP Africa, we will work together on developing your competencies. ... M&E is a key success factor for PEP Africa, but I am far from convinced that you have this under control.

19. The Applicant characterizes this email as an “ultimatum and a threat.” According to the Applicant, Mr. Chidzero “could not really determine what my performance would be as we had not even had the chance to work together,” and “could not possibly justify putting such damning

commentary about my future performance in writing.” In the Applicant’s view, this was “part of PEP Africa’s management’s strategy to get me to reject the contract or to intimidate me into not taking any action regarding the illegality and/or unfair treatment they were putting me through.”

20. The Applicant states that by the time he received this email from Mr. Chidzero there was only a short time (eight days) left on his previous contract, which was due to end on 30 June 2005.

21. On 23 June, Mr. Bonzano emailed the Applicant to inform him that, in addition to his salary, under the new contract he would also receive a settling-in allowance.

22. The Applicant signed the Letter of Appointment on 27 June 2005. He states that he did so under duress, “with the hope that I would work within the World Bank/IFC system whereby I could at a later stage seek redress on all the outstanding issues.”

23. On 5 March 2007, the Applicant and his wife met with the Bank’s Ombudsman in Johannesburg. The Ombudsman told the Applicant that he was unable to assist, and advised the Applicant to seek redress regarding the local contract with Ms. Ann Stahl, the then head of IFC Human Resources in Hong Kong. The Applicant chose not to do so.

24. The Applicant states that, notwithstanding the unfair treatment he received, he continued to perform his responsibilities diligently, and achieved above average performance ratings during this period. He also asserts that he “worked far outside the terms of reference of my PEP Africa contract for which I was not compensated.” For example, from 2005 to 2011 he claims to have performed not only his own duties as PEP Africa M&E Officer for Sub-Saharan Africa, but also the duties of an M&E Officer and an Operations Officer on a separate project, and of a Regional Portfolio Officer for Sub-Saharan Africa. He states that he sacrificed three weeks’ vacation every year, “which took a toll on my health, my marriage and my family,” and that it was not until 2007 that an additional staff member was seconded to his unit to assist him.

25. The Applicant states that a number of new personnel, including a Regional M&E Officer and a Regional Portfolio Officer, were hired by the IFC to perform some of the additional tasks he had been carrying out since 2005. The Applicant notes that the former was then classified as an international contract position, paid in US dollars.

26. The Applicant states that Short-Term Consultants were hired to provide additional assistance to him from 2009-2011.

MEDICAL CONDITION

27. In 2008 the Applicant was diagnosed with a medical condition which he says seriously affected his overall health and mobility. He contends that the condition “stems partly from the stress associated with my work and contractual predicament.”

28. The Applicant informed IFC HR of the condition, with a letter from his neurologist and, subsequently, an Occupational Therapy report. He states that an occupational therapist came from Washington, D.C. to his office in Johannesburg to determine the accommodations required at his work station. According to the Applicant, only one of the six recommended changes was actually implemented, and he continued to work “a minimum of ten hours a day without any breaks.”

29. The Applicant submits that, having not received any guidance on his condition, he was forced to solicit advice from abroad. He requested a medical evacuation to Canada, so as to visit a specialist there. To minimize the cost, he sought to combine this trip with an official trip to Washington, D.C. He was told by the IFC, however, that his “nearest point of service” was the UK. The Applicant claims that he was not given any further advice on what to do, and so in 2009 spent his own money to fly his family to Canada to try to consult with the specialist. He was unable to see the specialist at this point, however, as it takes one year to obtain an appointment, and so the Applicant had to fly his family back to Canada again in 2010.

30. On 1 June 2010, the Applicant visited a movement disorders center in Toronto, Canada, and was seen by two doctors, including the specialist. The report from that visit states that the

Applicant had been “apparently well” until early 2008, when he began noticing some of the symptoms, that he underwent surgery on 23 June 2008, and was diagnosed with the condition in question shortly after.

31. The Applicant contends that during this period he had to pay for his wife to accompany him on official duties, to assist him to and from work and to assist with some official chores, all without compensation.

32. In 2010, the Applicant learned of his entitlement to hire a Disability Assistant. He states that this had been IFC policy since 2006, but nobody had informed him of this, and that he learned about it accidentally. According to the Applicant, it took a further year before his wife was officially hired as his Disability Assistant in 2011 and he was able to cover her airfare, per diems and fees when he travelled on official duties.

MEDIATION AND END OF EMPLOYMENT

33. On 29 January 2014, the Applicant contacted Ms. Alison Cave, then Coordinator of the WBG’s Conflict Resolution System (CRS), asking whether “if a staff member feels that he was not treated fairly in 2006 but did not take any action for fear of reprisals, is it too late to seek a resolution now?”

34. In her response of the same day, Ms. Cave informed the Applicant that it would depend on the issue and resolution sought: “if the resolution sought is formal (i.e. through the Peer Review System or the Tribunal), it is too late – a case would have to be brought within 120 days of the decision or action.” She advised the Applicant that he might, however, still be able to do something through mediation or the Ombudsman.

35. On 17 and 24 April 2014, the Applicant contacted the WBG Office of Mediation Services. The first meeting between the Applicant and the mediators took place on 29 May 2014. The Applicant states that he finally went through mediation when he was just about to leave the IFC, “as I felt confident that nothing can happen to my employment.”

36. On 30 May 2014 the Applicant's employment with the IFC ended.
37. On 28 August 2014, the Applicant's legal representative wrote to the Mediation Services, asserting that the Applicant had been "prejudiced by the unilateral change to his conditions of employment," contrary to certain provisions of South African law, and had been "forced to sign acceptance to these changes under duress," but was presently engaged in "a mandatory mediation session." The letter stated that the Applicant would continue to participate in mediation, but that should an impasse be reached he reserved his right to escalate the matter.
38. The Applicant asserts that, shortly after their first meeting the independent mediator had to leave South Africa for Europe. Thereafter the mediation continued with an IFC appointed mediator; according to the Applicant, "it became immediately clear that the IFC mediator was biased." Mediation ended, unsuccessfully, on 30 October 2014.
39. On 11 November and 4 December 2014, the Applicant emailed the IFC HR Manager seeking clarification regarding her position on possible alternative solutions. He did not receive a response to these communications.

CLAIMS

40. The Application was filed with the Tribunal on 27 February 2015.
41. In his Application, the Applicant appears to raise three distinct claims. First, he challenges the 2005 decision of the IFC to change his contract from International Open to Local Term, and claims various financial losses as a result including lower income, loss of pension, and other benefits. Second, the Applicant claims compensation "for additional work done outside his job description as from the period 2005 to 2011." Third, the Applicant raises a number of issues with respect to his medical condition: he claims compensation for the cost of paying for his wife to accompany him on official duties between 2008 and 2010 and the cost of twice travelling to Canada to consult a specialist, and also challenges the failure of the IFC to inform him of its Disability Fund.

42. On 31 March 2015 the IFC filed a Preliminary Objection.

PRELIMINARY OBJECTION

SUMMARY OF THE IFC'S CONTENTIONS

43. The IFC submits that the Applicant failed to exhaust internal remedies in a timely manner and that his Application is therefore inadmissible before the Tribunal.

44. According to the IFC, the Applicant gives the date of occurrence of the event which gave rise to his Application as 23 May 2005, and this is "clearly time-barred." While the Applicant also gives a dispute date of 30 May 2014, he does not describe any disputed employment matter which occurred on this date. Even if there were such a matter which arose on this date, the Applicant would still be out of time to file with Peer Review Services (PRS) or the Tribunal. The Applicant does not raise any allegedly wrongful administrative action or omission which occurred 120 days prior to the filing of his Application.

45. The IFC states that "during his entire career at IFC, Applicant did not once bring any claims to the Appeals Committee or the PRS," and that the Applicant "readily admits, in fact, that his claims have long been time-barred, and that they would also be time-barred before the PRS."

46. The IFC submits that even if the Applicant complained about certain claims to the IFC Regional Human Resources Manager, the Global HR Advisor, the Ombudsman and Mediation Services, the administrative remedies which he needed to exhaust were, in fact, the Appeals Committee or PRS. According to the IFC, even if the mediation which the Applicant entered related to the claims he presents before the Tribunal, this would have no effect on his failure to exhaust internal remedies.

47. Finally, the IFC notes that the Applicant does not claim any "exceptional circumstances" which might justify his delay in submitting his complaint.

SUMMARY OF THE APPLICANT'S CONTENTIONS

48. The Applicant asserts that he exhausted all other avenues, that he completed an unsuccessful mediation process on 30 October 2014, and that the cut-off date for his filing before the Tribunal was therefore 28 February 2015.

49. Responding to the IFC's Preliminary Objection, the Applicant asserts that he in fact started seeking redress for issues related to his appointment letter even before he had signed that letter, and "continuously tried to seek redress over the period culminating in the application to the WBAT."

50. The Applicant contends that he "exhausted all reasonable internal avenues" that could have resulted in any meaningful redress, and that while he was working for the IFC he was "fearful of using any formal avenues for redress as he did not want to give PEP Africa management any excuse to terminate his contract given the numerous veiled threats he received when he first brought up his demands."

51. The Applicant contends that, having signed the employment contract on 27 June 2005, he "then decided to seek redress through IFC's internal processes that would not alert management to his actions as he feared retribution from IFC management if they knew what he was doing, given the previous veiled threats to his continued employment from management."

52. The Applicant asserts that he "used most of the internal remedies available to him," including the Africa HR Department, the HR Advisor for Africa, the Ombudsman, the Office of the Conflict Resolution System, and the mediation process, "all to no avail." According to the Applicant, he "felt that it would be futile to use any other internal processes."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

STATUTORY FRAMEWORK

53. Article II(2) of the Tribunal's Statute provides as follows:

No such 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; and

(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.

54. The internal remedies available, and the procedural requirements applicable, are addressed in Staff Rule 9.03, paragraph 6.02 of which requires that "a staff member seeking review of a disputed matter is required to submit the matter first to Peer Review Services prior to appealing to the Tribunal." This rule is subject to certain exceptions, none of which arise in the present case. As discussed further below, PRS replaced the Appeals Committee in 2009.

55. The Tribunal has often expressed the importance of the requirement of exhaustion of internal remedies, which "ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action, short of possibly protracted and expensive litigation before this Tribunal" (*Klaus Berg*, Decision No. 51 [1987], para. 30).

56. The Tribunal has emphasized that the prescribed time limits are very "important for a smooth functioning of both the Bank and the Tribunal" (*Agerschou*, Decision No. 114 [1992], para. 42; *see also Tanner*, Decision No. 478 [2013], para. 45). In *Mitra*, Decision No. 230

[2000], para. 11, the Tribunal observed that the resolution of claims brought many years after the operative events could be “seriously complicated by the absence of important witnesses or documents,” and would in any event “result in instability and unpredictability in the ongoing employment relationships between staff members and the Bank.”

57. Furthermore, the Tribunal has stressed in numerous decisions that a failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. (*See de Jong*, Decision No. 89 [1990], para. 33; *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25-26; *Peprah*, Decision No. 275 [2002], para. 24; *Islam*, Decision No. 280 [2002], para. 7).

CLAIM 1: CHANGE OF EMPLOYMENT CONTRACT

58. In the Application Form filed with the Tribunal, when asked to indicate the “date of occurrence of the event or date of decision giving rise to the application,” the Applicant gave the date of 23 May 2005. This is the date on which his Letter of Appointment was drafted. In the very next section of his Application Form, however, the “date of receipt of notice” is given as 30 October 2014. The latter is the date on which mediation between the Applicant and the IFC was formally closed.

59. The Applicant signed the Letter of Appointment on 27 June 2005. He states that he did so under duress. He also emphasizes that he signed the Letter of Appointment only three days before his new appointment commenced.

60. Whether the event marking the *dies a quo* here is the initial Letter of Appointment (23 May 2005), the allegedly threatening email from Mr. Chidzero of 22 June 2005, or indeed the signing of the contract by the Applicant (allegedly under duress) on 27 June 2005, the Applicant did not file a request for review of any of these acts before the Appeals Committee or PRS, and only filed his claim with the Tribunal on 27 February 2015. That is more than nine years out of time. Absent exceptional circumstances (discussed below), this claim is inadmissible.

61. The Applicant contends that he “started seeking redress” for issues regarding the change in contract even before he signed the Letter of Appointment, and that he “continuously tried to seek redress over the period culminating in the application to the WBAT.” In this regard, he refers to a number of steps he took.

62. First, he states that while the IFC HR Department “never informed me regarding redress procedures (appeal, ombudsman, mediation, Administrative Tribunal, etc.),” he sought redress himself by consulting two labor lawyers, “both of whom confirmed that this was illegal labor practices.” Having also consulted a human rights lawyer, the Applicant followed the latter’s advice to compile a letter detailing his losses. Second, the Applicant cites his contacts with various other IFC/Bank staff members. He states that he met privately with the HR Advisor at the time, Mr. Jean Bradler, who advised the Applicant “that the change in his contract would adversely affect his Pension Payout.”

63. The Applicant has not provided any evidence of these communications, or indeed indicated when they took place. In any event, discussions with an (external) legal advisor and an apparently informal exchange with a HR Advisor (which, indeed, appears to have been more in the form of a request for information), plainly do not constitute steps towards exhausting internal remedies as required under the Statute. The Tribunal has frequently held that the reference to “all other remedies within the Bank Group” in Article II(2) of the Statute denotes *formal* remedies; this requirement is not satisfied by meetings with Human Resources Officers, Country Directors and other staff, or indeed participation in mediation (*Dey*, Decision No. 279 [2002], para. 20; *Islam*, para. 19; *Lysy*, Decision No. 211 [1999], para. 46; *Motabar*, Decision No. 346 [2006], para. 12).

64. The Applicant further states that “having exhausted all avenues with management and our local HR team to resolve the issues and not having been given any direction as to where I can seek redress,” he and his wife met with the Bank’s Ombudsman, Mr. Fred Temple, in Johannesburg on 5 March 2007. The Applicant states that it was only when arranging this meeting that he became aware of the Ombudsman service. The meeting with the Ombudsman took place almost two years after the impugned act occurred, however. And, again, consultation

with the Ombudsman, though one of the conflict resolution avenues available to staff members, is not a substitute for the filing of a formal grievance with the Appeals Committee/PRS or the Tribunal.

65. In January 2014, the Applicant contacted the CRS Coordinator, Ms. Alison Cave, stating that he felt he “was not treated fairly in 2006” and asking whether it would be too late to seek a resolution. He was informed that for formal resolution, a case would have needed to be brought to PRS (or the Tribunal) within 120 days. It is not clear why the Applicant referred to allegedly unfair treatment in 2006 (rather than 2005, when his contract was changed), but in any event the advice he was given by the Coordinator was correct. The claim was plainly out of time. In the event, it would be a further year before the Applicant filed with the Tribunal.

66. The Applicant also refers to his efforts at mediation. He asserts that, shortly after their first meeting the independent mediator had to leave South Africa for Europe. Thereafter the mediation continued with an IFC appointed mediator; according to the Applicant, “it became immediately clear that the IFC mediator was biased.” The mediation concluded on 30 October 2014.

67. That the Applicant entered mediation in 2014 does not assist him here, however, as the 120-day term for the impugned decision had already lapsed. The Applicant was out-of-time by almost nine years before he entered mediation. As is clear from Staff Rule 9.01, paragraph 4.04, entering mediation can “stop the clock,” where it is initiated before the 120 days have elapsed, but it cannot “reset the clock” where the 120 days have already passed (*see also O*, Decision No. 323 [2004], para. 33, holding that commencement of mediation does not “revive a claim already out of time”).

68. The Applicant further contends that “his issues would not have been admitted for Mediation if they were deemed as being stale.” This argument conflates the formal and informal conflict resolution avenues open to staff members. As is clear from Staff Rule 9.01, mediation is an informal process which is not subject to the same temporal requirements as requests for

review before PRS or applications before the Tribunal. As noted above, this distinction was flagged by Ms. Cave in her email to the Applicant of 29 January 2014.

Exceptional Circumstances

69. The Tribunal has considered this standard in a number of cases, though neither the Statute nor the Tribunal's jurisprudence provides a complete list of the factors to be considered in determining whether exceptional circumstances exist in a given case (*BC*, Decision No. 427 [2010], para. 25). In *Yousufzi*, Decision No. 151 [1996], para. 28, the Tribunal stated that:

The statutory requirement of timely action may ... be relaxed in exceptional circumstances. Such circumstances are determined by the Tribunal from case to case on the basis of the particular facts of each case. In deciding that exceptional circumstances exist the Tribunal takes into account several factors, including, but not limited to, the extent of the delay and the nature of the excuse invoked by the Applicant.

70. In the present case, the extent of the delay in filing his claim regarding the change in contract does not favor the Applicant. The impugned act(s) took place in May-June 2005, and the Applicant filed his Application with the Tribunal in February 2015. That is a delay of almost ten years.

71. Turning to the nature of the excuse invoked, the Applicant cites a number of actions and events as justification for the delay in filing. He submits that while he was working for the IFC he was "fearful of using any formal avenues for redress as he did not want to give PEP Africa management any excuse to terminate his contract given the numerous veiled threats he received when he first brought up his demands."

72. The Applicant has made similar comments regarding his meeting with the Ombudsman in March 2007. The latter told the Applicant that he was unable to assist with his case, and advised the Applicant to seek redress regarding the contract issue with Ms. Ann Stahl, the then head of Human Resources in Hong Kong. The Applicant states, however, that:

Given that [the] Director, who was in charge of Sub-Saharan Africa when my contract was changed, was now the Director in IFC's Hong Kong Office where

[Ms. Stahl] was based and given the management culture at that time, I decided against consulting our HR department. Given that our Management had already made veiled negative comments on my performance and veiled threats in their 'letter of ultimatum' which basically told me to either accept the local contract or find alternatives.

73. He further contends that “the HR Manager should have been pro-active in informing [him] of alternative avenues to resolve his contract issues, within the stipulated time, instead of using veiled threats related to his SRI to dissuade him from pursuing redress.”

74. The Applicant appears to be making two contentions here. First, that he was unaware of the internal justice mechanisms available to him, and that the IFC should have done more to inform him of his options in this respect. Second, that he chose not to follow-up with certain formal or informal avenues for redress as he felt that this would not achieve anything and/or could have negative consequences while he remained with the IFC. Neither argument is convincing, however.

75. Regarding the first contention, it is well-established in the Tribunal’s jurisprudence that being unaware of the requirements for pursuing a claim through the Bank’s grievance system does not justify an untimely request; ignorance of the law is no excuse (*Levin*, Decision No. 237 [2000], para. 21; *Guya*, Decision No. 174 [1997], para. 7). By the time the dispute regarding the change to his contract arose, the Applicant had already been working for the IFC for nine years; it was plainly his obligation to keep himself apprised of his rights and to submit his request for review in good time (*see Islam*, para. 14; *Setia*, para. 31).

76. Regarding the second contention, it is recalled that in *Levin*, the applicant had sought to justify a late filing by arguing, *inter alia*, that he had had “no confidence in the processes of an organization that has acted in such a peremptory and abusive fashion.” The Tribunal rejected this argument, however, holding that “it would altogether undermine the required time limits if a staff member were allowed to ignore them merely by invoking his doubts about the efficacy of the Bank’s grievance system or about the outcome of his claim” (para. 23; *see also Caryk*, Decision No. 214 [1999], para. 31; *Madhusudan*, Decision No. 215 [1999], para. 40).

77. Regarding the Applicant's assertion that had he pursued his grievance while still working with the IFC he would have suffered negative consequences, the Tribunal has clearly stated the standard of proof which must be met to establish "exceptional circumstances." In *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30, it recalled that:

In all such cases the Tribunal has followed a strict approach so as to prevent the undermining of statutory limitations. Exceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent 'contemporaneous proof' (*Mahmoudi (No. 3)*, Decision No. 236 [2000], para. 27).

78. The Applicant has not met this standard of proof. He points to a June 2005 email exchange with his General Manager, Mr. Chidzero, in which there were no references by either party to the possibility that the Applicant might pursue his grievance with the Bank's Conflict Resolution System, let alone any implication that such hypothetical action could have negative consequences for the Applicant. The Applicant remained working with the IFC for nine years after signing this contract, and has not directed the Tribunal to any subsequent events or communications which would suggest that the pursuit of internal remedies, at any point, would have had negative consequences for him.

79. The Applicant makes one final argument regarding the Appeals Committee (which, it is recalled, was replaced by PRS in 2009). He cites two statements in an Appeals Committee brochure to the effect that, first, "most appeals fall into four categories: termination of employment; merit increase; performance evaluation; disciplinary action against a staff member," and, second, that "there are other options within the CRS that can help." He contends that "while he missed the opportunity to use the Appeals Committee, the Appeals Committee was not necessarily the only or appropriate avenue to seek resolution given the multifaceted nature of the issues for which Applicant was seeking redress." These arguments are misconceived, in a number of respects. First, that the four categories of claims listed were the type most frequently brought before the Appeals Committee plainly did not mean that these were the *only* types of claims which could be brought before that body. Second, the existence of other, informal conflict resolution procedures does not obviate the need to comply with formal filing requirements should the affected staff member wish to bring the issue(s) before the Tribunal. Third, as noted above, the Tribunal has previously confirmed that doubts about the effectiveness

(or, in the Applicant's words, appropriateness) of the formal conflict resolution processes do not excuse failure to abide by the admissibility rules applicable to those processes.

80. The Tribunal concludes that given the length of delay in filing, the nature of the excuses invoked and the evidence produced in support, the Applicant has failed to establish exceptional circumstances such that would excuse the late filing of his claim relating to the 2005 change of contract. This claim is therefore inadmissible.

CLAIM 2: COMPENSATION FOR ADDITIONAL WORK UNDERTAKEN

81. The Applicant seeks compensation for "additional work done outside his job description as from the period 2005 to 2011." He asserts that he "sacrificed three weeks' vacation every year which took a toll on my health, my marriage and my family." The IFC contends that in respect of this claim the Applicant does not state what actions or omissions of the IFC might have been wrongful.

82. The Applicant has not produced any evidence of him bringing this issue to the attention of the IFC, of him seeking a change to his working arrangements or seeking any compensation for the additional work he alleges to have undertaken.

83. The Tribunal has previously clarified that "the time to challenge Bank decisions starts to run from the 'date when the Applicant ought reasonably to have been aware that there could have been [an adverse decision]'" (*Motabar*, para. 16, citing *Thomas*, Decision No. 232 [2000], paras. 29, 31; *see also Prescott*, Decision No. 234 [2000], para. 28).

84. On the Applicant's own account, for at least six years from 2005 there was a consistent pattern of him undertaking additional tasks. By the end of his second year in the new position (i.e. 2007), at the latest, the Applicant must be held to have been on notice that he would not receive compensation for the alleged additional work. On his account, by then he had undertaken six discrete types of work beyond his "primary responsibilities" as M&E Specialist for PEP Africa. Yet the Applicant never filed with the Appeals Committee (or, subsequently, PRS)

regarding the IFC's failure to award him compensation for this extra work, and only filed this claim with the Tribunal in February 2015. Absent exceptional circumstances, this claim is clearly inadmissible.

Exceptional circumstances

85. The Applicant's general arguments on the factors which, he says, could excuse the delays in filing were discussed above; the conclusion above was that he has not established exceptional circumstances within the meaning of Article II(2) of the Tribunal's Statute. As with his first claim, the extent of the delay involved in the claim regarding extra work (at least seven years), does not favor the Applicant.

86. The Applicant does not raise any (other) particular circumstances which might excuse the delay in filing his claim of having undertaken extra work without compensation.

87. In light of the foregoing, the Tribunal concludes that this claim is inadmissible.

CLAIM 3: COMPENSATION RELATING TO MEDICAL CONDITION

88. There are a number of elements to the Applicant's claim under this heading, though he does not always clearly articulate each element or identify the decisions or actions that are being challenged. Nevertheless, as was held in *McNeill*, Decision No. 157 [1997], para. 26, "it is the duty of every international tribunal, 'to isolate the real issue in the case and to identify the object of the claim ...; this is one of the attributes of its judicial functions' (*Nuclear Tests (Australia v France)*, Judgment of December 20, 1974, I.C.J. Reports 1974, p. 262)"; see also *BJ*, Decision No. 443 [2010], para. 26.

89. The Applicant claims compensation, first, for the costs incurred for his wife to accompany and assist him to and from work as a result of his medical condition. He states that he was diagnosed with the condition in question in 2008, and that the costs in question were incurred between 2008 and 2010. The Applicant criticizes the IFC for not advising him of his entitlements regarding a Disability Assistant, and states that he only learned of this entitlement

by accident, in 2010. The Applicant further states that, even when he learned of this entitlement, it still took IFC Human Resources more than one year to finalize the arrangements. From 2011 to 2014, the Applicant's wife was officially registered as his Disability Assistant, and compensated accordingly.

90. Regarding the Disability Fund, the IFC argues that the Applicant does not point to a specific event which occurred within the Tribunal's time limits: he "does not state whether he requested, and was denied any assistance ... On the contrary, when he applied for assistance, he was granted assistance."

91. It is true that the Applicant has not pointed to any particular decision or communication of the IFC regarding this claim. Nor has the Applicant claimed that, upon learning of his entitlement, he requested (and was denied) back-dated compensation for the assistance his wife had provided prior to 2011. Rather, it appears that he challenges the IFC's perceived inaction in failing to inform him of his entitlements as a staff member with a serious medical condition.

92. The Applicant states that he became aware of his entitlement to hire a Disability Assistant in 2010. He does not indicate a precise date or month. On his account, then, he became aware of the earlier failure of the IFC to bring this entitlement to his attention (that is, the allegedly wrongful conduct) by the end of 2010, at the latest. Yet he took no steps towards exhausting internal remedies regarding this claim, and only filed with the Tribunal in February 2015. Absent exceptional circumstances (discussed below), this claim is inadmissible.

93. A second element of the Applicant's claim arising out of his medical condition is compensation for the costs of flying himself and his family to Canada, in 2009 and again in 2010, for the purpose of seeing a specialist regarding his condition. On the Applicant's account, he requested medical evacuation to Canada, where "one of the few" specialists was based, and sought to combine this with an official trip to Washington, D.C., so as to minimize the cost. However he was told that Canada was not his "nearest point of service," and that this "might be Britain." According to the Applicant, he was not informed as to what to do next, received no feedback from anyone within the IFC, and was therefore "forced to spend my own money to fly

my family to Canada” to consult the specialist in 2009. The Applicant was not able to see the specialist on this occasion, however, as appointments needed to be made one year in advance, so he “had to fly my family to Canada again in 2010, all at great cost to myself.” The Applicant finally met with the specialist on 1 June 2010.

94. Again, it is not clear which decision or act of the IFC is being challenged here. The Applicant has not provided evidence of the IFC refusing his request to combine mission travel with a medical trip to Canada, nor has he indicated the date of any such refusal. He criticizes the lack of information he received from the IFC following this alleged refusal but has not provided evidence of his own attempts to follow-up with the IFC. He has not claimed that he subsequently requested, and was denied, compensation from the IFC for these travel costs.

95. For present purposes, whether the act being challenged is the initial refusal of his request to combine mission travel with a medical evacuation to Canada (in 2009), the failure to provide him with further information after that refusal (again, apparently in 2009), or the failure to reimburse his travel costs for two trips to Canada (of which he was on notice, at the latest, by mid-2010), the Applicant failed to exhaust internal remedies regarding this claim, and only filed his Application with the Tribunal in February 2015.

96. The Applicant stresses that he sought compensation for these medical-related expenses as part of the mediation process in 2014. Again, however, this does not assist him as these claims arose in 2009-2010 and so were already out of time: as noted above, entering mediation can “stop the clock,” where it is initiated before the 120 days have elapsed, but it cannot “reset the clock” where the 120 days have already passed. Nor does participation in mediation remove the requirement to exhaust internal remedies before filing an application with the Tribunal. Absent exceptional circumstances, this claim is inadmissible.

Exceptional circumstances

97. As discussed above, the Applicant raises a number of justifications for his failure to file his claim regarding the 2005 change in contract: fear of adverse consequences, efforts at informal resolution of the issue, etc. He does not make the same arguments with respect to his

claims relating to his medical condition but, in any event and for the reasons outlined above, those arguments do not suffice to establish exceptional circumstances within the meaning of Article II(2) of the Tribunal's Statute. Again, the extent of the delays involved in this claim for compensation relating to his medical condition (at least four years) does not favor the Applicant.

98. While the Applicant seeks compensation on various bases relating to his medical condition, he has not claimed that the delay in filing his Application was caused or aggravated by this medical condition. In this regard the Tribunal notes that in the years following the diagnosis of his medical condition (in 2008) the Applicant continued working with the IFC – with, of course, the assistance of his wife – and, indeed, communicated frequently with various officials in the Conflict Resolution System. There is nothing in the record to suggest, and the Applicant himself does not assert, that his medical condition prevented him from exhausting internal remedies or filing an application with the Tribunal.

99. In view of the foregoing, the Tribunal finds the Application inadmissible.

DECISION

The Application is dismissed.

/S/ Mónica Pinto
Mónica Pinto
Vice-President

/S/ Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 13 November 2015