



**World Bank Administrative Tribunal**

**2015**

**Decision No. 527**

**DE,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

**(Preliminary Objection)**

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

**DE,  
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 29 April 2015. The Applicant represented himself. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 3 November 2015.
3. The Applicant has raised the following claims: (i) invalidity of a Memorandum of Understanding (MOU) of 1 April 2014 between the Applicant and the IFC because the Applicant allegedly signed it under duress and coercion exerted by the IFC; (ii) wrongful termination of his contract; and (iii) breach of a confidentiality provision in the MOU.
4. The IFC makes the following preliminary objections: (i) the Applicant's claim of a breach of the MOU is time-barred because the alleged breach occurred earlier than the Applicant claims; (ii) the mediation between the Applicant and the IFC did not stay the time limit for filing a claim established by Article II of the Statute of the Administrative Tribunal; (iii) the Applicant's claims of duress and coercion are time-barred; and (iv) there are no exceptional circumstances in this case that warrant allowing the Applicant to file his claim outside the relevant time limits.
5. This judgment addresses the IFC's preliminary objections.

## FACTUAL BACKGROUND

### *The Applicant's position and performance*

6. The Applicant was employed at the IFC from 10 April 2013 to 30 June 2014 as a Senior Insurance Officer. The Applicant was initially hired for a term of two years. When the Applicant was first hired, he reported to the Principal Insurance Officer in Insurance Services, who left his position on 30 July 2013, after which Ms. X became the Head of Insurance Services and thus the Applicant's supervisor on 1 August 2013.

7. On 30 July 2013, the former Principal Insurance Officer and Ms. X sent the Applicant an email outlining their joint expectations for the work the Applicant was supposed to do. In the email, the former Principal Insurance Officer and Ms. X told the Applicant "to shadow multiple Insurance Officers to gain operational experience as quickly as possible." In the email, they also said: "We will ensure that you are considered for the courses that your peers have taken." In the months following this email, Ms. X sent the Applicant multiple emails, in which she alluded to certain performance-related concerns. For example, in an email to the Applicant on 13 September 2013, Ms. X told the Applicant that she was disappointed that he had said that participating in a conference call at 8:00 a.m. was too early for him, and that she did not agree that he should work remotely, as it was important that he was physically present at the office. Additionally, in an email to the Applicant on 5 November 2013, Ms. X told the Applicant to consult with a colleague before taking particular actions, including making requests to clients and sending certain emails.

8. On 18 November 2013, Ms. X provided the Applicant with Performance Evaluation Plan (PEP) Objectives. These Objectives included the following Individual Objectives: "to become well-versed with the project cycle vis-à-vis the insurance input during pipeline and portfolio stages"; "to provide timely and high quality insurance services for MAS/FM projects in the South Asia region and achieve 100% compliance level of the insurance portfolio in the MAS/FM projects in the South Asia region"; and "to actively promote risk and insurance management understanding within the MAS/FM investment department staff in South Asia."

9. The PEP Objectives also included the following Professional Objective: to “improve technical insurance knowledge on FM projects” by managing the FM portfolio in South Asia “independently with minimal guidance.”

*The MOU*

10. On 14 January 2014, Ms. X had a meeting with the Applicant, during which she told him that she had decided to deny confirmation of his employment. The Applicant was informed that he had two options: resignation or the non-confirmation of his employment. He was told that a non-confirmation decision would preclude him from obtaining other employment opportunities in the World Bank Group, while resignation would still allow him to work in the World Bank Group in the future. The Applicant and Ms. X agreed to sign an MOU that would allow the Applicant to resign in order for him to be able to work in the World Bank Group in the future.

11. On 29 March 2014, the Applicant submitted a letter of resignation to Ms. X effective 30 June 2014. On 1 April 2014, the Applicant and Ms. X, as a representative of the IFC, signed an MOU. The MOU contained the following language in its preamble: “The decision to allow [the Applicant] to resign effective June 30, 2014 in lieu of a non-confirmation decision by management.” The MOU also outlined details relating to the Applicant’s separation from employment. For example, the MOU stated that the Applicant would not report to work starting 10 April 2014 and would be “on a Job Search period” from 10 April to 30 June 2014. Furthermore, the MOU required the Applicant to return World Bank Group owned and issued property, such as his computer and work files, to Ms. X on 9 April 2014 and vacate his office on 10 April 2014. The MOU also contained the following clause:

The Applicant agrees that he will not utilize his leave (annual and/or sick leave) to further extend his termination date. He further agrees that he will request and will use any accrued leave (sick and/or annual) he intends to take prior to April 9, 2014.

12. Additionally, the MOU included the following confidentiality clause:

[T]he parties agree that information learned in the context of coming to this agreement, including their participation in the mediation process (intakes, mediation session and follow-up) will remain confidential and cannot be disclosed to others or used in any other proceeding. The terms of this MOU can be disclosed

to those who need to implement or enforce its provisions, including those who need to review it for payments of tax allowances, if applicable. In particular, if this agreement impacts any conditions of employment, the parties are jointly responsible for consulting with those that need to approve such changes.

13. Further, under the heading “Binding,” the MOU stated the following:

The parties to this MOU are obliged to implement its terms and conditions in the way and manner stated in it. Although this MOU is confidential, it is also an enforceable document and may be disclosed to those with the responsibility to enforce its provisions. If a party believes that there has been a breach of this MOU, either party may request the assistance of the Office of Mediation Services in an attempt to resolve the issue. If mediation is unsuccessful, the staff member may request the World Bank Administrative Tribunal (WBAT) to decide the allegation of breach of this MOU through an expedited procedure.

14. The MOU also specified that it “constitutes a full and final settlement of the issues described above,” and “[t]he parties agree to release all claims connected to the issues that are part of this agreement.” Finally, the MOU stated: “This MOU supersedes and cancels all prior understandings of any kind with respect to the issues included above.”

15. The Applicant claims that during the revision process for the MOU, Ms. X had insisted on including the language in the preamble that the Applicant’s resignation was “in lieu of” the decision by the management not to confirm his employment although he had suggested using the language “Separation Agreement.”

*Alleged breaches of confidentiality*

16. On 21 May 2014, Ms. X sent an email to several colleagues in the World Bank Group Human Resources Department, asking one of them to clarify that the clause in the MOU that pertained to the Applicant not utilizing his leave in order to extend his termination date meant that the Applicant would not be paid any leave “upon his termination on June 30, 2014.” In the email, she reproduced the clause in the MOU verbatim.

17. On 21 and 22 May 2014, the Applicant sent two emails to a colleague from the Staff Association, in which he expressed his view that Ms. X's email violated the MOU by disclosing parts of it. Specifically, he said that the email had been sent to "more than people who needed to know." He also said that Ms. X's email gave off the impression that he was terminated, rather than that he resigned. He said that this action would ruin his reputation and "appears to be a deliberate effort of leaking information and defaming [him]." Additionally, he asked whether he could take this issue to the Tribunal or Peer Review Services. The Applicant was told in response that the word "termination" is used for any exit from the Bank Group, including resignations, and that Ms. X's email was only sent to Human Resources processing staff members, which meant that, "[t]here is no possibility that this info. will be shared with any other Unit/dept/org in the WBG."

18. The Applicant emailed other Human Resources officials, as well as Ms. X, on 5 June 2014 to express his belief that Ms. X had violated the confidentiality of the MOU by copying and pasting a clause from the MOU verbatim in her email. A Human Resources officer replied to the Applicant's email on 7 June 2014 and clarified that he would be paid the outstanding leave balance. She also explained that Ms. X's email was only sent to staff members in Human Resources who would process his leave payment.

19. In multiple emails in July 2014, the Applicant discussed another issue regarding his MOU with Human Resources officials and officials involved in a mediation between the Applicant and Ms. X. The Applicant claimed that on 24 June 2014, Ms. X uploaded his MOU on his "MyHR" page on the World Bank Group's intranet site in breach of the confidentiality of the MOU. The Applicant was told that "the appropriate HR team" and a "small number of HR Operations staff members" usually have access to the intranet page where the MOU was uploaded.

20. The Applicant was told in August 2014 that the MOU had been removed from his "MyHR" page. He claimed in response that the confidentiality of the MOU had been breached. He also requested that the mediation which had been ongoing by this time be closed. The Senior Human Resources Account Manager told the Applicant that the management did not agree either that the confidentiality of the MOU had been breached or that the Applicant should be paid compensation

or damages. The mediation between the IFC and the Applicant was officially closed on 14 October 2014 with no agreement reached between the parties.

*Time extensions granted by the Tribunal*

21. On 16 October 2014, the Applicant sought an extension of time from the Tribunal to file an Application. The President of the Tribunal, by letter of 21 October 2014, granted him an extension until 21 November 2014 to file the Application. The President of the Tribunal's letter contained the following language: "Please note that this extension of time is without prejudice to the position of the IFC with respect to any defences or objections of any nature."

22. The Applicant requested further extensions of time from the Tribunal to file his Application. After the Applicant requested an extension until 18 February 2015, the IFC objected to this request in a letter sent to the President of the Tribunal on 14 November 2014. The IFC said in the letter that the closure of mediation should not be counted as the date from which the time limit for filing an Application would begin to run, since "a pending mediation does not stay the time limit." On 19 November 2014, the President of the Tribunal sent a letter to the parties, referencing the clause in the MOU that reads: "If mediation is unsuccessful, the staff member may request the World Bank Administrative Tribunal (WBAT) to decide the allegation of breach of this MOU through an expedited procedure." The President of the Tribunal's letter stated that he had decided that the Applicant had "120 days from the day he received notice that the mediation proceedings had been closed to file an application with the Tribunal."

*The present Application*

23. After being granted further time extensions, the Applicant filed his Application on 29 April 2015. In the Application, he contends that there were two breaches of confidentiality of the MOU by the IFC: a) when Ms. X copied a clause from the MOU verbatim into an email; and b) when she uploaded the MOU onto his "MyHR" page. The Applicant also claims that there was "premeditated malafide intent designed to lead to [his] termination and consequential damage." The Applicant additionally seeks to void the MOU on the grounds that he signed the MOU under

coercion and duress. Specifically, he argues that duress and coercion were present in the circumstances under which he signed the MOU because he knew that resignation under the MOU was the only alternative to non-confirmation of his employment and thus the only way he could retain the ability to work at the IFC in the future. Finally, he contends that Ms. X retaliated against him by uploading the MOU to his “MyHR” page in exchange for her not being able to stop him from receiving a leave payment.

24. The Applicant requests “restitution of compensation as interim relief” via one of three options: (i) re-employment of the Applicant at the IFC at either his previous or upgraded level with retrospective effect from 1 July 2014; (ii) monthly compensation through an independent consulting assignment in India with retrospective effect from 1 July 2014; or (iii) monthly compensation without employment with retrospective effect from 1 July 2014. Additionally, the Applicant requests compensation in the amount of \$575,000, as well as a one-time payment of \$575,000 for “mental harassment, stress, emotional distress, [and] loss of reputation and goodwill.” The Applicant requests the following for costs: (i) business class tickets from Delhi to Washington, D.C. and back for him and his advisor, as well as transportation, boarding, and lodging required to represent himself before the Tribunal; (ii) advisor’s fees on a contingent basis in the amount of \$100,000 or 20% of the award, whichever is higher; (iii) “legal advisory cost on the ground in Washington, DC for this tribunal matter”; (iv) documentation costs for filings in the amount of \$5,000; and (v) “any other costs the tribunal may deem fit.”

### *Preliminary Objections*

#### The IFC’s Contentions

25. The IFC filed its Preliminary Objection on 1 June 2015. The IFC argues that the Applicant’s claims of duress, coercion and wrongful termination are time-barred because they have never been raised before, even during mediation, and the Applicant should have raised them by 30 July 2014. The IFC also argues that mediation could not have stayed the time limit for filing claims to the Tribunal because an MOU cannot override the Tribunal’s Statute, and that the Applicant was not forced to mediate his claims before proceeding to the Tribunal. Additionally, the IFC contends that the breach of confidentiality that the Applicant alleges happened on 24 June 2014 in



reality happened earlier on 21 May 2014 because the two alleged breaches were part of the same occurrence. Therefore, the Applicant did not file his claims regarding breach of confidentiality in a timely manner. The IFC argues that there are no exceptional circumstances in this case that warrant permitting the Applicant to file his claims outside the relevant time limits.

26. With regard to the President of the Tribunal's 19 November 2014 letter to the parties, the IFC contends that the letter was sent before an Application was even filed and thus pertained to the extension of time the Applicant requested, not the Tribunal's jurisdiction over any claims. The IFC also contends that the 21 October 2014 letter from the President of the Tribunal, in which the latter stated that an extension of time was being granted to the Applicant "without prejudice to the position of the IFC with respect to any defences or objections of any nature" is proof that the IFC did not waive its objections to the timeliness of the Applicant's claims.

#### The Applicant's Contentions

27. The Applicant argues that there are exceptional circumstances which warrant admitting his claims due to the nature of his claims of breach of confidentiality and "malefic intent." He contends that despite there being exceptional circumstances, his claim of breach of confidentiality is nevertheless timely because it arose on 24 June 2014, the date when the MOU was uploaded on the "MyHR" page. He claims that the MOU mandated that he first attempt mediation, and thus, the time limit began on the date he received notice of an unsuccessful mediation, which was 18 October 2014. In this regard, he points to the President of the Tribunal's 19 November 2014 letter and argues that the latter allowed him 120 days from the receipt of closure of mediation to file his Application. He also argues that he requested mediation on 19 July 2014, which was within the time limit to challenge the MOU, making the challenge to the MOU timely. Additionally, he argues that the two breaches are not part of the same occurrence, and he was not required to file the Application from the date of the first breach. Therefore, he argues that his claim for breach of confidentiality was filed within the time limit.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS  
*Admissibility of the Challenge to the Validity of the MOU Claim*

28. The Applicant asserts that he challenged the MOU as being invalid on the grounds of duress and coercion during mediation. In this regard, the Tribunal notes that it is well established in its jurisprudence that the validity of release or settlement MOUs is to be upheld, but that “no release or settlement of claims should be given effect if concluded under duress.” *See Mr. Y*, Decision No. 25 [1985], para. 32; *Nyambal (No. 2)*, Decision No. 395 [2009], para. 22. The IFC accepts these principles. However, it objects that, as with all applications to the Tribunal, the Applicant in this case must satisfy the time requirements for admissibility of claims stipulated in Article II(2) of the Tribunal’s Statute and that the Applicant has not done so.

29. Article II(2) of the Tribunal’s Statute sets out the requirements for admissibility of applications. It states in the pertinent part:

(2) 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.

30. Staff Rule 9.03, paragraph 6.04(e) is an important starting point in the application of Article II(2) to this case. That Staff Rule provides that Peer Review Services panels may not review:

[A] challenge to the validity of a Memorandum of Understanding (MOU) or settlement agreement between the Bank, IFC or MIGA and a staff member. (Panels may review an allegation of breach of such an MOU or settlement agreement, although a staff member seeking review of an alleged breach of an MOU or settlement agreement may elect to bypass the peer review process and file an

application concerning the matter directly with the World Bank Administrative Tribunal pursuant to Staff Rule 9.05).

31. It is evident from this Staff Rule that a party to an MOU is not required to exhaust internal remedies as required by Article II(2)(i) prior to challenging the validity of that MOU before the Tribunal. On the other hand, this Staff Rule unmistakably contemplates that such an Applicant must comply with Article II(2)(ii)(a) and file his or her application before the Tribunal within 120 days after “the occurrence of the event giving rise to the application,” in this case, after the alleged duress or coercion. It is important to stress here that, in the context of the present case, the event which triggers the determination of the date for filing of an application, or in other words for determining the “*dies a quo*” or “*terminus a quo*” is, on the plain words of Article II(2)(ii)(a), “the occurrence of the event giving rise to the application,” not the discovery of the occurrence of such event.

32. It is because of the foregoing interpretation that the Tribunal finds persuasion in the IFC’s contention that in this case the *dies a quo* was 120 days after 1 April 2014, the date on which the MOU was signed by the Applicant. Logically, any events giving rise to duress and coercion in the signing of the MOU cannot have happened after that date.

33. The facts here are that the coercion and duress could only have arisen around the time that the Applicant signed the MOU. This was 1 April 2014. Notwithstanding that the Applicant asserts that he raised these claims during mediation, his first request for an extension to file his Application to the Tribunal was on 16 October 2014, which was more than 120 days after the date he signed the MOU. Thus, the Tribunal finds that the Applicant’s claim that the MOU is invalid on the grounds of duress and coercion was time-barred by the time of his first application to the Tribunal for a time extension.

34. The Tribunal notes that the Applicant argued that his claim was not time-barred because he requested mediation on 19 July 2014, which was within 120 days of 1 April 2014, when his claims of coercion and duress first arose. There is nothing in the Statute, Staff Rules or the Tribunal’s jurisprudence to suggest that such a request has the effect of automatically suspending the statutory stipulated time limitation period. The Tribunal is well aware of the crucial role played

by mediation within the Bank Group's conflict resolution system. That system seeks to balance a number of important principles, including the need for non-adversarial procedures such as mediation, and the need to impose time-limits for the formal resolution of claims before PRS and/or the Tribunal. In light of these principles, the Tribunal has developed a practice to accommodate efforts at mediation. Where an applicant requests mediation in respect of claims which must ordinarily be brought directly to the Tribunal, he or she can communicate with the Tribunal as soon as possible after requesting mediation, either to request an extension of the time-limit for filing a prospective claim with the Tribunal, or to file such a claim and then request a stay of Tribunal proceedings pending mediation. The Tribunal considers such requests on a case-by-case basis. *See Alrayes*, Decision No. 520 [2015], para. 123. In this case, the Applicant did not request an extension of time to file an Application until 16 October 2014. In these circumstances, the Applicant's request for mediation did not stay the 120-day time limit that otherwise applied to the Applicant's claims in respect of duress, coercion and wrongful dismissal.

35. Notwithstanding the foregoing, the Tribunal recalls that, under Article II(2) the requirement of filing within 120 days of "the occurrence of the event giving rise to the application," is excused if there are "exceptional circumstances." The burden is on the Applicant to prove the existence of exceptional circumstances. *See Malekpour*, Decision No. 320 [2003] para. 22.

36. The Applicant claims that the presence of "malefic intent" in this case created exceptional circumstances. He contends that Ms. X had "malefic intent," as indicated by her decision not to confirm his employment. However, he alleges that he did not discover said "malefic intent" until the second breach of the confidentiality provision of the MOU. The Applicant urges that it is for this reason that he could not have challenged the MOU on the grounds of coercion and duress earlier than that date.

37. The Tribunal recalls its jurisprudence on what amounts to exceptional circumstances within the contemplation of Article II(2) such as would justify relief from, or suspension of, the requirement of filing within the time limitation period. In *Nyambal (No. 2)*, para. 30, the Tribunal stated:

The jurisprudence of the Tribunal is well-established regarding the treatment of exceptional circumstances. 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).

38. Here, the Applicant has contended that there was “malefic intent” present in the case that created exceptional circumstances. However, he has not offered “reliable and pertinent ‘contemporaneous proof’” either, of the “malefic intent” on the part of Ms. X that he alleges, or, of how this “malefic intent” created exceptional circumstances that prevented him from bringing a timely claim to the Tribunal to challenge the validity of the MOU on the grounds of coercion and duress. The Applicant argues that “malefic intent” was present because Ms. X allegedly breached the confidentiality of the MOU multiple times. However, the alleged breaches of confidentiality of the MOU occurred after the MOU was signed. Therefore, the Applicant’s claims of “malefic intent” do not address why there may have been exceptional circumstances that would warrant the Tribunal admitting his claim relating to coercion and duress. As a result, the Tribunal finds that there are no exceptional circumstances in this case, and the Applicant’s challenge of the validity of the MOU on the grounds of coercion and duress is inadmissible.

39. Finally, the Tribunal notes that the Applicant’s claim of duress and coercion is based on the view that unless he resigned pursuant to the MOU, his employment would not be confirmed, which would eliminate his chances of being able to work in the World Bank Group in the future. The Tribunal further notes that the Applicant also claims that he suffered duress when signing the MOU because he “would have been under tremendous financial hardship in DC, had [he] not agreed [to sign the MOU], as [his] son was in his high school and... [the Applicant] had to bear all rents and expenses.” The Tribunal reiterates that:

In all cases of release agreements the staff member is assumed to have balanced the benefits resulting from the different options he or she has, and finally to have decided to consent to the proposed agreement. In each case the staff member must have been under certain pressures leading him to opt for what appeared to him to be the more advantageous alternative. This kind of pressure is inherent in the process and cannot be treated as by itself constituting duress. *See Kehyaian (No. 2)*, Decision No. 130 [1993], para. 26. *See also Nyambal (No. 2)*, paras. 22 - 23; *BJ*, Decision No. 443 [2010], para. 78.

*Admissibility of the Claim Regarding Termination*

40. In addition to his challenges on the validity of the MOU, the Applicant also claims that the termination of his employment contract was unlawful in that it was motivated by “malefic intent.” The IFC argues that the termination of the Applicant’s contract was based on his performance deficiencies, and his claim of wrongful termination is time-barred.

41. The Tribunal finds that the Applicant’s claim of wrongful termination is time-barred. As of 1 April 2014, the date the Applicant signed the MOU, he was already on notice that his employment would terminate on 30 June 2014. His challenge to the termination of his employment should have been filed within 120 days of 1 April 2014. It was not.

*Admissibility of the Claim Regarding Breach of Confidentiality of the MOU*

42. The IFC argues that the Applicant’s claim relating to Ms. X’s breach of the MOU’s confidentiality clause is time-barred because the alleged breach occurred earlier than the Applicant alleges. Specifically, the IFC contends that the Applicant is claiming that the breach of confidentiality occurred on 24 June 2014, when Ms. X uploaded the MOU onto the Applicant’s “MyHR” page. However, the IFC claims that the Applicant should consider the alleged breach to have occurred on 21 May 2014, when Ms. X sent an email with a clause of the MOU reproduced verbatim. The IFC argues that the two alleged breaches are “one and the same: IFC staff members communicating internally about the Applicant’s MOU as part of processing the benefits provided to him in that document.” The IFC also contends that the Applicant knew about the alleged breach of confidentiality on 21 May 2014 because in an email to a colleague from the Staff Association on that day, the Applicant said that he felt the MOU had been violated and asked the next day whether he could go to the Tribunal or Peer Review Services. The IFC argues that since 16 October 2014, the date when the Applicant first requested the Tribunal to grant him an extension of time to file his Application, was after the expiration of the 120-day time limit from 21 May 2014, the alleged breach of confidentiality claim is time-barred.

43. Additionally, the IFC claims that the relevant date by which to measure the time limit for the Applicant to have filed his Application is not the date that the Applicant received notice of closure of mediation, but rather the date that the breach of confidentiality occurred. The IFC argues that mediation cannot stay the time limit established by Article II of the Tribunal's Statute, and in any event, the MOU did not require the Applicant to mediate his claims before going to the Tribunal. With regard to the President of the Tribunal's 19 November 2014 letter, the IFC argues that the letter was sent before an Application was even filed and thus pertained to the extension of time the Applicant requested, not the Tribunal's jurisdiction over any claims. Thus, the IFC argues that it did not waive any objections to the timeliness of the Applicant's claims.

44. The Applicant, on the other hand, maintains that his breach of confidentiality claim is timely because one of the two breaches occurred on 24 June 2014. He claims that the two alleged breaches of confidentiality are not part of the same occurrence but rather constitute "two separate incidents." Thus, he claims that he could have challenged the second breach even if the first breach may have been time-barred. The Applicant also argues that with regard to the first breach, the issue was resolved in his favor, and he was willing to give Ms. X the benefit of the doubt. However, he challenged the second breach in mediation because when the second breach occurred, he claims that, "it was a clear case of malefic intent," and he "could clearly see a pattern emerging."

45. Moreover, the Applicant contends that he pursued mediation on the second breach pursuant to the "Binding" clause of the MOU. He contends that the relevant date from which the time limit began to run to file an Application was not from the date of the second breach, but rather from the date he received notice of the closure of mediation. In this regard, he refers to the 19 November 2014 letter from the President of the Tribunal, which stated that the Applicant had "120 days from the day he received notice that the mediation proceedings had been closed to file an application with the Tribunal." The Applicant argues that in any event, he initiated mediation on 19 July 2014, which was within 120 days of the second breach, thus making his claim timely. The Applicant also contends that because he is alleging breach of confidentiality and "malefic intent," the nature of these claims creates exceptional circumstances. He also alleges that there are exceptional circumstances in his case because he was "in a state of shock and disbelief" when the confidentiality of the MOU was breached.

46. The Tribunal recalls that the MOU contains the following clause:

The parties to this MOU are obliged to implement its terms and conditions in the way and manner stated in it. Although this MOU is confidential, it is also an enforceable document and may be disclosed to those with the responsibility to enforce its provisions. If a party believes that there has been a breach of this MOU, either party may request the assistance of the Office of Mediation Services in an attempt to resolve the issue. If mediation is unsuccessful, the staff member may request the World Bank Administrative Tribunal (WBAT) to decide the allegation of breach of this MOU through an expedited procedure.

47. However, the Tribunal notes that, according to paragraph 4.13 of Staff Rule 9.01 (Office of Mediation Services):

If a party believes that there has been a breach of an MOU, or of a settlement agreement reached outside the Office of Mediation Services between the Bank, IFC or MIGA on the one hand and a staff member on the other, either party may request the assistance of the Office of Mediation Services in an attempt to resolve the issue. In addition, the staff member may either submit a request for review to Peer Review Services (pursuant to Staff Rule 9.03) or may bring a claim regarding the alleged breach directly to the World Bank Administrative Tribunal (WBAT), pursuant to Staff Rule 9.05.

48. The Tribunal observes that in the context of the language of the MOU, it is reasonable to draw the conclusion that the Applicant is required first to have recourse to mediation, and if mediation is unsuccessful, to then file an application to the Tribunal.

49. Since the Applicant pursued mediation first under the terms of the MOU, the relevant time limit for purposes of determining whether his claim of breach of the MOU is time-barred is, as was noted in the 19 November 2014 letter from the President of the Tribunal, “120 days from the day [the Applicant] received notice that the mediation proceedings had been closed.” The Applicant filed his first request for an extension of time to file his Application on 16 October 2014, two days after the mediation was closed. Thus, the Tribunal finds that his claim of breach of the MOU was not time-barred and is therefore admissible.



DECISION

For the reasons given above, the Tribunal decides as follows:

- (1) The Applicant's claims on the invalidity of the MOU are inadmissible.
- (2) The Applicant's claim on the termination of his employment is inadmissible.
- (3) The Applicant's claims on the breach of the MOU are admissible.
- (4) The IFC shall meet the Applicant's costs in the amount of \$500 from the preliminary objection phase of these proceedings.

/S/ Monica Pinto

Monica Pinto

Vice-President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 13 November 2015