



**World Bank Administrative Tribunal**

**2014**

**Decision No. 503**

**Pascal Dooh-Bill,  
Applicant**

**v.**

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

**(Preliminary Objection)**

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

**Pascal Dooh-Bill,  
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, and Mahnoush H. Arsanjani.
2. The Application was received on 6 March 2014. The Applicant was represented by Stephen C. Schott, Schott Johnson, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant claims that the Bank destroyed his personal property and failed to compensate him. The Bank has raised a preliminary objection to the admissibility of the Applicant's claims. This judgment addresses that objection.

**FACTUAL BACKGROUND**

4. The Applicant worked in the World Bank Institute (WBI) as a Consultant for some six years and his last Short Term Consultant (STC) contract with the WBI ended on 30 June 2012. According to the Bank, when the Applicant's last STC contract for work in the WBI came to an end and it seemed unlikely that his contract would be renewed, the Applicant's manager asked the Applicant to vacate the office he had used.
5. E-mails exchanged between the Applicant and his manager in October 2012 demonstrate that the manager asked the Applicant to vacate his former office. On 1 October 2012, the Applicant wrote to his manager:

I understand that you want me to clear my stuff from the office without more ado. Honestly, I was under the impression that you would extend my contract, as you are aware of the administrative procedure regarding staff under G4 visa. You indicated that you would give me certain days of contract that would help me renew my G4 visa. Now, for no apparent reason to me, you've changed your mind and you are asking me to leave the office.

6. On 2 October 2012, the manager responded:

You don't at present have a contract with us so you cannot be coming in and sitting in that office. Its a matter of liability for us. I would ask you once again to move. FYI, there is an office move in December during which the Bank policy on STCs using hotelling space will be enforced.

Regarding your contract, we did have a discussion about that and I indicated I could top up what someone else had given. Can you update me on that? I would like you to recognize I gave you 3 years worth of contracts in recognition of your time here and other factors.

7. On 3 October 2012, the Applicant again wrote to his manager inquiring about work opportunities. On the same day, the manager wrote to the Applicant insisting that he vacate the office:

There are two separate issues here.

The first is that you are occupying an office space here and have no contract with us. I have allowed you plenty [of] time to move out but must insist now. There is no room for discussion or delay on this.

A separate issue relates to programs where we might have you work. We don't have any right now. That is not to say this might not change but that is the present situation.

8. According to the Applicant, he came to empty the office on or around 15 October 2012 and he placed the items he no longer needed in the "big moving trashing bins that were provided by the Team Assistant." He, however, adds that: "In one corner of the room [he] kept two boxes that contained important and personal stuff including some official documents, [his] diploma, books and clothing. [He] placed the two boxes away from the trash bins and wrote [his] name on top of both boxes. [He] was planning to pick the two boxes on another day when [he] could bring a ride or arrange to bring [his] own car."

9. The Bank disputes the Applicant's claim that he cleared the office by 15 October 2012. It maintains that the office continued to be occupied by the Applicant's personal items. The record contains an e-mail from the Applicant to Bank officials including the WBI Program Assistant dated 19 October 2012 in which the Applicant stated that he would pick up his personal items on 22 October 2012. The Bank adds that his promise notwithstanding, as of 24 October 2012, the Applicant did not pick up his personal items.

10. On 24 October 2012, the WBI Program Assistant warned the Applicant by e-mail that his items would be removed if not picked up. The e-mail with the subject-heading "Urgent: Your office needs to be cleaned out and your laptop returned immediately," reads:

It is now Wednesday. You had indicated that you would come over the weekend to clean out your office and did not. You then said you would do it on Monday and it has still not been done. The trash bin is still in your office and I need to return it.

Perhaps you should request your own trash container and take care of this when you are ready. If this is not done this week, our team is going to have to remove everything for you.

11. The Bank states that at some point between 24 October 2012 and 6 November 2012, the Applicant stopped by the office and placed his personal items in boxes. The Bank adds that instead of taking the boxes with him, however, he left them in the office.

12. The Bank maintains that on 6 November 2012, five months after first requesting that the Applicant clean out the office, the Bank's General Services Department (GSD) and the WBI Program Assistant removed all items remaining in the office including three large trash bins. The Bank adds that the Applicant came to the office late on 6 November 2012 to collect his personal items, which is when he "ostensibly discovered that the two boxes of his personal items were missing." The Applicant spoke to the WBI Program Assistant who told him that all boxes had been trashed as instructed by the manager.

13. On 12 November 2012, the Applicant wrote to the manager expressing his disappointment and the manager responded that: "I'm very surprised as I saw you in your office

about 10 days ago and had assumed you were finally getting round to cleaning it up. I'm not sure why you didn't take the opportunity to action things then as had been requested multiple times ....”

14. On 13 November 2012, the Applicant wrote to the WBI Program Assistant and asked whether any items had been stored in another place. The WBI Program Assistant responded on the same day reconfirming that all items had been trashed, stating: “We threw out three large trash bins full of stuff from your office. It was not just a couple of boxes. These items have been disposed of [and] it is not stored anywhere.”

15. In the months of January and February 2013, the Applicant sent several e-mails to the WBI management complaining that the trashing of his personal items was abusive and disrespectful.

16. On 19 March 2013, the Applicant and the WBI management met with the Office of Ombuds Services to discuss his complaint about the disposal of his personal effects. The Bank states that while maintaining that the actions were reasonable, the management recognized the Applicant's frustration at having lost his personal items, and offered to consider compensating the Applicant for them, or helping to recover some, such as academic diplomas. The Bank adds that the management requested that the Applicant provide them with an itemized list of items that were in the boxes but states that the Applicant never provided one.

17. The Applicant on the other hand states that the WBI management “took no further action: no apology was issued, no reprimand for the inconsiderate and wrongful managerial action was given, no assistance in recovering any of the lost items was provided and no offer of monetary compensation was put forward.”

18. On 22 October 2013, the Applicant filed a Request for Review with the Peer Review Services (PRS) challenging “the alleged decision by [his] former manager to destroy or dispose of [his] World Bank working papers and personal records.”

19. On 8 November 2013, PRS dismissed the Request for Review for being untimely. PRS referred to the fact that the Applicant had received notice of the alleged decision by his former manager in November 2012 when he discovered his personal effects had been removed from his former office. However, according to PRS, the Applicant did not file his Request for Review until almost one year later after November 2012, which was more than 120 calendar days of receiving notice of the challenged decision.

20. On 6 March 2014, the Applicant filed this Application with the Tribunal challenging the “World Bank Institute’s destruction of his personal property and failure to take a decision on compensation and to provide assistance in retrieving or replacing certain academic documents and archived work product.” The Applicant claims *inter alia* compensation, “appropriate recognition of the wrongful act of destruction and apology for the harm caused,” “restoration of what can be restored,” and costs.

21. On 23 May 2014, the Bank raised a preliminary objection contending that the Tribunal lacks jurisdiction in this case.

#### PRELIMINARY OBJECTIONS

##### *Summary of the Bank’s contentions*

22. The Bank contends that the Application is inadmissible under Article II of the Tribunal’s Statute because the Applicant did not exhaust all prior remedies available with the Bank Group in a timely manner.

23. The Bank explains that Staff Rule 9.03 (“Peer Review Services”), paragraph 7 requires that a Request for Review must be submitted within 120 days of receiving notice of the disputed employment matter. The Bank further explains that the Applicant received notice of the disputed matter on 13 November 2012. In the Bank’s view, whatever doubts the Applicant may have had about the fate of his boxes, they should have been dispelled when he received the WBI Program Assistant’s 13 November 2012 e-mail that informed him that everything in the office had been

thrown away and not stored. Yet, the Bank argues, the Applicant waited to file his Request for Review until 22 October 2013, which was seven months beyond the statutory 120-day deadline.

24. The Bank maintains that the Applicant does not raise any exceptional circumstances that would justify his delay in submitting his complaint to PRS. The Bank states that, recognizing his untimeliness, the Applicant argues that he has been trying to address his concerns informally, with his manager and his superiors and through the Office of Ombuds Services in March 2013. But, in the Bank's view, that is certainly not enough to suspend the running of the limitation period for the filing of a PRS Request for Review.

*Summary of the Applicant's contentions*

25. The Applicant explains that he filed his PRS claim within a reasonable period of time:

The incident that led to Applicant's grievance may have occurred on November 13, 2012, but his grievance arises out of the failure of Respondent to take any action to investigate what happened to his personal property and determine responsibility. Respondent agreed to seek the intervention of the Ombudsman and accepted to try and restore certain documents and compensate for items lost. There was a commitment on the part of Respondent made in March 2013 and Respondent failed to keep that commitment. That eventually gave rise to Applicant's decision to take the matter to PRS review. Considering Respondent's non-action, Applicant did so within a reasonable period of time.

26. The Applicant contends that, considering that he expected action on the part of the management, he engaged the services of the Ombuds Office and wanted to avert litigation, and that consequently his filing of the PRS claim in October 2013 was reasonable.

27. Invoking *N*, Decision No. 356 [2006], the Applicant contends that the Bank should not be allowed to claim that the Applicant was late because the Bank's failure to act has resulted in confusion and the Bank "cannot rely on its own inaction to create a situation in which it can then claim that Applicant is out of time."

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

28. Article II(2) of the Tribunal's Statute sets out the requirements for the admissibility of applications before the Tribunal:

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.

29. In *Malekpour*, Decision No. 320 [2004], para. 14, the Tribunal stated that:

The Tribunal has emphasized several times the importance of the statutory requirement of exhaustion of internal remedies (e.g., *Berg*, Decision No. 51 [1987] para. 30). In other decisions, the Tribunal has ruled that a staff member's failure to observe the time limits for submission of an internal complaint or appeal constitutes non-compliance with the statutory requirement of exhaustion of internal remedies (e.g., *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25–26).

30. In *Malekpour*, para. 20, the Tribunal also affirmed that all internal remedies have to be formally exhausted in a timely manner:

The Tribunal has emphasized on a number of occasions that all internal remedies have to be formally exhausted and that these include timely recourse to the Appeals Committee. (See, e.g., *Bredero*, Decision No. 129 [1993], paras. 22–23; *Levin*, Decision No. 237 [2000], para. 13.) The Applicant must formally



and in a timely manner invoke and exhaust available internal remedies in order that the allegedly improper Bank decisions may be challenged in an application before the Tribunal.

31. In the present case, it is undisputed that to comply with the condition of exhaustion of internal remedies, the Applicant was required to file his grievances before PRS in a timely manner. But he failed to do so. PRS found that the Applicant's Request for Review was not filed in a timely manner and so in dismissing it explained that:

Peer Review Services does not have jurisdiction to review your claim as set forth in your Request for Review because you did not file your claim within the 120 calendar day period after receiving notice of the Disputed Employment Matter as required by Staff Rule 9.03 (Peer Review), paragraph 7.01. This Rule 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.

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 case, the record shows that you received notice of the alleged decision by your former manager in November 2012 when you discovered your personal effects had been removed from your former office. You did not file your Request for Review until almost one year later after November 2012, which is more than 120 calendar days of receiving notice of your claim. Therefore, your Request for Review is untimely.

32. The Tribunal finds that the conclusions reached by PRS as to its jurisdiction are supported by the record. The record is clear that by the e-mail of 13 November 2012 the Applicant was put on notice that his personal items had been disposed of and were not stored anywhere. There is no doubt that he was aware at this time that the disputed employment matter or the event giving rise to the Application had occurred. Under Staff Rule 9.03 ("Peer Review Services"), paragraph 7.01, he was required to come to PRS within 120 days, i.e. by 13 March 2013. He filed his Request for Review on 22 October 2013, however, almost seven months later than the required date. Having failed to timely exhaust internal remedies through PRS, the

Applicant has failed to comply with the requirements of Article II(2)(i) of the Tribunal's Statute. Consistent with a long line of cases, the Tribunal must conclude that the Applicant's failure to come to PRS in a timely manner "would constitute a failure to exhaust internal remedies and would thus result in the Application being inadmissible before the Tribunal." *Levin*, Decision No. 237, [2000], para. 13.

33. Under Article II(2) of the Tribunal's Statute, the requirement of exhaustion of internal remedies is excused if there are exceptional circumstances. In *Malekpour*, para. 22, the Tribunal stated that:

The burden is on the Applicant to show that "exceptional circumstances" exist which justify relief from or suspension of the exhaustion requirement in Article II(2) of the Statute of the Tribunal. (*Hristodoulakis*, Decision No. 296 [2003], para. 17.) The Applicant declares that he is neither a citizen nor a resident of the United States, but refrains from explaining how that circumstance imposes such real and serious impediments to exhausting internal remedies as to constitute "exceptional circumstances." "[M]ere inconvenience," the Tribunal has ruled, "is not sufficient" to constitute "exceptional circumstances." (*Hristodoulakis*, *id.*)

34. The Applicant contends that "he expected action on the part of management and reasonably awaited such action, recognizing that he was travelling and managers were also travelling or busy with reorganization and office consolidation." He says that "[t]he fact that he waited approximately six to seven months after March 19, 2013 before filing a complaint with PRS was reasonable under the circumstances and was intended to avert litigation."

35. The fact that the Applicant continued to address his grievances by approaching management after receiving notice of 13 November 2012 does not stop the clock for the purposes of calculating the 120 day period within which to file a PRS Request for Review. In *Sharpston*, Decision No. 251 [2001], para. 36, the Tribunal observed that it "has in several cases made clear that applicants may not extend deadlines for seeking internal remedies by the expedient of requesting reconsideration of the initial decision." The Tribunal also held at para. 37 that: "Unilateral reiterations of a grievance, addressed to the author of the initial decision, thus cannot have the effect of extending the time limits within which a complainant is required to

seek redress against that decision.” Approaching higher management for reconsideration of a matter does not suspend the limitation period for filing a PRS Request for Review. In *Tanner*, Decision No. 478 [2013], para. 45, it was held that

the Tribunal has made clear that requests for reconsideration, confirmation or explanation of the Bank’s position do not generally lead to a new decision providing the Applicant with an additional period of time to file his application. *H (No. 4)*, Decision No. 385 [2008], para. 37; *Agerschou*, Decision No. 114 [1992], para. 42; *Sharpston*, Decision No. 251 [2001], para. 36. The Tribunal has held that the prescribed time limits are very “important for a smooth functioning of both the Bank and the Tribunal.” *Agerschou*, para. 42.

36. The Applicant refers to some facts that suggest that he was in settlement negotiations with the management. But, the Tribunal “does not consider settlement negotiations to be ‘exceptional circumstances’” that excuse a failure to exhaust other internal remedies within the prescribed time period. *See Tanner*, para. 46.

37. The Applicant also refers to the fact that he engaged the Ombuds Services Office. Indeed a meeting was held at the Ombuds Services Office on 19 March 2013. However, by then 120 days had already passed since the notice of 13 November 2012. In any event, nothing in the Bank’s rules suggest that the engagement of the Ombuds Services Office automatically suspends the limitation period for filing claims before PRS or the Tribunal. The Tribunal notes that Staff Rule 9.02 (“Ombuds Services Office”), paragraph 6.01, states that: “An Ombudsman may request the Peer Review Secretariat to extend the normal time limit for filing a Request for Review subject to the provisions of Staff Rule 9.03.” In this case, the Tribunal finds no evidence that the Applicant requested an extension of the time to file a PRS Request for Review or that he asked the Ombuds Services Office to do so. Moreover, the Tribunal is persuaded by the following submission made by the Bank in these proceedings:

To underscore unreasonableness of Applicant’s inaction, it is worth pointing out that even if Applicant was, *arguendo*, justified in waiting to pursue administrative remedies until after he had his meeting with the Ombudsman’s Office and management on March 19, 2013, he would have had to file his Request for Review with the PRS by July 17, 2013. Even if one were to presume that Applicant hoped that the matter would be resolved through the Ombudsman’s Office; even if one were to further stretch imagination to assume

that Applicant wanted to give management an additional month or two after the March meeting with the Ombudsman to offer him a settlement, it was unreasonable for him to wait until October 22, 2013 - seven months after the meeting with the Ombudsman - to realize that no resolution was forthcoming. Neither can Applicant blame his management for lack of action following the meeting as he never provided them with a detailed list of items lost, or a proposed monetary value that he assigned to his lost items.

38. In sum, the Tribunal finds no exceptional circumstances to excuse the Applicant's failure to exhaust internal remedies in a timely manner. The Application is thus inadmissible.

#### DECISION

The Application is dismissed.

*/S/ Stephen M. Schwebel*

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Stephen M. Schwebel

President

*/S/ Zakir Hafez*

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Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 26 September 2014