



World Bank Administrative Tribunal

2018

Decision No. 584

**EQ,
Applicant**

v.

**International Finance Corporation,
Respondent**

(Preliminary Objection)

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

**EQ,
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 (President), Mahnoush H. Arsanjani (Vice-President), and Ahmed El-Kosheri.
2. The Application was received on 15 November 2017. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The International Finance Corporation (IFC) was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 May 2018.
3. The Applicant challenges the reassignment of two projects from her work program for Fiscal Year 2016 (FY16); her FY16 Performance Evaluation; her performance cycle for Fiscal Year 2017 (FY17); and the IFC's alleged mismanagement of her career.
4. The IFC has raised a preliminary objection to the admissibility of this Application. This judgment addresses that preliminary objection.

FACTUAL BACKGROUND

5. The Applicant joined the IFC on 2 September 1997 as an Investment Officer. She was promoted to Senior Investment Officer on 1 July 2001 and to Principal Investment Officer on 1 July 2010. Throughout her employment, the Applicant has worked on many sectors including Manufacturing, Agribusiness and Services (MAS); Infrastructure; and Financial Services.
6. From 2013 to 2015, the Applicant was the Sector Lead for Aquaculture and Fisheries in the Global Agribusiness team. In this capacity, the Applicant began working with two clients on

Project A and Project B, respectively, in order to develop business initiatives in the aquaculture sector.

7. In February 2015, Ms. X was appointed Global Agribusiness Sector Head for the Latin American and Caribbean (LAC) region and became the Applicant's manager for Project A and Project B as well as the Investment Review Meeting Chair for another project of the Applicant's, Project C.

8. During FY16, the Applicant led and supported several major initiatives for the Agriculture and Forestry Services in the LAC and Africa regions. She was the client relationship manager and team leader for Project A; client relationship manager and business developer for Project B; and team leader for Project C.

THE APPLICANT'S FY16 WORK PROGRAM AND PERFORMANCE EVALUATION

Project A

9. On 6 October 2015, the Applicant's manager and Project A's portfolio manager met with the Applicant to inform her that another Principal Investment Officer from MAS would take over her client relationship management responsibilities on Project A and would also replace her as the project's team leader. At the Applicant's request, she retained Project A's client relationship management responsibilities for a bit longer.

10. On 13 October 2015, the Applicant's manager emailed the client informing him that the Principal Investment Officer would replace the Applicant as Project A's team leader.

11. Sometime in February 2016, the Applicant's manager decided to remove the Applicant's client relationship management responsibilities on Project A.

12. On 11 March 2016, the Applicant's manager emailed the Applicant regarding her FY16 mid-year review and informed her that she should not include Project A in her FY16 performance objectives.

Project B

13. On 16 February 2016, the Applicant emailed her manager informing her that a Senior Investment Officer, LAC Agribusiness, was leading Project B and "leveraging his experience."

14. On 18 February 2016, the Applicant's manager informed the Applicant that, going forward, the Senior Investment Officer would handle Project B.

15. On 11 March 2016, the Applicant's manager emailed the Applicant regarding her FY16 mid-year review and informed her that she should not include Project B in her FY16 performance objectives.

The Applicant's Work Program after the Removal of Project A and Project B

16. In early February 2016, the Applicant's manager offered the Applicant the opportunity to be the business development lead for Francophone Africa.

17. On 18 February 2016, the Applicant declined the offer noting that she was not convinced the proposal was a "win-win proposition."

18. Between March and June 2016, the Applicant held a part-time Development Assignment with the aquaculture and fisheries team of the Bank's Environment and Natural Resources Global Practice.

The Applicant's FY16 Mid-Year Performance Review

19. On 20 February 2016, the Applicant's manager had an FY16 mid-year discussion with the Applicant over the phone. On 15 March 2016, upon the Applicant's return from mission, the Applicant and her manager met to finalize the mid-year review.

20. On 17 March 2016, the Applicant entered her Mid-Year Conversation Staff Comments into the IFC's performance system noting that:

I fundamentally disagree with my manager's decision to reassign client relationship management and business development responsibilities for [Project A] to [the Principal Investment Officer] and with the reasons and motives underlying this decision [...]. I also do not understand why [my manager] insisted firmly that I remove [Project B], from the list of clients that I have developed and nurtured over two years and with which we aim to get a mandate. Although I decided by my own initiative to hand over the lead structuring role to [the Senior Investment Officer], my intention was to continue working together to secure the mandate.

21. On 18 March 2016, the Applicant's manager entered her comments into the performance system and completed the Applicant's FY16 mid-year review. The Applicant's manager stated that:

[The Applicant] is leading the FCS fisheries initiative that is going to pre-appraisal.

[Project C] just appraised as team leader, a mandate sourced by [the Applicant] from her [...] relationship. This project should be her priority for delivery for the rest of the FY [...].

[Project A] was reassigned to another senior staff in October at the request of the portfolio manager. We discussed the underlying reasons.

[The Applicant] had been in touch with [Project B's client] and hand[ed] over [the] contact to [the Senior Investment Officer] who is structuring a potential transaction. No further work is needed for [the Applicant] at this point on [Project B] as confirmed with the transaction manager.

The Applicant's FY16 Performance Evaluation

22. On 6 September 2016, the Applicant met with her manager and the Africa Business Manager to discuss her FY16 Performance Evaluation.

23. In the Supervisor's Comments section of the Applicant's FY16 Performance Evaluation, the Applicant's manager noted the Applicant's "very good job providing input to teams across regions working on aquaculture of fisheries transaction[s]." The Applicant's manager added that the Applicant's strengths include her commitment "to finding ways to leverage WB [World Bank] public investment to subsidize risk that would attract private capital" and her "[g]enuine interest for development and understanding of the aquaculture and fisheries sector [...]." However, the Applicant's manager highlighted deficiencies in the Applicant's performance as the team leader for Project C and as the client relationship manager for Project A, noting that:

[The Applicant] contributed significant sector knowledge to the team, however her overall performance as team leader [to Project C] was disappointing.

[...]

[The Applicant] was also the Relationship Manager for [Project A] until Oct 2015. Following negative feedback and in agreement with the Portfolio Manager, the client and portfolio project were moved to another team leader. [...] This feedback was discussed in numerous occasions throughout the year, including with the portfolio manager and the acting portfolio manager. It is also reflected in the area for development outlined in the multirater feedback for this year, pointing to insufficient structuring skills and difficult relationship with the team, sometimes "siding with the client" instead of protecting the Corporation's interest.

THE APPLICANT'S CLAIMS REGARDING HER FY17 PERFORMANCE CYCLE AND ALLEGATIONS OF
CAREER MISMANAGEMENT

24. On 29 October 2016, the Applicant's FY17 objectives were finalized. According to her work program, the Applicant committed to complete "2 to 3 deals" for the year, to close a fisheries project in East Africa, and to carry out a business development trip in the fisheries sector in three West African countries. The Applicant alleges that she had no possibility of

success under this work program because the fisheries assignments had very limited probabilities of turning into commitments for FY17.

25. On 13 February 2017, the Applicant met with her manager and the Africa Business Manager to discuss her mid-year evaluation.

26. In the Staff Comments section of the FY17 Mid-Year Conversation, the Applicant protested that “[t]he overall quantitative objectives for FY17 (2–3 transactions to be closed) have not been explicitly adjusted to reflect the fact [that] none of the above-mentioned projects is expected to convert into commitments.” In the Supervisor’s Comments section, the Applicant’s manager noted that the Applicant “continued in her efforts to support the development of the fisheries sector in West Africa” and the fact that the Applicant “also spent some time on the preliminary reviews of [two other projects].” The Applicant’s manager highlighted the fact that “[u]nfortunately, no mutually acceptable business development area has been identified to date since [the Applicant] decline[d] our West Africa business development offer.”

27. By the end of FY17, the Applicant notes that she had neither closed any transaction nor originated any mandate for the year. She alleges career mismanagement claiming that, between November 2016 and May 2017, her manager asked her to review “a few visibly poor-quality proposals” that had no possibility of success, while more interesting potential projects were assigned to other senior colleagues. As a result, her “deal sheet” for FY17 was negatively affected.

PROCEEDINGS BEFORE THE PEER REVIEW SERVICES

28. On 27 July 2016, the Applicant filed a request for review before the Peer Review Services (PRS) contesting the decision to remove Project A and Project B from her FY16 business development objectives and alleging that management’s reasons were arbitrary, lacked a reasonable basis, and did not follow due process.

29. On 24 and 25 January 2017, PRS conducted hearings.

30. On 22 February 2017, the PRS Panel issued its Report in Request for Review No. 356 and found that “management acted consistently with [the Applicant]’s contract of employment and terms of appointment in making the decision to remove her from her role on [Project A] and the decision to remove from her fiscal year 2016 performance objectives her responsibilities related to [Project B].” The PRS Panel therefore recommended that the Applicant’s requests for relief be denied.

31. On 10 March 2017, the IFC’s Vice-President notified the Applicant of his decision to accept the PRS Panel’s recommendation.

ADMINISTRATIVE REVIEW AND PERFORMANCE MANAGEMENT REVIEW

32. On 28 November 2016, the Applicant challenged her FY16 Performance Evaluation and requested Administrative Review.

33. On 31 January 2017, the Administrative Reviewer found that the Applicant’s manager conducted a fair evaluation of the Applicant’s FY16 performance. Nonetheless, regarding the comment in the Applicant’s FY16 Performance Evaluation that her “performance on the IFC projects was not satisfactory,” the Administrative Reviewer noted that the Applicant did not receive clear feedback regarding her areas for development and therefore recommended that “the manager revise this specific comment on the evaluation report while maintaining the main messages about the performance deficiencies.” He also recommended that the Director revisit the reporting line between the Applicant and her manager.

34. On 11 February 2017, the Administrative Reviewer’s recommendations were accepted by the Applicant’s Director and communicated to the Applicant.

35. On 13 February 2017, the Applicant challenged the recommendation of the Administrative Reviewer and requested Performance Management Review.

36. On 9 May 2017, the IFC's Vice-President accepted the recommendations of the Performance Management Reviewer and transmitted the Reviewer's report to the Applicant. The Performance Management Reviewer had concluded that "management acted within its discretion and that due process was followed" and recommended "no further changes to [the Applicant]'s FY16 Annual Review beyond those already agreed by management as recommended by the Administrative [R]eview."

37. On 19 June 2017, the Applicant requested an extension of time to file an Application before the Tribunal. The President of the Tribunal granted the Applicant's request for an extension until 2 October 2017.

38. On 24 October 2017, the Applicant requested a second extension of time to file the Application. The President of the Tribunal granted the requested extension until 15 November 2017.

39. The present Application was filed on 15 November 2017. The Applicant seeks the following: (i) the "revocation" of the negative Performance Evaluation for FY16; (ii) written apologies from the Applicant's manager and MAS Director for the harm done to the Applicant's professional reputation within the IFC; (iii) correction of any "unfair conclusions" relating to the Applicant's talent reviews for FY15/16/17; (iv) agreement on a work program that "best utilizes the Applicant's skills and strengths as a Principal Investment Officer in the context of IFC's new strategy"; (v) agreement on "career and profile enhancing assignments"; (vi) "absolute transparency" in decisions affecting the Applicant's career; (vii) compensation in the amount of one year's salary; and finally (viii) legal fees and costs in the amount of \$5,100.00.

40. On 5 January 2018, the IFC filed a preliminary objection to the admissibility of the Application.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The IFC's Contentions

41. The IFC submits that the Applicant's claims should be dismissed for lack of jurisdiction because (i) the Applicant's claims of wrongful reassignment of her FY16 work program are out of time; (ii) the Applicant's claims that her FY16 Performance Evaluation was unfair, was arbitrary, and did not follow due process are also time-barred; and (iii) the Applicant's claims regarding her FY17 performance cycle and her allegations of career mismanagement are not properly before the Tribunal.

42. On the issue of timeliness, although the IFC initially argued that the Applicant failed to meet the time limits prescribed by Article II, paragraph 2 of the Tribunal's Statute, the IFC later acknowledged that the Applicant's claims of wrongful reassignment of her FY16 work program and those pertaining to her FY16 Performance Evaluation are timely and properly before the Tribunal. The IFC explains that it was unaware of the extensions of time granted to the Applicant to file the Application.

43. The IFC maintains that the Applicant has not exhausted internal remedies for her claims relating to her FY17 performance cycle and allegations of continued career mismanagement. The IFC states that some of the Applicant's claims should be considered by PRS, as required by Staff Rule 9.03, whereas other claims relating to the Applicant's FY17 performance cycle must be submitted to Administrative Review and Performance Management Review, as required by Staff Rules 9.06 and 9.07, before the Tribunal's review.

The Applicant's Contentions

44. The Applicant claims that the IFC's objection to jurisdiction is misplaced and out of order.

45. The Applicant submits that her claims of wrongful reassignment of her FY16 work program and those pertaining to her FY16 Performance Evaluation are timely because they were

submitted to the Tribunal on 15 November 2017, within the extensions of time granted by the Tribunal.

46. On the Applicant's claims regarding her FY17 performance cycle and allegations of career mismanagement, the Applicant submits that the IFC has misunderstood the primary purpose of those allegations. She argues that she raised this issue as "a matter of information to show continuing mismanagement of her career" and not as a separate claim. She asserts that her FY17 Performance Evaluation was completed on 22 December 2017 and that she had subsequently submitted a request for Administrative Review.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

47. At the outset, the Tribunal observes that the timeliness of the Applicant's claims regarding the wrongful reassignment of her FY16 work program and her FY16 Performance Evaluation is no longer in dispute. The IFC acknowledged during the proceedings that these claims are timely. As shown by the record, the Tribunal received the Application on 15 November 2017, within the extensions of time granted to the Applicant. These claims are, therefore, timely and properly before the Tribunal.

48. The central issue pending before the Tribunal is whether the Applicant's claims relating to her FY17 performance cycle and allegations of career mismanagement are admissible. The IFC maintains that the Applicant has not exhausted the internal remedies prescribed by Article II of the Tribunal's Statute. For her part, the Applicant submits that the IFC has misunderstood the primary purpose of her allegations regarding her FY17 performance cycle and career mismanagement. She argues that she raised this issue as "a matter of information to show continuing mismanagement of her career" and not as a separate claim. The Tribunal is therefore called upon to determine whether these allegations constitute a separate claim. If the answer is in the affirmative, the Tribunal must determine if the IFC's internal remedies were exhausted before submitting the Application to the Tribunal.

49. In *McNeill*, Decision No. 157 [1997], para. 26, the Tribunal recalled that it is the duty of every international tribunal “to isolate the real issue in the case and to identify the object of the claim” and that “this is one of the attributes of its judicial function.”

50. In her Application, the Applicant is contesting the following:

- (i) The first is her PRS request dated July 29, 2016. That review was based on actions taken by her management on March 11, 2016. That administrative review was finalized and a decision denying relief was issued on February 28, 2017 [...].
- (ii) A second review, the Administrative Review, was requested by Applicant in November 2016 and to address her performance evaluation and other issues. That review was completed on February 11, 2017 (i.e., before the finalization of the PRS Review). It was focused on issues of process and found that the process did not violate her contractual rights [...].
- (iii) The third[,] Performance Management Review was requested following completion of the Administrative Review. The review was completed on May 9, 2017 [...].

51. The Tribunal observes that the Applicant has brought several complaints in section 3 of her Application under the heading titled “continued mismanagement of career.” The Applicant states that there is a “continuing pattern of setting ambitious quantitative objectives without giving [her] the opportunities and resources for delivering them.” She submits that the following provide support for her allegation of continued career mismanagement: (i) her FY17 work program; (ii) her FY17 mid-year review; (iii) her non-selection for a MAS Business Development position; (iv) the “spreading [of] reputation damage”; (v) the “re-mapping to new unit”; (vi) the “still pending revision of the FY16 Performance Evaluation”; (vii) her request for remedies; and (viii) her FY17 Performance Evaluation.

52. Of the above-listed items, only items (v), (vi), and (vii) are made in connection with the reassignment of the Applicant’s FY16 work program and her FY16 Performance Evaluation. For their part, items (i), (ii), and (viii) relate to performance management decisions made in FY17. In item (iii), the Applicant complains that her non-selection for MAS Business Development was

based on improper motives. Similarly, the Applicant suggests in item (iv) that her managers are unfairly portraying her as a poor performer.

53. The Specific Performance Requested section of the Application is also indicative that the matters submitted for the Tribunal's consideration are not limited only to the reassignment of the Applicant's FY16 work program and her FY16 Performance Evaluation. The Applicant is indeed seeking to obtain from the Tribunal remedial measures in favor of the Applicant's work program and performance cycle for FY17.

54. In light of the above, the Tribunal concludes that the Applicant's claims relating to her FY17 performance cycle and allegations of continued career mismanagement constitute separate claims. The Tribunal will now address whether the Applicant has exhausted the internal remedies prescribed by Article II of the Tribunal's Statute in respect of these claims.

55. Article II(2) of the Tribunal's Statute states that:

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;

(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.

56. The internal remedies available, and the procedural requirements applicable, are addressed in Staff Rule 9.03, paragraph 7.02, which requires that:

A staff member seeking a review of a disputed employment matter is required to submit the matter first to the Peer Review Services prior to appealing to the World Bank Administrative Tribunal, unless the matter comes under one of the exceptions listed in paragraphs 7.03 or 7.04 of this Rule. A staff member seeking review of the performance management decisions set forth in subparagraph 7.04 (h) is required to submit the matter to Administrative Review, as set forth in Staff Rule 9.06, "Administrative Review of Performance Management Decisions," and thereafter Performance Management Review, as set forth in Staff Rule 9.07, "Performance Management Review," prior to seeking review with the World Bank Administrative Tribunal.

57. Staff Rule 9.06, paragraph 3.01, states that the Administrative Review procedure is:

[T]he first step for requesting review of a Performance Management Decision and must be exhausted before seeking Performance Management Review. Administrative Review is conducted by the World Bank Group Human Resources Vice President, or an official designated by the World Bank Group Human Resources Vice President, who considers whether management acted within its discretion, satisfied its obligations to the staff member, and followed proper procedures in connection with the Performance Management Decision under review.

58. For its part, Staff Rule 9.07, paragraph 3.01, provides that:

Performance Management Review is the process by which staff members may request review, by a neutral reviewer, of a Performance Management Decision. Performance Management Review is conducted by a Reviewer, who considers whether management acted within its discretion, and otherwise satisfied its obligations to the staff member, in connection with the decision under review. Performance Management Review is intended to facilitate resolution of staff member concerns in a constructive manner at the earliest opportunity through an impartial and efficient process.

59. The Tribunal has frequently emphasized the importance of the requirement to exhaust the internal remedies set forth in Article II(2) of its Statute. In *Klaus Berg*, Decision No. 51 [1987], para. 30, the Tribunal held that:

This statutory exhaustion requirement is of the utmost importance. It 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. In addition, the pursuit of internal remedies, in particular the findings and recommendations of the Appeals Committee, greatly

assists the Tribunal in promptly and fairly disposing of the cases before it. The Appeals Committee permits a full and expeditious development of the parties' positions, including the testimony of witnesses, and often results in the announcement of recommendations that are satisfactory to both the Bank and to the aggrieved staff member.

60. In her Request for Review before PRS, the Applicant identified the following employment matters in dispute: (i) the complete reassignment of Project A to another Principal Investment Officer and the removal of Project A from her FY16 objectives and (ii) the removal of Project B from her FY16 objectives. The Applicant also alleged career mismanagement and retaliation in connection with these decisions. In the section regarding the relevant facts, the Applicant noted that, in addition to the above-disputed decisions, there were other management "actions/inactions" reinforcing "[her] profound concerns that [her] work program is being emptied of valued substance and [her] career further mismanaged." To this effect, she stated that her "FY17 work program needs to be defined." When PRS considered the Applicant's various claims, it limited its examination to the decisions to remove Project A and Project B from her FY16 work program and did not address any allegation concerning the FY17 performance cycle. The PRS Panel's review of the Applicant's claims of career mismanagement and retaliation are also examined in the context of these disputed decisions.

61. In her Administrative Review and Performance Management Review requests, the Applicant requested the review of her FY16 Performance Evaluation claiming that it was not done "fairly, on an objective basis and I believe it was done with an agenda." When the reviewers considered the Applicant's requests, they limited their examination to the FY16 Performance Evaluation.

62. The Applicant's PRS Request for Review does not show that she asked PRS to review claims of career mismanagement in relation to her FY17 performance cycle. Similarly, as clearly evidenced by the record, the Applicant did not raise any claim regarding her FY17 performance cycle before Administrative Review and Performance Management Review.

63. In light of the foregoing, the Tribunal observes that the Applicant has not exhausted the internal remedies prescribed by Article II of the Tribunal's Statute in relation to her FY17

performance cycle and her allegations of career mismanagement. Therefore, the Tribunal declines jurisdiction in respect of these claims.

DECISION

- (1) The preliminary objection filed by the IFC is upheld with respect to the Applicant's claims relating to her FY17 performance cycle and allegations of career mismanagement;
- (2) The Applicant's claims regarding the reassignment of her FY16 work program and her FY16 Performance Evaluation are admissible; and
- (3) All other claims are dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 May 2018