



World Bank Administrative Tribunal

2018

Decision No. 586

**ER,
Applicant**

v.

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

(Preliminary Objection)

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

**ER,
Applicant**

v.

**International Bank for Reconstruction and Development,
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 21 November 2017. The Applicant represented himself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 17 May 2018.
3. The Applicant challenges the Office of Ethics and Business Conduct's (EBC) decision to close its investigation into the budgeting matters raised by the Applicant. The Applicant also seeks classification as a whistleblower under Staff Rule 8.02.
4. On 14 February 2018, the Bank filed a preliminary objection to the Application. This judgment addresses the Bank's preliminary objection.

FACTUAL BACKGROUND

5. The Applicant commenced employment with the Bank in 2004 and currently serves as a Resource Management Analyst, Level GE.
6. In October 2014, the Applicant brought what he perceived to be budget-related anomalies to the attention of EBC. According to the Applicant, EBC indicated the Bank's Internal Audit Department (IAD) as the appropriate venue to report budget-related anomalies.

7. The Applicant requested his manager to initiate an IAD audit to clarify the anomalies discovered by the Applicant. The manager complied with the Applicant's request and initiated an IAD audit in February 2015.

8. On 19 May 2015, IAD concluded its audit finding neither a breach of Bank policies nor "any attempt to circumvent institutional governance arrangements." IAD's report acknowledged how "[The Applicant's unit's] management was responsive, candid and supportive throughout the course of IAD's engagement." The report did note some documentation lapses and recommended improvements to provide for a more robust documentation trail in the tracking of budget decisions.

9. On 1 June 2015, the Applicant met with an EBC representative.

10. On 2 June 2015, EBC, by email, again notified the Applicant that the matters he observed in relation to the Information and Technology Solutions (ITS) budgeting function "are not within the jurisdiction of EBC's investigative function."

11. On 7 July 2015, the Bank's Chief Counsel, Legal Vice Presidency, emailed the Applicant in response to his "various telephone calls and email messages regarding the concerns [he had] raised about the ITSVP Capital Budget and related matters." In this email, the Chief Counsel informed the Applicant:

I would like to assure you that the Bank takes matters such as the ones you raised very seriously. We appreciate and share your desire for an ethical environment within the World Bank. I would like to thank you for raising these concerns.

Your concerns were the subject of a careful review by Bank Management as well as impartial reviews by EBC and by the Bank's Internal Audit Department, including for evidence of any possible staff member misconduct or unethical behavior. As you have been made aware on various occasions, none of these reviews has uncovered any evidence of misconduct or unethical behavior. The appropriate avenues for consideration of these issues have been fully pursued.

The reviews did help, though, to identify issues related to governance of the ITS capital budget, and these have led to specific recommendations to improve the practice and transparency of ITS capital budget. The Bank will follow up to supplement these and continue with internal process improvement as part of the ongoing fiduciary role of management.

Please be assured your management will continue to engage with you to address any remaining concerns.

12. In July 2015, the Vice President of the Applicant's unit formed a working group to monitor the practices of the unit and address any of the Applicant's remaining concerns. This working group became part of the Applicant's work program.

13. On 15 June 2016, the Vice President of the Applicant's unit awarded "Bravo Points" to the Applicant for his "appreciation for [the Applicant's] work on the IAD audit," stating it was very "professionally done."

14. On 30 October 2016, the Applicant emailed the Vice President of IAD, copying EBC, to inform IAD of his concerns regarding the "underlying concepts used by IAD to draw audit conclusions" in the May 2015 audit report.

15. On 3 November 2016, the Vice President of IAD replied to the Applicant, again informing him of IAD's findings and its awareness of the ongoing management initiatives for improving the quality of financial projections produced during the budgeting process.

16. On 28 April 2017, the Applicant again met with EBC to report budget anomalies.

17. On 17 May 2017, the Applicant provided documentation and information to EBC in relation to his reported budgetary concerns.

18. On 31 May 2017, EBC informed the Applicant that, after "thorough and careful review of the evidence available to us, which included a review of all documentation and information you provided to EBC, we have determined that there is insufficient factual basis to proceed to formal investigation. Therefore, EBC closed the case."

19. On 21 November 2017, the Applicant filed this Application. On 14 February 2018, the Bank filed a preliminary objection. On 28 March and 14 May 2018, the Applicant submitted comments on the matters raised in the preliminary objection.

20. The Applicant challenges EBC's decision to close its investigation into the budgeting matters raised by the Applicant. As relief the Applicant seeks the Tribunal to order the Bank to (i) request IAD to correct its audit report; (ii) request IAD to conduct another audit for fiscal years 2011–14; (iii) identify appropriate institutional mechanisms to report budget compliance; (iv) provide an independent financial expert to look into the budget anomalies reported by the Applicant; and (v) create a permanent institutional mechanism for "Budget Staff" to report budget anomalies. The Applicant also seeks classification as a whistleblower under Staff Rule 8.02.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Main Contentions

21. In its preliminary objection, the Bank argues that the Applicant's claim challenging EBC's decision, that the matters raised by the Applicant fall outside of EBC's mandate, should instead be reviewed by IAD.

22. The Bank maintains that the gravamen of the Applicant's claims relates to budgeting practices. According to the Bank, these practices do not form part of the Applicant's contract of employment or terms of appointment and therefore fail to fall within the jurisdiction of the Tribunal.

23. The Bank additionally notes the fair consideration the Applicant's claims received through IAD's advisory audit.

24. According to the Bank, whether or not the Applicant would be classified as a whistleblower is not material to its preliminary objection as the Applicant has not alleged any retaliatory conduct.

The Applicant's Main Contentions

25. The Applicant "agrees with the [Bank] that many anomalies brought up by [him] may not be part of [his] contract of employment." He nevertheless argues that there was non-observance of various Staff Rules by the Bank.

26. The Applicant argues that the Bank's Code of Conduct is part of his contract of employment and it notes that staff are entrusted with considerable fiduciary responsibilities and that "all of our actions and decisions must be guided by these values."

27. In addition to citing the Code of Conduct, the Applicant points to Staff Rule 3.01, paragraph 1.02 to support his claim that EBC improperly closed the case addressing the matters he raised. Staff Rule 3.01, paragraph 1.02 states:

The purpose of this Rule is to ensure that staff members adhere to the high standards of professional conduct expected of international civil servants. Staff members who have questions about the application of ethical rules in particular circumstances should seek advice from the Office of Ethics and Business Conduct (EBC).

28. According to the Applicant, because EBC closed his case, he did not get an opportunity to present his case within the established institutional mechanisms.

29. The Applicant asserts that the Bank has not objected to the possibility of the Tribunal classifying him as a whistleblower.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

30. Article II, para. 1 of the Tribunal's Statute provides:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.

31. In *Agodo*, Decision No. 41 [1987] para. 22, the Tribunal explained that:

Article II, para. 1 of the Statute expressly limits the kind of claim that a staff member is able to present to the Tribunal. The staff member must allege non-observance of the employment contract or terms of appointment "of such staff member," that is, of the staff member filing the application. An application asserting a violation of some other staff member's contract of employment is

clearly inadmissible under this provision. It is, indeed, an established principle of adjudication that claims for redress are properly to be asserted only by the injured party, lest there be gratuitous and vexatious litigation of claims of dubious and speculative merit.

32. In *Agodo*, the Tribunal found that the applicant had no standing to bring his claims because the applicant “as a staff member, ha[d] failed to identify a particular decision by the Respondent that ha[d] adversely affected him.” (*Agodo*, para. 20). It further determined the applicant’s claims were premature because the applicant “d[id] not claim that any adverse consequences ha[d] been actually suffered by him.” (*Id.*, para. 30).

33. Similarly, here, the Applicant has not identified any adverse consequences actually suffered by him. Not only has the Applicant not identified any adverse employment consequences but he was also awarded “Bravo Points” in acknowledgment of his discovering budget anomalies. The Applicant’s concerns regarding budget anomalies were addressed through an IAD audit, and new practices were implemented to improve the budget record process as a result of the audit conducted at the Applicant’s insistence. These facts do not relate to an allegation of non-observance of the Applicant’s contract of employment or terms of appointment.

34. The Applicant himself states before the Tribunal that “I agree with the [Bank] that many anomalies brought up by me may not be part of my contract of employment.” He, however, adds, “My main concern is I did not get an opportunity to present my case within the established institutional mechanisms and I did not get fair treatment. This is the precise reason I am appealing to the Tribunal.”

35. The Tribunal understands that the Applicant’s claim of unfair treatment may be a recognizable claim. But the Applicant does not make any plausible claim explaining how the Bank’s decisions resulted in unfair treatment violating his rights as a staff member. General accounting standards and budget practices do not form part of the Applicant’s employment contract with the Bank. The Tribunal cannot entertain claims that simply mention unfair treatment in a vague context. In *Agodo*, the Tribunal noted at para. 27 that:

It is obvious [...] that the Statute contemplates the making by the Respondent of a “decision” that adversely affects the applicant specifically and that will justify “compensation ... for the injury sustained.” Rule 7(3) of the Tribunal echoes these provisions; it provides that the applicant’s pleas are to set forth “the decisions which the applicant is contesting” and the amount of compensation sought “for the injury sustained.”

36. Finally, as part of relief requested, the Applicant states, “The [A]pplicant is requesting the Tribunal to decide from the facts shared by both [A]pplicant and the [Bank] to decide if the [A]pplicant has whistle blower rights as per Staff Rule 8.02, ‘Protections and Procedures for Reporting Misconduct (Whistleblowing).’”

37. In *Agodo*, the Tribunal observed at para. 32 that:

The Applicant contends that its attack on the validity of Staff Rule 5.09 can be adjudicated by the Tribunal by means of the issuance of a declaratory judgment which, although not expressly authorized in the Statute of the Tribunal, is a form of remedy that all adjudicatory bodies can issue by virtue of inherent powers. This contention is, however, not relevant to the facts of this case. Even assuming that the Tribunal can issue a decision in the form of a declaratory judgment, the premise underlying any such relief is that the applicant has standing before the Tribunal and that he or she has properly alleged and proved a cognizable violation of his or her own contract of employment or terms of appointment. As the Staff Association itself argues, in its reply in the World Bank Staff Association case, “the power to issue a declaration ... is but a lesser and necessarily included power in the expressly granted authority to grant the remedies of specific performance, rescission and compensation to redress such a violation.” Just as specific performance, rescission and compensation may be issued by the Tribunal only when the Respondent has made a “decision” adversely affecting a staff member, the same is true regarding the issuance of a declaratory judgment.

38. In view of the above, the Tribunal finds that the Application does not meet the jurisdictional requirements imposed by Article II of the Tribunal’s Statute.

DECISION

The Application is dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 May 2018