



**World Bank Administrative Tribunal**

**2016**

**Decision No. 535**

**Peter Hanney,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

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

**Peter Hanney,  
Applicant**

**v.**

**International Finance Corporation,  
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, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 17 June 2015. The Applicant represented himself. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.

3. The Applicant alleges the following: (i) the termination of his appointment was due to age discrimination; (ii) he was not given adequate notice of termination by the IFC; (iii) he was not given adequate notice of his performance deficiencies; (iv) he was not offered substitute work by the IFC; and (v) the IFC's actions defamed him.

#### FACTUAL BACKGROUND

4. The Applicant, a 74 year old British and American national, was employed at the IFC as a Short Term Consultant (STC) during two time periods. His first STC appointment lasted from 15 April to 15 August 2005. His second STC appointment, which is the subject of this judgment, began on 15 April 2015.

5. On 13 April 2015, the Applicant was offered an STC appointment for an assignment with the Financial Institutions Group (FIG) Advisory Service – Asia “for about 100 days from April 15, 2015 to December 31, 2016.” His Task Team Leader (TTL) for the assignment was Ms. A. His Letter of Appointment (LOA) stated the following:

In the event International Finance Corporation (IFC) finds it necessary to cancel the assignment or to shorten its duration, International Finance Corporation (IFC) reserves the right to adjust the terms of the assignment as necessary. Your appointment will terminate accordingly unless it is extended or a new appointment is made. International Finance Corporation (IFC) has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed to in writing at the time of the expiration of the appointment.

International Finance Corporation (IFC) will make every effort to give you as much notice as possible of any such change to your appointment. In the event that International Finance Corporation (IFC) finds it necessary to extend the terms of this assignment, every effort will be made to accommodate your interests.

6. The IFC assignment for which the Applicant was hired required him to work in credit risk management with an IFC client bank (“Client”) in Myanmar. The Applicant submitted a proposal for the position before being hired by the IFC. He claims that, “Credit Risk Management is one of [his] principal areas of expertise,” and that the work he expected to perform for the position “was very similar to that delivered [by the Applicant] on numerous occasions for banks around the world over the past 20 [...] years including for the World Bank and IMF.” His curriculum vitae describes several risk management projects that he worked on in different countries.

7. The Applicant began his assignment in Yangon, Myanmar on 11 May 2015. He claims that while he was in Myanmar, he did not engage in substantive conversations with anyone. In fact, according to the Applicant, Ms. A asked him not to speak at a project-related meeting.

8. On 11 May, the Applicant sent an email to the Head of Credit Risk for the Client, requesting that she send him certain information “sooner rather than later.” Ms. A told the Applicant on 12 May that she did not want to overburden the Client with document requests and asked him to discuss with her any further information that he might need before requesting it from the Client. In response, the Applicant told Ms. A that he did not see anything “offensive or demanding” in his emails to the Client. On 13 May, the Applicant sent an email to another employee of the Client, telling him that the requested documents were “NOT urgent.”

9. The IFC disputes the Applicant's assertion that he did not have any substantive communications with anyone in Myanmar. The IFC claims instead that during a meeting on 12 May, the Applicant presented a proposed credit risk assessment methodology, which the FIG team thought was unsuitable for the project. According to a statement submitted by Ms. B, the Manager of the FIG Advisory Service – Asia, to the Tribunal, the Applicant was told that the methodology needed to be adapted, but he was “unable or unwilling” to do so. Ms. B's statement in the record also states that on 12 May, Ms. A and Ms. C, a Senior Operations Officer in the unit, expressed “their concerns about the quality of Applicant's technical advice and communication skills” to her. Moreover, the IFC claims that on 12 and 13 May, the Chief Executive Officer (CEO) of the Client in Myanmar expressed concerns to Ms. C and Ms. B about the “Applicant's paternalistic communication style, which he felt was inappropriate in Myanmar.”

10. The IFC claims that on 14 May, Ms. A, Ms. B, and Ms. C expressed the concerns of the Client's CEO to the Applicant. During this meeting, according to the IFC, the Applicant was also told that his STC appointment would be terminated, and that he would be paid for the five days he was in Myanmar, from 11 to 15 May 2015. The Applicant claims that he was told that, “the project was not for [him],” and that he was not given a reason for the termination of his STC appointment. However, Ms. A told him in an email on 14 May that she “ha[d] already explained the reason for [the] decision earlier.” The Applicant sent an email to the Client's CEO on 18 May, asking him whether he knew the reason why the Applicant's appointment was terminated. The CEO responded that he “ha[d] no details.” The Applicant left Myanmar on 15 May.

11. On 21 May, Ms. A told the Applicant how to request payment for five days of work from 11 to 15 May. However, on 12 June, he submitted an invoice for the full 100 days that were estimated in his LOA. On 26 June, Ms. B told the Applicant by email that he had been informed on 14 May that his employment would no longer be required, and that he would be paid for five days of work. In the same email, she referenced Staff Rule 7.01, paragraph 3.02 on Early End of Appointments.

12. The FIG team decided to hire another STC for the project in June. The selection process for the STC included consultations and interviews with members of both the FIG team and the Client in Myanmar.

13. On 20 August 2015, the Applicant contacted the World Bank Group Global Support Center to ask why he could not reset his password on his account on the EConsult website. He was told that his “details [were] not found in WB directory.” He claims that when he contacted EConsult, he was asked by an employee to provide his age.

14. The Applicant filed his Application on 17 June 2015. In his Application, he requests the following relief: (i) a formal apology; (ii) \$250,000 for age discrimination and lost work opportunity; (iii) “[s]ubstitute work opportunity of similar status”; (iv) remuneration according to his LOA; and (v) a letter from the IFC “to re-establish [his] character and compensate for public damage to [his] professional reputation.” For costs, the Applicant requests \$25,000 for time lost to compile the case, financial commitments that he had made to accommodate his work agreement with the IFC, research of his rights and defenses, and attorney’s fees in the event of an unfavorable decision.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Applicant’s Main Contentions*

15. The Applicant claims that his appointment was terminated due to age discrimination. He also contends that the IFC should have given him “adequate forewarning of their intention to terminate [him] and offered [him] substitute project work,” in accordance with his LOA, but that the IFC did neither. Additionally, he claims that he was not told the reason his appointment was terminated. He also argues that the IFC’s actions were “defamatory, humiliating [...] and highly prejudicial.”

*The IFC's Main Contentions*

16. The IFC claims that the decision to terminate the Applicant's appointment had a reasonable and observable basis. Specifically, the IFC contends that the termination decision "was in accordance with fair and reasonable procedure." The IFC also claims that the termination of his appointment was neither arbitrary nor discriminatory. In fact, according to the IFC, the termination of the Applicant's appointment "was based on legitimate business considerations." The IFC argues that the Applicant was given reasonable notice of the termination of his appointment, and that he was not entitled under his LOA to be offered substitute work upon termination. In addition, the IFC claims that its actions towards the Applicant were not defamatory, humiliating, or insulting because the termination of his appointment was only discussed with the Applicant himself, IFC staff, and the IFC Client "on a need to know basis."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

17. The Applicant has raised the following claims: (i) his STC appointment was terminated due to age discrimination; (ii) the termination of his appointment was not procedurally proper or in accordance with his terms of employment; and (iii) the IFC defamed him.

*Whether the Applicant's appointment was terminated due to age discrimination*

18. The Applicant argues that his STC appointment was terminated due to age discrimination against him. He claims that there are no other motives or reasons that explain why his STC appointment was terminated only a few days into the project. He also argues that he did not engage in substantive conversations or interactions with anyone while he was in Myanmar, and thus, the people with whom he worked would not have been able to form a negative opinion about his performance or communication style during that time. As further evidence of age discrimination, he alleges that the consultant that was later hired for the project in Myanmar is younger and less experienced than he is. The Applicant also argues that when a World Bank Group employee asked him for his age when he tried to access his EConsult account, that occurrence was an example of "a culture that challenges age in the workplace." He contends that he has made a *prima facie* case

of age discrimination for the above reasons, as well as because he is within the protected group (over 40 years old) and was qualified to perform the work for which he was hired.

19. The IFC maintains that the termination of the Applicant's appointment was not due to age discrimination, and that the termination of the Applicant's appointment had a reasonable and observable basis and was neither arbitrary nor discriminatory. Specifically, the IFC contends that the termination of the Applicant's appointment was due to "legitimate business considerations." According to the IFC, because the Client had concerns about whether the Applicant was suitable for the project, as described in paragraph 9 above, the Applicant's managers decided to terminate the appointment, taking into consideration both their own business needs and those of the Client. In this respect, the IFC claims that the Client was "a major project for FIG," and that the termination decision was made after members of the FIG team consulted with one another. The IFC also argues that the Applicant has not provided evidence to establish that he was the victim of age discrimination.

20. According to the Tribunal's established case-law, decisions which are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or which lack a reasonable and observable basis, constitute an abuse of discretion and will be set aside. *Bodo*, Decision No. 514 [2015], para. 70; *Sekabaraga (No. 2)*, Decision No. 496 [2014], para. 30; see *Desthuis-Francis*, Decision No. 315 [2004], para. 19.

21. Additionally, the Tribunal has to invalidate decisions which are discriminatory on the basis of prohibited grounds, including race, gender, and age. See *AI*, Decision No. 402 [2010], para. 39; *Bodo*, para. 71.

22. In examining claims of discrimination, the Tribunal observed in *AI*, para. 41:

[T]he applicant carries the initial burden of establishing a *prima facie* case of [...] discrimination. If the applicant meets this burden, the Bank then must provide a non-discriminatory business rationale for its decision. The applicant may then challenge the Bank's stated rationale and provide evidence to show that the Bank's stated reason was a pretext for a [...] discriminatory decision.

23. Accordingly, in order for the Applicant to establish a *prima facie* case of discrimination, he must provide “detailed allegations and factual support” for his claim and must “adduce evidence from which the Tribunal can reasonably infer such discrimination.” *AI*, para. 42. Once he has established a *prima facie* case of discrimination, the burden will shift to the IFC to prove that the decision at issue was not discriminatory.

24. In support of his claim of age discrimination, the Applicant argues that there is “no other credible or possible motive” for the termination of his appointment other than age discrimination. The allegations and factual support that he relies on relate to his qualifications for the position, and his claim that neither the FIG team nor the Client’s CEO told him the reason that his appointment was terminated. Moreover, the Applicant alleges as evidence of a *prima facie* case of age discrimination that he is in the protected group of people over 40 years old, and that he was qualified to perform the work on the project. He also argues that the decision to terminate his appointment was evidence of age discrimination because the consultant who was hired to replace him is “younger and considerably less experienced.” Finally, the Applicant alleges that when he tried to access his EConsult account in August 2015, a World Bank employee asked him for his age, which according to the Applicant, “seems to be further evidence of the existence of a culture that challenges age in the workplace,” given the unclear relevance of the question to the Applicant.

25. The Tribunal is of the opinion that the Applicant has not put forth sufficient “detailed allegations and factual support” in order to establish a *prima facie* case of age discrimination. He has not pointed out specific instances of conduct by his managers or colleagues that would indicate to the Tribunal that his age was in any way related to the decision to terminate his appointment. In this respect, the Applicant claims that he was never given a reason for the termination of his appointment. The IFC disputes this assertion both in its pleadings and in the emails sent to the Applicant by Ms. A on 14 May 2015 and by Ms. B on 26 June 2015. Furthermore, the mere fact that the Applicant is older than a certain age does not automatically indicate or infer that an adverse employment decision taken against him is based on a discriminatory motive. The Applicant has also argued that the consultant who was hired to replace him is younger than he is. However, as the IFC has stated, the replacement consultant was around 60 years old, and there were other consultants in the unit who were over 55 years old. In any case, establishing a *prima facie* case for



age discrimination requires more than a showing that there are younger people in the unit, who may be fulfilling the same functions that a given staff member is expected to fulfill. Moreover, the Applicant's allegation that he was asked his age by a World Bank employee when trying to access his EConsult account similarly does not provide evidence of age discrimination. The employee could have asked him his age for verification purposes in order to determine why he was unable to access his account.

26. Furthermore, there is nothing in the file that would lead one to contest the IFC's assertion that the decision to terminate the Applicant's appointment was based on legitimate business considerations. Specifically, the IFC invoked the fact that the Client's CEO expressed concerns to the Applicant's manager about the Applicant's communication style and suitability for the project within the context of the local market in Myanmar. The IFC equally indicates that the Applicant was expected to work closely with the Client during his assignment. Thus, according to the IFC, the Applicant would not have been able to successfully complete the assignment with the Client, given the negative feedback received about the Applicant's performance, in addition to Ms. B's consultations with other members of the FIG team and the IFC's business needs.

27. The Tribunal finds therefore that it is credible that the decision to terminate the Applicant's appointment was based on a business-related, non-discriminatory motive, given the importance of the engagement with the Client to the FIG team, as well as the feedback Ms. B received both from an external source, the Client's CEO, and internal sources, including the Applicant's supervisor, Ms. A, about his communication style and potential suitability for the project.

28. Accordingly, the Tribunal concludes that the Applicant did not establish a prima facie case for age discrimination. Further, the Tribunal holds that the IFC has sufficiently demonstrated that its motives were based on business considerations.

*Whether the termination of the Applicant's appointment was procedurally proper and in accordance with his terms of employment*

29. The Applicant argues that the termination of his appointment was not procedurally proper or in accordance with his terms of employment for the following reasons: (i) he did not receive adequate notice of the termination of his appointment; (ii) he was not told the reason for the termination of his appointment at the time his appointment was terminated; and (iii) the IFC should have offered him substitute work in accordance with his LOA and did not do so.

30. The IFC argues that the termination of the Applicant's appointment did not violate fair and reasonable procedure. Specifically, the IFC contends that according to Staff Rule 7.01, paragraph 3.02 on Early End of Appointments, and the Applicant's LOA, the IFC provided the Applicant with sufficient notice of termination. The IFC claims that the Applicant's manager received the Client's feedback on 12 May 2015 and told the Applicant on 14 May that his appointment would be terminated on 16 May. Therefore, the IFC states, the Applicant received two days' notice of termination for an assignment that lasted five days, which was "as much notice as was possible in the circumstances" and was "reasonable and in line with the requirements of [the] Applicant's terms of employment." The IFC contends additionally that the Applicant was told the reason that his appointment was being terminated during his meeting with Ms. A, Ms. B, and Ms. C on 14 May, when he was told about the Client's concerns. Regarding the Applicant's entitlement to an offer of substitute work, the IFC argues that his LOA states that the IFC is not obligated to extend his appointment or offer a new one but "may do so if agreed to in writing at the time of the expiration of the appointment." According to the IFC, there was no such agreement to offer the Applicant a new appointment or provide him substitute work.

31. The Tribunal, in passing upon this issue, observes that Staff Rule 7.01, paragraph 3.02 dealing with Early End of Appointments under the heading "**Extended Term Consultant, Extended Term Temporary, Short Term Consultant, Short Term Temporary, and Special Assignment Appointments,**" provides that the consultant's appointment

may be ended by the staff member's Manager prior to expiration on grounds that the employment is no longer required, with such advance notice to the staff member as the Manager determines consistent with the staff member's letter of appointment.

32. Regarding the notice of termination, the Applicant's LOA states the following:

International Finance Corporation (IFC) will make every effort to give you as much notice as possible of any such change to your appointment.

33. Generally, a staff member should be given sufficient notice of termination, as well as an opportunity to defend himself or herself. *See Garcia-Mujica*, Decision No. 192 [1998], paras. 19-20; *see K. Singh*, Decision No. 188 [1998], para. 21.

34. In the present case, the Applicant was told on 14 May 2015 that his appointment would be terminated effective 16 May. This amounts to two days' notice. While due process warrants that the notice period must be sufficient, the notice period differs according to the circumstances of the particular employment, including type or length of appointment. In the singular circumstances of this case, including that after five days the Applicant was determined not to be suitable for the project, two days' notice was sufficient and does not constitute a procedural flaw or deficiency that warrants compensation.

35. The Applicant in the present case claims that he was not told why his appointment was being terminated during the meeting on 14 May. Instead, he argues that he was told simply that, "the project was not for [him]." The IFC disputes this assertion and claims that he was told about the concerns of the Client's CEO regarding his communication style during the 14 May meeting.

36. The record indicates that the Applicant was told about his perceived performance deficiency before his appointment was terminated. In an email that the Applicant sent to Ms. A on 14 May, he asked her to provide an explanation, and she responded that she had already explained the reason for the termination decision to him. Moreover, in an email on 12 May, Ms. A told the Applicant that she was "cautious about overburdening [the Head of Credit Risk for the Client] with documentary requirements" and requested that the Applicant discuss with her any other

information he might need. The Applicant stated the following in an email to Ms. A on 13 May regarding his email exchange with employees of the Client:

As mentioned to you earlier, I see nothing offensive or demanding about the content of this exchange of emails and in fact, the sentiment quite to the contrary.

I simply cannot believe that it has been made an issue but then I am prepared to hear your side of the story. I need to know the truth and think that is the minimum that I am owed so that I can be guided for the future.

Moreover, in a signed statement that was submitted to the Tribunal, Ms. B stated that the Applicant presented a proposed credit risk assessment methodology to the FIG team in a meeting on 12 May. Ms. B claimed in her statement that Ms. A and the Client's Resident Advisor thought the proposed methodology was inappropriate for the local context in Myanmar. According to Ms. B, Ms. A told her that the Applicant was unwilling to modify his approach to the business needs of the Client, "despite having discussed this with him several times."

37. The communications above indicate that the Applicant was notified that his supervisors perceived his communication style with employees of the Client to be problematic. According to Ms. B's statement, the Applicant was also told that his proposed methodology was unsuitable to the Client's needs and the local context in Myanmar. Moreover, Ms. A asked that he discuss with her any further information he wanted to request from the Client in her 12 May email. Furthermore, the Applicant had an opportunity to defend himself and did in fact defend himself in his 13 May email to Ms. A by openly disagreeing with her criticism of his emails. Accordingly, the Tribunal is of the opinion that the IFC did not violate the Applicant's due process rights because he was provided with sufficient notice of what his colleagues and the Client found to be deficient in his approach, as well as opportunities to defend himself.

*Obligation to provide substitute work*

38. The Applicant claims that the IFC should have offered him "substitute project work" in accordance with his LOA. The IFC argues, however, that the Applicant was not entitled to be offered substitute work under either the Staff Rules or his LOA.

39. With regard to whether the IFC was obligated to offer the Applicant substitute work after the termination of his appointment, his LOA states the following:

In the event International Finance Corporation (IFC) finds it necessary to cancel the assignment or to shorten its duration, International Finance Corporation (IFC) reserves the right to adjust the terms of the assignment as necessary.

40. In the light of the foregoing provision of the LOA and taking into account the circumstances of this case, the Applicant's claim that he was entitled to another assignment is not sustainable.

*Whether the IFC defamed the Applicant*

41. The Applicant claims that the IFC's actions were defamatory and humiliating to him, "since they were made in the close proximity of associates where the damage done has significant damning long-term consequences."

42. The IFC contends that the Applicant did not provide any evidence in support of his claim that its actions were defamatory. It further contends that the termination decision was not discussed with anyone other than the Applicant, IFC staff, and the Client "on a need to know basis." The IFC states that there were no other individuals, besides Ms. A, Ms. B, Ms. C, and the Applicant, present during the 14 May meeting.

43. The Applicant has not provided any evidence to substantiate his claim that the IFC's actions defamed him. IFC managers have the authority to evaluate the work of their staff, including STCs. Such evaluation cannot be considered defamatory. In *DA*, Decision No. 523 [2015], para. 138, the Tribunal observed:

In that context, and recalling also the Tribunal's previous observation that "criticism or adverse decisions about performance or work assignments does not, in and of itself, constitute harassment [...]" (*Schiesari*, Decision No. 314 [2004], para. 34), the record does not support the Applicant's claim of harassment.

44. In view of the record before the Tribunal, the Tribunal is unpersuaded that any of the IFC's actions resulted in defamation of the Applicant.

*Conclusions*

45. The Tribunal concludes that the Applicant has not established a *prima facie* claim for age discrimination. The IFC has shown that the Applicant's termination was based on business considerations, not age discrimination.

46. The Tribunal further finds that the termination of the Applicant's appointment was in accordance with the terms of his employment, that the Applicant was provided adequate notice of termination, that he was informed of his perceived performance deficiencies, and that there was no obligation on the part of the IFC to offer the Applicant substitute work or a new appointment. It further finds that the Applicant was not defamed.

DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 8 April 2016