



World Bank Administrative Tribunal

2018

Decision No. 588

**Josef Kobli,
Applicant**

v.

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

(Preliminary Objection)

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

**Josef Kobli,
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 Andrew Burgess (Vice-President), Abdul G. Koroma, and Marielle Cohen-Branche.
2. The Application was received on 29 August 2017. The Applicant represented himself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant claims that his ejection from Bank premises on 13 August 2014 violated various Staff Rules of the Bank.
4. On 25 October 2017, the Bank filed a preliminary objection to the Application. This judgment addresses the Bank's preliminary objection.

FACTUAL BACKGROUND

5. The Applicant, who is married to a Bank employee, states that he had been a consultant with the Bank from 1993 to 1997. The Applicant states that, on 11 August 2014, he went to the Bank to speak to his wife's supervisor, who had recently denied his wife's annual leave request. The Applicant returned to the Bank on 13 August 2014. According to the Applicant:

On August 13, 2014, around 4:30PM, [the Manager, Corporate Case Management (HRDCO)] and [a Director in the International Finance Corporation] asked me to leave the Bank premises immediately. I was escorted out of the building and was told that I should call HRDCO for permission if I wanted to return. The reason for the removal, as [the Manager, HRDCO] explained to me, was that HR had received three reports that "my physical presence was perceived as threatening for 3 staff members of [the unit where his wife worked]."

6. Some two years later, on 22 December 2016, the Applicant submitted a complaint to the Office of Ethics and Business Conduct (EBC) based on the incident on 13 August 2014. The record suggests that EBC or the Integrity Vice Presidency (INT) conducted a preliminary inquiry and closed the case on 2 May 2017 after determining that there was insufficient evidence to substantiate the Applicant's allegations.

7. In his present Application, the Applicant expressly identifies 13 August 2014 as the "[d]ate of the occurrence of the event or date of decision giving rise to the application."

8. The Bank filed a preliminary objection on 25 October 2017 requesting that the Tribunal dismiss the Application on jurisdictional grounds.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Contentions

9. The Bank argues that the Applicant is not eligible to bring a case because he was not a staff member during the relevant period. The Bank argues that the Applicant is not "a member of the staff of the Bank Group alleg[ing] non-observance of [his] contract of employment or terms of appointment" as required by Article II. Thus, the Bank argues that the Applicant lacks standing.

10. The Bank also states that the Applicant brought his case after the 120-day deadline and did not exhaust internal remedies. Addressing the Applicant's argument that his claim should be considered to be timely because it was filed fewer than 120 days after EBC closed the case, the Bank argues that the Applicant here attempts to resurrect a time-barred claim. The Bank further argues that if the Applicant were allowed to do so, then any future applicant would be able to bring a stale or time-barred claim by first submitting it to EBC and then filing a case before the Tribunal.

The Applicant's Contentions

11. The Applicant claims that his ejection from Bank premises on 13 August 2014 violates multiple Staff Rules and constitutes retaliation. The Applicant seeks compensation for these alleged violations.

12. The Applicant does not claim that he is an employee of the World Bank but that his “spouse-status,” as husband to an employee, gives him standing to bring his case. The Applicant argues that: “The Application was submitted in a timely manner: It was posted on August 28, 2017; and it arrived and was received by the Tribunal on August 29, 2017, at 10:22 AM, that is, within the required 120 day time-period.” He thus argues that he met the 120-day filing deadline.

13. The Applicant alternatively argues that because his claim to EBC was not time-barred, he has timely brought his claim by filing within 120 days of INT’s rejection of his complaint on 2 May 2017.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

14. Article II of the Tribunal’s Statute states as follows:

1. 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.
2. No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:
 - (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
 - (ii) the application is filed within one hundred and twenty days after the latest of the following:
 - a. the occurrence of the event giving rise to the application;
 - b. receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
 - c. receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

3. For the purpose of this statute:

the expression “member of the staff” means any current or former member of the staff of the Bank Group, any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member’s death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

15. In interpreting Article II, the Tribunal observed in *Agodo*, Decision No. 41 [1987], para. 22 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.

16. In *Q*, Decision No. 370 [2007], paras. 35-36, the Tribunal stated that:

The Tribunal “does not accept a narrow conception of its jurisdiction which leaves a former staff member incapable of bringing a case based on an alleged violation of his rights.” (*I*, Decision No. 343 [2005], para. 18.) The Tribunal has also made it clear that “[i]t is sufficient to provide jurisdiction *ratione personae* that the Applicant was a former staff member, because Article II(1) of the Statute gives the Tribunal power to ‘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 expression ‘member of the staff’ is defined in Article II(3) to mean ‘any current or former member of the staff.’ This obviously includes the Applicant.” (*Mwake*, Decision No. 318 [2004], para. 32.)

At the same time, a challenge to a flag placement must invoke the Tribunal’s jurisdiction *ratione materiae* as well as *ratione personae*. For a present or former staff member to have standing to bring such a claim, the requested removal of the flag in question must relate significantly to the staff member’s contract of employment or terms of appointment, for example with respect to the performance of the staff member’s current duties, or to the staff member’s enjoyment of the rights provided under the Principles of Staff Employment. (*Mwake*, Decision No. 318 [2004], paras. 33-35; *R*, Decision No. 368 [2007], paras. 24-26, citing inter alia *N*, Decision No. 356 [2006]. See also *Azhar*, Decision No. 104 [1991], para. 15.) Jurisdiction *ratione materiae* is found in cases where a flag has been entered as a disciplinary measure. (*Dambita*, Decision No. 243 [2001], paras. 18-27.) Consultation with the Bank’s conflict-resolution bodies may also, under

appropriate circumstances, constitute a justification for demanding access to the Bank. (*Mwake*, Decision No. 318 [2004], para. 35.)

17. Under the Tribunal's Statute, former staff members are allowed to file applications before the Tribunal, but they must allege "non-observance of the contract of employment or terms of appointment of such staff member." The Applicant ended his employment in 1997, some 20 years ago. He does not demonstrate how the incident in 2014 relates to any alleged violation of his right as a former staff member.

18. The Applicant argues that his "spouse-status," as husband to an employee, gives him standing to bring his case. The Tribunal notes that the term "member of the staff" includes "any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan." The Tribunal accepts the Bank's arguments that these circumstances are not present here. The Applicant here does not come as a personal representative for his wife, and he is not asserting a claim upon his wife's rights. The Tribunal is persuaded by the Bank's argument that the Applicant

seeks to create a claim for himself, to obtain compensation directly - he is not claiming to assert his wife's claims derivatively. In fact, Applicant's spouse, a current staff member, has already filed two different cases based on the same facts on which Applicant is also trying to base his current case, seeking compensation for herself. Applicant has [no] right to assert his wife's claims.

19. In view of the above, the Tribunal finds that the Applicant has failed to meet the jurisdictional requirement imposed by Article II of the Tribunal's Statute. The Applicant is not a "member of the staff of the Bank Group" who is alleging "non-observance of the contract of employment or terms of appointment of such staff member."

20. Moreover, the Applicant brought his Application on 29 August 2017 based on incidents that took place on 13 August 2014, more than three years earlier. He mentions that two years after the incidents, in December 2016, he went to EBC but that "INT closed the case on May 2, 2017." The Bank submits that "INT closed its case [...] because the preliminary inquiry determined that there was insufficient evidence to substantiate the allegations or to merit further proceedings." The

Applicant fails to explain, however, how such closure by INT violated his rights as a staff member triggering the Tribunal's jurisdiction over his Application.

21. The Tribunal notes that in his Application the Applicant expressly identifies 13 August 2014 as the “[d]ate of the occurrence of the event or date of decision giving rise to the application.” By coming to the Tribunal some three years later, in 2017, the Applicant failed to meet the Tribunal's 120-day filing deadline. The Applicant does not show any exceptional circumstances that would justify his failure to meet the 120-day deadline.

22. For these reasons, the Application is inadmissible and is dismissed accordingly.

DECISION

The Application is dismissed.

/S/ Andrew Burgess

Andrew Burgess

Vice-President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 May 2018