



World Bank Administrative Tribunal

2014

Decision No. 490

**L.T. Mpoy-Kamulayi (No. 10),
Applicant**

v.

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

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

L.T. Mpoy-Kamulayi (No. 10),

Applicant

v.

**International Bank for Reconstruction & 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, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 31 July 2013. 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. In his Application, the Applicant challenges the “decision notified by the [Bank] to the Tribunal on September 17, 2012 refusing to adjust [his] salary” following the Tribunal’s Judgment No. 463 dated 27 June 2012. The Bank has filed a preliminary objection to the Application. This judgment addresses that objection.

FACTUAL BACKGROUND

4. The Applicant, a Congolese national, was formerly a Lead Counsel (Level GH) in the Bank’s Legal Department. He commenced employment with the Bank in 1984. Two years after his recruitment he complained to the Bank’s Ombudsman that his salary was as much as 24% lower than that “offered to other lawyers in his recruitment cohort.” Following his complaints, in April 1986, the Applicant’s salary was increased by 14.7% with retroactive effect to the date of his recruitment.

5. In 2007, a new Chief Counsel was appointed to head the Africa practice group in the Bank’s Legal Vice Presidency. The Applicant’s professional relationship with

his new Chief Counsel did not develop well and after his 2008 salary increase was announced, the Applicant approached the Bank's Ombudsman to request a review of his salary against that of his peers in the Legal Vice Presidency.

6. According to the Applicant, the Ombudsman's review suggested his salary was some 27% lower than that of his peers. In October 2008, the Applicant requested that the Bank review his salary.

7. On 12 February 2009, the Applicant's Chief Counsel notified him that, following a review, the "HR Compensation Team" had determined that his salary was "within the expected range" positioned between 6.4% and 0.4% lower than comparator groups identified by the Bank.

8. On 30 June 2009, the Applicant filed an appeal challenging this decision with the Appeals Committee. Following the rejection of his appeal, on 11 July 2011, he filed an Application with the Tribunal challenging the Bank's refusal to adjust his salary.

9. In the ensuing case, *Mpoy-Kamulayi (No. 5)*, Decision No. 463 [2012], one of the Applicant's principal contentions was that, in conducting a review of his salary in early 2009, the Bank should have compared it with that of other practicing lawyers employed by the Bank Group. The Bank had not done so, claiming that other factors, including the Applicant's age, made it impossible to compare the Applicant's salary by job function.

10. In its 27 June 2012 judgment, the Tribunal held that it was "not convinced that the Bank compared the Applicant's salary to that of those doing 'similar work' in the present case" and that, in the circumstances (in particular the evidence that lawyers may command higher salaries than staff in other professional fields), "the 'similar work' criterion should be given precedence over other factors in identifying the comparator group."

11. The Tribunal ordered the Bank, within sixty days of delivery of the judgment, to

undertake a review of the Applicant's salary as of February 2009 and include, along with other factors, a comparison of the Applicant's salary against that of other Lead Counsel (level GH) in the World Bank Group, determine whether the Applicant's salary was properly positioned, and if it was not, provide an appropriate remedy.

12. The Tribunal also ordered the Bank to "share with the Applicant the results of the salary comparison (taking appropriate steps to protect confidential information) and the Bank's findings in relation to the positioning of the Applicant's salary." The Bank was ordered to contribute \$20,000 to the Applicant's attorney's fees. The Applicant's other claims were dismissed.

13. In a 17 September 2012 letter, the Bank provided the Tribunal and the Applicant with what it termed a "Salary Re-Review" indicating that, when compared against fourteen Level GH staff members with the title Lead Counsel as of February 2009, the Applicant's salary of \$171,300 was 8.7% lower than the average salary of \$186,239. The Bank commented that "the normal dispersion of salaries at the WBG is within 10 to 12 percent of the average of a staff member's real peers, when time in grade, age, and performance are fairly accounted for" and that the:

Applicant's salary is easily explained by the most pertinent factor in assessing relative salaries – performance ... [the] Applicant's performance is lower than any other person in the comparison group, by 0.60 SRI points. This performance deficit indicates the next lowest rated person in salary averaged a full performance category higher than Mr. Mpoy-Kamulayi in 6 out of every 10 salary reviews ... This difference in performance over time also reasonably explains any difference in pay between Mr. Mpoy-Kamulayi's salary, and the average salary of the comparison group ... There is no evidence, or any basis to believe, that his salary in February 2009 was unreasonably low ... [or] the result of any improper or illegitimate factors.

14. In letters of 19 and 24 September 2012 addressed to the President of the Tribunal, the Applicant submitted that the Bank had not complied with the Tribunal's

judgment because, among other things, it had not provided the Applicant with “an appropriate remedy.”

15. In another letter dated 5 October 2012, the Applicant—responding to a letter from the Tribunal which asked him to state his objections with greater specificity—argued, among other things, that the Bank had failed to compare the “Applicant’s salary to that of other Lead Counsel (level GH) in the World Bank Group and to include in this comparison other factors such as age, level of education attained and time in grade. (see Decision No. 463 at paragraphs 31, 40, and 41)” and had failed to share information required to “assess the extent to which Respondent has complied with the Tribunal’s Decision No. 463 [including] (i) age, (ii) level of education achieved by the selected comparators, and (iii) time in grade for each peer used as a comparator.”

16. In a 31 October 2012 letter, the Bank responded that it had “performed a comparison, as of February 2009, of [the Applicant’s] salary to the salaries of a group of [Legal Vice Presidency] staff with the title ‘Lead Counsel’ at grade GH” and that based “on the result of this comparison, Respondent ha[d] notified [the] Applicant that the additional review showed his 2009 salary was fairly within the range of these staff members, and that no adjustment to [the] Applicant’s salary is required given this data.”

17. In a 13 December 2012 letter, the Applicant was informed by the Tribunal that

[b]ased on the parties’ submissions in the letters referred to above, the Tribunal concludes that the Bank’s review of the Applicant’s salary as explained in its letters of 17 September 2012 and 31 October 2012 is consistent with the intent of Decision No. 463, and that the results of the Bank’s salary comparison and findings were shared with the Applicant as required by the Tribunal’s judgment. Accordingly, the Applicant’s requests for further relief are denied.

18. On 15 January 2013, the Applicant filed a Peer Review Services (“PRS”) Request for Review, disputing “the Bank’s improper review of [his] salary and its ...

refusal to reposition [his] salary properly as compared to [his] true peers in the Legal [Vice Presidential Unit (“VPU”)].” He stated that he was seeking review of his salary

based on the Bank’s standard methodology applied to my real peers i.e. other Lead Counsels of my age group, time in grade, equivalent education and other operational skills including language skills. To the best of my knowledge there were only 6 of those in the Legal VPU in February 2009.

He stated further that the

Bank should ... provide an arithmetic table showing how the numerical value ascribed to my OPEs from 2001 to 2009 compare to those of my real peers; the simple SRI ... of 3.2 does not constitute an objective measure of performance; by all accounts, it is only a subjective judgment made most arbitrarily by management.

19. On 1 March 2013, PRS dismissed the Applicant’s request for review on the ground that his “salary claims were already challenged before” the Tribunal.

THE CONTENTIONS OF THE PARTIES

The Bank’s Principal Contentions

20. The Bank contends that the Applicant is attempting to re-open Decision No. 463 notwithstanding that the Tribunal has already decided the Bank complied with the terms of that judgment.

21. The Bank contends the Applicant’s case is the same as that he raised in the case which led to Decision No. 463 and that he seeks the same relief, namely an extraordinary salary increase for 2009. It states that the Applicant concedes that he is seeking the same remedy and even refers to having “resumed” his “compensation review complaint” in the Application.

22. The Bank argues that the Applicant’s pleadings in the present case nearly “complete[ly] overlap” with the facts, arguments and annexed evidence advanced by the Applicant in the case leading to Decision No. 463. In the Bank’s view, the Applicant is

trying to re-litigate the earlier claim in circumstances where Article XIII of the Tribunal's Statute does not apply because no new and potentially decisive fact has been discovered. The Bank submits that, like the PRS, the Tribunal should dismiss the Applicant's claim.

23. The Bank suggests that its 17 September 2012 letter does not reflect a new administrative decision, but rather the execution of Decision No. 463. Furthermore, the Bank argues, the Applicant raised several objections to the conclusions in the Bank's 17 September letter, but the Tribunal's letter of 13 December 2012 held that the second review of the Applicant's salary was consistent with the intent of Decision No. 463. According to the Bank, the 13 December letter was a decision of the Tribunal, reached after considering the parties' related submissions and no further challenges should be allowed.

The Applicant's Principal Contentions

24. The Applicant challenges the Bank's refusal to "correct the serious misalignment" of his salary "retroactively to February 2009." He argues the Bank improperly manipulated data in the September 2012 review of his salary ordered by the Tribunal in Decision No. 463. He states that he was the only Lead Counsel (Level GH) receiving a salary of \$171,300 after seven years in grade and raises several arguments intended to establish a "case of salary misalignment which cannot be accounted for by the undocumented assertions of 'job performance deficit'" made by the Bank.

25. The Applicant contends that "his complaints ... should serve to assist the Bank in its goal of improving its internal governance and race relations with ... staff of African descent who have been discriminated against by managers in the World Bank Group as a matter of routine behavior."

26. The Applicant contends that the contested decision in his present Application is quite different from that adjudicated in Decision No. 463. He notes that his earlier application challenged the Bank's February 2009 decision not to adjust his salary

following a salary review. He recognizes that Decision No. 463 disposed of that challenge “once and for all” by a decision that is “final and without appeal” and states that his present application challenges the Bank’s September 2012 decision not to adjust his salary following the second review ordered by the Tribunal. He contends he is making a new claim related to the “form and substance” of the September 2012 review and notes there is no other forum in which he can challenge this decision.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

27. Whereas Article XI of the Statute makes clear that the Tribunal’s judgments shall be final and without appeal, it expressly anticipates clarifications of judgments and it is well-established that applications for a review of the implementation, or for the interpretation, of a judgment are admissible. *See, e.g., M (No.2)*, Decision No. 472 [2013]; *AS (No. 2)*, Decision No. 468 [2012]; *AI (No. 2)*, Decision No. 437 [2010]; *Q*, Decision No. 370 [2007]; *Brannigan*, Decision No. 165 [1997].

28. The terms of Decision No. 463 required the Bank to make a decision about the positioning of the Applicant’s salary based on a review of the salaries of other Lead Counsel. It required the Bank to

undertake a review of the Applicant’s salary as of February 2009 and include, along with other factors, a comparison of the Applicant’s salary against that of other Lead Counsel (level GH) in the World Bank Group, *determine* whether the Applicant’s salary was properly positioned, and if it was not, provide an appropriate remedy (emphasis added.)

29. In other words, the Bank was required to carry out a further review of the Applicant’s salary by reference to the salaries of other Lead Counsel and make a determination about whether the Applicant’s salary was properly positioned by reference to this newly examined information.

30. The Bank’s 17 September 2012 letter to the Tribunal makes clear the Bank made such a determination. It refers to the Bank’s conclusion that no salary adjustment

was necessary because the Applicant's salary was "fairly within the range" of other Lead Counsel (Level GH); within the "normal dispersion of salaries at the Bank ... within 10 to 12 percent of the average of a staff member's real peers, when time in grade, age and performance are fairly accounted for"; and that the difference in SRI ratings between the Applicant and other Lead Counsel "reasonably explains [the] difference in pay between [the Applicant's] salary, and the average salary of the comparison group."

31. The Tribunal considered the objections to this determination raised by the Applicant in September and October 2012, and also received submissions from the Bank, before deciding, as stated in its 13 December 2012 letter, that the Bank's actions were consistent with the intent of Decision No. 463. By the terms of Article XI of the Tribunal's Statute, this decision is final and without appeal. Having considered the Applicant's arguments carefully, the Tribunal concludes that the Application in this case constitutes a request to revise this decision.

32. Article XIII of the Statute provides the only exception to the rule that the Tribunal's judgments are final and without appeal. Here, the Applicant does not suggest that he has discovered a previously unknown fact that might have had a decisive influence on the earlier judgment. Rather, his submissions principally relate to inferences he argues should be drawn from the determination made by the Bank in accordance with Decision No. 463; to his contention that an SRI rating, because it is assessed relative to colleagues' performance, should not be considered an objective measure of performance; and to his view that the comparator group should be further limited in size, in particular by age, notwithstanding his former position that age was an arbitrary criterion that is not a valid indicator of overall work experience. *See Mpooy-Kamulayi (No. 5)*, para. 41. The Tribunal concludes that the requirements of Article XIII have not been met.

DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D.C., 28 February 2014