



World Bank Administrative Tribunal

2017

Decision No. 554

**Dominique Njinkeu,
Applicant**

v.

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

(Merits)

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

**Dominique Njinkeu,
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 (Vice-President), Ahmed El-Kosheri, Andrew Burgess, and Mahnoush H. Arsanjani.
2. The Application was received on 30 December 2015. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.

FACTUAL BACKGROUND

3. In this Application, the Applicant raised the following claims: "(i) the decision not to renew his Term appointment was an abuse of discretion; (ii) the Bank discriminated against him; (iii) he was not informed of the honest rationale behind the non-renewal of his appointment; and (iv) the Bank did not provide clear guidance with respect to the separation options available to him."
4. On 22 February 2016, the Bank filed a preliminary objection to the admissibility of the Application.
5. The Tribunal in its judgment of 4 November 2016 addressed the question of the preliminary objection and concluded that only "[t]he Applicant's claim regarding the Bank's alleged failure to provide clear and consistent guidelines regarding his separation options is admissible." *Njinkeu* (Preliminary Objection), Decision No. 538 [2016].
6. A full factual description of the case is contained in the Tribunal's judgment of 4 November 2016. Hence only the relevant facts regarding the above-admitted claim are set out below.

7. The Applicant began working at the Bank in August 2009 under a two-year term contract as a Program Coordinator, Level GH. He managed the Trade Facilitation Facility Trust Fund (TFFTF) in the Trade and Competitiveness Global Practice (GP).

8. The Applicant's initial two-year term appointment was extended several times. The last extension was for a period of six months, from 1 August 2015 until 31 January 2016. On 23 June 2015, the Applicant's Manager informed the Applicant by email that his contract would end on 31 January 2016 and would not be extended.

9. In August 2015 the Applicant met two Directors in the GP who also confirmed that his contract would not be extended beyond 31 January 2016. The Directors told the Applicant to discuss the details of his separation from the Bank with Human Resources (HR).

10. The Applicant then started consulting with HR. He met with an HR Manager on 3 September 2015 and on 23 October 2015 to discuss his separation. The record includes a number of email exchanges between the Applicant and the HR Manager regarding his separation. On 14 September 2015, the HR Manager sent an email to the Applicant in which he included a hyperlink to a document entitled Guidance on Separation Frameworks at the Bank, "taken from [the] intranet page, and intended to help managers and staff understand the Bank's separation policies." According to the HR Manager, this document contained "an exhaustive list of all the different separation options existing at the Bank to provide [the Applicant] with as much information as possible regarding the termination process."

11. On the same day, the Applicant asked the HR Manager, "can you for example advise under what category the separation is taking place e.g. redundancy?" The HR Manager responded, "I think that starting to discuss the parameters of a Redundancy or an MAS could be a good start."

12. After some internal consultations including discussion with one of the Directors in the GP, the HR Manager informed the Applicant on 23 October 2015 that the redundancy option was not applicable to his situation but that a mutually agreed separation with 100% severance, and an

effective separation date no later than 31 January 2016, was to be considered. In his email of 23 October 2015, the HR Manager wrote to the Applicant:

As promised, I have reached out to the T&C practice [...] as I wanted to validate (i) our mutual understanding on the situation and the way forward, and more importantly (ii) the terms & conditions attached to the mutually agreed separation solution option that can be considered. [The Director] has confirmed the practice's disposition for allowing a mutually agreed separation (MAS, with 100% severance) to be provided, assorted with an effective separation date that would be no later than Jan. 31, 2016. Under such conditions, this would represent a lump sum payment of circa \$110k, effective on the date of exit [...].

13. In response on 28 October 2015, the Applicant sent another email to the HR Manager stating *inter alia* that:

From our earlier discussions the basis for the separation is strategic staffing, which implies redundancy although your preference, implied by your email, is to process this as a MAS; but the two options are on the table.

[...] As indicated, earlier, in order to have adequate time to adjust my visa status I want the job search period under administrative leave to start on February 1, 2016.

14. On 16 November 2015, the HR Manager clarified that the redundancy option was not available in light of the upcoming expiration of the Applicant's term contract. In his email to the Applicant, the HR Manager explained:

Indeed, as you know, we are still operating in the context of the upcoming termination of your employment, for the purpose of non-renewal of your term contract, for which you have already been formally notified over the summer. This, therefore, doesn't qualify for a redundancy situation, which makes the standard 6 months job search period irrelevant to the situation, as well as any extension of employment beyond Jan. 31.

15. According to the HR Manager, as the Applicant persisted in his request for an extension of employment beyond 31 January 2016, he arranged a meeting between the Applicant and a Senior HR Specialist for further discussions.

16. The Applicant and the Senior HR Specialist agreed to meet on 9 December 2015. In preparation for the meeting, the Senior HR Specialist sent an email to the Applicant on 7 December

outlining the benefits to which he was entitled at the end of his term appointment, including an expiration payment, resettlement benefits, and an annual leave balance of up to 480 hours, which would be converted into a payment.

17. The Applicant and the Senior HR Specialist met on 9 December 2015 and the Senior HR Specialist explained again the benefits that the Applicant would receive at the end of his term appointment. The Senior HR Specialist also explained to the Applicant that, under the Staff Rules, a staff member who receives an expiration payment may not be reappointed to the Staff of the Bank Group in any capacity for the period of time equal to the number of months' pay included in such payment, unless the staff member waives the expiration payment. On the same day, the Senior HR Specialist sent the Applicant the relevant Staff Rule by email.

18. After the meeting, the Applicant restated his desire to retain his employment and G4 visa status beyond 31 January 2016, and asked one of the Directors in the GP if the Director could make an exception and allow the Applicant to work as a Short Term Consultant as of 1 February 2016 without requiring that he waive his expiration payment. On 23 December 2015, the Director informed the Applicant that he was not in a position to grant the exception.

19. The Bank explains that considering the limitations established by the Staff Rules regarding expiration payment, the Senior HR Specialist and a Lead HR Specialist in Corporate Operations in the Human Resources Vice Presidency made a last offer to the Applicant in a final effort to assist and enable him to travel for a few months under a G4 visa while his green card was issued. The Bank states that they offered the Applicant a mutually agreed separation that would allow him to keep his G4 visa status for a period of three months starting 1 February 2016 while he would still receive the expiration payment, as well as the other benefits associated with the expiration of his term appointment.

20. The Applicant rejected the offer of a mutually agreed separation because he was not ready to waive his rights to appeal which is a standard clause in mutually agreed separations. On 13 January 2016, the Applicant confirmed his decision to opt for the expiration payment as part of the benefits associated with the expiration of his term appointment.

21. On 27 January 2016, the Bank issued the Applicant his End of Employment Memorandum (EEM) and the Bank states that in February 2016 the Applicant received the benefits relating to the end of his term appointment.

22. In the meantime, on 30 December 2015 the Applicant filed this Application. He seeks compensation, and legal fees and costs in the amount of \$24,306.25.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contentions

23. The Applicant claims that the Bank failed to provide clear and consistent guidelines regarding his separation options. The Applicant explains that the Bank wanted to deny the Applicant a position to which he was legally entitled and the Bank had not decided how he should be separated. Therefore, according to the Applicant, the Bank changed its mind numerous times and provided the Applicant information in a piecemeal manner, with the critical EEM being issued only on 27 January 2016, four days before his contract's termination, depriving the Applicant of his rights for a smooth separation from the Bank on 31 January 2016. The Applicant argues that it was the Bank that was confused and it is the Bank's confusion that goes to the heart of the wrongful separation of the Applicant. The Applicant argues that his due process rights were violated and he was deprived of a fair and just process in the ending of his employment.

The Bank's Contentions

24. The Bank asserts that the Applicant cannot claim surprise when the Bank implemented his separation as a result of his contract expiration because he was cognizant since 23 June 2015 that his term appointment would not be renewed or extended after its expiration on 31 January 2016. The Bank further points to the more than six months the Applicant had to explore his options and secure an adequate package that would be suitable for him. The Bank explains that the HR Manager provided the Applicant with an exhaustive list of separation options, which the Bank asserts was to "facilitate an informed discussion." The Bank contends that its clear and consistent guidance did not harm the Applicant. The Bank contends that the Managers and HR representatives acted in good faith and appropriately in light of the Applicant's circumstances.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

25. The only matter before the Tribunal is whether the Bank failed to provide clear and consistent guidelines regarding the Applicant's separation options.

26. The Applicant does not invoke any specific staff rule or the Tribunal's jurisprudence in support of this claim. But it could be argued that the Bank's duty to provide clear and consistent guidelines regarding a staff member's separation options can be derived from a general obligation of the Bank to "act with fairness" in its relationship with its staff members as articulated in Principle 2.1 of the Principles of Staff Employment. Principle 9.1 of the Principles of Staff Employment also states that: "Staff members have the right to fair treatment in matters relating to their employment."

27. In *DC* (Merits), Decision No. 530 [2016], the applicant sought information about his separation benefits. *Id.* para. 36. He, however, did not timely receive any response to his inquiries. *Id.* The Tribunal concluded that "the Applicant received no response to his query for over a year until 28 December 2015 when the Bank submitted its Answer in these proceedings. Such an extended period of silence is unjustifiable and the Tribunal is satisfied that the Bank's failure to respond to the Applicant, within a reasonable time, amounted to unfair treatment of the Applicant inconsistent with Staff Principles 2.1 and 9.1." *Id.* para. 38. The Tribunal also found that "the Bank's failure to respond to the Applicant caused him harm, particularly as he was unable to address [the dispute over payment of his severance payment], and therefore protect his interests, before his contract ended." *Id.* para. 40.

28. In the present case, the record, however, shows that that the Bank timely responded to the Applicant's inquiries and made reasonable efforts to provide clear and consistent guidelines regarding the Applicant's separation options.

29. When the Applicant contacted HR regarding his separation options, the HR Manager met twice with the Applicant on 3 September and 23 October 2015 to discuss his separation. The HR Manager provided the Applicant with the Guidance on Separation Frameworks at the Bank

containing a detailed list of the different separation options available at the Bank. The record contains considerable email exchanges between the Applicant and the HR Manager that demonstrate that the HR Manager made reasonable efforts in a timely manner to address the Applicant's inquiries. Even though in his email of 14 September 2015, the HR Manager, as an initial discussion starting point, mentioned redundancy as an option, after consulting all the relevant parties, it was made clear to the Applicant by an email of 23 October 2015 that redundancy was not an option applicable to his situation. Upon further inquiries from the Applicant, again on 16 November 2015, the HR Manager explained why a redundancy separation option was not available to the Applicant.

30. When the Applicant persisted in his request for an extension of employment beyond 31 January 2016, the HR Manager arranged a meeting between the Applicant and the Senior HR Specialist for further assistance. The Senior HR Specialist sent an email to the Applicant outlining the benefits to which he was entitled at the end of his term appointment, including an expiration payment, resettlement benefits, and an annual leave balance of up to 480 hours, which would be converted into a payment. The Senior HR Specialist also met with the Applicant on 9 December 2015 to explain the Applicant's benefits at the end of his employment.

31. As the Applicant restated his desire to retain his employment and G4 visa status beyond 31 January 2016, the Senior HR Specialist and the Lead HR Specialist in Corporate Operations in the Human Resources Vice Presidency made efforts to help the Applicant by enabling him to travel for a few months under a G4 visa while his green card was issued. They offered the Applicant a mutually agreed separation that would allow him to keep his G4 visa status for a period of three months starting 1 February 2016. This offer was not accepted by the Applicant, as the Bank explains, because he was not ready to waive his rights to appeal which is a standard clause in mutually agreed separations.

32. The Applicant complains that the Bank belatedly issued the EEM only on 27 January 2016. The memorandum, however, does not deal with the separation options, the matter that is before the Tribunal. The memorandum summarizes information relevant to staff members who are leaving the World Bank Group. If the Applicant wanted his EEM earlier, he could have requested

so. The record shows that the benefits upon ending employment were already explained to the Applicant. If he needed any other information before his EEM was issued, he could have requested such from HR.

33. In sum, the Tribunal finds no basis to sustain the Applicant's claim that the Bank failed to provide clear and consistent guidelines regarding the Applicant's separation options nor does the Tribunal find any specific harm the Applicant suffered due to any alleged failure of the Bank in this regard.

DECISION

The Application is dismissed.

/S/ Mónica Pinto

Mónica Pinto

Vice-President

/S/Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 21 April 2017