

Decision No. 310

Ignatius Kne Peprah (No. 2),
Applicant

v.

International Finance Corporation,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on July 21, 2003, by Ignatius Kne Peprah against the International Finance Corporation ("IFC"). The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Bola A. Ajibola (a Vice President of the Tribunal) as President, Robert A. Gorman and Florentino P. Feliciano, Judges. The usual exchange of pleadings took place and the case was listed on January 20, 2004.

2. The Applicant brought a prior case before the Tribunal, *Peprah*, Decision No. 275 [2002]. In that case, the Applicant challenged: (i) the allegedly wrongful termination of his employment; (ii) the decision of the Appeals Committee dismissing his claims on jurisdictional grounds; and (iii) his manager's evaluation of his performance. The Tribunal decided that the application was inadmissible due to the Applicant's failure to exhaust internal remedies in a timely manner with respect to each of the three claims.

3. The distinct issue of reimbursement of the Applicant's annual leave benefits was still under review by the Appeals Committee at the time of his prior Tribunal case and thus was not included. The Applicant now challenges the Respondent's decision to deny him reimbursement of 40 days of annual leave as an abuse of managerial discretion.

4. The Applicant requests: (i) the monetary value of 40 days of annual leave; and (ii) costs to cover any legal fees, opportunity costs for time spent on this case, travel expenses and other expenses incurred by him in the proceedings before the Appeals Committee and the Tribunal.

Relevant Facts

5. The Applicant accepted a two-year Consultancy appointment to the Africa Project Development Facility ("APDF") in Accra, Ghana, beginning on or about January 15, 1997. In January 1999, the Respondent appointed the Applicant as APDF Regional Manager for Anglophone West Africa, based in Accra, and extended his appointment until June 30, 2000. On December 17, 1999, more than 6 months before the Applicant's appointment was scheduled to end, the Applicant met with his Manager, his Department Director and his Human Resources Manager regarding his contract's upcoming termination and to discuss his future career. On December 23, 1999, the Applicant's Manager sent him an e-mail confirming the following agreements made during the December 17th meeting: (i) the Applicant would continue to be a Consultant to APDF until the end of his contract on June 30, 2000; (ii) APDF would continue to pay his current Consultant fee; (iii) his APDF contract would not be renewed; (iv) the Respondent would continue to permit the Applicant's access to the IFC's e-mail and database systems in order to facilitate his search for alternative employment; (v) APDF would cover the costs of reasonable travel after the Applicant left the office until the end of his contract period if he needed to sit for interviews in his job search; and (vi) the Department Director would try to identify possible positions or alternate assignments for the Applicant to undertake at the end of his contract.

6. According to the e-mail sent on December 23, 1999 by the Applicant's Manager, he and the Applicant had agreed that the Applicant would work from home as a Consultant on full pay from February 1, 2000 until the

expiration of his contract on June 30, 2000. In an e-mail to the Applicant dated January 3, 2000, his Manager confirmed that the Department Director had clearly stated that the Applicant should now be actively seeking new employment outside the IFC, as the Department Director could not give the Applicant assurances that the IFC would be in a position to make him any further offers.

7. In a follow-up e-mail from the Applicant to his Manager dated January 4, 2000, the Applicant stated that he would like to continue to work from the office and not from home. He also asked for his Manager's help in protecting his image by assigning him "to work on projects in areas such as Nigeria and the French-speaking countries." The Manager and Department Director agreed to allow the Applicant to "relinquish [his] current position in Accra" and "take up a posting to Lagos until the end of [his] APDF contract" [i.e., from January 31 through June 30, 2000], where he would be responsible for new business development for APDF in Nigeria. The Applicant expressed his agreement with, and gratitude for, this arrangement.

8. In a letter dated March 13, 2000, the Applicant's Manager informed the Applicant that he had 48 days of accumulated annual leave benefits, with "the possibility of cashing these days out or us[ing] them." The Applicant denies having received this letter and claims that the letter is a forgery.

9. Also on March 13, 2000, the Applicant's Manager suggested to the Applicant that he travel to Washington in order to be closer to the place where positions were being advertised and to be more effective in his job search.

10. The Applicant states that at the time he was arranging the trip to Washington, his Manager said nothing to him about whether or not he would be on leave and was even prepared to allow him to stay at home. According to the Respondent, the Manager assumed that the Applicant would not stay in Washington for an extended period of time and therefore did not ask the Applicant to take his annual leave at that time.

11. The Applicant arrived in Washington on March 14, 2000, where he was provided with an office in the IFC building. The record indicates that both the Applicant and his Manager acknowledged that the reason for his trip was to search for employment. As had been agreed at the December 17th meeting, the Applicant's costs for "reasonable travel ... to sit for interviews in his job search" were being covered by the IFC. The Applicant's Manager sent an e-mail to the Regional Manager of APDF dated March 26, 2001 acknowledging that he had authorized the Applicant to come to Washington to search for employment. The e-mail further explained that the Manager and the Applicant had agreed that the Applicant would use his available annual leave during his period in Washington, but that APDF would cover his subsistence costs. According to the Applicant's Manager: "We took this decision given his age and in order to facilitate his transition to a new position."

12. In mid-April 2000, the Applicant's Manager realized that the Applicant was still in Washington. In an e-mail dated April 14, 2000, the Applicant's Manager informed the Applicant that if he planned to stay in Washington to search for a job, he would need to request and use his annual leave benefits. The Manager testified before the Appeals Committee that his "intention had been at the time that this would be a 3 to 4 week stay in Washington." Therefore, according to his testimony, when he found that the Applicant was still in Washington after four to five weeks, he decided that he would "then now require him to start using his annual leave time as a way of him participating a bit in the cost of this thing and having him have an investment in the time here." The Manager stated that it had become evident to him that the Applicant was not trying very hard to find a job and that the Bank was still paying for all of the Applicant's expenses, including his full salary, even though the Applicant was not performing his assigned duties in Nigeria.

13. Thereafter, on April 27, 2000, the Applicant, at the Manager's request and in an effort to share in the costs of his job search in Washington, submitted a leave request form for 15 days of annual leave (i.e. May 6 through May 28, 2000). This leave request was approved by the Applicant's Manager in an e-mail to the APDF Regional Manager dated April 29, 2000, wherein he stated: "Go ahead and approve. Starting next week he is on annual leave although I agreed we would cover his subsistence costs while still in DC." On May 2, 2000, the Applicant sent an e-mail to the APDF Regional Manager acknowledging that he had submitted a leave request for the "special leave period being paid by APDF. This is because I will continue to be in Washington and this

special leave is a way for me to share the overall cost to APDF of my mission to Washington.”

14. The Applicant remained in Washington until the end of his contract on June 30, 2000. Towards the end of June, the Applicant’s Manager asked him to draw down additional annual leave for his time in Washington. The Applicant refused, stating that his Manager was acting in bad faith. The Applicant claims in his pleadings that by this time he had discovered that his Manager was acting against him, behind the scenes, by saying negative things about him and by forging the March 13, 2000 letter.

15. According to the Manager, at the April discussion with the Applicant it was understood that from that time on the Applicant would be using his leave to search further for a job in Washington. The Manager is of the view that the Applicant was on leave from that time until the end of his contract on June 30, 2000. However, no other leave slips were signed by the Applicant. The Applicant denies that he ever agreed to use all of his annual leave for the job search.

16. At the end of the Applicant’s appointment in June, the Applicant submitted a final statement of expenses in the amount of \$14,960.24 for his travel costs (an earlier statement of expenses for \$7,350.01 having already been paid). According to the Respondent, the Applicant has therefore already received *ex gratia* payments of more than \$22,000. Upon the termination of the Applicant’s contract, the IFC deducted 25 days of leave from the Applicant’s annual leave record (i.e. May 29 through June 30, 2000). These 25 days, plus the 15 days the Applicant had signed for earlier, amounted to the 40 days of annual leave the Respondent states that the Applicant used from May through June 2000 in connection with his job search in Washington.

17. The Applicant brought this deduction of annual leave to the attention of the Human Resources Account Manager who, after thoroughly researching the matter, stated in an e-mail response to the Applicant dated March 29, 2001 that “I have discovered correspondence which shows that as part of the arrangement granting you the job search period in Washington, it was agreed that you would use all your leave and end your employment on June 30, 2000 with a balance of zero. In view of this agreement, it was actually generosity on the IFC’s part to cash out the remaining balance of 15.7 days.”

18. The Applicant filed a Statement of Appeal with the Appeals Committee, which conducted an oral hearing. The Appeals Committee issued its report on May 30, 2003 recommending denial of the Applicant’s requested relief. This recommendation was accepted by the Acting Vice President of Human Resources. The Applicant thereafter filed this application with the Tribunal, challenging the Respondent’s decision not to reimburse him for the monetary equivalent of his 40 days of annual leave.

Contentions of the Parties

19. According to the Applicant, his trip to Washington was an “operational” one that he would not have taken, absent a request from his Manager to do so. The Applicant further claims that by asking him to travel to Washington, his Manager found a way of reneging on a decision that he and the Department Director had taken for the Applicant to commence a new assignment in Nigeria.

20. The Applicant alleges that during his stay in Washington, his Manager asked him to use some of his annual leave as his contribution to the job search. The Applicant agreed to use 15 days of his annual leave, but did not agree to use all of his annual leave. In addition, the Applicant contends that since his Manager was allegedly not acting in good faith and was working against his job search behind the scenes, the Applicant should be reimbursed for the 15 days of annual leave which he had agreed to take.

21. According to the Applicant, the Respondent did not request that the Applicant sign for annual leave for his stay in Washington from the latter part of May through June 2000. He contends that under Staff Rule 6.06, annual leave must be pre-approved by the Bank. He claims that since the 25 days of leave were not pre-approved, and since the Applicant was reporting for work at the IFC’s offices in Washington during this period, he was not on leave. Accordingly, the Applicant contends that the Respondent should pay him for his 25 days of annual leave.

22. The Applicant also submits that the Respondent's offer to pay him, prior to the Appeals Committee proceeding, for the 40 days of remaining annual leave is an admission by the Respondent of its obligation to pay him such money.

23. The Respondent states that the Applicant obviously and unreasonably overstayed his time in Washington while searching for employment. When the Applicant was still in Washington after a month, the Applicant's Manager told the Applicant in clear terms that he would need to take annual leave for prospective periods of time spent in Washington looking for work.

24. The Respondent confirms that the Applicant agreed to take 15 days' annual leave as a way for him to share the overall costs of his employment search, and that it is uncontroverted that the Applicant submitted a leave request for those 15 days of leave. Although the Applicant now claims reimbursement for those days on the basis of false statements, alleged forgery and bad faith on the part of his Manager, the Respondent contends that these claims relate to the non-renewal of his appointment or to the Respondent's provision of job-search assistance, neither of which is admissible in this case, as they were rejected on jurisdictional grounds by the Tribunal in *Peprah*, Decision No. 275 [2002].

25. The Respondent contends that the job-search arrangements approved by the Applicant's Manager did not authorize the Applicant to charge as operational travel time spent traveling in connection with his job search. The Respondent notes that the Applicant was informed by his Manager that if he planned to stay in Washington searching for a job, he would have to request annual leave even though the Respondent would continue to cover his travel expenses. The Respondent asserts that the deduction of 25 days of annual leave was consistent with this agreement and necessary for administrative purposes. Furthermore, the Respondent argues that under Staff Rule 6.06, it is the duty of a staff member to request approval for annual leave, and if he or she does not do so, a manager may correct or authorize correction of the leave record.

26. The Respondent acknowledges its earlier efforts to settle the case. It maintains that such efforts are, however, not a reflection of the Respondent's views as to the merits of the case but rather a reflection of its wish to put to rest a case that had taken up an inordinate amount of time and Bank resources.

Considerations

27. The only issue before the Tribunal in this case is whether or not the Respondent's decision not to reimburse the Applicant for his 40 days of annual leave charged before June 30, 2000, was an abuse of managerial discretion. The Tribunal has held in several of its judgments that it will not interfere with the exercise of such discretion "unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure." (*Saberi*, Decision No. 5 [1981], para. 24.) Further, "it is not for this Tribunal to substitute its own judgment for that of the competent organs of the Bank ..." (*de Merode*, Decision No. 1 [1981], para. 45.) The issue here "is not whether things could have been done better, but whether the process satisfied the fundamental requirements to which managerial discretion is subjected." (*Martin del Campo*, Decision No. 292 [2003], para. 71.)

28. The Applicant's duty station was in Lagos, Nigeria, as was his work in business development for APDF. Despite the Applicant's contention that he believed his time in Washington was "operational" in nature, the record makes clear that the sole purpose of the Applicant's trip there was his job search; it also reveals that the Applicant did nothing related to his work program during his stay in Washington.

29. The record in this case shows that prior to the Applicant's arrival in Washington on March 14, 2000, and in fact during his stay there, there appeared to be no agreement between the Manager and the Applicant regarding how much time the Applicant would spend in Washington for his job search. The Manager asserts that he authorized the Applicant's trip to Washington to facilitate his job search based on the assumption that the Applicant would stay for three to four weeks. It was not until the middle of April, after the Manager discovered that the Applicant was still in Washington (at APDF's expense) that he told the Applicant that he

would have to start using some of his annual leave time as a way for the Applicant to participate in the costs of the job search.

30. Based on the record, it appears that the Applicant and his Manager later reached an agreement with respect to the 15 days of annual leave (i.e. for May 6 through May 28), and that the Applicant willingly contributed to the job search by signing a leave request form for these days.

31. Regarding the Applicant's claim for reimbursement for these 15 days of annual leave – because of false statements, lack of good faith and the alleged forgery of the March 13, 2000 letter by his Manager – the Tribunal has previously dismissed these claims for lack of jurisdiction in *Peprah*, Decision No. 275 [2002]. The Tribunal has stated that claims which an applicant attempts to re-submit in another application are “irreceivable under the principle of *res judicata*.” (*Madabushi*, Order No. 2002-10 [2002], para. 4.) The Applicant is therefore estopped from raising these issues here again. Furthermore, the Tribunal held in *Lysy*, Decision No. 211 [1999], para. 71, that a “finding of improper motivation cannot be made without clear evidence.” The Applicant has failed to show clear evidence of a lack of good faith on the part of his Manager, particularly in view of the fact that his Manager went to such lengths to find him a position in Nigeria and to arrange for the payment to the Applicant of quite substantial amounts for his travel and subsistence while in Washington on his job search, without having an obligation to do so. The Tribunal therefore finds that the Applicant's claim for reimbursement of 15 days' leave, which he applied for and which was approved by his Manager, must be denied.

32. The Applicant further claims entitlement to the remaining 25 days pursuant to Staff Rule 6.06. He claims that his Manager acted in violation of Staff Rule 6.06 by deducting without prior approval 25 days of annual leave upon his termination.

33. In accordance with Staff Rule 6.06, para. 2.01, annual leave is defined as “absence from duty with pay for vacation, rest and relaxation, and for other purposes on occasions when other types of leave are not applicable.” The Respondent acted *intra vires* and without any abuse of discretion when it charged against the Applicant's annual leave the 25 days prior to the end of June 2000. Sufficient evidence in the record supports the Respondent's view that it was its intention that the Applicant would utilize part of his time in Washington as part of his annual leave. First, this was mentioned in the e-mail of the Manager dated March 26, 2001 to the Regional Manager of APDF, stating that the Applicant “would use his available annual leave during the period but that APDF would cover his subsistence costs.” Another, similar e-mail from the Manager to the Regional Manager of APDF dated April 29, 2000 was to precisely the same effect.

34. Of particular significance is the Manager's e-mail to the Applicant dated April 14, 2000:

You do not have a blank cheque to travel indefinitely at the costs of APDF. *You have had more than a reasonable time to carry out your job search. Before we authorize any extension of this trip, I need to be involved. You seem to be abusing the help we offered by extending your stay beyond a reasonable time. I need a detailed report of your work to date and results attained.* [Emphasis added.]

35. This e-mail furnished sufficient indication and warning to the Applicant that he needed to either consume his annual leave credits for the rest of his time or depart to Lagos where he had been posted and had agreed to work. The Applicant not only needed to apply for the 15 days' leave, but he also needed immediately after April 14, 2000 to decide on what to do with the rest of his annual leave.

36. The Respondent was clearly acting within its discretion in accordance with Staff Rule 6.06, para. 2.03, particularly the sentence that provides: “A staff member's manager may also require annual leave to be taken for absences which have not been approved as some other form of leave.” Under this Staff Rule, the Applicant's extended travel to Washington for the purposes of job search would fall under the phrase “absences which have not been approved as some other form of leave.” Therefore, the Applicant's Manager in this case acted consistently with Staff Rule 6.06 when he deducted 25 days from the Applicant's annual leave record.

37. Contrary to the Applicant's claims, the Bank's offer to pay him the 40 days of annual leave does not amount to an admission of liability. Were it to be so, such a rule, absent clear and convincing evidence of such

admission, would restrain parties from entering into such settlement negotiations in the future. The Tribunal is disinclined to impose any such impediment on free and fair settlement negotiations.

38. The Tribunal finds that the Applicant has been beneficially and generously assisted by the Respondent, particularly given the fact that he was not entitled to job-search assistance in the first place. As confirmed in *B*, Decision No. 247 [2001], para. 26, “the Bank’s obligation to provide [job-search] assistance relates not to the expiration of fixed-term contracts but to cases of termination of service on account of redundancy. (*McKinney*, Decision No. 187 [1998], para. 17.)” While the Bank was not under an obligation to provide assistance upon the valid expiration of the Applicant’s contract, generous assistance was provided nonetheless.

Decision

For the above reasons, the Tribunal decides to dismiss the application.

/S/ Bola A. Ajibola
Bola A. Ajibola
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At London, England, June 18, 2004