

Decision No. 275

Ignatius Kne Peprah,
Applicant

v.

International Finance Corporation,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on March 21, 2002, by Ignatius Kne Peprah against the International Finance Corporation. The Bank has raised a jurisdictional objection to be decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Francisco Orrego Vicuña (President of the Tribunal) as President, Bola A. Ajibola (a Vice President of the Tribunal), A. Kamal Abul-Magd and Jan Paulsson, Judges. The usual exchange of pleadings with respect to jurisdiction took place. The case was listed on June 4, 2002, to decide the issue of jurisdiction only.

2. This case concerns the Applicant's complaints that: (i) the expiration of his Consultancy contract was wrongful; (ii) the Appeals Committee's denial of jurisdiction in his case was based on an irregular process; and (iii) the evaluation of his performance was an abuse of discretion.

3. On December 2, 1996, the International Finance Corporation (IFC) offered the Applicant a Consultancy appointment for an assignment with the Africa Project Development Facility (APDF) in Accra, Ghana. The letter of appointment stated that the Applicant's appointment would be for two years, beginning on or about January 15, 1997. It noted that the appointment would terminate at the end of that period unless it was extended or a new appointment was made. The Applicant's employment was thereafter extended until June 30, 2000, as indicated in an e-mail to the Applicant dated January 6, 1999 from the Applicant's manager and the General Manager, APDF. The e-mail also indicated that the Applicant would become the APDF Regional Manager for Anglophone West Africa, based in Accra.

4. In a letter to the Applicant dated April 5, 1999, an IFC Personnel Officer stated that the IFC Human Resources Department, in conjunction with the Applicant's managers, were working on a conversion process for the Applicant and that in the meantime the Applicant's contract, as extended, would remain valid until its expiry date on June 30, 2000.

5. There was a meeting on December 17, 1999 between the Applicant's manager, the Applicant and the Department Director, APDF. This meeting was recorded in an e-mail communication dated December 23, 1999 from the Applicant's manager to the Applicant, and was answered by the Applicant in an e-mail of January 3, 2000 without putting in doubt its essential elements as listed below. As recorded, the Applicant agreed in the meeting of December 17 to present his resignation as APDF Regional Manager effective January 31, 2000 and to continue, while working from his home, as a Consultant to APDF until the end of his contract. Furthermore, it was agreed that the Applicant's contract with APDF would not be renewed beyond its expiry on June 30, 2000. The Department Director, APDF, undertook to try to identify alternative assignments for the Applicant thereafter.

6. The Applicant's manager sent an e-mail on January 16, 2000 to IFC staff announcing that APDF was to have a more active presence in Nigeria and that, as a result, the Applicant would lead the IFC team in developing a strong pipeline of projects in the country after relinquishing his responsibilities as Regional Manager of the APDF Accra Office effective February 1, 2000. Even though the Applicant became involved in the Nigerian APDF operations in February 2000, the Applicant's manager asked the Applicant to go to Washington, D.C. in order to facilitate his efforts at finding alternative employment in the Bank. The Applicant

left for Washington, D.C. on March 13, 2000.

7. On March 13, 2000, the Applicant's manager also sent the Applicant a letter titled "Notice: Expiration and non-renewal of Appointment." In this letter, the Applicant's manager formally notified the Applicant by way of confirmation that his Term appointment, which was to end on June 30, 2000, would not be renewed.

8. During the Applicant's time in Washington, D.C., the IFC Personnel Manager, Client Services, and the Department Director, APDF, attempted to assist the Applicant in finding employment with the Operations Evaluation (OED) and Small and Medium Enterprises (SME) Departments, while he looked for a permanent position. These efforts notwithstanding, on June 30, 2000, the Applicant's employment with the Bank ended.

9. In November 2000, the Applicant raised concerns with the World Bank Executive Director responsible for Ghana and Nigeria. The Executive Director thereafter met with the Executive Vice President of the IFC on January 17, 2001 to discuss the Applicant's case. The Applicant claims that during this meeting (which he did not attend), it was falsely stated to the Executive Director that the Applicant had never been evaluated as a Long-Term Consultant and that he was not a good manager. The Applicant also claims that during this meeting, the Executive Vice President of the IFC promised that the Applicant would be paid for the period he had been waiting (i.e. until January 17, 2001) for a Short-Term assignment to materialize in OED.

10. In an e-mail dated March 29, 2001, the IFC Personnel Manager, Client Services, stated, among other things, that she had done her best to help the Applicant find a job within the World Bank Group, and had suggested that the Applicant seek a position with OED as a Short-Term Consultant, but had not promised that he should be paid while he waited for such a position to materialize.

11. On June 15, 2001, the Applicant filed an appeal with the Appeals Committee raising a number of grievances. First, the Applicant claimed that his travel expenses from Accra to Washington, D.C., totaling US\$14,960.24, had not been paid to him. The Applicant then claimed that his manager had taken away his job in Accra, and that while he was asked to come to Washington, D.C. to find an alternative job within the World Bank Group, the Manager had worked behind the scenes to prevent the Applicant from finding another job. The Applicant furthermore stated that he had been promised but not given a Short-Term appointment that would have enabled him to find a more permanent job. The Applicant also challenged an allegation by the IFC Personnel Manager, Client Services, that in coming to Washington, D.C. the Applicant had agreed to use all his leave.

12. The Applicant claimed the following relief:

- (i) travel expenses amounting to US\$14,960.24;
- (ii) salary payment in lieu of two months' unused leave; and
- (iii) payment for the period between July 1, 2000 and January 17, 2001, during which the Applicant waited for a Consultancy assignment while he sought an alternative position in the World Bank Group.

13. The Respondent filed a Challenge to Jurisdiction, upon which the Appeals Committee issued its first decision on jurisdiction on September 7, 2001. The Committee dismissed as premature the Applicant's first claim that the Respondent had failed to reimburse the Applicant for travel expenses, since there had been no adverse decision for the Applicant to contest. The Committee also determined that it was not competent to review the Applicant's third claim that the Respondent had failed to compensate the Applicant for the time he had spent in Washington, D.C. waiting for a Consultancy contract that never materialized. The Committee found that the Applicant's claim referred to monies allegedly owed after the expiration of the Applicant's contract with the IFC and had no bearing on the Applicant's earlier contract of employment. The Committee accepted jurisdiction, however, over the Applicant's second claim concerning his use of annual leave during his job search and referred the matter to mediation.

14. By letter dated November 2, 2001, the Applicant asked the Appeals Committee to address the following two issues which he felt that it had not addressed in its decision: (i) that the Applicant had been promised a Short-Term appointment that would have enabled him to find a more permanent job, but that the IFC violated this promise; and (ii) that the Applicant's manager had improperly taken away his job.

15. In its second decision on jurisdiction, issued on December 20, 2001, the Committee concluded that its first decision had addressed all of the issues actually raised in the Applicant's Statement of Appeal. The Committee found that the purpose of the Applicant's original appeal was not to challenge the promise of a Short-Term Consultant position or wrongful termination, but to seek financial compensation for the circumstances surrounding those events. The Committee further found that the Applicant was clearly out of time to appeal these issues when he filed his appeal since he did not file his Statement of Appeal until June 15, 2001. The Applicant filed an application with this Tribunal on March 21, 2002.

16. The Applicant asks the Tribunal to rescind three decisions: (i) the allegedly wrongful termination of his employment; (ii) the decision of the Appeals Committee; and (iii) the evaluation of his performance by his manager. Although he does not include it in the decisions he is contesting, the Applicant also claims that the IFC breached the promise of a Short-Term Consultancy. The Respondent raises jurisdictional objections to all of the contested decisions and states that giving the Applicant a Short-Term Consultancy appointment after the expiration of his contract was never a term or condition of his employment. The Tribunal will examine each of these decisions separately, starting with the second contested decision.

17. The Applicant contests the "decision of the Appeals Committee." Since the Committee issued two decisions in the Applicant's case, as seen above at paragraphs 13-15, it appears that the Applicant contests both these decisions. In its first decision on jurisdiction, dated September 7, 2001, the Committee determined in pertinent part that it had no competence to review the Applicant's claim that the Respondent had failed to compensate him for the time he had spent in Washington, D.C. waiting for a Short-Term Consultancy that never materialized. In its second decision, dated December 20, 2001, the Committee declined to review the Applicant's claims that: (i) he had been promised a Short-Term appointment that would have enabled him to find a more permanent assignment; and (ii) his manager had improperly taken away his job. The Committee found that the Applicant had not contested these decisions in his Statement of Appeal and that, even if he had, they were out of time.

18. More specifically, the Applicant alleges that the Committee based its denial of jurisdiction on a forged letter by the Applicant's manager dated March 13, 2000 whereby the Applicant was notified that his Term appointment would expire on June 30, 2000 and would not be renewed. The Applicant also challenges the process before the Appeals Committee in that when he requested the Appeals Committee to review his termination and the promise of a Short-Term Consultancy, the Committee allowed the Respondent to comment on this request but did not give the Applicant an opportunity to respond, thus depriving him of an opportunity to defend himself.

19. The Tribunal found in *de Raet*, Decision No. 85 [1989], para. 54:

The Tribunal is not a court of appeal from the Appeals Committee and does not review the manner in which the Appeals Committee has dealt with a case before it. The proceedings before the Tribunal are entirely separate and independent

20. Furthermore, the Tribunal found in *Lewin*, Decision No. 152 [1996], para. 44 that "[t]he Tribunal is not an appellate body reviewing the proceedings, findings and recommendations of the Appeals Committee. Its task is to review the decisions of the Bank; it is not to review the Report of the Appeals Committee." On the basis of this jurisprudence, the Tribunal will not review the Applicant's claim that he was not given an opportunity to address the Respondent's comments during his second request before the Appeals Committee.

21. At the same time, however,

it is beyond doubt that the Tribunal has the authority, and indeed the duty, to review jurisdictional findings of the Appeals Committee. (*Sharpston*, Decision No. 251 [2001], para. 28.)

This is in accordance with paragraph 4.03 of Staff Rule 9.03, which provides that “[t]he Appeals Committee itself shall decide an objection to its competence, subject to review by the Administrative Tribunal.” The Tribunal will therefore review the jurisdictional findings of the Appeals Committee to the extent that they have been challenged by the Applicant.

22. The question of whether the Appeals Committee properly refused to assume jurisdiction over the issues raised by the Applicant is closely related to the question of whether the Tribunal will assume jurisdiction over the first decision that the Applicant now contests before it, namely his “job termination” and its effect on his professional reputation, and, also, over his claim of an alleged promise to offer him a Short-Term assignment. The Tribunal will, therefore, examine them simultaneously.

23. The Applicant claims that his position as APDF Regional Manager was taken away by his manager, that his manager reneged on a promise that the Applicant would be the Lead Person in Nigeria, and that his manager used a forged letter to justify the Applicant’s job termination from APDF. The Respondent argues that since the Applicant failed to file a timely appeal of the Respondent’s decision to terminate his Consultancy appointment, these claims should be declared inadmissible for failure to exhaust internal remedies as required by Article II, paragraph 2(i) of the Tribunal’s Statute.

24. The Tribunal has stressed, in several decisions (*see e.g. Klaus Berg*, Decision No. 51 [1987], para. 30), the importance of the statutory exhaustion requirement. The Tribunal has also emphasized in numerous decisions that a failure to observe time limits for the submission of an internal complaint or appeal resulting in that complaint or appeal being rejected as untimely is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. (*See de Jong*, Decision No. 89 [1990], para. 33; *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25-26.)

25. Although it is difficult to discern whether the Applicant explicitly challenged the expiration of his contract and the allegedly unfulfilled promise of a Short-Term Consultancy in his Statement of Appeal, there is no doubt that he raised these issues generally before the Appeals Committee and that he clearly requested compensation for the time he had spent in Washington, D.C. waiting for a Short-Term Consultancy to materialize. The Appeals Committee found that he had not challenged these decisions and that, even if he had, he would have been too late at the time that he filed his Statement of Appeal. The Respondent now again argues that the Applicant filed well beyond the time-limit provided by the Staff Rules for challenging an administrative decision adversely affecting his rights, once he was notified of such a decision.

26. Staff Rule 9.03, paragraph 5.01, states:

A staff member who wishes to appeal an administrative decision to the Appeals Committee must submit the appeal in writing to the Secretariat of the Appeals Committee within either: (i) 90 calendar days of receiving the written decision; or (ii) 30 calendar days following the termination of mediation which failed to resolve the issue arising from the same administrative decision.

27. The Respondent offers a number of dates which could have started the running of time, all of which entail the Applicant being given notice that his contract would expire on June 30, 2000. These notices, as the Tribunal had the opportunity of verifying in the record, were:

- (i) the e-mails from the Applicant’s manager to the Applicant on January 6, 1999 and December 23, 1999;
- (ii) the letter from the Personnel Officer, IFC, dated April 5, 1999; and
- (iii) the letter from the Applicant’s manager to the Applicant dated March 13, 2000.

28. The Respondent further asserts that it had no obligation under the Staff Rules to offer the Applicant additional notice of the expiration of his appointment after the January 6, 1999 amendment to his appointment letter providing that the Applicant's appointment would expire on June 30, 2000. Staff Rule 7.01, Section 3 ("Expiration of Appointment"), paragraph 3.01, states:

A staff member's appointment shall expire on the completion of an appointment for a definite term, as specified in the staff member's letter of appointment or as otherwise amended.

The Respondent argues that the Applicant's appointment letter did not oblige the Respondent to give the Applicant a notice of termination. On the contrary, the Respondent argues that according to the terms of the Applicant's appointment letter, the Respondent had an obligation to provide the Applicant with additional written notice only if it chose to "extend the appointment or offer a new appointment."

29. The Tribunal finds these arguments well-founded. The Applicant never timely challenged the expiration of his contract after any of the above-listed written notices. Further, even though the Applicant has repeatedly complained that the letter of March 13, 2000 was forged and that he did not even receive it, the Tribunal cannot readily ascertain from a review of the record that this is true. Most importantly, his contention does little to help his case because even if true, it does not explain why the Applicant did not challenge the expiration of his contract upon receiving any of the earlier notices. The Applicant remained inactive in pursuing internal remedies even after the expiration of his appointment on June 30, 2000 when, at the latest, he must have been well aware that there was no possibility of renewal or extension of his appointment, notwithstanding the alleged promise of a different appointment, i.e. a Short-Term Consultancy.

30. In addition, the Applicant did not challenge in a timely manner his manager's alleged reneging on his promise to make him a Lead Person for Nigeria in January 2000. The record includes an announcement by the Applicant's manager to IFC staff dated January 16, 2000 in which it is clearly stated that the Applicant would lead the team in developing a strong pipeline of projects in Nigeria. By March 14, 2000, the Applicant was in Washington, D.C. at his manager's request in order to seek an alternative assignment. He could then have questioned whether the Respondent had failed to carry through with its promise; as the Tribunal has ruled, "claims of nonfeasance are as much within the Tribunal's jurisdiction as claims of improper affirmative decisions." (*Robinson*, Decision No. 78 [1989], para. 39.) The Applicant must certainly have been aware that he would not be made the Lead Person for Nigeria by his return to Washington, D.C. on March 14, 2000. Nonetheless, he did not raise this issue until more than a year later, on June 15, 2001, and then only as part of the relevant alleged facts linked with his challenge to the IFC's decisions before the Appeals Committee.

31. Regarding the Applicant's claim that the Respondent failed to offer him a Short-Term appointment, the Tribunal finds that it too has been challenged in an untimely manner. The Tribunal notes that the Applicant claimed before the Appeals Committee payment for the period from July 1, 2000 until January 17, 2001, during which time the Applicant waited for a Short-Term appointment to materialize in OED. Clearly, therefore, the Applicant was aware by January 17, 2001 at the latest that this appointment would not be forthcoming and yet failed to raise this claim before the Appeals Committee until five months later, on June 15, 2001. In addition, the Applicant did not timely challenge the alleged failure of another offer of a Short-Term Consultancy with SME, given his admission in his Statement of Appeal that he knew that this offer would not materialize by August 3, 2000.

32. The Tribunal finds that the Applicant did not exhaust internal remedies regarding any of the above claims by timely raising them before the Appeals Committee.

33. The third decision that the Applicant contests in his application before the Tribunal is his manager's allegedly negative evaluation of his performance as a manager without having taken into consideration positive feedback by the Applicant's staff, and without having sought the opinion of the manager who had worked with the Applicant nine months out of the year in question. Although the Applicant did not include this decision in the list of decisions appealed before the Appeals Committee, he did discuss the issue of his performance evaluation for 1998 in his Statement of Appeal. This evaluation, which he produces in his pleadings before the Tribunal, was signed by his manager on June 7, 1999. Furthermore, the Applicant discussed the evaluation

with his Department Director in November and December 1999. The Applicant, however, did not raise the issue of the evaluation until his June 15, 2001 Statement of Appeal. The Tribunal finds that if the Applicant was dissatisfied with his evaluation, he could have filed an administrative review within ninety days of receiving it, as provided by Staff Rule 9.01 as then in effect. Because he did not do so, the Applicant failed to exhaust internal remedies in a timely manner regarding this third claim.

34. To explain his delay in exhausting internal remedies regarding his claims, the Applicant alleges that it was the IFC Personnel Manager's e-mail of March 29, 2001 which made evident to him that no other notices triggering the 90-day time limit would be forthcoming and that he would thus have to appeal the expiration of his appointment and the failure of the IFC to offer him a Short-Term assignment within 90 days. He also states that this e-mail was an explicit communication with regard to financial matters and an implicit one with regard to the job issues, so that by filing on June 15, 2001 with the Appeals Committee he timely contested these decisions.

35. The Personnel Manager's e-mail, however, had nothing to do with the expiration of the Applicant's appointment many months before, or with the evaluation of his performance. The e-mail did not address these issues. Nor did it convey notice of an IFC administrative decision relating to a Short-Term assignment, as the Applicant claims. The IFC Personnel Manager simply clarified that she had attempted to find another assignment in OED for the Applicant, and denied having offered a promise of an assignment. The e-mail most certainly did not convey any decision on the part of the Executive Director or the Executive Vice President, IFC, regarding the offer of a Short-Term assignment in IFC because, as the Personnel Manager clarified in her e-mail, she was not present at the meeting dealing with the matter.

36. The Tribunal has held previously, regarding notices of administrative decisions, that staff members may not seek to "toll the time limit" by contesting "alleged 'administrative decisions' which do not constitute separate administrative decisions but which are simply re-confirmations of the original administrative decision." (*Kehyaian* (No. 3), Decision No. 204 [1998], para. 23, citing *Agerschou*, Decision No. 114 [1992], para. 42.) The March 29, 2001 e-mail is not a notice of a new administrative decision. It cannot serve as the *dies a quo* for challenging the decisions which the Applicant brought before the Appeals Committee. The Tribunal therefore finds that the Applicant failed timely to exhaust internal remedies with respect to his claims.

37. The Applicant has not invoked any compelling or exceptional circumstances to justify an assumption of jurisdiction by the Tribunal over his claims. The Tribunal is unable to discern any such circumstances. The Applicant refers to the so-called "Rules of Natural Justice and Fairness," as well as to the doctrine of estoppel, and is eager that his case be addressed on the merits rather than stopped at the jurisdictional stage because his case allegedly does not reflect well on the image of the Bank. Notwithstanding this plea, the Tribunal cannot disregard its statutory obligations under Article II, paragraph 2, of its Statute, and must instead ensure that it acts within its authority.

Decision

For the above reasons, the Tribunal decides that the application is inadmissible.

/S/ Francisco Orrego Vicuña
Francisco Orrego Vicuña
President

/S/ Nassib G. Ziadé

Nassib G. Ziadé
Executive Secretary

At Washington, D.C., September 30, 2002