



World Bank Administrative Tribunal

2014

Decision No. 494

**Claude Rugambwa Sekabaraga,
Applicant**

v.

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

(Preliminary Objection)

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

**Claude Rugambwa Sekabaraga,
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 15 October 2013. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant raises claims of discrimination, harassment, retaliation and “insults.” He alleges that he, along with two other colleagues, suffered treatment designed “to make [their] work difficult and [to] discourage” them from continuing to work for the Bank. The Bank has raised a preliminary objection to the admissibility of most of the Applicant’s claims. This judgment addresses that objection.

FACTUAL BACKGROUND

4. In March 2009, the Applicant joined the Bank as an Extended Term Consultant in the Africa Region’s Health Systems Strengthening (“HSS”) Hub. His duty station was Nairobi, Kenya. In March 2011, he accepted a one-year Term Appointment as a Senior Health Specialist, Level GG, with the Africa Region’s Health, Nutrition and Population Unit (“AFTHE”) in the Bank’s Kenya Country Office.

5. In September 2011, the Applicant made a complaint of discrimination to the Bank’s Ombudsman.

6. In March 2012, his one-year Term Appointment was extended for another year.
7. It appears from the evidence presently before the Tribunal that, during 2012, the Bank's Africa Region decided to close the HSS hubs.
8. On 15 October 2012, the Applicant filed a Request for Review with Peer Review Services ("PRS"), challenging, among other things: (i) the Bank's delayed clearance for his mission travel to Kenya and Rwanda; (ii) his "unequal treatment" in his choice of duty station; and (iii) the Bank's decision not to short-list him for the positions of Sector Manager, AFTHE, and Sector Director, Human Development, Health, Nutrition and Population ("HDNHE"). He also claimed discrimination, harassment and retaliation in the context of these decisions and actions.
9. It appears from the evidence presently before the Tribunal that, in October 2012, the Applicant complained to his sector manager about a number of colleagues and former managers.
10. On 16 November 2012, PRS found that the Applicant had not filed his request within 120 calendar days of having received notice, and consequently that it lacked jurisdiction in respect, of the following claims: (i) unfair or non-existent performance evaluations in 2009–10, 2010–11, 2011–12; (ii) delays in clearance for mission travel to Burundi; (iii) renewal of his contracts for one year only for the following contractual years (March 2009, March 2010, March 2011 and March 2012).
11. On 8 February 2013, the Applicant filed an application with the Tribunal.
12. On 14 February 2013, noting that the Applicant's case was still being considered by other internal units at the Bank, the Tribunal informed the Applicant that his application was irreceivable as he had not exhausted internal remedies.

13. On 27 March 2013, the Applicant's Term Appointment with the Bank came to an end.

14. On 27 June 2013, the PRS Panel issued a report finding that the Bank had acted consistently with the Applicant's contract of employment and terms of appointment and recommending his requests for relief be denied.

15. On 15 October 2013, the Applicant filed his present Application with the Tribunal. He seeks a public apology and a commitment to fight discrimination in the Bank from those staff members involved in the alleged discrimination, harassment, retaliation and insults. He also seeks reinstatement to the Bank's employment or, alternatively, \$4 million compensation (with a request that staff involved in the alleged acts contribute 10% of their salaries to the payment of compensation awarded). He also seeks his costs.

THE CONTENTIONS OF THE PARTIES

The Bank's Main Contentions

16. The Bank requests the Applicant's claims be dismissed in part. It objects to the admissibility of most of the issues raised by the Applicant on the grounds he failed to seek relief in respect of them by exhausting other remedies available within the Bank Group within the 120 day time period prescribed by Article II of the Tribunal's Statute. It submits that only three matters raised by the Applicant are admissible and properly within the jurisdiction of the Tribunal.

17. The Bank contends that the following claims made by the Applicant are inadmissible because he has not exhausted all other remedies available within the Bank Group in respect to them: (i) an alleged salary reduction in March 2011; (ii) alleged intimidating messages from his then Sector Manager in June 2009; (iii) allegedly inappropriate messages from a colleague in January 2013; (iv) an allegedly unjustified delay in approval of a Short Term Consultant appointment in July 2013; (v) instances where the Applicant was allegedly insulted by a Task Team Leader in June 2012 and his

Sector Manager in November 2012; and (vi) an allegedly unfair SRI rating for 2011–12. The Bank refers to *Jalali*, Decision No. 148 [1996], para. 35 and *BR*, Decision No. 456 [2011], in support of its contentions.

18. The Bank further contends that the Applicant failed to exhaust remedies available within the Bank Group in a timely manner in respect of his claims: (i) that his performance evaluations were unfair and/or not provided in the years 2009–2010, 2010–2011 and 2011–2012; (ii) of indecision and delay in providing clearance for his mission travel to Burundi on 25 March 2012; (iii) of his contracts being renewed for only one year in March 2009, March 2010, March 2011 and March 2012; and (iv) related to the decision not to shortlist him for the position of Sector Manager, AFTHE. The Bank refers to *Levin*, Decision No. 237 [2000], para. 13 and *Kassab*, Decision No. 97 [1990], para. 45, in support of these contentions.

19. The Bank further contends that the Applicant failed to file the claim in relation to the non-renewal of his contract within the time limit prescribed by Article II of the Tribunal's Statute. The Bank points out that the Tribunal informed the Applicant that his 8 February 2013 application was irreceivable.

20. The Bank also contends that the Applicant's complaints about alleged abuses of discretion affecting other Bank staff members are not related to the Applicant's own contract of employment or terms of appointment and, as such, the Tribunal lacks jurisdiction in respect of them.

21. The Bank submits that the only matters properly within the jurisdiction of the Tribunal are: (i) the decision not to shortlist the Applicant for Sector Director, HDNHE; (ii) delay in clearance for missions to Rwanda in September 2012 and to Kenya in October 2012; and (iii) unequal treatment in the assignment of his duty station.

The Applicant's Main Contentions

22. The Applicant alleges facts which he contends amount to more than twenty incidents of discrimination, harassment, insults or retaliation occurring between early 2009 and mid-2013. He says that the Bank's "management did all possible to destabilize [his] work, including delaying mission travels, [pressurizing] Task Team Leaders not to work with [him] and refusing to proceed [with] performance evaluations."

23. His allegations of discrimination arise out of, among other things, alleged deficiencies in certain performance evaluations and the rating he received; non approval or delayed approval of his mission travel; the fact he was offered one-year contracts which he alleges was less favorable treatment than received by his AFTHE colleagues; his non-selection for certain Bank positions for which he applied; the manner in which his duty station was allocated; the termination of his term contract; and the process of reorganization of the HSS hubs.

24. His allegations of harassment arise out of, among other things, allegedly intimidating and unfair messages sent by his managers, including messages related to the completion of his OPE allegedly contrary to Bank rules, his skills in the use of English and his allegations of discrimination. His allegations of "insults" arise out of his manager's comment on his skills in the use of English and a different colleague allegedly referring to him as "irresponsible."

25. His allegations of retaliation include claims that his employment was allegedly terminated following his complaint to the Bank's Integrity Vice Presidency ("INT") about corruption and mismanagement of Health Results Innovation Trust Funds, and that Bank management allegedly took an unduly long time to approve a Short Term Consultant contract he had been offered in mid-2013.

26. In relation to the preliminary objection, he contends that the Bank confuses his claims and his supporting arguments. He states that his claims are: discrimination,

harassment, retaliation and insults. He argues that these are continuing acts that did not occur all at one time but amount to a continuous denial of his employment rights.

27. He also states that he submitted his claim regarding the termination of his appointment to the Tribunal on 8 February 2013. He asserts that the Bank is wrong to say that the Tribunal informed him the claim was irreceivable, and in fact only informed him that he had to exhaust other remedies available within the Bank Group.

28. He additionally explains that his references to the treatment of other staff is intended as evidence in support of his discrimination claims.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

29. Article II of the Tribunal Statute provides that no 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.

30. The Tribunal has recognized that time limits "have a wide purpose. They are prescribed as a means of organizing judicial proceedings in a reasonable manner. Their object is to prevent unnecessary delays in the settlement of disputes. As such they are of a

mandatory nature and are enforced by courts in the public interest.” *Yousufzi*, Decision No. 151 [1996], para. 26.

31. The Tribunal’s view of the requirement to exhaust other available remedies has always been that it is of the utmost importance. It “ensures that the Bank shall be afforded an opportunity to redress any alleged violation by its own action, short of possibly protracted and expensive litigation before this Tribunal.” *Klaus Berg*, Decision No. 51 [1987], para. 30; *Gilani*, Decision No. 261 [2002]. In *Setia*, Decision No. 134 [1993], para. 23, the Tribunal held:

[W]here an Applicant has failed to observe the time limits for the submission of an internal complaint or appeal, with the result that his complaint or appeal had to be rejected as untimely, he must be regarded as not having complied with the statutory requirement of exhaustion of internal remedies.

32. There is no suggestion in this case that the Bank agreed that the Applicant could submit claims to the Tribunal directly. Nor does the Applicant allege exceptional circumstances within the meaning of Article II.

33. The Tribunal concludes that, since the Applicant filed his PRS Request for Review on 15 October 2012, claims which: (i) arise out of events occurring prior to 17 June 2012; or (ii) which arise after 17 June 2012 but in respect of which the Applicant has not exhausted internal remedies available with the Bank Group, are inadmissible.

34. Accordingly, the Bank is correct that the following claims raised by the Applicant are admissible: (i) his claims in relation to the 26 September 2012 decision not to shortlist the Applicant for the position of Sector Director, HDNHE; (ii) his claims in relation to clearance for mission travel to Rwanda on 7 September 2012 and Kenya on 8 October 2012; and (iii) his claims in relation to alleged unequal treatment in the allocation of duty station in June 2012. Each of these claims arises out of events that occurred after 17 June 2012 and were submitted for review by PRS within the prescribed time limit.

35. The Applicant submits that he refers to certain incidents as supporting “arguments” rather than “claims” in themselves. The Tribunal must consider whether the Applicant may seek to establish matters which, while inadmissible as claims themselves, allegedly constitute background evidence supporting his claims that his non-selection for the Sector Director position, the delayed approval of his mission travel and his treatment in respect of the allocation of duty stations amount to acts of unjustifiable and illegitimate discrimination.

36. The Tribunal has rejected the notion that incidents inadmissible as claims may be incorporated into present proceedings as “background evidence.” In *Jalali*, Decision No. 148 [1996], paras. 34-35, the Tribunal rejected the applicant’s attempt to allege a “pattern of injustice and unfair dealing” finding that “[n]ot having raised them before and not having taken them through administrative review, the [a]pplicant cannot now incorporate these earlier decisions by the Bank as part of a ‘pattern’ that can be indefinitely subjected to review by the Tribunal.”

37. In *Malekpour*, Decision No. 320 [2004], the Applicant claimed that a particular performance assessment had been the culmination of thirty months of retaliatory and abusive treatment and that the background facts which had occurred over the prior thirty months should be considered in determining the fairness of the last assessment. The Tribunal noted that in *Jalali*, it had “rejected such a litigation strategy as an indirect way of avoiding the requirement of exhaustion of internal remedies” and would in the instant case similarly reject such a strategy. *Id.*, para. 21.

38. In *O*, Decision No. 323 [2004], paras. 28-29, the applicant also asked the Tribunal to consider all claims as a continuous pattern of wrongdoing, but as in *Malekpour*, the Tribunal refused to do so, finding that internal remedies must be exhausted in a timely manner with respect to each of the claims.

39. Accordingly, the Applicant must direct his submissions towards establishing his case in relation to the specific claims found to be admissible on the merits.

40. The one exception to the Tribunal's conclusion that the Applicant's other claims are inadmissible relates to his allegation that the Bank's decision not to renew his Term Appointment was retaliatory. Staff Rule 9.03, paragraph 6.03 states:

A staff member seeking review of a decision to terminate his or her employment may elect to bypass the peer review process and file an application concerning the matter directly with the World Bank Administrative Tribunal pursuant to Staff Rule 9.05.

41. In the application he filed on 8 February 2013, the Applicant implies that his Sector Manager decided not to renew his Term Appointment, and thereby terminated his employment with the Bank, because he had complained of discrimination. In the present Application, the Applicant alleges that his appointment was "terminated" after he made the August 2012 report to INT. The Tribunal considers that its 14 February 2013 letter has to be narrowly construed as relating only to those claims that could not be filed directly with the Tribunal. The Applicant states that he received notice his contract would not be renewed on 27 December 2012. On this basis, the non-renewal claim in his 8 February 2013 application was filed in a timely manner.

42. The Tribunal wishes to make the following observations. Retaliation is one of the more serious forms of staff misconduct. In the present case, there is no indication in the record of a review by the Office of Ethics and Business Conduct ("EBC") of the Applicant's allegation of retaliation. Staff Rule 8.02, paragraph 3, permits a staff member to challenge alleged retaliatory action before PRS and this Tribunal prior to or concurrently with a review of the same allegation of retaliation by EBC. However, it appears to the Tribunal that there are good grounds for having EBC undertake a review of allegations of retaliation before such allegations are considered by PRS or by the Tribunal. EBC is the unit with the primary mandate and the resources to review allegations of retaliation, and review by EBC could make an important contribution to a proper consideration of the often complex factual background against which retaliation is alleged. In addition to ensuring a more complete factual record, prior review by EBC would also eliminate the possibility of EBC reaching conclusions that are at variance with findings of fact made by PRS or the

Tribunal. In appropriate cases, the Tribunal may suspend proceedings before it to allow for review of retaliation claims by EBC.

DECISION

1. The following claims raised by the Applicant are admissible:
 - (i) the claims identified in paragraph 34 above arising out of events that occurred after 17 June 2012 and which were submitted for review by PRS within the prescribed time limit; and
 - (ii) the Applicant's claim regarding non-renewal of his contract.
2. All other claims are dismissed.
3. The dates for the filing of pleadings on the admissible claims will be determined by the President of the Tribunal and communicated to the parties.

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

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D.C., 28 February 2014