



World Bank Administrative Tribunal

2010

No. 432

**Yang-Ro Yoon (No. 10),
Applicant**

v.

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

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

**Yang-Ro Yoon (No. 10),
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, composed of Jan Paulsson, President, and Judges Florentino P. Feliciano, Francis M. Ssekandi and Mónica Pinto. The Application was received on 7 August 2009.

2. This Application, her tenth before this Tribunal over the last decade, deals with the Applicant's claims that (i) she was denied an appropriate work program; (ii) she was placed improperly on a Performance Improvement Plan ("PIP"); and (iii) her employment was terminated improperly on the basis of unsatisfactory performance under the PIP. In this judgment, the Tribunal will address only the mentioned three claims to avoid confusion over some of the Applicant's earlier but still pending cases. She alleges here that collusion among Human Resources ("HR"), the Legal Vice Presidency ("Legal") and the World Bank Institute ("WBI") produced those three decisions which in her view were unwarranted and arbitrary and should be withdrawn or reversed. Her employment with the Bank ceased as of 9 May 2008.

FACTUAL BACKGROUND

3. On 18 July 2006 the Applicant met with her new Supervisor to discuss generally her employment situation and go over her work program, just as the Supervisor had done with other staff members in the Human Development unit in WBI ("WBIHD") upon taking

up his new position. At this meeting, the Applicant informed her Supervisor that she did not have a work program but did not need one, because she was negotiating an external service arrangement (“ESA”) with the Vice President of Human Resources (“HRSVP”). The Applicant thus declined to discuss her situation but described the meeting as “cordial” and was “hopeful of their relationship.”

4. No other discussions about a work program for the Applicant took place between her and her Supervisor for about a year. In August 2007, the Supervisor approached her again to set up a meeting to discuss her work program. The Applicant deferred the meeting as she was about to leave for vacation but agreed to think about potential subjects of a work program and to discuss them with her Supervisor upon her return. On 24 September 2007, upon her return from vacation, the Supervisor sent the Applicant an e-mail note asking her whether she had thought about possible subjects for a work program. Two days later the Applicant replied indicating her preference that she and her Supervisor wait for HR’s actions in respect of the Appeals Committee’s decisions on the two cases she had filed the previous year. At the same time, she expressed willingness to listen to her Supervisor’s comments and suggestions.

5. About a month later, the Supervisor informed the Applicant by e-mail that he had consulted with HR and WBIHD management about her employment situation, and prepared a work assignment designed to reengage her in WBIHD’s work program. The Supervisor designed a Terms of Reference (“TOR”) entitled “Desk Study – Review of Active Labor Market Programs in Developing Countries” describing the objective of the desk study as increasing

our knowledge base ... in developing countries by compiling and analyzing the results of new studies and evaluation – with a particular

emphasis on examples from developing countries – undertaken after the 2004 World Bank study. The desk study should to the extent possible use a similar approach to ensure consistency with the previous study.

6. The proposed work assignment generated an extraordinary reply from the

Applicant in the following terms:

Yet I must confess that *your email on my work program has broken my trust in you and your integrity, making me extremely sad. Your unilateral approach on my “engagement” and your “efforts [for me] to reintegrate into the unit work program” digress so far from our conversations which until last Friday I wanted to believe that we carried out in a sincere, good-faith manner.*

As your email seems to suggest that *there is no way left for me to communicate with you in a polite, implicit manner*, I feel obliged to alert you more bluntly to a couple of the most troubling aspects among many for the benefit of our future communication.

First, you must remember full well that when you approached me to explore a potential work program on August 3, 2007 (saying that my kind words about you prompted you to do it), you told me that the topic is open and that we can discuss anything. Now you are *unilaterally imposing on me a trivial desk work with the flimsy justification that you and [another manager] took into account my “competencies” and “the needs of the Social Protection Program over the next few months”*, prior to any meeting or discussion with me.

If you are frank with yourself, you will know that *the work you [and the other manager] assigned to me is appropriate for a low-level consultant but not for a senior economist – your slight is really insulting*. More importantly, as a seasoned manager, you must be fully aware by now that you are not allowed to devise a work program for staff members without any discussion with him or her: *you neither took into account my interests and career goals let alone my credentials and experience*. This is exactly what I have been charging in all my cases since my reinstatement (Emphasis added.)

7. The Supervisor met with the Applicant on 5 November 2007 but they were not able to discuss the work program which he had assigned to her. He reported that she explained to him that she did not believe she could have a “meaningful career” at the Bank and could not engage in any discussions about her work program until her “other issues” (the subjects

of her pending actions before the Appeals Committee) were resolved. Further communications between the Applicant, her Supervisor and HR took place, but she repeatedly refused to discuss the work assignment designed by her Supervisor. The Supervisor consulted with senior management staff in HR and Legal. The Applicant was given an extension of time to complete the work program assigned to her.

8. The Applicant continued to decline to meet with her Supervisor and other WBIHD officials; she also continued to decline to carry out the work assignment given to her. On 10 January 2008 she received an e-mail message from her Supervisor informing her that she would be placed on a PIP effective 14 January 2008 through 30 June 2008. The PIP set out a timeline for completion of the work dealing with the review of post-2004 labor market programs in developing countries previously assigned to her but which she had not carried out. The PIP stated that it would

be in effect from January 14, 2008, until June 30, 2008. This period may be extended if additional time is necessary to evaluate your performance. *It may also be shortened if you do not show clear and significant progress towards meeting the required outcomes set forth in the PIP.* (Emphasis added.)

9. The Applicant's Supervisor attempted several times to encourage the Applicant to comply with the terms of the PIP. She continued to refuse to do so on the basis that the work program was not appropriate for a staff member with her rank and prior experience and that it was being imposed on her without prior discussion and without her consent.

10. On 13 February 2008, a month after the PIP went into effect, her Supervisor and a senior manager in WBIHD informed the Applicant by e-mail that her continued refusal to perform the work described in the PIP constituted unsatisfactory performance during the PIP period and that they would recommend to WBIHD that the "PIP period be ended now

and that [her] employment with the Bank be terminated as a result of unsatisfactory performance.”

11. The following day, the Applicant replied to them insisting that “the ‘so-called’ work program and the unsatisfactory ratings, and PIP are all illegitimate and not in good faith,” and stating that she would file another case against the Bank.

12. On 6 March 2008 the Applicant was formally informed of the termination of the PIP and the termination of her employment for unsatisfactory performance. She was also informed that she was being placed on administrative leave commencing immediately, and was asked to take her personal belongings from the office by 7 March 2008 or, if she needed more time to do so, to discuss the matter with her Supervisor and HR Officer. She was also informed that since “there is no requirement for [her] daily presence in the office,” she would “need the approval of the Vice President of HR to enter Bank premises.” Accordingly, the Applicant was told to contact her Supervisor or HR Officer should she need to come to the Bank.

13. On 15 April 2008 and 7 July 2008 the Applicant filed two Appeals with the Appeals Committee, the former generally contesting the PIP and the latter controverting the termination of her employment, on the ground that those two actions were in violation of the Bank’s rules and procedures. The Appeals Committee heard her two Appeals together and thereafter dismissed her claims in their entirety.

14. On 24 February 2009 HRSVP accepted the Appeals Committee’s recommendation.

15. In this Application, the Applicant seeks, *inter alia*, compensation equivalent to 12 years’ plus two months’ salary, in addition to the salary she would have earned as a mid-

level GH until her retirement at age 62, plus foregone pensions and other benefits on the basis of her salary adjusted in accordance with her claims.

THE CONTENTIONS OF THE PARTIES

The Applicant's work program

16. The Applicant contends that she did not have an appropriate work program and that what was assigned to her had not been discussed with her. She contends that the work assignment “unilaterally imposed upon her” (i) was not appropriate for a Level GG economist of her experience; (ii) was an abuse of discretion on the part of her Supervisor and managers and constituted a “downgrading” of the Applicant; (iii) failed to reflect her professional interests; (iv) was not a program needed by WBIHD, the unit to which she was attached; (v) was not a viable action plan but only an “undeveloped desk study,” comprising a single task that was not part of a more comprehensive work program; and (vi) imposed unreasonable deadlines. Furthermore, she contends that, contrary to the requirements of the Bank’s Rules, she had no Results Agreement with her Supervisor on the basis of which her performance in carrying out the PIP could be measured.

17. In response, the Bank argues that the Applicant’s discussions with her managers concerning a work assignment were part of the discussions relating to her performance under the PIP and the termination of her employment. The Bank submits that the Applicant was given a reasonable work program or assignment to allow her to “re-engage” in WBIHD in order to justify her salary. The Bank explains that, at her request, she had been without a work program (and therefore did not perform any work for the Bank) for more than a year (April 2006 to July 2007) before her Supervisor attempted to discuss with her the task of undertaking the review of major labor programs in developing countries.

The Bank stresses that the work assignment took into account her qualifications and served the needs of WBIHD. The Bank rejects the Applicant's characterization of her work assignment as a "low level task," stating that in the past, the work done in connection with the 2004 Bank report on major labor programs had been done by level GG staff members. The Bank states that she was given the opportunity to provide comments and discuss her work assignment with her Supervisor, but she made no recommendation or proposal concerning the work assigned to her and simply refused to carry out that work.

Appropriateness of the PIP

18. The Applicant argues that the PIP was not based on reasonable grounds and was implemented in violation of the Bank's Staff Rules. She alleges that the Bank had not proved that her performance was "unsatisfactory" as required by the Bank's Rules and that, accordingly, that rating was arbitrary. She disputes the Bank's position that she had refused to engage in a work program and insists that it was the Bank that had refused to discuss an appropriate work program with her. She asserts that the PIP was unilaterally imposed on her and was "improperly motivated," and that her Supervisor should have commenced a disciplinary action against her instead of a PIP. In addition, she notes that the Bank did not complete an Overall Performance Evaluation ("OPE") for her and therefore could not have found her performance to be unsatisfactory.

19. In response, the Bank argues that her refusal to do the work assigned to her constituted a performance problem to be addressed under Staff Rule 5.03 ("Management of Unsatisfactory Performance"). The Bank submits that carrying out an OPE in respect of her performance was not necessary before she could lawfully be placed on a PIP.

According to the Bank, Staff Rule 5.03 does not “prescribe a specific format to record unsatisfactory performance prior to placing a staff member on [a] PIP.”

Termination of the Applicant’s employment

20. The Applicant contends that the Bank also violated the procedural requirements for a PIP under the Staff Rules by not providing her with an opportunity to improve her performance upon characterizing such performance as unsatisfactory. She further argues that her Supervisor did not discuss the PIP with her, and that shortening its period from six to one month was in violation of the terms of the PIP. Lastly, she contends that failure to provide her with a written evaluation of her performance within 14 days of the completion of the PIP, before making the decision to terminate her employment, was also in disregard of the Staff Rules. The Applicant concludes that the termination of her employment was the final act in a long period of manipulation and mismanagement geared towards destruction of her professional career in the Bank and had been motivated by the Bank’s desire to punish her for her “civic activism.”

21. The Bank in response argues that the Applicant had been invited to discuss the PIP on 9 January 2008 but refused to attend that meeting. She had also repeatedly declined to comply with the requirements set out in the PIP in spite of the opportunities provided by her managers. Her managers, after consultation with HR and Legal, were forced to conclude that there were no other options save to shorten the PIP in accordance with its explicit terms and terminate her employment for unsatisfactory performance.

Other claims

22. The Applicant claims, *inter alia*, that there was a “conflict of interest” arising from the fact that a staff member in Legal advising HR and WBI on the proper course of action

with respect to her PIP and termination of employment also represented the Bank when she challenged the Bank's decisions before the Appeals Committee and subsequently the Tribunal.

23. The Bank replies that with respect to these additional claims, the Applicant failed to exhaust internal remedies as required by the Rules of the Tribunal. The Bank also comments that although she alleges collusion among WBI, HR and Legal, she also complains inconsistently that the Bank disregarded her request that HR be brought into the discussion about her work program.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

24. The Bank raised a preliminary objection with regard to the Tribunal's jurisdiction in the case, but the Bank's jurisdictional challenge must be dismissed because the Bank did not raise it within 21 days after receiving a copy of the Application, as required under Rule 8, paragraph 1, of the Tribunal's Rules. Two miscellaneous claims may be dismissed succinctly. The first relates to the alleged collusion between HR, WBI and Legal. It appears from the record that communications between the various units of the Bank were for the limited purpose of ensuring that the issues regarding employment which she had raised were handled appropriately. Moreover, the Applicant has not submitted any evidence to show such collusion, and the record is devoid of evidence of collusion to "railroad" the Applicant towards termination of her employment. The second relates to the conflict of interest alleged by the Applicant. The Tribunal similarly is unable to find evidence of a conflict of interest on the part of the staff member in Legal who was advising WBI and HR. The Legal staff member referred to by the Applicant was simply acting for

the Bank; it does not appear that the Applicant comprehends the concept of conflict of interest in the context of dispute resolution.

25. The Tribunal turns now to the Applicant's main contentions.

Work program

26. According to the record, the Applicant did not have a work program for over a year after her Supervisor took over his new position. The record also shows that on several occasions, she postponed or avoided discussions about her work program with her Supervisor. While negotiating for an ESA for about a year, she insisted on deferring such discussion until she had obtained an ESA, which, however, never materialized. Then she went on vacation. After her return, she declined once more to commence discussing her work program until all her issues with HR had been resolved. It was at this point that the Bank, after seeking advice from other managers in the unit, drafted a work assignment for the Applicant and gave it to her as a basis for discussion.

27. However, instead of proceeding to discuss her work assignment with her Supervisor, she repeatedly protested the proposed assignment as inappropriate for her, describing it as no more than "trivial desk work." She told her Supervisor that she would discuss a work program with him only after he was fully informed of her situation. In her subsequent sessions with her Supervisor, she continued to decline discussions of the proposed work assignment.

28. It appears that the core reason for the Applicant's behavior was her conviction that the work program developed by her Supervisor was not appropriate for a level GG economist with her experience. She contends that the study she was expected to carry out and complete as her work program was similar to one conducted a few years earlier by

more junior consultants under the supervision of two level GH managers. She notes that she had no Results Agreement nor an OPE and charges that the work program was really a “made up” assignment imposed with unreasonable deadlines.

29. As the Tribunal held in *Barnes*, Decision No. 176 [1997], para. 20, it is within the discretion of the Bank to decide upon a staff member’s work program. The Bank stresses that the work program was designed in consultation with other managers in WBI who knew the Applicant and the needs of the unit. The Bank stresses that the work assigned was not a “demeaning” and “insulting” “low level task” and that in the past a similar assignment had been carried out by level GG staff members. The Bank notes that the Applicant did not take the opportunities given to her to provide comments on the proposed assignment but had simply refused to do the work.

30. The Tribunal has repeatedly stated that developing a work program is a managerial responsibility and it will not interfere therewith absent proof of arbitrariness. (*See e.g., Moussavi*, Decision No. 360 [2007], para. 17, and *Prakas*, Decision No. 357 [2007], para. 47.)

31. The Applicant had not done any work for the Bank for over a year, and consequently had no Results Agreement. As noted earlier, the Bank had attempted to develop a work program for her. But more than a year had gone by and she still had not accepted and commenced working on her assignment while she continued to be paid her full level GG salary.

32. In *Prudencio*, Decision No. 377 [2007], the applicant was similarly unhappy with the work program assigned to him and had declined working on projects for what the Tribunal found to be “unusual reasons” or “unspecified security concerns,” and did not

follow through with a conditionally approved request for a change of task. The Applicant here, unlike the applicant in *Prudencio*, did not discuss her work assignment and contented herself with rejecting it as “inappropriate.” She did not suggest any alternative to her manager. In her pleadings, the Applicant alludes to two topics she had mentioned to others during her efforts to obtain an ESA, but the record does not show that she engaged her Supervisor in any substantive discussion about those topics. The Tribunal held in *Prudencio* that “the Bank cannot give every staff member carte blanche” and found no evidence of unfair or unreasonable processes applied in respect of his work program. *Id.*, para. 77. Here too, the Tribunal has no basis for finding that the Bank acted arbitrarily or unfairly.

PIP and termination

33. The next issue is whether the Applicant’s refusal to accept and carry out the work program assigned to her constitutes unsatisfactory performance which can be addressed through a PIP and if so, whether the PIP was implemented consistently with the applicable Bank Staff Rules and procedures.

34. Staff Rule 5.03, paragraph 2.02(c), provides, with respect to the OPE process, that a staff member’s manager, in consultation with the staff member, must establish in writing the development priorities for, and the results to be achieved by, the staff member during the upcoming review period.

35. The record before the Tribunal indicates that the Applicant’s PIP included development priorities as well as clear deadlines for specific results. After several unsuccessful attempts to engage the Applicant, her Supervisor warned her that she was expected to carry out the assignment and that failure to do so would have serious consequences. He gave her additional time to perform under the PIP; she continued to

refuse to carry out her assignment. The Tribunal finds that the Bank did not act arbitrarily in deciding that her failure to perform constituted unsatisfactory performance. Failure to commence performance of work required in a work program or assignment is plainly unsatisfactory performance.

36. In addition, Staff Rule 5.03 requires that a staff member be given notice when he or she is placed on a PIP; the staff member must also be given an opportunity to discuss the PIP; the notice must make clear to the staff member the tasks expected to be performed and the relevant deadlines; and the PIP must have a beginning and an end date. The record indicates clearly that the Bank complied with all these requirements.

37. Finally, the Applicant asserts that the PIP was improperly motivated and that her Supervisor should have addressed her performance with a disciplinary action and not a PIP. In particular, she notes that the PIP was disciplinary in its purpose although couched in the language of a performance management process. She finally argues that because the Bank did not complete an OPE for her, it could not have found her performance unsatisfactory.

38. As to the OPE, the Tribunal finds that in the Applicant's case there was no need for one. Under Staff Rule 5.03, which governs the evaluation process, the assessment relates to the work that has actually been performed by a staff member. The Applicant did not perform any work for the Bank during the OPE period immediately preceding the PIP. The Tribunal considers that it would be unreasonable to require an OPE for the purpose of deciding whether or not to impose a PIP, when the staff member had performed no work for about a year before management made that decision. Nor was an OPE required, considering the simple fact that no work had in fact been done by the Applicant.

39. Further, in respect of the Applicant's contention that the deadlines imposed in the PIP were unreasonable and that the PIP was wrongfully shortened, the Applicant was given repeated opportunities to perform the assignment under the PIP. She repeatedly refused. The express terms of the PIP included a provision explaining that the PIP may be shortened if the Applicant failed to perform the task given. Under these circumstances, continuing the PIP would have been pointless. The Tribunal is unable to find that the Bank acted unreasonably.

40. In *Yoon (No. 6 and No. 7)*, Decision No. 390 [2009] para. 100, the Applicant refused to complete the OPE process. The Tribunal found that "a staff member cannot, by withdrawing from the process, transform the Tribunal into a forum of first instance in which the minutiae of past performance are alleged, discussed, and resolved for the first time." It concluded that "the Bank, and in particular the Applicant's manager, appears to have made efforts to treat the Applicant fairly. [Her Supervisor] was in uncharted territory and appears to have tried to accommodate her concerns. The Tribunal [found] that the process followed was not unreasonable under the circumstances." *Id.*, at para. 101. In the present case, the Applicant similarly refused to meet with her new Supervisor to discuss a work program, and to discuss the PIP. The Tribunal does not find the Bank's reactions to have been arbitrary or unreasonable.

41. The final question the Tribunal must address is whether the termination of the Applicant's employment was proper. Staff Rule 7.01, paragraph 11.02, provides that the Bank "may terminate the appointment of a staff member for unsatisfactory performance as provided in Rule 5.03", which governs PIPs. The Tribunal has noted that the record shows that the Applicant's performance was plainly unsatisfactory, that she was placed on a PIP

to improve her performance, and that she paid no regard to the PIP's requirements. The Tribunal holds that the Applicant's employment with the Bank was not terminated unreasonably.

DECISION

For the foregoing reasons, the Tribunal dismisses all of the Applicant's claims.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 23 March 2010