



World Bank Administrative Tribunal

2010

No. 433

**Yang-Ro Yoon (No. 11),
Applicant**

v.

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

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

**Yang-Ro Yoon (No. 11),
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 Zia Mody and Mónica Pinto. The Application was received on 28 August 2009.
2. The Applicant joined the Bank in 1991 and worked until 2008 when her employment was terminated for unsatisfactory performance. In this Application, her eleventh before this Tribunal, she challenges the following actions:

Decision by Ms. Jodi Glasow, Executive Secretary, Peer Review Services [formerly Appeals Committee], to violate, bypass, set aside, and disregard the rules, practices, and procedures of the World Bank in facilitating, promoting, managing the process of, and structuring the decision-making process leading to, the decision attributed to the Panel in AC No. 1465 to consolidate that case with AC Nos. 1493 and 1494.

Decision by Ms. Jodi Glasow, Executive Secretary, Peer Review Services, and/or Mr. Gerard Byam, Panel Chair, and the Panel in AC 1465, to move towards consolidation of AC No. 1465 with cases Nos. 1493 and 1494 at a time when their jurisdictional parameters had neither been tested nor established, and without giving Appellant an adequate right to respond.

Decision by Ms. Jodi Glasow, Executive Secretary, Peer Review Services, and/or Mr. Gerard Byam, Panel Chair, and the Panel in AC 1465, to arrange the indefinite postponement, without cause, of the hearing scheduled for AC No. 1465 without any justifiable basis or foundation.

Decision by Ms. Jodi Glasow, Executive Secretary, Peer Review Services, and/or Mr. Gerard Byam, Panel Chair, and the Panel in AC 1465, to threaten cancellation of the hearing scheduled by the Panel in AC No. 1465 in violation of, and completely disregarding, the rules, practices, and procedures of the World Bank.

Decision by Ms. Jodi Glasow, Executive Secretary, Peer Review Services, and/or Mr. Gerard Byam, Panel Chair, and the Panel in AC 1465, and/or Ms. Anna Bjerde, Panel Chair, and the Panel in AC 1497, to arrange the consolidation of AC Nos. 1465, 1493, and 1494 further with AC No. 1497, without adequate cause or basis, in violation of the rules, practices, and procedures of the World Bank.

Decision by Ms. Jodi Glasow, Executive Secretary, Peer Review Services, to withhold the Respondent's Answer in AC No. 1493 to Appellant far longer than is acceptable under Bank rules, procedures, and precedents, raising the question of whether the recorded date of the Answer is accurate or falsified.

Decision by Ms. Jodi Glasow, Executive Secretary, Peer Review Services, to withhold the Respondent's Answer in AC No. 1497 far longer than is acceptable under Bank rules, procedures, and precedents.

Decision by Ms. Jodi Glasow, Executive Secretary, Peer Review Services, to provide an incomplete or doctored transcript to Appellant for the hearing in cases AC Nos. 1455 and 1466, and to justify her action by falsely advising Appellant and the WBAT Executive Secretariat that the transcript was in fact a full and complete record of that hearing, while knowing full well that it was not.

3. The Applicant alleges that in making these "decisions," the Appeals Committee, specifically Ms. Jodi Glasow and Mr. Gerard Byam, violated Principle 2.1 of the Principles of Staff Employment and Staff Rule 9.03. The Applicant states that these decisions failed to respect her essential rights as a staff member and also failed to maintain the independent and neutral character of the Appeals Committee. As relief, the Applicant claims compensation, an independent audit of the Appeals Committee, and legal costs.

THE CONTENTIONS OF THE PARTIES

The Bank's contentions

4. The Bank argues that the Application is inadmissible and that the Tribunal lacks jurisdiction over the Application based on the following considerations. First, the decisions of the Appeals Committee cannot be considered administrative decisions subject to review by the Tribunal. In *Peprah*, Decision No. 275 [2002], para. 20, the Tribunal

stated that it “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.” Thus, even if the rulings of the Appeals Committee allegedly violated the Applicant’s due process rights, such rulings are not subject to review by the Tribunal. Second, there is no Staff Rule, Statute, or Rules of the Tribunal that permits an “interlocutory appeal” against a ruling of the Appeals Committee while those proceedings are in progress, as sought by the Applicant in this Application. Finally, the Applicant filed her Application directly with the Tribunal without exhausting internal remedies.

The Applicant’s response

5. The Applicant claims that the Tribunal has jurisdiction over the Application on the following grounds. First, the Application “does not raise a claim against the ‘manner in which the Appeals Committee has dealt with a case,’ but rather a series of claims against discrete decisions by individuals in the processing of a case, which decisions have been extremely harmful to Applicant, and which were not rendered in conformity with the Staff Rules and Principles of Staff Employment.” For the Tribunal to review the Applicant’s claims here would be consonant with its rulings in *Peprah* that it will review jurisdictional decisions of the Appeals Committee if properly challenged by an applicant. The individuals entrusted with the management of the Conflict Resolution System (“CRS”) are not exempt from the application of Staff Rules. If their decisions result in violation of Staff Rules, those decisions are subject to the Tribunal’s review.

6. Second, in *N*, Decision No. 356 [2006], the Tribunal held that the Bank's internal decision-making processes can indeed constitute justiciable "decisions." The Applicant adds that:

The Appeals Committee is a key element of the CRS system and the Bank's Human Resources Vice Presidency, and performs its functions by recommending and advising actions to the Bank which have great consequences for staff. Its decisions, and the decisions of its Executive Secretary and Panel Chairs, are final and afford no opportunity for redress, aside from resort to that same CRS system, which is what Applicant has done here.

7. Third, the Applicant does not request reversal of the actions and decisions she complains of, but instead seeks monetary compensation on the basis that the improper behavior and actions of Ms. Glasow and Mr. Byam severely undermined her case before the Appeals Committee. There is simply no aspect of the Applicant's presentation here that resembles in any way a request for an "interlocutory appeal."

8. Finally, considering the nature of the Applicant's claims, she should not be required to go the Appeals Committee. In a letter to the Applicant dated 24 September 2009, the Chair of the Peer Review Services wrote to her in this context that "it would be illogical and inappropriate to ask the Peer Review Services to review its own actions: actions that were taken by Panel members and the Peer Review Secretariat in the course of administering and processing your Appeals." Thus, the Tribunal is the right forum to address the Applicant's claims.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

9. The Appeals Committee Annual Report (2008) provides as follows:

Working under the principle, "peers ensuring fairness," the Appeals Committee ... provide[s] staff members of the World Bank Group (Bank Group) a venue for challenging administrative decisions that affect the terms and conditions of their employment. Within the Conflict Resolution System (CRS), the Appeals Committee provides staff members with their

first opportunity to obtain formal review of contested administrative decisions. Governed by the provisions of Staff Rule (SR) 9.03, the Appeals Committee seeks to ensure fair treatment of staff members by reviewing contested administrative decisions to determine whether management has abused its discretion by acting arbitrarily, discriminatorily, or in violation of applicable Bank Group procedures. Volunteer Bank Group staff members serve on the Panels that review appeals. At the conclusion of each appeal, Panel members recommend to the Vice President, Human Resources (VP HR), or to the designated Senior Management official, the course of action they believe the Bank should take to resolve the appeal. Typically, Panel members recommend either that the Bank dismiss an appeal or award the Appellant some form of remedy. Upon receiving a Panel's recommendation in an appeal, the VP HR or Senior Management official then decides whether to accept the Panel's advice.

...

If [a staff member] disagree[s] with the outcome of the Appeal Process, [the staff member has] 120 calendar days from the date of receipt of the decision on the Appeal to file an Application with the Administrative Tribunal.

10. Effective 1 July 2009, the Appeals Committee was renamed Peer Review Services.

The new Staff Rule 9.03 (Peer Review Services) implemented a number of changes to make "the peer review process simpler, shorter, more equitable, and less legalistic, among other refinements." The new Rule applied to all requests for peer review filed on or after 1 July 2009. Appeals filed prior to that date are processed under the prior Staff Rule 9.03 (Appeals Committee).

11. In this Application, the challenged decisions were made by the Appeals Committee. Accordingly, the Tribunal will consider them as decisions of the Appeals Committee rather than of the Peer Review Services.

12. The Applicant challenges certain procedural decisions made by the Appeals Committee in reviewing her Appeal Nos. 1465, 1493, 1494, and 1497. In Appeal No. 1465 filed in July 2008 the Applicant challenged the restrictions on her access to the Bank after her separation from the Bank. In Appeal No. 1493 filed in March 2009 she

challenged the placement of a permanent no-access flag in her PeopleSoft file and denial of a retiree identity card. In Appeal No. 1494 filed in April 2009 she challenged the Bank's decisions to quarantine e-mail messages from the Applicant's private e-mail account to recipients in the Bank. In Appeal No. 1497 also filed in April 2009 she challenged *inter alia* the Bank's decision "to monitor, check and interfere with [the Applicant's] personal e-mail in search of alleged security concerns."

13. In adjudicating these appeals, the Appeals Committee made certain procedural decisions relating to consolidation of appeals, schedules of hearings, and schedules of exchange of pleadings. The Applicant insists that the Tribunal is competent to review these decisions because they violated her rights as a staff member. The Bank claims that these decisions are not subject to review by the Tribunal.

14. In a number of cases the Tribunal has explained the relationship between the Appeals Committee and the Tribunal. In *de Raet*, Decision No. 85 [1989], para. 36, the applicant complained that:

The Appeals Committee hearing fell far below the standard of fair procedure to which the Applicant was entitled, because it did not consider the issues of bias and national discrimination, did not make a verbatim record, and did not require testimony on affirmation. Furthermore, its Chairman conferred *ex parte* with a recalcitrant and hostile principal witness, did not permit cross-examination of that same witness and signed the Committee's Report for another member of the Panel.

In dismissing the complaint, the Tribunal stated at paras. 54-55 that:

The first is that the relationship of the Appeals Committee to the Tribunal is not that of an inferior to a superior court. 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 despite the fact that recourse to the Appeals Committee is a condition precedent to the commencement of proceedings before the Tribunal. The function of the Appeals Committee is to assist the management of the Bank to determine for itself whether there has been a failure on the part of the

Bank. The function of the Appeals Committee ends with its recommendation, which the Bank may or may not accept. It is a complete misunderstanding of the situation to aver, as does the Applicant, after complaining of certain aspects of the Appeals Committee's procedure, that "consequently, the Report of the Committee does not provide a basis upon which the Tribunal can deal with the questions raised in this application." The report of the Committee is never regarded as "the basis" upon which this Tribunal deals with cases and is in no way binding upon it. The Tribunal is the only body within the Bank that deals with complaints judicially and it does so only on the basis of the evidence before it.

The Applicant has complained of certain inherent limitations in the operation of the Committee as well as procedural and substantive flaws in its conduct in this case. The Tribunal has found itself able to review these complaints without entering further into the question of the powers of the Appeals Committee or its relation to the Tribunal. It has concluded that the complaints cannot be sustained.

15. In two subsequent cases the Tribunal reaffirmed that:

The 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. *Lewin*, Decision No. 152 [1996], para. 44.

On the basis of this jurisprudence [citing *Lewin*], 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. *Peprah*, Decision No. 275 [2002], para. 20.

16. The Tribunal's jurisprudence is clearly to the effect that it will not readily review procedural decisions by the Appeals Committee such as those identified in paragraph 2 of this judgment. It is evident that, while it is an important part of the CRS, the Appeals Committee is not a typical unit of the Bank; it does not make decisions on behalf of the Bank. The Tribunal does not micromanage the activities of such a body. In this case, the Appeals Committee was in the best position to make these procedural decisions given the multiple appeals the Applicant filed, and the Tribunal will not second-guess them. True enough, as a matter of abstract principle, decisions of the Appeals Committee could be subject to the Tribunal's review in the event that they resulted in violation of a staff

member's rights, e.g. a refusal to deal with a complaint at all. The Tribunal will intervene whenever staff members' rights are violated. In this case, however, the Applicant has failed to show even a *prima facie* violation of her rights. At the most, hers are complaints about routine procedural arrangements, with no demonstration of the manner in which they prejudiced her access to consideration by the Appeals Committee. The unexplained and unproved accusation that Ms. Glasow somehow "in essence dictated the outcome ... attributed to the Panel" is as unavailing as the emotive language used. The Tribunal has no basis whatsoever to intervene.

17. The Applicant argues that the challenged decisions here are like jurisdictional decisions of the Appeals Committee, and that in *Peprah* the Tribunal made clear that it would review the jurisdictional findings of the Appeals Committee. This argument elides an important distinction. Paragraph 4.03 of Staff Rule 9.03 (Appeals Committee) stated that: "The Appeals Committee itself shall decide an objection to its competence, subject to review by the Administrative Tribunal." The decisions involved here are not decisions by the Appeals Committee relating to its competence or jurisdiction. Neither Staff Rule 9.03 nor any other Staff Rule states that the challenged procedural decisions at issue here are subject to review by the Tribunal.

18. The final decision challenged by the Applicant is of a nature different from the others. The Applicant describes it as follows: "Decision by Ms. Jodi Glasow, Executive Secretary, Peer Review Services, to provide an incomplete or doctored transcript to Appellant for the hearing in cases AC Nos. 1455 and 1466, and to justify her action by falsely advising Appellant and the WBAT Executive Secretariat that the transcript was in fact a full and complete record of that hearing, while knowing full well that it was not."

19. In this respect, the record shows that Ms. Glasow, in view of the Applicant's concerns regarding the transcript, consulted with the company that provided the transcription service in Appeal Nos. 1455 and 1466. The company confirmed that the "transcript is strictly a verbatim transcript and is unedited, and as such we do not have contemporaneous notes. We simply transcribed what we heard in the audio recordings." After obtaining this confirmation, Ms. Glasow informed the Applicant and the Executive Secretary of the Tribunal that the Applicant was in receipt of "an accurate, verbatim and unedited version of the transcript." The Tribunal concludes that the Applicant has failed to show even a *prima facie* violation of her rights.

DECISION

For the reasons given above, the Tribunal dismisses the Applicant's claims.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 23 March 2010