



**World Bank Administrative Tribunal**

**2010**

**No. 436**

**Yang-Ro Yoon (No. 12),  
Applicant**

**v.**

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

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

**Yang-Ro Yoon (No. 12),  
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 Stephen M. Schwebel, President, and Judges Francis M. Ssekandi and Ahmed El-Kosheri.
2. The Application was received on 27 October 2009. The Applicant was represented by George Pieler, Attorney at Law. The Bank was represented by David Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

FACTUAL BACKGROUND

3. The Applicant joined the Bank in 1991 and worked until 2008 when her employment was terminated for unsatisfactory performance. In this Application, the Applicant is contesting the following decisions:
  - (a) Decision by the Bank, acting through the apparatus of the Appeals Committee Executive Secretariat and the Panel Chair in [Appeals] Nos. 1454 and 1460, Ms. Suzana de Campos Abbott, to deny me due process and a proper hearing of my claims as guaranteed by the Staff Rules; to expressly deny me the right to cross-examine witnesses; to consciously and deliberately misstate and misapply Bank rules and Appeals Committee rules and procedures in order to frustrate my claims; to claim a willful and deliberate ignorance of those rules and procedures, of case pleadings, and of Bank jurisprudence generally in order to avoid actual adjudication of the issues raised by my claims;
  - (b) Decision by Ms. Glasow, Executive Secretary to the Appeals Committee, and Ms. Suzana de Campos Abbott, Panel Chair, to collude by manipulating evidence and procedure at the February 26, 2009 hearing in [Appeals Nos.] 1454 and 1460 to provide spurious

grounds for defending the Bank's provocation of a "security incident" in connection with my return to the Bank at 5:40 p.m. on March 7, 2009, leading to a manufactured assault charge against me.

4. The Applicant claims that in making these "decisions" the Bank violated Principles of Staff Employment 2.1 and 9 because it failed to respect the essential rights of staff members, did not honor the requirement not to differentiate in an unjustifiable manner between individuals or groups within the staff and did not observe the right of staff members to "have full opportunity to present their case without fear of reprisal." She claims that the Bank also violated Staff Rule 9.03 because the Appeals Committee failed to maintain an independent and neutral character.

5. The Applicant requests: (i) rescission of these "decisions;" (ii) compensation in the amount of \$250,000 for abuse of the Conflict Resolution System ("CRS") process in, *inter alia*, denying her a full and fair hearing in Appeals Nos. 1454 and 1460; (iii) referral of the behavior of the Appeals Committee Secretariat and Panel in Appeals Nos. 1454 and 1460 to the "Ethics Office" for possible sanction and punishment; (iv) promulgation of Bank-wide guidance, prepared by the Tribunal in consultation with an independent outside expert, for dealing with staff in cases of access restriction; (v) establishment of an independent, formal inquiry into the "security incident" of 7 March 2008; and (vi) full reimbursement of all legal and other costs in the amount of \$1,834.66.

#### THE CONTENTIONS OF THE PARTIES

##### *The Bank's contentions*

6. The Bank has made a preliminary objection to the admissibility of the Application on four grounds. First, the Bank states that all of the Applicant's allegations against the Appeals Committee are inadmissible since it is long settled that the Tribunal hears cases before it *de novo* and not as an appellate body for proceedings before the Appeals

Committee (*de Raet*, Decision No. 85 [1989], para. 54 and *Lewin*, Decision No. 152 [1996], para. 44).

7. Second, the Bank points out that since none of the alleged decisions constitutes non-observance of the Applicant's contract of employment or terms of appointment, those alleged decisions are *ab initio* inadmissible *ratione materiae*. The Bank also argues that, unlike the applicant in *Peprah*, Decision No. 275 [2002], the Applicant is not challenging jurisdictional decisions by the Appeals Committee but procedural actions taken at the hearing, and the Tribunal has ruled that such challenges are inadmissible.

8. Third, the Bank asserts that the Applicant has failed to exhaust internal remedies available within the Bank with regard to all of her allegations relating to the hearing before the Appeals Committee on 26 February 2009. Therefore, the Applicant's Application is inadmissible because the Bank has not agreed to the Applicant's submission of her Application directly to the Tribunal.

9. Fourth, the Bank alleges that the Applicant's allegations are untimely because even though Article II(2)(ii)(a) of the Tribunal's Statute prescribes that an application before the Tribunal must be filed within 120 days after the occurrence of the event giving rise to the application, the Applicant filed her Application 243 days after the occurrence of such event which was the hearing of 26 February 2009.

*The Applicant's contentions*

10. The Applicant claims that the Tribunal has jurisdiction over the Application based on the following grounds. First, the Applicant claims that she has carefully distinguished between a challenge against the decision to deny relief in Appeals Nos. 1454 and 1460 (which is separately pending before the Tribunal) and the challenge in the present case

which is against specific actions by staff members entrusted with managing the CRS process. She claims that these actions have caused her serious harm which can be remedied only by the Tribunal, the only body that is empowered to undertake a *de novo* review of these actions.

11. Second, the Applicant claims that the present case does not relate to “the manner in which the Appeals Committee has dealt with a case,” but is concerned with discrete decisions by individuals in the processing of a case which had been harmful to the Applicant and which were not rendered in conformity with the Staff Rules and Principles of Staff Employment. The Applicant claims that the Tribunal’s competence to review her claims is in line with its rulings in *Peprah*, Decision No. 275 [2002] and *N*, Decision No. 356 [2006].

12. Third, regarding the non-exhaustion of internal remedies, the Applicant states that she challenged all the rulings and decisions she now complains of, both in the course of her pleadings before the Appeals Committee and during the hearing itself, but had no power to override the actions of the Executive Secretary and the Panel Chair. Furthermore, she claims that she did not have any prospect of subsequent redress in the Appeals Committee based on the guidance and decision in the matter of *Yoon (No. 11)*, Decision No. 433 [2010] by Theodore Ahlers, Chair, Appeals Committee/Peer Review Services. She claims that he dismissed the Applicant’s request for review by the Appeals Committee of the complaints made in *Yoon (No. 11)* in part because of her simultaneous submission of parallel complaints to the Tribunal, but also because of the impossibility of the Appeals Committee or Peer Review Services reviewing their own actions. The Applicant argues that as the issues of exhaustion of remedies were, in all other respects, the same in the

present Application as the issues addressed and resolved by both the Appeals Committee and the Tribunal in *Yoon (No. 11)*, judicial and administrative efficiency dictated that the Applicant not pointlessly burden either of these bodies with duplicative pleadings.

13. Fourth, regarding the Bank's challenge to the timeliness of her Application, the Applicant asserts that it is not possible for her, or any other staff member similarly situated, to prepare an application to the Tribunal prior to the release of the official transcript of the hearing which was provided to her only after the receipt on 1 July 2009 of the Bank's decision in Appeals Nos. 1454 and 1460. She claims that she filed her present Application on 27 October 2009 well within the 120-day time limit measured from the receipt of such decision on 1 July 2009.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

14. In Appeals Nos. 1454 and 1460 the Applicant challenged before the Appeals Committee *inter alia* (i) the Bank's decision to restrict her access to Bank premises pending her termination from Bank employment set to take effect on 10 May 2008; and (ii) the Bank's decision to place the Applicant on compulsory administrative leave beginning 8 March 2008, which allegedly provided the legal pretext for the Bank's "access restrictions" namely the Bank's decision to bar the Applicant from entry into its premises. The hearing of these cases took place on 26 February 2009. The Applicant is now challenging before the Tribunal certain actions and decisions taken by the Executive Secretary and the Panel Chair during the Appeals process, notably withholding of critical documents submitted by the Bank *in camera* and rejection of key witnesses requested by the Applicant and, especially, the conduct of the Executive Secretary and the Panel Chair during the hearing process of these Appeals. As examples of such conduct she has specified their "rushing

through witnesses,” “testifying for [the Bank]” and “leading witnesses.” The question before the Tribunal is whether such actions, decisions and conduct are within the Tribunal’s scope of review and whether the Bank’s objection to the admissibility of the Applicant’s claims is well-founded.

15. At the outset, the Tribunal notes that, effective 1 July 2009, the Appeals Committee was renamed Peer Review Services and the new Staff Rule 9.03 (Peer Review Services), which introduced a number of changes, applied to all requests for peer review filed on or after 1 July 2009. However, appeals filed prior to that date, such as the Applicant’s appeals in the present case, are governed by and were processed under the former version of Staff Rule 9.03 (Appeals Committee).

16. The applicable version of Staff Rule 9.03 prescribes in pertinent part regarding the competence of the Appeals Committee and its advisory role to Bank management:

4.01. The Appeals Committee will consider and advise the Vice President, Human Resources Services ... on appeals by staff members against an administrative decision which allegedly alters or is in breach of terms of appointment or conditions of employment, or any formal disciplinary action based on misconduct (e.g., formal reprimands).

...

9.01. The Vice President, Human Resources, or in cases from which the Vice President, Human Resources, is disqualified, either the Managing Director responsible for the Human Resources function or a Bank Group official designated by the President will review the recommendation of the Appeals Committee and make a decision on the appeal.

17. A similar description of the Appeals Committee’s role is given in the “Appeals Committee Annual Report (2008)” (*See Yoon (No. 11)*, Decision No. 433 [2010], para. 9.)

18. The relationship of the Appeals Committee to the Tribunal and the Tribunal’s scope of review in this respect has frequently been explained in the Tribunal’s jurisprudence. In *de Raet*, Decision No. 85 [1989], the applicant had made similar

complaints to those of the Applicant in this case to the effect that “[t]he Appeals Committee hearing fell far below the standard of fair procedure to which the Applicant was entitled.” The Tribunal explained at para. 54 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. ... 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.

19. Furthermore in *N*, Decision No. 356 [2006], para. 33, the Tribunal re-affirmed:

The Tribunal has repeatedly emphasized that it does not sit as a court of appeals in respect of the proceedings, findings and recommendations of the Appeals Committee. (*See, e.g., de Raet*, Decision No. 85 [1989], para. 54; *Lewin*, Decision No. 152 [1996], para. 44; *Peprah*, Decision No. 275 [2002], paras. 19-20.)

20. In another case brought by this Applicant (*Yoon No. 4*, Decision No. 317 [2004], para. 22) the Tribunal held:

The Tribunal reviews applications *de novo*. Its function is not to assess the regularity of the process that leads to an Appeals Committee recommendation, because that recommendation is of no moment in the Tribunal’s assessment of the legal merits of any application.

21. In its judgment in *Yoon (No. 11)*, Decision No. 433 [2010], paras. 14-16, the Tribunal also dealt with a claim by the Applicant regarding its competence to hear complaints against procedural decisions made by the Executive Secretary and the Panel Chair of the Appeals Committee in reviewing a number of her appeals. After citing its previous jurisprudence, the Tribunal dismissed the Applicant’s claims.



22. As clearly established in the relevant Staff Rules and the Tribunal's jurisprudence, the Appeals Committee is part of the administrative recourse mechanism put in place by the Bank to redress staff grievances. The Appeals Committee makes recommendations to the Bank's management which takes the final decision on a staff member's complaint. In conducting its business, the Appeals Committee is, of course, bound to follow basic requirements of fairness, but it is not a judicial body that is required to comply with rules of judicial order and process. A staff member aggrieved by the decision of the Bank has a right to file an application to this Tribunal and, under Article II, paragraph 1, of its Statute, the Tribunal's role is to review decisions taken by the Bank alleged to violate a staff member's contract of employment or terms of appointment. The Tribunal, however, will not review procedural decisions or actions taken during the Appeals process in general, or the Appeals hearing in particular, as it "does not micromanage the activities of such a body" and "will not second-guess [its procedural decisions]." *See Yoon (No. 11)*, Decision No. 433 [2010], para. 16. It should also be noted here, as noted in *Yoon (No. 11)*, para. 17, that the decisions and actions taken during the hearing process of the present Appeals should be distinguished from the decisions taken by the Appeals Committee relating to its own competence and jurisdiction. Those latter decisions are subject to review by the Tribunal under Staff Rule 9.03, paragraph 4.03. *See Peprah*, Decision No. 275 [2002], para. 21.

23. As the object of the Applicant's current Application are procedural decisions and actions or inactions of the Panel Chair and the Executive Secretary during the Appeals process and specifically their conduct during the hearing of her Appeals, the Applicant's

claims are dismissed for the foregoing reasons. It is unnecessary to rule on the Bank's claims of the inadmissibility of the Applicant's claims on the remaining grounds.

DECISION

For the reasons given above, the Application is dismissed.

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

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Paris, France, 29 October 2010