

Decision No. 329

**Yang-Ro Yoon (No. 5),
Applicant**

v.

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

1. The World Bank Administrative Tribunal has been seized of an application, received on August 9, 2004, by Yang-Ro Yoon against the International Bank for Reconstruction and Development. 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, and composed of Bola A. Ajibola (President of the Tribunal) as President, Jan Paulsson (a Vice President of the Tribunal) and Francisco Orrego Vicuña, Judges. The usual exchange of pleadings with respect to jurisdiction took place and the case was listed on October 27, 2004 to decide the issue of jurisdiction only.
2. The Applicant's employment was made redundant effective June 1999. Her challenge to the redundancy decision was upheld by the Tribunal in *Yoon (No. 2)*, Decision No. 248 [2001]. Pursuant to Article XII of its Statute (as then in force), the Tribunal ordered the Bank to reinstate the Applicant to a "comparable position," unless the President of the Bank were to determine, in the interest of the institution, to pay compensation in lieu of reinstatement. On September 12, 2001, the Bank's Vice President of Human Resources informed the Applicant's counsel that the Bank had decided to reinstate the Applicant to a position comparable to the one she had occupied at the time of the termination of her employment.
3. The Applicant was indeed reinstated to a senior economist position at the World Bank Institute (WBI). She soon brought two sets of grievances to the Appeals Committee, however, by reference to the circumstances of that reinstatement (Appeals Nos. 1219 and 1226). The Appeals Committee decided to consolidate the two appeals since they involved the same parties and arose from the same event (i.e., the Tribunal's Order in *Yoon (No. 2)*). Before the Appeals Committee, the Applicant challenged the failure of Bank management to "provide any special support in recognition of the fact that [she had] resumed [her] career at the Bank through the Tribunal, not as an ordinary staff."
4. On September 25, 2002, the Appeals Committee concluded that it had jurisdiction over the Applicant's claims in the consolidated appeals. On August 8, 2003, the Appeals Committee issued its report, recommending denial of all relief sought.
5. On November 13, 2003, the Tribunal received the application for *Yoon (No. 4)* concerning the claims brought in Appeals Nos. 1219 and 1226. The Applicant contended that she had been given an assignment on the basis of a biased and false appraisal of her ability and achievements. She claimed that her reinstatement to WBI as a senior economist (level GG) deprived her of operational work and therefore was not comparable to her previous employment. She challenged the Bank's failure to short-list her for positions in the Europe and Central Asia Region (ECA), and its failure to provide her with a position of her choice. She also alleged that the Bank had retaliated against her and threatened her with revocation of the reinstatement. She requested a wide range of relief, including monetary compensation, placement in a permanent position in an operating unit of the Bank at GH level, "corrective penalties" to be paid to non-profit organizations, damages on account of "unjust delay and abuse" by the Appeals Committee, and disciplinary proceedings against three staff members who allegedly mishandled her case. On June 18, 2004, the Tribunal in *Yoon (No. 4)* dismissed the Applicant's case.
6. In the meantime, on November 11, 2003, the Applicant had filed another appeal (Appeal No. 1295) with the

Appeals Committee in which she complained of the following:

- [1] I hereby appeal and contest the decisions made by the Bank, and specifically my managers in ECA, Maureen Lewis and Annette Dixon, to deny me an interim performance review, which I was promised both by ECA and by the Bank;
- [2] to deny me a timely performance assessment in the form of an [Overall Performance Evaluation (OPE)];
- [3] to wrongfully, and deliberately, downgrade my performance in ECA when an OPE was ultimately drafted and finalized;
- [4] to deny me a full work program consistent with my ability, experience, and record of achievement in the Bank;
- [5] to wrongfully, and in violation of Bank rules, circulate an incomplete, draft version of my OPE to all reviewers with no protection of confidentiality or remedial action to offset this wrongful distribution;
- [6] to withhold from me timely information about openings for regular positions in ECA for which I was highly qualified, thereby obstructing my integration into ECA on a permanent basis;
- [7] to falsely denigrate my abilities and qualifications in connection with other suitable openings in the Bank for regular positions for which I was eminently qualified, further obstructing my integration into a regular position in other operational units of the Bank, particularly job postings in ECA itself, in [the Human Development Network Vice Presidency (HDNVP)], and in [the South Asia Human Development Sector Unit (SASHD)];
- [8] to deny me the standard on-the-job perquisites made available by the Bank, and by ECA, to all professional staff at my level of training and experience;
- [9] to treat me as a probationary, third-class employee with no regard to either ECA's interest or my own career path;
- [10] to willfully disregard the [Terms of Reference (TOR)] agreed to by myself, Ms. Lewis, and Aulikki Kuusela in January, 2002 and task me with second-hand, short-term pick-up projects and duties unsuitable for a level GG staff;
- [11] and to personally denigrate me as a professional with a long track record of success at the Bank;
- [12] I further appeal and contest the decision of Michelle Riboud, SASHD, to deny my selection as senior education economist in her unit, despite my highly relevant qualifications, shortlisting, and excellent interviews with her staff, with Ms. Riboud falsely claiming after the fact that 'we have decided not to fill this position for the time being';
- [13] I also appeal and contest the decisions of Annette Dixon and Maureen Lewis to deny me shortlisting, and to not select me, for the position of senior HD economist in ECA, and the decision of Maureen Lewis to deny my selection as senior economist in HDNVP.

7. On February 11, 2004, the Appeals Committee concluded that it had jurisdiction to review only the three claims listed under (2), (3) and (5) in the preceding paragraph. The Appeals Committee found that all other claims submitted by the Applicant were either untimely or beyond the scope of its review as they did not relate to administrative decisions. The three claims heard on the merits gave rise to a recommendation on May 25, 2004 by the Appeals Committee that they be denied. The recommendation was accepted by the Bank.

8. Before this Tribunal, the Applicant now brings fifteen grievances mainly concerning her developmental assignment in ECA's Human Development Sector Unit ("ECSHD") from February 2002 through August 2003. Thirteen of these grievances in substance repeat claims raised in her Appeal No. 1295. In terms of relief, she seeks \$100,000 in cash for denial of proper working conditions, for the failure to provide her with a timely evaluation, and the failure to provide necessary feedback to allow her to take advantage of career opportunities as they arose. Also, she seeks, for personal suffering, both psychological and professional, cash compensation

calculated at two months' compensation for each month of abuse, i.e. three years total. She further asks for re-evaluation of her performance by an independent panel, and compensation for lost career opportunities. Finally, she asks for integration into ECA on a Regular basis and selection for a suitable Open-Ended position to be graded at the GH level. Alternatively, she asks to be awarded "an appointment to a regular position at level GH in SASSED, ECSHD or HDNVP as compensation for her wrongful non-selection for suitable positions in those units in 2002..."

9. In the further alternative, the Applicant requests payment of salary and benefits as if she were to keep working as a GG-level staff member until the mandatory retirement age of 60, but with a release from her obligation to render services to the Bank "to facilitate Applicant's development of a career elsewhere."

10. The following are the fifteen grievances the Applicant brings before this Tribunal:

Work Program:

[1] Decision by the Bank and Applicant's ECA managers to deny her a full work program consistent with her ability, experience and record of achievement in the Bank, and their failure even to minimally observe the terms of the TOR negotiated between Applicant and the Bank in January, 2002

[2] Decision by the Bank and Applicant's ECA managers to treat her as a probationary, second-class employee with no regard to either ECA's interest or Applicant's career path

[3] Decision by the Bank and Applicant's ECA managers to task her with second-hand, short-term pick-up projects and duties unsuitable for a level GG staff professional, and wholly inconsistent with the terms of the TOR agreed to by Applicant, Ms. Lewis, and Aulikki Kuusela in January, 2002

Performance Evaluation:

[4] Decision by the Bank, acting through Applicant's ECA managers, Maureen Lewis and Annette Dixon, to deny Applicant a regular 2002 OPE as well as an interim performance review, which she was expressly (and repeatedly) promised by ECA, [Human Resources, Office of the Vice President (HRSVP)], and the Bank

[5] Decision by the Bank and the aforementioned ECA managers to deny Applicant a timely performance assessment in the form of an OPE for FY 2003, compounded by the failure of Ms. Lewis and Ms. Dixon to provide Applicant with the regular performance appraisals and feedback demanded by the Bank's rules and procedures

[6] Decision by Ms. Lewis and Ms. Dixon to wrongfully and deliberately downgrade Applicant's performance in ECA when they ultimately (and belatedly, at the very end of Applicant's development assignment) did draft and provide Applicant with a copy of an OPE

[7] Decision by the Bank acting through Ms. Lewis wrongfully to circulate, in violation of Bank rules, an incomplete, pejorative, draft version of Applicant's OPE to all reviewers with no protection of confidentiality, and with no remedial action on the part of the Bank and Ms. Lewis to remedy this offense

[8] Decision by ECSHD to assign Applicant [an] SRI rating of 3.2 in FY 2002 without [a] reasonable and objective basis, with resulting adverse effects on Applicant's salary level

[9] Decision by ECSHD to assign Applicant [an] SRI rating of 3.2 in FY 2003 without [a] reasonable and objective basis, with resulting adverse effects on Applicant's salary level

Job Search:

[10] Decision by the Bank and Applicant's ECA managers to withhold from her timely information about openings for regular positions in ECA for which she was highly qualified, thereby obstructing Applicant's integration into ECA on a permanent basis

[11] Decision by the Bank and Applicant's ECA managers to falsely denigrate her abilities and qualifications in connection with other suitable openings in the Bank for regular positions for which Applicant applied (and for which she was eminently qualified), further obstructing Applicant's integration into any operational unit of the Bank (specifically including job postings in ECA, in HDNVP, and in SASHD)

[12] Decision of Michelle Riboud, SASHD, to deny Applicant selection as senior education economist in her unit, falsely claiming she had 'decided not to fill this position for the time being,' despite Applicant's highly relevant qualifications, success in being shortlisted for this position, and excellent interviews with Ms. Riboud's staff

[13] Decision of Annette Dixon and Maureen Lewis to deny Applicant shortlisting, and to not select her, for the position of senior HD economist in ECA, and the decision of Maureen Lewis to deny Applicant's selection as senior economist in HDNVP

Stigmatization and Discriminatory Treatment:

[14] Decision by the Bank and Applicant's ECA managers to deny her standard on-the-job perquisites made available by all Bank units, including ECA, to all professional staff at her level (GG) and degree of training and experience

[15] Decision by the Bank and Applicant's ECA managers to personally denigrate her as a professional with a long track record of success in the Bank.

11. Claims (8) and (9), concerning the SRI ratings for 2002 and 2003, were not included in the Applicant's claims before the Appeals Committee. Not having brought these claims before the Appeals Committee, the Applicant cannot bring them before this Tribunal. Article II(2) of the Tribunal's Statute provides that the Applicant must have exhausted all other remedies available within the Bank Group, except if the Applicant and the Bank have agreed to submit the application directly to the Tribunal, or in the event of exceptional circumstances. Neither exception applies to any of the claims in this case. Moreover, the Tribunal's jurisprudence has consistently held that claims must be timely in order to be admissible; as it was notably put in *Setia*, Decision No. 134 [1993], para. 23:

As regards, first, the issue of the timeliness of the Applicant's appeal to the Appeals Committee, the Tribunal recalls that, in view of the utmost importance which attaches to the statutory requirement of the exhaustion of all other remedies available within the Bank Group, and in particular to the findings and recommendations of the Appeals Committee, the Tribunal has found in previous cases that

[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 (*Dhillon*, Decision No. 75 [1989], paras. 23-25; *Steinke*, Decision No. 79 [1989], paras. 16-17). (*de Jong*, Decision No. 89 [1990], paragraph 33.)

12. As to the remaining thirteen grievances, it should be observed that underlying all of them are two principal claims or premises, namely: (1) the Bank failed to reinstate the Applicant to a comparable position; and (2) the Bank has treated her like a second-class citizen. These principal claims were dismissed by the Tribunal in *Yoon* (No. 4). The additional facts adduced by the Applicant in the present case appear to be an attempt to re-litigate her claims concerning her reinstatement based on different events. To what extent these different events actually raise new claims will be examined at the merits stage. Nevertheless, the Tribunal will make some preliminary observations in this regard.

13. The Applicant's claims concerning her rights as a reinstated employee of the Bank are well summarized in the following e-mail addressed to Bank management on February 4, 2003:

I am not a staff member on an ordinary development assignment, but someone reinstated to a comparable position ...; the putative "consistency" in my treatment exemplifies once more the complete indifference of ECA Management to any notion that my reinstatement entitles me to some (legal or moral) "right" to being

treated properly and in a way that accounts for and in some ways tries to repair at least some of the damage done to me unjustly by this institution.

14. The notion that the Applicant's reinstatement entitles her to treatment beyond that of an ordinary staff member was expressly dismissed by this Tribunal in *Yoon (No. 4)*, Decision No. 317 [2004], para. 8:

The person to be reinstated has no greater rights than any other staff member. Certainly no other staff member should be transferred, demoted, or dismissed only to accommodate that person. Nor should the Bank create a position at the level to which such a person aspires only for that purpose; that would be an unjustifiable waste of the Bank's resources, indeed nothing more than a concealed and inefficient equivalent of monetary compensation.

15. The Tribunal's observations in *Yoon (No. 3)*, Decision No. 267 [2002], para. 15, concerning the nature of "reinstatement to a comparable position" also merit reiteration:

A suitable "comparable position" is unlikely to materialize instantly on the occasion of an order of reinstatement. Reinstatement is likely to require consultation and accommodation. The Bank is entitled to exercise its managerial discretion in the manner in which it implements the order (although of course it cannot alter the terms of the order).

16. The Applicant's claim to a right to special treatment as a reinstated staff member is barred by *res judicata*.

17. The Applicant's second principal contention, a variation of the first, is that she has been treated as a "third-class employee" or a "second-class citizen." The Applicant's claims numbers (2) and (14) are based on a premise that, as noted above, was expressly dismissed in *Yoon (No. 4)*.

18. In addition, the facts adduced by the Applicant in support of her "second-class" treatment claim date back to 2002. On July 4, 2002, the Applicant sent an e-mail to Maureen Lewis in which she stated: "Isn't it natural if I sometimes feel as a second class citizen?" On July 7, 2002, the Applicant e-mailed Maureen Lewis regarding her claims that she would be stigmatized by the "signaling effect of taking a job from a lower level colleague." The Applicant's claims (2) and (14) are therefore dismissed as time-barred.

19. The Applicant's claims (10), (12) and (13) are dismissed for failure to exhaust internal remedies in a timely manner. These claims refer to positions that were advertised in 2002 and filled in the fall of 2002 and the spring of 2003. Having failed to bring these claims before the Appeals Committee in a timely manner, the Applicant neglected to exhaust internal remedies for claims (10), (12) and (13).

20. Several of the Applicant's current grievances were brought in consolidated Appeals Nos. 1219 and 1226, left out in the Applicant's pleadings before the Tribunal in *Yoon (No. 4)*, re-introduced in Appeal No. 1295, and introduced yet again before the present Tribunal. The Applicant challenged the Bank's failure to provide her with a 2002 OPE before the Appeals Committee in consolidated Appeals Nos. 1219 and 1226. She did not, however, bring claims concerning her 2002 OPE before the Tribunal in *Yoon (No. 4)*. She then brought the 2002 OPE claim before the Appeals Committee in Appeal No. 1295, which dismissed the claim as both untimely and barred by *res judicata*. Likewise, the Applicant's claim concerning her work program in 2002 was brought before the Appeals Committee in Appeals Nos. 1219 and 1226, was not the subject of her complaint in *Yoon (No. 4)*, was brought again before the Appeals Committee in Appeal No. 1295, and is now before the Tribunal. The work program grievance dates back to July 2002, when the Applicant e-mailed Maureen Lewis describing how she had been made to pick up the pieces from someone else who was "substantially less experienced and qualified." The Applicant may not now re-introduce claims concerning a 2002 OPE and a 2002 work program before the present Tribunal, and the Tribunal therefore dismisses claims (1), (3) and (4).

21. The Applicant may not re-introduce stale claims to support a "pattern of abuse" or "continued wrong" theory. Although the Applicant cites *D*, Decision No. 304 [2003], to support her contention that she may bring in all claims relating to what she considers to be a single pattern of abuse, *D* is inapposite to the present case. The Tribunal in *D* held that "it should not be reasonably expected that each of the various elements of a single

pattern of investigation and termination of the Applicant (such as removal from an office or the explanation given at a contemporaneous staff meeting) must be viewed discretely and challenged separately.” (*Id.* at para. 67.) Whereas *D* concerned the underlying elements of due process in the course of a specific investigation, the present case raises a wide range of claims, arising at different times, involving different people, and related to distinct events. The Applicant cannot transform such claims into a single pattern of abuse merely by labeling them as such.

22. In *Jalali and Malekpour*, the Tribunal rejected the notion of bringing stale claims as part of a “continuous pattern” litigation strategy:

Not having raised [the Bank's decisions] before and not having taken them through administrative review, the Applicant cannot now incorporate these earlier decisions by the Bank as part of a "pattern" that can be indefinitely subjected to review by the Tribunal. The Tribunal has explained in several cases that there are important reasons for the requirement that Bank decisions be reviewed in a timely manner and that internal remedies be exhausted, including timely recourse to administrative review and to the Appeals Committee. (*Jalali*, Decision No. 148 [1996], para. 35.)

The Applicant's argument appears to be an effort to tack numerous alleged Bank acts and "decisions" since the mid-1990s onto his complaint about his 2002 OPE, by alleging that those old acts and "decisions" constituted evidence of a "pattern" of "abusive treatment and retaliation" on the part of the Bank ultimately leading to the allegedly unfair evaluation in his 2002 OPE. In *Jalali*, Decision No. 148 [1996], para. 35, the Tribunal rejected such a litigation strategy as an indirect way of avoiding the requirement of exhaustion of internal remedies. (*Malekpour*, Decision No. 320 [2004], para. 21.)

23. What remains to be examined by the Tribunal on the merits are claims (5), (6), (7), (11) and (15).

24. The Tribunal finds the five claims admissible with the proviso that claims (11) and (15) will be considered only inasmuch as they relate to claims (5), (6) and (7); i.e., to the extent that her claim of denigration directly results from Bank management's handling of the Applicant's 2003 OPE. The broad language employed by the Applicant does not give her license to bring in claims that are dismissed by the present judgment, or were dismissed in *Yoon (No. 2)*, *Yoon (No. 3)* and *Yoon (No. 4)*. The Tribunal emphasizes in the strongest terms that it will not tolerate any attempt to re-litigate claims which it has already dismissed.

Decision

For the above reasons, the Tribunal decides that:

- (i) it will examine in their entirety the merits of claims (5), (6) and (7) of the Applicant;
- (ii) it will examine the merits of claims (11) and (15) only inasmuch as they relate to claims (5), (6) and (7);
- (iii) the dates for the filing of pleadings on the merits will be determined by the President of the Tribunal and communicated to the parties; and
- (iv) all other claims of the Applicant are dismissed.

/S/ Bola A. Ajibola
Bola A. Ajibola
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At Washington, DC, November 12, 2004