

Summary of Gonzalez-Flavell (No. 2) v. IBRD, Decision No. 570 [2017]

The historical background of the case is contained in *Gonzalez-Flavell*, Decision No. 553 [2017]. The Applicant submitted a second Application to primarily challenge the decision to continue her on Short Term Disability (STD) and the refusal to accept her medical certification that she was fit to return to work. In addition, the Applicant challenged the Bank's decision to place her on Administrative Leave and pay her salary at 70% as though she was still on STD pending the resolution of the Applicant's fitness to return to work claim. The Bank submitted a preliminary objection contesting the admissibility of the Application. The Bank argued that the Applicant was first obliged to exhaust internal remedies by challenging, through the Administrative Review Panel, the decision not to process her return to work certification that was made by the Bank's Disability Administrator (the Reed Group). The Applicant on the other hand contended that her Application was admissible directly before the Tribunal because she was not appealing a decision by the Reed Group, but rather the Bank's failure to return her back to work. To the Applicant, the Reed Group is merely an agent of the Bank. This judgment addressed the Bank's preliminary objection.

The Tribunal observed that this case concerned a matter of procedure, not the question of agency. The issue at the core of this case was what procedure should to be adopted when a staff member seeks to challenge a decision not to process a Return to Work form. To address this issue, the questions of who made the impugned decision and what do the Staff Rules say must be answered. The Tribunal held that it was evident that the decision maker was the Reed Group since the Staff Rules expressly states that it is the Disability Administrator which "determines, following receipt of a release to work form, that the staff member is able to perform the material duties of his/her regular job." The Tribunal emphasized that it was logical that it is the Reed Group that makes such a determination following receipt of a Return to Work form since it was the Reed Group that approved the Applicant's placement on STD and entry into the disability program in 2015. Having made that finding, the Tribunal held that if the Applicant wanted to challenge the Reed Group's decision not to return her to work, she was obliged to request administrative review within 90 days of receipt of the decision. The Applicant did not do so. As a result, the Applicant's claims were found to be inadmissible because the Applicant did not first exhaust internal remedies as required by the Staff Rules and the Tribunal's Statute.

The Tribunal then observed that the remainder of the Applicant's claims were either moot or devoid of all merit. In particular, the Tribunal held that the Applicant contributed to the state of affairs because she refused to submit an Authorization for Release of Medical Records despite multiple requests. This prevented the Reed Group from ascertaining whether the Applicant was indeed fit to return to work. To address the situation, the Bank continued paying the Applicant's salary at 70% as though she was still on STD, even though her STD benefits had already expired. The Tribunal found that the Applicant could not, on one hand, decry the state of limbo which she created through her own actions and, on the other, petition to receive full pay for the period where she received benefits to which she was not entitled.

Decision: Application is dismissed.