

Summary of Ampah v IFC, Decision No. 522 [2015] (Preliminary Objection)

The Applicant challenged, first, the May 2005 decision of the IFC to change his International Open contract to a Local Term contract. Second, he sought compensation for additional work undertaken beyond his terms of reference. Third, he challenged the IFC's failure to inform him of the existence of a Disability Fund, and sought compensation for the cost of paying for his wife to accompany him on official duties when he developed a serious medical condition, and costs associated with seeking treatment for this condition. The IFC raised a preliminary objection.

The Applicant began working for the IFC in 1996, as a consultant in the Africa Project Development Facility (APDF). In 2001 he was appointed to an Open contract. In 2004 the IFC concluded the activities of APDF and initiated a new facility. With this change, some staff had their employment terminated, while others were retained in the new facility. The Applicant was one of those retained. His Letter of Appointment stipulated that it was subject to local recruitment, and indicated the salary in local currency. The Applicant was taken aback by this, and spoke to IFC management, highlighting the extent to which the conditions under the new contract would negatively affect his salary and benefits. In response, management confirmed that the position available was a local hire, that the international position the Applicant had previously held had been eliminated, and that in any event the Applicant should focus on improving his performance. The Applicant viewed this as an ultimatum and a threat. He signed the Letter of Appointment in late June 2005.

The Applicant stated that notwithstanding his unhappiness at the change in contractual status, he continued to perform his activities diligently, and worked far outside his terms of reference.

In 2008 the Applicant was diagnosed with a medical condition which affected his overall health and mobility. He contended that this stemmed partly from the stress associated with his work and contractual predicament. The Applicant stated that he requested a medical evacuation to Canada, but that this request was refused by the IFC and so in 2009 and again in 2010 he had to pay the cost of flying himself and his family to see a specialist in Toronto. The Applicant also stated that from 2008 to 2011 he had to pay for his wife to accompany him on official duties and assist him at work, without compensation. In 2010 he learned of his entitlement to hire a Disability Assistant. His wife was officially recognized as his Disability Assistant in 2011.

The Applicant entered mediation with the IFC in mid-2014, without success. He filed his Application with the Tribunal on 27 February 2015.

The IFC contended that the Applicant had failed to exhaust internal remedies in a timely manner and that the Application was therefore inadmissible. The IFC argued that the Applicant never sought to bring his claims before the Appeals Committee or PRS, and had not asserted any “exceptional circumstances” which might justify his delay in filing. The Applicant responded that he had exhausted all possible avenues before filing with the Tribunal. He argued that while working with the IFC he was fearful of using any formal avenues for redress as he did not want to give management an excuse to terminate his contract but that, nevertheless, he used a number of internal remedies.

The Tribunal considered the admissibility of the Applicant’s three claims in turn. Regarding the change in contractual status, the relevant event(s) had occurred in mid-2005 yet the Applicant did not file a request for review before the Appeals Committee or PRS, and only filed with the Tribunal in 2015. Regarding the various avenues for redress pursued by the Applicant, the Tribunal noted the important distinction between formal and informal remedies. The Tribunal then considered a number of potential “exceptional circumstances.” It concluded that the Applicant’s lack of awareness of the requirements of the internal justice system and his lack of confidence in that system did not constitute “exceptional circumstances” for the purposes of the Statute. Regarding the Applicant’s alleged fear that pursuing formal remedies would have had adverse consequences for his continued employment, the Tribunal concluded that he had not met the applicable standard of proof. The Tribunal concluded, therefore, that his first claim was inadmissible.

The Tribunal reached a similar conclusion regarding the Applicant’s second and third claims. The Tribunal found that the Applicant had never filed with the Bank’s formal grievance mechanisms in respect of these issues before filing with the Tribunal in 2015, and that there were no exceptional circumstances to excuse the delays in filing. As a result, the Tribunal found that the Applicant’s claims for the extra work allegedly undertaken between 2005-2011 and for compensation relating to his medical condition were inadmissible.