

McIntosh & Sisler v. IBRD, Decisions Nos. 488 & 491 [2014]

The Applicants filed separate applications which addressed the same issue, namely the non-payment of on-call compensation to General Services Department (GSD) staff who perform on-call duties pursuant to the 2003 on-call compensation policy. The 2003 on-call compensation policy provided in relevant part that any staff who is required to be available for work during off-hours on a regular basis is entitled to on-call compensation. The Applicants argued that the Bank acted in a discriminatory manner by paying on-call compensation to some World Bank staff members who perform on-call tasks and not to them. The Applicants further contended that the Bank's decision not to publish the on-call compensation policy constituted a failure to meet the necessary standard of transparency. The Bank contested these assertions, arguing first that the applications were inadmissible on the grounds that the Applicants delayed contesting the non-payment of on-call compensation to them. The Bank claimed that each unit was first required to request payment of compensation to their staff from Human Resources before the on-call compensation policy could be applied to their staff. According to the Bank the Applicants failed to demonstrate unjustified differentiation or discrimination since all staff in GSD are not paid on-call compensation. The Bank further asserted that the decision not to pay on-call compensation to staff in GSD was reasonable because: 1) the nature of the work performed by GSD staff while on-call was minimal; 2) being on-call is an inherent part of the responsibilities of a security specialist; 3) GSD security specialist salaries incorporate a premium for on-call work; 4) GSD staff members are compensated in other ways for being on-call; and 5) the practice of other international organizations confirm the reasonableness of the Bank's decision not to pay on-call compensation to GSD staff.

The Tribunal dismissed the Bank's admissibility challenge, noting that the Applicants contested their alleged ineligibility to receive on-call compensation as soon as they became aware of the policy. In order to determine whether the Applicants were treated in a discriminatory manner, the Tribunal considered the nature and content of the Bank's on-call compensation policy. The Tribunal found that this policy included an administrative process, as demonstrated by Bank practice, in that the unit in question first submitted a request to Human Resources setting out the business need for on-call compensation. The Tribunal found that this administrative process formed a condition precedent to the application of the on-call compensation policy and was an essential element of the policy.

The Tribunal then assessed whether the Bank's decision not to pay on-call compensation to GSD staff members who are on-call amounted to an abuse of managerial discretion and unjustified differentiation in the treatment of staff. The Tribunal observed that while it is within the Bank's discretionary powers to

This summary is provided to assist in understanding the Tribunal's decision. It does not form part of the reasons for the decision. The full judgment of the Tribunal is the only authoritative document. Judgments are available at: www.worldbank.org/tribunal

develop managerial tools aimed at achieving the Bank's business objectives, these discretionary powers must be exercised in a manner which is not arbitrary, discriminatory, improperly motivated or in violation of a fair and reasonable procedure. The Tribunal rejected the Bank's argument that the Applicants should be compared with other GSD staff members. The Tribunal found that the comparator group with whom the Applicants must be compared are those who are listed on the weekly duty roster and are required to be available after working hours on a regular basis. The Tribunal found that the Bank's five arguments in favor of non-payment of on-call compensation to GSD staff did not serve as a justifiable basis for the differential treatment between the Applicants and other staff who receive on-call compensation. The Tribunal held that the nature of the work performed while on-call was not an essential part of the on-call compensation policy and that the Bank failed to provide evidence to support its second and third contentions. With respect to the Bank's fourth argument, the Tribunal noted that any compensation scheme which only compensates a staff member for actual time spent addressing an emergency cannot be considered a justifiable substitute for the existing on-call compensation policy. Finally, the Tribunal held that the practice of other international organizations was inconclusive and did not support the Bank's argument.

The Tribunal observed that the existence and terms of an on-call compensation policy which was consistently applied since 1 January 2003 should not come as a surprise to staff, their managers or HR personnel. The Tribunal found that due to the Bank's failure to publish the terms of the on-call compensation policy, the Applicants consented to perform on-call duties without the knowledge that such a policy existed. They were denied the opportunity to request compensation for their on-call duties.

Decision: The Bank was ordered to pay the Applicants \$8,000 and \$25,000 respectively and attorneys' fees.