



World Bank Administrative Tribunal

2017

Decision No. 574

**BI (Nos. 6 and 7),
Applicant**

v.

**International Finance Corporation,
Respondent**

(Preliminary Objection)

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

**BI (Nos. 6 and 7),
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Stephen M. Schwebel (President), Abdul G. Koroma, and Marielle Cohen-Branche.
2. The Applications were received on 11 and 17 January 2017. The Applicant represented herself. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges: (i) her 2015 Performance Evaluation Plan (PEP); (ii) her 2015 Salary Review Increase (SRI) rating; (iii) the implementation of her Opportunity to Improve Plan (OTI); (iv) the decision by management to terminate her employment; (v) her placement on administrative leave; and (vi) the restriction on her access to Bank Group premises.
4. By an order of 3 March 2017, the Tribunal consolidated the two Applications. On 24 March 2017, the IFC filed a preliminary objection to the consolidated Application. This judgment addresses the IFC's preliminary objection.

FACTUAL BACKGROUND

5. The Applicant commenced employment with the World Bank Group in 1999 at its headquarters as a Program Assistant, Level GC. In October 2010, the Applicant began working as a Program Assistant, Level GC, with the IFC.

6. On 12 December 2014, management notified the Applicant that she would be placed on an OTI. On 13 February 2015, management suspended the Applicant's OTI and requested a Fitness for Duty assessment to address her medical condition.

7. The Fitness for Duty assessment concluded that the Applicant was fit for duty with certain recommended accommodations, including "[t]hat she be provided the opportunity on her request to be absent from work for medical reasons [...] for a period of at least 1-2 hours on a weekly basis" and "[t]hat her management provide individual support in her daily activities such as a coach, mentor or design a re-education program to address behavior related to the defined performance dimensions noted in the fitness for duty request and the IFC Competency Framework."

8. The Applicant claims that, while the Fitness for Duty assessment was being conducted, her OTI was suspended. According to the Applicant, the OTI was reinstated on 17 April 2015 with an effective date of 20 April 2015. The Applicant contends that due to a death in her family, she was out of the office from 20 April to 17 June 2015. During the time that she was out of the office, according to the Applicant, the OTI was again suspended, and it was reinstated on 18 June 2015 after she returned to work.

9. On 17 September 2015, the Applicant was verbally informed of her 2015 SRI rating.

10. On 20 September 2015, the Applicant's supervisor and Reviewing Official signed her 2015 PEP.

11. On 11 February 2016, the Applicant was separated from the IFC due to unsatisfactory performance.

12. On 29 February 2016, the Applicant filed a Request for Review with Peer Review Services (PRS) contesting her 2015 PEP, 2015 SRI rating, and "accompanying OTI." On 17 March 2016, the Applicant added a claim contesting the termination decision. The claims were consolidated and considered in Request for Review No. 337.

13. In a memorandum dated 21 March 2016, PRS notified the Applicant of its partial dismissal of claims as untimely, namely: (i) the 2015 PEP and (ii) placement on an OTI. In a later report, PRS concluded that the Applicant's 2015 SRI claim was also untimely.

14. While the PRS Panel found her claims regarding the 2015 PEP, 2015 SRI rating, and placement on an OTI untimely, it also noted that her "claims [...] regarding the OTI process leading to the notice of [her] termination based on unsatisfactory performance appear[ed] to be timely because this claim was filed within 120 calendar days of receiving notice of the termination decision on February 11, 2016."

15. The PRS Panel released its report on 25 August 2016. In consideration of the Applicant's timely claims, the Panel found

that management acted consistently with [the Applicant's] former contract of employment and terms of appointment in making the decision to terminate her employment based on unsatisfactory performance, including the OTI process leading to the termination decision. The Panel therefore recommend[ed] that [the Applicant's] requests for relief be denied.

The responsible Vice Presidents accepted the PRS Panel's recommendation on 13 and 19 September 2016.

16. The Applicant filed her Applications on 11 and 17 January 2017. Her request for relief includes the following: (i) "compensation and benefits for nearly 3 years"; (ii) "reinstatement to service via Short Term/Long Term STD"; (iii) "maximum pension under the Net Plan as service years [were] shortened by approximately 3 years before mandatory age of 62"; (iv) "employer's subsidy for medical insurance premiums"; and (v) "overall reputational damage for being unjustly terminated."

17. The IFC filed a preliminary objection on 24 March 2017.

18. The IFC accepts the Tribunal's jurisdiction over the following claims made by the Applicant:

- a. [The] Applicant's OTI process;
- b. The decision by management to terminate [the] Applicant's employment for unsatisfactory performance; [and]
- c. The decision by management to place [the] Applicant on administrative leave and restrict her access to the Bank Group premises.

19. The parties are therefore in agreement that the Tribunal has jurisdiction over the above claims of the Applicant but dispute the Tribunal's jurisdiction over the Applicant's remaining claims, namely: (i) her 2015 PEP and (ii) her 2015 SRI rating.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

Preliminary Objections

20. In its preliminary objection, the IFC argues that the Applicant's claims challenging (i) her 2015 PEP and (ii) her 2015 SRI rating are inadmissible because they were not filed in a timely manner. The IFC also contends that the Applicant's challenge to her OTI process is admissible, but not the decision to place the Applicant on an OTI as she was notified of that decision on 12 December 2014, more than a year before she submitted her Request for Review to PRS.

21. The IFC contends that there are no exceptional circumstances for which the Applicant's delay in filing her Applications should be excused. Specifically, the IFC argues that the Applicant has used the internal justice system before and should be aware of the time limit for filing an application with the Tribunal.

22. In addition, according to the IFC, while the Applicant argues that she did not "confirm" her 2015 SRI rating in the Bank Group's HR system until 30 October 2015, that is an improper date from which to calculate the tolling of time on her claims.

23. The IFC points to three dates from which the Applicant's timeliness could reasonably be calculated. First, in the IFC's view, since the Applicant received notice of her 2015 SRI rating of 2 on 17 September 2015, she should have filed a Request for Review with PRS within 120 days

of that date, which would have been 15 January 2016. Second, the IFC contends that since the Applicant received her completed 2015 PEP on 20 September 2015, she therefore should have filed a Request for Review with PRS within 120 days of that date, which would have been 18 January 2016. Third and finally, the IFC points to the Applicant's email of 5 October 2015 in which the Applicant references her 2015 PEP and SRI rating of 2 and requests a meeting to discuss both. The IFC contends that even by the date of the Applicant's own admission of receipt of notice of her 2015 PEP and SRI rating, the deadline to file a Request for Review with PRS would have been 2 February 2016.

24. However, the Applicant filed her Request for Review with PRS on 29 February 2016. Therefore, the IFC argues, her Request for Review was not filed in a timely manner.

25. The Applicant contends that 30 October 2015 was the date from which she was "fully aware of the entire disputed decision for that performance year," because, in the Applicant's view, "[i]t was not until October 30, 2015 that [she] confirmed the FY15 SRI rating in myHR Kiosk that made that date the official date of [the] completed FY15 performance evaluation."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

26. The question before the Tribunal is whether it has jurisdiction over the Applicant's claim relating to her 2015 PEP and 2015 SRI rating.

27. Article II, paragraph 2 of the Tribunal's Statute provides:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

- (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
- (ii) the application is filed within one hundred and twenty days after the latest of the following:
 - (a) the occurrence of the event giving rise to the application;

- (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
- (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

28. The parties are in agreement that the Applicant is required to challenge her 2015 PEP and SRI claims before PRS prior to coming to the Tribunal. Staff Rule 9.03, paragraph 8.01 states:

A staff member who wishes to request peer review must submit a Request for Review with the Peer Review Secretariat within 120 calendar days of receiving notice of the disputed employment matter.

29. Staff Rule 9.03, paragraph 8.02 states:

A staff member receives “notice” of a disputed employment matter when he or she receives written notice or ought reasonably to have been aware that the disputed employment matter occurred.

30. The Tribunal has expressed the importance of the requirement of exhaustion of internal remedies, which “ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action.” *Ampah*, Decision No. 522 [2015], para. 55. Furthermore, the Tribunal has stressed in numerous decisions that a failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. *Alrayes*, Decision No. 520 [2015], para. 55; *Islam*, Decision No. 280 [2002], para. 7; *Peprah*, Decision No. 275 [2002], para. 24; *Sharpston*, Decision No. 251 [2001], paras. 25-26; *Setia*, Decision No. 134 [1993], para. 23; *de Jong*, Decision No. 89 [1990], para. 33.

31. It is undisputed that the Applicant’s 2015 PEP was completed on 20 September 2015. She had 120 days from that day to challenge her PEP to PRS. But she did not timely challenge; she only came to PRS on 29 February 2016. The PRS Panel, in dismissing her challenge to the 2015 PEP, stated:

You assert that on September 20, 2015, your supervisor and your Reviewing Official signed the 2015 annual performance review in ePerformance. You filed your Request for Review on February 29, 2016, more than 120 calendar days [after] receiving notice of your 2015 performance review. Therefore, this claim is untimely.

32. The Tribunal finds that the PRS Panel's dismissal of the above claim as untimely is supported by the record.

33. Regarding the Applicant's 2015 SRI rating, the record supports the IFC's position that the Applicant was verbally informed of her 2015 SRI rating of 2 by her supervisor on 17 September 2015. The record clearly shows that the Applicant acknowledged receipt of her 2015 SRI rating on 5 October because on that day she sent an email to her Director asking for a meeting to discuss her SRI rating of 2. PRS dismissed the claim relating to her 2015 SRI rating as untimely, stating:

[The Applicant] also requested review of her performance rating of 2 for the fiscal year (FY) 2015 review period. After carefully considering the timeliness of this claim, the Panel noted that [the Applicant] acknowledges in her written submission that management communicated her 2015 performance rating of 2 to her verbally on September 17, 2015. [The Applicant] filed her Request for Review more than 120 days later. The Panel therefore found that the claim regarding the 2015 performance rating was untimely and the Panel did not have jurisdiction to review the claim.

34. The Tribunal finds that the PRS Panel's dismissal of the above claim as untimely is also supported by the record. The Tribunal notes that even if the PRS Panel calculated the starting period for the 120-day deadline from 5 October 2015, the Request for Review was still untimely as the Applicant filed it only on 29 February 2016.

35. Under the Tribunal's jurisprudence, a failure to observe time limits for submission to PRS is a failure to comply with the Tribunal's statutory requirement of exhaustion of internal remedies. Therefore, the Tribunal must decline jurisdiction over the 2015 PEP and SRI claims.

36. Finally, Article II(2) of the Tribunal's Statute allows the Tribunal to render a claim or application admissible even if it was not filed in a timely manner, if the Tribunal finds that there

were exceptional circumstances justifying the late filing. The record does not contain any exceptional circumstances that would justify the Applicant's failure to observe the time limits regarding these claims.

DECISION

For the reasons given above,

- (1) The Applicant's claims regarding the validity of her 2015 PEP and 2015 SRI rating are inadmissible;
- (2) The Applicant's claims regarding: (i) the implementation of her OTI; (ii) the decision to terminate her employment; (iii) her placement on administrative leave; and (iv) the restriction on her access to Bank Group premises are admissible.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 25 October 2017