World Bank Administrative Tribunal

2019

Decision No. 620

Chantal Andriamilamina (No. 3),
Applicant

v.

International Finance Corporation,
Respondent

(Preliminary Objection)

World Bank Administrative Tribunal
Office of the Executive Secretary

Chantal Andriamilamina (No. 3),
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 Mónica Pinto (President), Marielle Cohen-Branche, and Seward Cooper.

2. The Application was received on 18 March 2019. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The International Finance Corporation (IFC) was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. Invoking Article XIII of the Tribunal's Statute, the Applicant seeks revision of *EQ (Merits)*, Decision No. 595 [2018].

4. On 11 April 2019, the IFC submitted a preliminary objection contesting the Applicant's request for revision. This judgment addresses the IFC's preliminary objection.

FACTUAL BACKGROUND

5. The historical context of this case is contained in *EQ (Merits)*. A brief background of the facts relating to the Applicant's claim in the present Application is as follows.

6. During Fiscal Year 2016 (FY16), the Applicant was a Principal Investment Officer in the Global Manufacturing, Agribusiness and Services (MAS) department at the IFC. In that role, she managed relationships and worked on developing business initiatives in the aquaculture sector with multiple clients, including Client A.

7. On 3 September 2015, the Applicant informed her Manager of the planned acquisition of Client A by another Group, stating that the acquisition would be "bad news for us" and that she "need[ed] IFC/MAS management['s] help to together convince [Client A's] board […] that [the] IFC is still a partner of choice for [Client A's] growth in emerging markets." The Applicant's Manager subsequently reassigned her Client Relationship Management role for Client A to another Principal Investment Officer on 6 October 2015. According to the Applicant, she was informed that she was "'too close' to the client to defend [the] IFC's interests."

8. The Applicant claims to have discovered on 1 March 2016 that her business development responsibilities with regard to Client A had been removed from her FY16 performance objectives. The Manager stated that she made this decision because she felt it was not practical to have two Principal Investment Officers working with one client.

9. The Applicant sent an email to her Manager and the MAS Directors on 4 May 2016, in which she said that she had learned of an equity transaction that the IFC had been evaluating to participate in the acquisition of Client A by another Group. The Applicant also stated in the email that she was "concerned about operational conflicts of interest related to this new transaction" and that she would not "be in a position to provide support to the transaction team." In response, the Applicant's Manager told the Applicant that it would be best for her not to continue engaging in this matter. The Applicant's Manager further told the Applicant on 10 May 2016 that the Applicant could no longer be involved in the acquisition transaction.

10. The Applicant's first application with the Tribunal was received on 15 November 2017. In that case, the Applicant challenged "the reassignment of two IFC clients and their removal from her work program for [FY16]; her FY16 Performance Evaluation; her performance cycle for [FY17]; and the alleged mismanagement of her career by the IFC."

11. The Tribunal issued its judgment on the Applicant's first application on 18 October 2018. With regard to the Applicant's claims that are relevant to the present Application, the Tribunal decided that the reassignment of Client A had a reasonable and observable basis. In so deciding, the Tribunal noted that the reorganization of MAS affected the Applicant's work program, as well

as that of other Investment Officers. Moreover, the Tribunal acknowledged that the Applicant's strong support for Client A's request for waivers could have, in the eyes of her Manager, "undermin[ed] her objectivity and jeopardiz[ed] the IFC's interests in obtaining business opportunities that were best for the institution." Hence, the Tribunal concluded that it was reasonable for the Applicant's Manager to assign Client A's responsibilities to another Principal Investment Officer.

12. The Tribunal also found that the Applicant "failed to meet the required burden of proof in support of her allegations of improper motives" in relation to the reassignment and removal of Client A from her work program. The Tribunal noted that the Applicant's Manager did not believe that the Applicant was having productive discussions with Client A, but rather that she was compromising the IFC's business position. The Tribunal also observed that the Applicant had not proved her allegation of improper motives on the part of the IFC, but that the IFC provided evidence that there were business reasons in support of the reassignment decision. The Tribunal also took into account that the IFC had demonstrated transparency and fairness in its treatment of the Applicant.

13. Moreover, the Tribunal decided that management followed a proper process in reassigning Client A and that, following the reassignment and removal of Client A from the Applicant's work program, she was provided a suitable work program for the remainder of FY16. In addition, the Tribunal concluded that the Applicant "was duly informed of the IFC's reasons for reassigning and removing Client A from her FY16 work program."

14. The Applicant claims that, around the same time as the Tribunal's judgment in October 2018, she learned that the processing of a waiver related to the Client A transaction violated conflict of interest procedures of the IFC, and that "attempts were made to conceal a possible business conflict of interest." The Applicant contends that, also in October 2018, she consulted with the Office of Ethics and Business Conduct (EBC) to clarify issues relating to a conflict of interest and that an EBC advisor referred her to an EBC investigator.

15. The Applicant contends that, on 18 April 2019, EBC investigators informed her that EBC had closed the investigation because it had found insufficient evidence that there was a personal conflict of interest regarding a former IFC staff member whom the Applicant had mentioned. According to the Applicant, EBC also told her that any conflict of interest that may have arisen in the transaction would not be "subject to EBC's review or jurisdiction" but rather to the "IFC's discretion to manage."

16. The Applicant's present Application was received on 18 March 2019. The Applicant seeks revision of the Tribunal's judgment in *EQ (Merits)*, in accordance with Article XIII of the Tribunal's Statute. The Applicant claims that "the principal issue adjudicated, namely her removal from task team leadership for [Client A], was due to unethical actions and abuse of power by her managers." She further avers that the conflict of interest she has allegedly uncovered played a role in the reassignment of Client A away from her work program, the feedback that her managers gave her during her FY16 performance evaluation, the testimony of certain managers during the Peer Review Services (PRS) Panel hearing in January 2017, and "the continuing efforts by the relevant managers and directors to discredit [the] Applicant which has continued to this date."

17. The IFC's preliminary objection was received on 11 April 2019.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The IFC's Main Contentions

18. The IFC claims that the Applicant has not fulfilled the requirements for a request for revision that are set out in Article XIII of the Tribunal's Statute. According to the IFC, the Applicant has not alleged any new facts that relate to the reassignment of Client A from her work program. The IFC contends that the Applicant has alleged that there was a conflict of interest in the relevant transaction, but that she has not put forward any facts or evidence that the reassignment of Client A was related to her flagging a potential conflict of interest. For the IFC, the "Applicant's mere assertions and unsubstantiated conclusions in her EBC request could not, of themselves, constitute new 'facts' which would justify a revision of the Tribunal's decision." The IFC also

contends that the Applicant has not proffered any evidence to demonstrate that her allegations are true. The IFC adds that the alleged fact of a "potential operational conflict of interest" does not demonstrate that the Applicant's Manager acted in an improper manner by reassigning Client A from the Applicant's work program.

19. Moreover, the IFC contends that the "facts" presented by the Applicant "relate to [the] IFC's alleged processing of various transactions and the loan-prepayments during FY18" and occurred after the Tribunal's judgment in *EQ (Merits)*. For the IFC, since those matters took place after the reassignment of Client A from the Applicant's work program, they could not have played a part in the reassignment decision or caused retaliation with regard to the reassignment decision. Specifically, the IFC points to the Applicant's contention that she discovered facts relating to a potential conflict of interest and shared her concerns with EBC and other parties in the IFC starting in October 2018. The IFC contends that, if those statements are true, then the Applicant could not have raised integrity flags before the reassignment of Client A, nor would her Manager have had retaliatory motives with respect to the Applicant when making the reassignment decision because the Applicant would not have had information relating to a potential conflict of interest at the time.

20. The IFC additionally claims that many of the matters raised by the Applicant pre-date the Tribunal's judgment in *EQ (Merits)*, and the Applicant either raised those "facts" during the proceedings in *EQ (Merits)* or knew of the "facts" at the time they occurred. The IFC contends that those matters therefore could not constitute "new" evidence to support the Applicant's request for revision.

21. The IFC also explains that, in its view, the matters that the Applicant has raised touch only upon the aspect of the *EQ (Merits)* judgment that addressed the reassignment of Client A from her work program. The IFC contends that, if the Tribunal decides that the Applicant has met the requirements of Article XIII, then the revision of the judgment would be justified only in part.

The Applicant's Response

22. The Applicant claims that the conflict of interest issues she has raised are new, and the relevant facts have not been identified before. She states that the potential violations of conflict of interest procedures through the related transactions were not known and had not been investigated at the time of the Tribunal's judgment in *EQ (Merits)*. The Applicant contends that she did not realize the existence of a potential business conflict of interest involving a former staff member of the IFC before October 2018. According to the Applicant, she discovered these "new facts" after she learned on 1 October 2018 about the prepayment of an IFC loan to Client A, and that the actions relating to these facts "took place between October 2015 and September 2018, unknown to [the] Applicant and the Tribunal" before the *EQ (Merits)* judgment.

23. The Applicant further claims that the Tribunal's judgment in *EQ (Merits)* was influenced by the Applicant's inability to prove the existence of improper motives relating to the reassignment decision, based on the information that the Applicant had available to her at the time. The Applicant contends that the new facts she has alleged "should dispel any doubt about the bad faith of [the IFC's] representatives […] and have a decisive influence on the Tribunal's judgment."

24. The Applicant contends that her request for revision should not be limited to the decision to reassign Client A from her work program. She states that, rather, the new facts she has put forth support her claims of "i) arbitrariness and improper motives for the reassignment of her client responsibilities with [Client A]; ii) arbitrary evaluation, collusion among certain multi-rater feedback providers and violation of due process in her FY16 performance evaluation; and iii) effects on the overall mismanagement of her career." The Applicant alleges that the new facts show that the conflict of interest issues that she raised influenced not only the reassignment decision but also the outcome of the PRS Review and the multirater feedback provided by multiple managers during her FY16 performance evaluation.

25. Furthermore, the Applicant notes for the Tribunal that she has experienced incongruity and an inability to be heard that have involved all units of the Internal Justice Services over a period of three years. In requesting the revision of the Tribunal's judgment in *EQ (Merits)*, the Applicant

states that she has concerns about a conflict of interest among the units of the Internal Justice Services, specifically with regard to inconsistencies about "which unit has jurisdiction over issues of operational conflict of interest," and that the Applicant has been denied due process as a result.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

26. Article XI of the Tribunal's Statute provides that "[j]udgments shall be final and without appeal." In *van Gent (No. 2)*, Decision No. 13 [1983], para. 21, the Tribunal held:

> Article XI lays down the general principle of the finality of all judgments of the Tribunal. It explicitly stipulates that judgments shall be "final and without appeal." No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal's judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

27. The Tribunal has also stated that "[t]his rule of finality of the Tribunal's judgments is essential to the operation of the Bank's internal justice system. Once the Tribunal has spoken, that must end the matter; no one must be allowed to look back to search for grounds for further litigation." *Mpoy-Kamulayi (No. 7)*, Decision No. 477 [2013], para. 27.

28. The sole exception to the principle of finality is found in Article XIII of the Statute which provides that

> [a] party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

29. However, the Tribunal has stated in a number of its judgments that "the powers of revision of a judgment are strictly limited and may be exercised only upon compliance with the conditions set forth in Article XIII." *Skandera*, Decision No. 9 [1982], para. 7. In *Kwakwa (No. 2)*, Decision No. 350 [2006], paras. 18–19, the Tribunal further held:

> In this light, the character of Article XIII as a very limited exception should be obvious. Its requirements are not fulfilled unless the Tribunal is satisfied that newly discovered facts are potentially decisive.
>
> It is difficult to define in a phrase the nature of factual revelations which might justify the disruption of a *res judicata*; it is a matter to be determined in the particular circumstances of each case. If it were left to any disappointed litigant to assess the relevance and decisiveness of subsequently discovered facts, the ingenuity of pleaders would ensure that few, if any, judgments would ever be final. Unless some restrictive principle fulfills a rigorous screening function, the availability of revision would subvert a fundamental rule of tribunals such as this one: namely that its judgments are definitive. To ensure that Article XIII does not wreak havoc with the rule of finality, enshrined in Article XI, the former must be recognized as available only in exceptional circumstances. The "new fact" must shake the very foundations of the [T]ribunal's persuasion; "if we had known that," the judges must say, "we might have reached the opposite result."

30. As such, the Tribunal will assess whether the Applicant has satisfied the criteria for revision set in Article XIII of the Tribunal's Statute. Article XIII(2) provides that a request for revision must "contain the information necessary to show that the conditions laid down in paragraph 1 of this Article have been complied with." The conditions set out in Article XIII(1) are:

a. Discovery of a fact which was unknown to both the Tribunal and the party seeking revision at the time the judgment was delivered;

b. The fact must be such that it "might have had a decisive influence on the judgment of the Tribunal"; and

c. The request for revision must be submitted within a period of six months after discovery of said fact.

DP (No. 2), Decision No. 576 [2017], para. 27, citing Article XIII(1) of the Tribunal's Statute.

31. The Applicant has alleged that she discovered new facts relating to a potential conflict of interest in a transaction between Client A and the IFC. Specifically, she claims that, in October 2018, she learned that Client A prepaid an IFC loan and that another corporation divested its stake in Client A's company two years after its initial co-investment. According to the Applicant, she further learned that conflict of interest procedures had been breached during the processing of another transaction involving Client A, which she subsequently flagged to EBC.

32. The Applicant also claims that the above "facts" that she discovered would have had a decisive influence on the Tribunal's judgment in *EQ (Merits)* because that judgment was influenced by the Applicant's inability to prove the existence of improper motives relating to her Manager's decision to reassign Client A from her work program.

33. The IFC contends that the Applicant has not alleged any new facts with relation to the reassignment of Client A from her work program. According to the IFC, the Applicant has not put forward any evidence proving that the reassignment decision was related to the discovery of a potential conflict of interest. The IFC underscores that the matters that the Applicant has alleged (the alleged processing of various transactions by the IFC and the loan prepayment during FY18) are wholly irrelevant since they took place after the Tribunal's judgment and, therefore, could not have been taken into account by management when making the reassignment decision; thus, they could not have constituted a retaliatory reassignment decision.

34. In additional support of her claim, the Applicant provided documents related to the transactions in question, including a change of control waiver memorandum and a due diligence form. The Applicant also refers to an email from her Manager on 6 October 2015, in which the Manager proposes removing Client A from the Applicant's work program in order to have "a chance to make it work." The Applicant claims that this language was deliberately vague.

35. In *EQ (Merits)*, the Tribunal decided that the reassignment of Client A from the Applicant's work program had a reasonable and observable basis. In this regard, the Tribunal took into account multiple factors including the reorganization of MAS and the Applicant's strong support for Client A's request for waivers, which, in the view of her Manager, might have undermined her objectivity. The Tribunal also noted in *EQ (Merits)* that the IFC had provided evidence of business reasons in support of the reassignment decision.

36. The Applicant has provided documents related to transactions that Client A and the IFC were involved in, but she has provided no evidence linking these transactions to the reassignment of Client A away from her work program. As the Tribunal stated in *González Flavell (No. 13)*, Decision No. 611 [2019], para. 26:

> [T]he discovery of new information does not entail the automatic revision of an existing judgment […]. In order to revise the [judgment], the Tribunal must be convinced that the annual leave records had a decisive and material impact on the judgment. Indeed, as held in *Kwakwa (No. 2)*, para. 19, "[i]f it were left to any disappointed litigant to assess the relevance and decisiveness of subsequently discovered facts, the ingenuity of pleaders would ensure that few, if any, judgments would ever be final."

37. In this case, the Applicant has not proffered evidence proving that the information she discovered in October 2018 about the transactions had any relevance to the reassignment decision. In addition, the mere suspicion of a perceived conflict of interest, which the Applicant reported to EBC after the date on which the alleged retaliatory act took place, and which was dismissed by EBC due to insufficient evidence on 18 April 2019, cannot constitute a basis to substantiate the requisite new facts in order to meet the demanding standards of possible revision under Article XIII. Furthermore, the Tribunal's decision in *EQ (Merits)* sufficiently relied on the business reasons provided by the IFC for the reassignment decision. Therefore, the Tribunal finds that the facts that the Applicant has alleged in her request for revision would not have had a "decisive and material impact" on its judgment in *EQ (Merits)*, had the facts been known to the Tribunal at that time. The Tribunal thus dismisses the Applicant's request for revision of the judgment.

DECISION

The Application is dismissed.

/S/ Mónica Pinto
Mónica Pinto
President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 25 October 2019