



World Bank Administrative Tribunal

2019

Decision No. 621

**Emmanuel Brace,
Applicant**

v.

**International Finance Corporation,
Respondent**

(Preliminary Objection)

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

**Emmanuel Brace,
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 27 March 2019. The Applicant represented himself. The International Finance Corporation (IFC) was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the IFC's acceptance of the recommendations by the Peer Review Services (PRS) Panel in Request for Review No. 400, in which the Applicant sought review of issues related to ending employment, benefits and compensation, and alleged conduct of management.
4. The IFC has raised a preliminary objection to the admissibility of this Application. This judgment addresses that preliminary objection.

FACTUAL BACKGROUND

5. The Applicant joined the IFC in January 2016 as a Short Term Consultant (STC). The initial Letter of Appointment (LOA) authorized 100 days of work from 11 January 2016 to 30 June 2016.
6. In April 2016, the Applicant attended an interview for a different position within the IFC, which was ultimately not filled. The Applicant has characterized this interview as an

“interrogation” by claiming that “IFC personnel unceremoniously accosted [him], falsely imprisoned [him] and subjected [him] to sustained interrogation and psychological harassment.”

7. The Applicant received another offer for an STC appointment on 16 June 2016, for 150 days from 1 July 2016 to 30 June 2017. In January 2017, the Applicant was informed his contractual days were being reduced from 150 days to 130 days due to budgetary constraints.

8. Also in January 2017, the Applicant met with a senior member of his unit for a “mentoring discussion” regarding his work performance. The Applicant has characterized this meeting as “harassment.”

9. The Applicant became a naturalized U.S. citizen on 21 March 2017. The Applicant emailed the Director of Environment, Social, and Governance’s Procurement Assistant on 5 April 2017 for information regarding his tax status. The Applicant contends he requested an update to his tax status “at least three times” due to his change in immigration status.

10. The Applicant’s LOA was revised on 3 May 2017 to reflect the change in his rate of remuneration from net to gross effective 1 April 2017 because of his change in immigration status. This revised LOA also added ten days to the contract, increasing the total contract days to 140. The LOA provided:

Your appointment will terminate [30 June 2017] unless it is extended or a new appointment is made. [...] International Finance Corporation (IFC) has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed to in writing at the time of the expiration of the appointment.

The Applicant claims an extension of the appointment was implied.

11. In the Spring of 2017, the Applicant, along with several other STCs in the Environment, Social, and Governance Department, was informed that his contract would not be renewed beyond 30 June 2017 due to budgetary concerns for the following fiscal year.

12. On 27 June 2017, the Applicant had a telephone conversation with his Manager, Chief Environmental Specialist, Environment and Social Global Support, to discuss the concerns of the Applicant. According to the Manager's notes on the meeting, the two specifically discussed the end date of the Applicant's contract, the Applicant's rate of compensation, and alleged disrespectful treatment of the Applicant by management. The Manager also reminded the Applicant to submit his claim for payment for June 2017.

13. The Applicant then submitted his claim for payment, which included a claim for eleven days of work from home between January and April 2017 as well as a claim for three days worked in June 2017 in excess of his contract. These payment claims were not accepted by the budget officers at that time because they determined the claims to be "undocumented" and in excess of the Applicant's contract days. The Applicant claims that evidence verifying the days worked had been provided.

14. The Applicant's contract with the IFC ended on 30 June 2017.

15. On 1 August 2017, the Applicant responded to an email regarding his 2017 compensation stating that "[t]he adjustments have still not been made and [his] salary [has] not [been] paid." The Applicant's Manager responded on 4 August 2017, stating that the Applicant had been paid in full for every formal payment claim made and requesting specific details if that was not the case. The Manager's email further explained the adjustment in the Applicant's daily fee rate based on his change in citizenship.

16. On 22 August 2017, the Applicant was informed that the World Bank Group (WBG) agreed to pay him \$5,500.00 to fully resolve his claim for non-payment, representing payment of the fee for 12 days worked in June 2017 as well as payment for the salary adjustment for five days worked between 22 March and 31 March 2017, after the Applicant had become a naturalized U.S. citizen. The Applicant received this payment on 28 August 2017.

17. On 5 October 2017, the Applicant filed a Request for Review with PRS. The Applicant sought review of

(i) “[e]nding [e]mployment-[r]elated issues including deception, sustained harassment, work interference, and personal data breach;” (ii) “[b]enefits and [c]ompensation-[r]elated issues includ[ing] discriminatory conduct, underpayment, unpaid money, defamation and undue stress;” and (iii) “[p]erformance and [m]anagement-[d]iscriminatory/bias/unfair conduct by management.”

18. Regarding the scope of its jurisdiction, the PRS Panel concluded

that [the Applicant’s] claims of underpayment of daily fee, non-payment of housing benefits and relocation costs were untimely and PRS does not have jurisdiction to review these claims. The Panel also decided to dismiss [the Applicant’s] allegations of “deception, sustained harassment, work interference, and personal data breach” in connection with the non-extension decision and his claim of “[p]erformance and [m]anagement-[d]iscriminatory/bias/unfair conduct by management” because PRS does not have jurisdiction to review these claims pursuant to Staff Rule 9.03 (Peer Review Services), paragraph 7.04 (h) (Matters Subject to Review).

19. In its Report of 31 May 2018, the PRS Panel concluded

that management provided a reasonable and observable basis for the decision not to extend [the Applicant’s] former STC appointment beyond June 30, 2017. The Panel also determined that management followed the appropriate procedures in making the non-extension decision. The Panel further concluded that management made the non-extension decision in good faith.

20. The PRS Panel also concluded that the amount paid to the Applicant in August 2017 “did not cover the full amount that was owed to him.” The Panel found “that the total amount paid to [the Applicant] is less than the total amount that was owed to him by \$235.00.” The Panel then recommended “that the Bank Group compensate [the Applicant] in the amount of \$235.00 to cover the amount that was not paid to him.”

21. On 1 June 2018, an email was sent to the Applicant from a Senior Human Resources (HR) Specialist stating:

We have been notified of your frequent and unsolicited emails which are of no pertinence to the work of the WBG.

As a consequence, I am writing to notify you that, effective immediately, your emails will be blocked from receipt to all WBG email addresses.

Emails from Information and Technology Solutions confirm that the Applicant's Gmail address was placed under a sender quarantine.

22. On 14 June 2018, the IFC General Counsel accepted the recommendations of the PRS.

23. On 15 June 2018, a Senior HR Assistant emailed the Applicant at an educational institution email address stating, "We have a PRS decision letter and Panel Report to send you. Could you please let me know if you would like to receive it electronically or by postal mail/courier." On the same day, the Senior HR Assistant sent the PRS Panel Report and decision letter to the Applicant via U.S. Postal Service to a P.O. Box provided by the Applicant.

24. On 22 June 2018, the Applicant responded to the Senior HR Assistant's email of 15 June 2018 using the email address of the educational institution, which was not blocked, stating:

I am just seeing this. I am yet to find out the detail as there was another message from PRS which implied that the case has been escalated. The police recently reached out to me about the current status of the case and my concerns.

25. On 26 June 2018, the Senior HR Assistant responded to the Applicant's email of 22 June 2018, stating:

I am unaware of your case. I was just instructed to mail the confidential PRS letter to the PO Box address and get confirmation from you that you received it. Could you please confirm receipt.

26. The Applicant claims he emailed the Senior HR Assistant on 20 September 2018 to ask about an electronic copy of the PRS Panel Report and decision letter. The Applicant has not produced that email as a part of the record. The Applicant further claims he was not present in the United States when the PRS Panel Report and decision letter were mailed and that the mailing address used to notify the Applicant of the decision was "invalid until 6th March 2019." The Applicant claims his requests were ignored. The IFC states that the Senior HR Assistant "confirms that he has no email correspondence from Applicant dated September 20, 2018 requesting an electronic copy."

27. The Applicant states he emailed the WBG on 13 December 2018 regarding concerns he had with the PRS process. The Applicant also states he emailed Ombuds Services on 4 February 2019 regarding whether his concerns were being addressed by Ombuds Services or the Office of Ethics and Business Conduct. He also expressed an intent to bring his case before the Tribunal.

28. On 27 March 2019, the Applicant submitted this Application to the Tribunal. He is challenging the 14 June 2018 decision of the IFC to accept the recommendations of the PRS Panel. The Applicant contends that the IFC's decision to accept the PRS Panel's recommendations was "a result of the biased, misrepresented and omitted data submitted. The issues PRS reviewed but did not adequately factor into consideration include deception, sustained harassment, work interference, personal data breach, discriminatory conduct, underpayment, unpaid money and defamation." The Applicant specifically contends that the "World Bank Group did not act consistently with [his] contract of employment and terms of appointment with regard to payments due [to him]," "[m]anagement's exercise of its discretion regarding the decision not to extend [his] STC appointment is arbitrary and discriminatory," and "[m]anagement's exercise of its discretion regarding the decision not to extend [his] STC appointment was based on considerations unrelated to the functioning of the institution."

29. In his Application, the Applicant states that the date of the occurrence of the event or date of decision giving rise to this Application is "2/4/2019." On 27 March 2019, the Secretariat of the Tribunal emailed the Applicant requesting additional information regarding the Application, specifically requesting information as to what decision occurred on the referenced date.

30. On 3 April 2019, the Applicant responded to the Secretariat, stating that he "ha[d] reached out on numerous occasions to HR, PRS, and the Office of Ethics...but have been given the roundabout for months." He then referenced an email sent by himself on 2 February 2019. There is no copy of this email in the record.

31. The Applicant seeks the following relief: (i) \$440,000,000.00 in compensation; (ii) the return of "the blue and white ship (with sails and fondly referred to as AMISTAD) [he] left in [his] work area at IFC"; and (iii) \$1,964,000.00 in costs.

32. On 2 May 2019, the IFC filed its preliminary objection.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The IFC's Contentions

33. The IFC contends that the Tribunal lacks jurisdiction because (i) the Applicant's claims are inadmissible *ratione temporis*, as the challenged decision was made on 14 June 2018 and the Application was submitted well after the 120-day time limit; (ii) the Applicant's claims are inadmissible *ratione materiae*, as they do not allege non-observance of the employment contract or terms of appointment; and (iii) the Applicant's claims are inadmissible because he failed to exhaust internal remedies.

34. According to the IFC, the Application is inadmissible *ratione temporis*. The IFC explains that the Applicant is challenging the 14 June 2018 decision of the IFC to accept the recommendation of the PRS Panel. The IFC contends that the 120-day time limit to file an application to the Tribunal began to run on 14 June 2018, notwithstanding the Applicant's claim that he received notice only on "2/4/2019." The IFC contends that, while the Tribunal may disregard time limits when it finds that exceptional circumstances exist, the Applicant has not invoked any such circumstances and as such the Application is time-barred.

35. The IFC further contends that the Application does not meet the Tribunal's jurisdictional standard which limits the claims it will hear to allegations of non-observance of the contract of employment or terms of appointment of a staff member. The IFC contends that the Applicant's challenges to the "credibility of the PRS' final report" and the IFC's subsequent decision to accept the recommendations of the PRS are not judicially cognizable, as it is not the role of the Tribunal to review how PRS has made a particular finding.

36. The IFC addresses the Applicant's claims that the "decision by [the IFC] did not address the issues of deception, sustained harassment, work interference, personal data breach, discriminatory conduct, underpayment and defamation" by assuming, without conceding, that

such issues could constitute administrative decisions that could be reviewed by the Tribunal under its Statute. The IFC then contends that, even with this assumption, the Applicant would have to demonstrate that he has exhausted internal remedies with regard to each claim. The IFC submits that the Applicant has not exhausted internal remedies or alleged any exceptional circumstances warranting relief from the requirement and, as such, should not be able to submit the Application directly to the Tribunal.

The Applicant's Response

37. The Applicant contends that the Tribunal does have jurisdiction over his claims and objects to each of the IFC's contentions.

38. Regarding the IFC's contention that the Application is inadmissible *ratione temporis*, the Applicant submits that the date from which the time limit should be considered is 27 March 2019 (when he submitted his Application), since this is when it became "evidently clear that [his] genuine attempts to explore an internal resolution [were] futile." The Applicant further contends that he was unable to receive notice of the PRS Panel Report and the IFC's decision because his emails requesting an electronic copy were ignored.

39. In response to the IFC's contention that the Application is inadmissible *ratione materiae*, the Applicant contends that the Tribunal should review the PRS Panel's recommendations because they resulted in a "violation of a staff member's rights." (Emphasis omitted.) The Applicant specifically contends that his rights under the Fourth Amendment of the U.S. Constitution were violated when he was "falsely imprisoned" and subjected to "sustained interrogation and psychological harassment."

40. Regarding the IFC's contention that the Application is inadmissible for failure to exhaust internal remedies, the Applicant objects to the IFC's characterization and repeats his claim that he has attempted to exhaust internal remedies "over the last two years to no avail." (Emphasis omitted.) The Applicant appears to be referencing a series of emails with HR Operations and others containing various complaints as evidence of his exhaustion of internal remedies.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

41. The Tribunal will first consider the IFC's objection that the Application is inadmissible *ratione temporis*.

42. Article II(2)(ii) of the Statute of the Tribunal provides:

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

[...]

(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.

43. The IFC contends that the Application is inadmissible *ratione temporis*, as the *dies a quo* was set at 14 June 2018, when the Applicant was notified in a letter of the IFC's decision to accept the recommendation of the PRS Panel. The IFC contends that the Applicant had 120 days from 14 June 2018 (or until 12 October 2018) to file his Application; however, the Applicant only filed his Application on 27 March 2019.

44. In *DG*, Decision No. 528 [2016], para. 55, the Tribunal emphasized

the importance of the timely filing of applications and respect for time limits prescribed by Article II of the Statute "for a smooth functioning of both the Bank and the Tribunal." Under the terms of Article II the specified time limits may be disregarded only when the Tribunal finds that exceptional circumstances exist.

45. In *DZ (No. 2) (Preliminary Objection)*, Decision No. 590 [2018], para. 88, the Tribunal stated that

there is a time period within which a claim has to be pursued before the Tribunal or other internal bodies. Timely resolution of claims is an essential feature of the

Bank's internal justice system. A staff member has to pursue a claim within the time frame articulated by the Tribunal or other bodies, counting from the day staff members knew or should have known of the claim.

In para. 87, citing *Kehyaian (No. 3)*, Decision No. 204 [1998], para. 23, the Tribunal also explained that

an applicant "cannot [...] toll the time limit by requesting an administrative review of alleged 'administrative decisions' which do not constitute separate administrative decisions[,] but which are simply re-confirmations of the original administrative decision."

46. In *EF*, Decision No. 249 [2001], paras. 23–24, when considering the Bank's preliminary objection on timeliness, the Tribunal found that the *dies a quo* should be set when the applicant actually received the letter providing notice of the contested decision where the applicant was not in the country to receive notice when the letter was delivered. In para. 22, the Tribunal made clear, however, that its decision was in consideration of the applicant's proactive approach in notifying the Appeals Committee of his absence:

The Tribunal also notes that the Applicant had expressly asked for the decision to be sent to him at his condominium since he would have no access to his email and no fixed address during his travels. The Tribunal further notes that in his email to the Secretary to the Appeals Committee, the Applicant emphasized that he would be back at his address in the United States only at the end of November 2000. The Respondent had thus been fully informed before its decision was given that the Applicant was away and would not actually receive its report until his return to the United States. In light of this, the Respondent, which had 60 days under Staff Rule 9.03, paragraph 9.01, to take its decision in respect of the Appeals Committee's report, could have given notice to the Applicant later so as to give him an opportunity to consider the decision and take appropriate action. The Tribunal is of the view that there was no attempt by the Applicant to circumvent the Rules because he had kept the Respondent fully informed of his absence.

47. The Applicant makes multiple claims to contend that the *dies a quo* should not be set at 14 June 2018. He first claims that he did not in fact receive notice at that time, as the mailing address used was "invalid until 6th March 2019," but provides no evidence to support this contention, or even to demonstrate that he notified the IFC of his absence. He references emails sent to the WBG requesting electronic copies of the PRS Panel Report and the IFC's decision letter but does not provide records of those emails. The record does show that (i) the Senior HR Assistant, in an email

sent to an unblocked email address of the Applicant on 15 June 2018, requested information as to how the Applicant would like to receive the IFC's decision letter and the PRS Panel Report; (ii) the Applicant responded on 22 June 2018 without answering this question; and (iii) the Senior HR Assistant responded on 26 June 2018 informing the Applicant that the documents had been mailed and requested confirmation of receipt. The extensive quoting of the PRS Panel Report in the Application suggests the Applicant did receive a copy at some point. The Senior HR Assistant submits that the letter was mailed to the Applicant at an address which was on file with the WBG on 15 June 2018. Since the Applicant provides no other date for the receipt of the letter, the Tribunal finds it reasonable to conclude that the Applicant was notified of the IFC's decision on 15 June 2018, or immediately around that date.

48. The Applicant further claims that the *dies a quo* should be set at 27 March 2019, since this is when it became "evidently clear that [his] genuine attempts to explore an internal resolution [were] futile." The Applicant is referencing multiple emails he sent to the WBG expressing his concerns following the PRS Panel Report. Notwithstanding the fact that the Applicant provides no records of those emails, the Tribunal's jurisprudence on timeliness provides that the Applicant cannot extend the 120-day limit by requesting further clarification on an administrative decision which is being challenged (or, in this case, which serves as the notice that requested relief will not be granted). *See DZ (No. 2) (Preliminary Objection)*, para. 87.

49. Finally, the Applicant claims that exceptional circumstances exist because "[e]lements within IFC deliberately prevented [him] from accessing the requisite documents needed."

50. In *Malekpour*, Decision No. 320 [2004], para. 22, the Tribunal clarified what constitutes "exceptional circumstances," explaining that they must be "real and serious impediments to exhausting internal remedies" and that "[m]ere inconvenience" is not sufficient.

51. In *BI (No. 5) (Preliminary Objection)*, Decision No. 564 [2017], para. 20, citing *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30, the Tribunal stated that it takes a "strict approach in determining what constitutes exceptional circumstances" and that "[e]xceptional circumstances

cannot be based on allegations of a general kind but require reliable and pertinent ‘contemporaneous proof.’”

52. Again, the Applicant provides no evidence to support this claim and does not meet the standard of “reliable and pertinent ‘contemporaneous proof.’” The Applicant references the fact that his emails were blocked on 1 June 2018; however, email exchanges with the Senior HR Assistant in late June 2018 indicate that the Applicant remained able to, and did in fact, communicate over email with the WBG. As such, the Tribunal does not find that exceptional circumstances existed warranting excusal from the 120-day time limit.

53. Because the Application was submitted well after the 120-day time limit and because no exceptional circumstances existed, the Application is time-barred. Having found that the Application is time-barred, the Tribunal considers that review of the remaining grounds for dismissal proffered by the IFC is unwarranted.

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