



World Bank Administrative Tribunal

2022

Decision No. 673

**EO (No. 3),
Applicant**

v.

**International Finance Corporation,
Respondent**

(Merits)

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

**EO (No. 3),
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mahnoush H. Arsanjani (President), Marielle Cohen-Branche (Vice-President), Janice Bellace (Vice-President), Andrew Burgess, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 11 February 2021. The Applicant represented himself. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency.

3. The Applicant challenges the IFC's compliance with the Tribunal's judgment in *EO (No. 2) (Merits)*, Decision No. 629 [2020], in respect of the following: (i) the delay in calculating the adjustment to his Long-Term Disability (LTD) payments and the failure to correctly resolve the issues with the adjustments in a timely manner; and (ii) the decision to omit the period of 1 July 2017 to 15 July 2017 when calculating his retroactive salary adjustment.

FACTUAL BACKGROUND

4. The historical context of this case is contained in *EO*, Decision No. 580 [2018] and *EO (No. 2) (Merits)* [2020]. In *EO* [2018], the Tribunal decided:

(1) The IFC shall have the option of reinstating the Applicant to a position in the World Bank Group similar to the one he was occupying at the time of the non-renewal of his appointment, but in a different unit, or paying the Applicant compensation in the amount of three years' net salary based on the last salary drawn by the Applicant;

(2) The IFC shall rescind and remove all records of the OTI [Opportunity to Improve plan] from the Applicant's personnel records;

(3) The IFC shall pay the Applicant's legal fees and costs in the amount of \$30,000.00; and

(4) All other claims are dismissed.

In *EO (No. 2) (Merits) [2020]*, which was received by the parties on 29 June 2020, the Tribunal decided:

(1) The IFC shall change the Applicant's FY2017 [Fiscal Year 2017] performance rating to a 3 and make the corresponding salary adjustments, as well as the necessary adjustments to the Applicant's previous award, disability payments, and pension contributions, as agreed by the IFC;

(2) The IFC shall pay the Applicant compensation in the amount of nine months' net salary, based on the last salary drawn as adjusted, for procedural violations and unfair treatment in the shortlisting process, inclusive of the three months' net salary already agreed to by the IFC;

(3) The IFC shall pay the Applicant compensation in the amount of one year's net salary, based on the last salary drawn as adjusted, for retaliation;

(4) The IFC shall pay the Applicant's legal fees and costs in the amount of \$8,249.27; and

(5) All other claims are dismissed.

5. On 28 July 2020, a team member from the Bank Group's Corporate Operations emailed the Applicant to request bank account information for the payment of the Tribunal award. Following this initial contact, there was an email exchange between the Applicant and the Corporate Operations team member regarding the amounts that would be received.

6. On 31 July 2020, the Applicant emailed a Payroll team member regarding the payment of the retroactive salary adjustments. The Payroll team member replied that he was coordinating with the Human Resources (HR) team and would update the Applicant shortly. The Applicant and the Payroll team member continued to exchange emails regarding the pending payment over the next two months.

7. Meanwhile, on 14 August 2020, the Applicant received a deposit of \$13,680.00. This payment represented the adjustment to the award received in *EO* [2018], in which the Tribunal awarded the Applicant compensation in the amount of three years' net salary.

8. On 19 August 2020, the Applicant received a deposit of \$212,019.27. This payment represented the combined one year and nine months' salary awards from *EO (No. 2) (Merits)* [2020] and the legal fees and costs associated with that case.

9. On 15 October 2020, the Applicant received a deposit of \$5,997.62. This payment represented the retroactive salary adjustment for the period of 15 July 2017 to 27 January 2018. The Applicant did not receive any retroactive salary adjustment for the period of 1 July 2017 to 15 July 2017, an amount of \$190.00, at that time. Following the receipt of the \$5,997.62 payment, the Applicant emailed the Payroll team member stating that the amount received was not correct and requesting a breakdown of the calculations. After receiving the calculations, the Applicant responded that he thought other components would be included in the deposit from Payroll and that he would contact other units on the matter. The Applicant also stated that he would take a "proper look through the calculations later."

10. On 29 October 2020, the Applicant contacted the Corporate Operations team member noting that the deposit from Payroll did not account for the retroactive adjustments to his pension or his LTD payments and asking who he needed to contact to process these components of his award. The Corporate Operations team member responded the next day with contact information for a Pension Office team member and an HR Specialist.

11. On 30 October 2020, the Applicant emailed the HR Specialist asking who would be responsible for processing the retroactive adjustments to his LTD payments. The HR Specialist responded on 2 November 2020, informing the Applicant that LTD payments should be equivalent to 70% of his last salary plus the Cost of Living Adjustment (COLA). The Applicant responded on the same day, noting that there needed to be a retroactive adjustment to his LTD payments from January 2018 onward and asking when and by whom the retroactive adjustment would be processed. The Applicant followed up by email on 9 November 2020, again asking who would be

responsible for processing the retroactive adjustment. The HR Specialist responded on 10 November 2020, noting that the LTD administrator would be making the retroactive adjustment to the LTD payments and that she had requested a timeline for the payment.

12. The Applicant continued to have email exchanges with the HR Specialist to ensure that the retroactive adjustment to the LTD payments was correct. On 14 December 2020, the Applicant received a deposit of \$6,367.91 from the LTD administrator, representing a retroactive adjustment to LTD payments for the period of 1 May 2018 to December 2020. The payment was calculated using the European COLA, which is lower than Headquarters (HQ) COLA. The Applicant also did not receive a retroactive adjustment to the LTD payments for the period of January 2018 to April 2018.

13. The Applicant emailed the HR Specialist on 17 December 2020, noting that the payment received on 14 December 2020 did not include the retroactive adjustment for the period from January 2018 to April 2018 and noting that the COLA amount was “mysteriously reduced.” The HR Specialist responded on 21 December 2020, stating that she was following up with the LTD administrator and had requested that they send the Applicant details of the COLA amounts.

14. After continued email exchanges with the HR Specialist and the LTD administrator, the Applicant received a deposit of \$1,064.00 on 21 January 2021, representing the retroactive adjustment to the LTD payments for the period of January 2018 to April 2018. This payment was also calculated using the European COLA.

15. On 3 February 2021, the Applicant followed up by email with the Payroll team member asking about specific calculations made for the retroactive salary adjustment payment received on 15 October 2020. Specifically, the Applicant asked why there seemed to be a \$190.00 deduction taken from the payment. The Payroll team member responded on 9 February 2021, writing:

As per policy, any retro earnings\deduction which is exceeding three years limit it will not [be] paid or deducted from staff. We find that the change in annual salary effective 07/01/2017 was updated on 07/22/2020, therefore retro calculated for the pay period covering 07/16/2017 to 01/31/2018 (which falls under the three year

limit). The retro payment for 07/15/2017 was not paid to you for an amount USD 190.00 and that is difference shown in the table.

The present Application

16. On 11 February 2021, the Applicant submitted the present Application. The Applicant challenges (i) the delay in calculating the adjustment to his LTD payments and the failure to correctly resolve the issues with the adjustments in a timely manner; and (ii) the decision to omit the period of 1 July 2017 to 15 July 2017 when calculating his retroactive salary adjustment.

17. The Applicant requests as relief the amounts still owed to him following the Tribunal's judgment in *EO (No. 2) (Merits)* [2020] and any additional compensation as the Tribunal deems just and appropriate for the prolonged stress caused by the IFC's delay in complying with the judgment.

18. Following the submission of the Application, the IFC instructed the LTD administrator to apply the HQ COLA to the Applicant's LTD payments and further instructed the LTD administrator to pay the Applicant \$3,313.32, representing the difference between the HQ COLA and European COLA for the payments already received. On 24 March 2021 the LTD administrator processed the \$3,313.32 payment, and the Applicant received the payment on 2 April 2021.

19. The IFC submitted preliminary objections on 2 April 2021, contending that the Applicant's claims were moot and that the Tribunal lacked jurisdiction over the claims. The IFC noted that a system error caused the Applicant not to receive a retroactive salary adjustment for the period from 1 July 2017 to 15 July 2017 and confirmed that HR was processing the payment manually. The Applicant received the payment for \$190.00 on 7 May 2021.

20. In *EO (No. 3) (Preliminary Objection)*, Decision No. 662 [2021], the Tribunal dismissed the IFC's preliminary objections and stated that it would consider on the merits the issue of whether there was an unreasonable manner of and delay in the implementation of the judgment in *EO (No. 2) (Merits)* [2020] and, if so, whether any remedy is warranted.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Main Contentions

The IFC's unfair treatment of the Applicant in implementing the Tribunal's judgment caused the Applicant harm

21. The Applicant contends that the IFC failed to uphold its obligations of fair treatment pursuant to Principles 2.1 and 9.1 of the Principles of Staff Employment as it did not follow a proper process when implementing the Tribunal's judgment. The Applicant notes that the Tribunal's judgment was final and binding, "did not afford the [IFC] discretion to consider any part of it as optional," and "placed no responsibility on [the Applicant] and was not contingent on any action by [the Applicant.]" While the Applicant recognizes that the IFC had the discretion to delegate the implementation of the Tribunal's judgment "across multiple units," the Applicant avers that the "duty to implement the [judgment] was, and remains, non-delegable, and the [IFC] alone must accept sole responsibility for its failure."

22. To demonstrate harm, the Applicant submits that it is "a matter of record from his first two applications that the [IFC]'s abusive actions were the reason for the [the Applicant's] sick leave, STD [Short-Term Disability], and LTD." The Applicant notes that he remains on LTD at the time of his submissions. The Applicant contends that "[i]t was entirely foreseeable that the [IFC]'s negligence in refusing to process the [judgment] in a timely manner would cause [the Applicant] unwarranted and unnecessary stress and harm." To the Applicant,

this has not simply been a one-off case – [he] has been trying to vindicate his rights continuously since 2016 and has been under a constant pressure during that time as a result. The constant state of stress has left him stranded on LTD and unable to begin to properly put the whole ordeal behind him.

23. The Applicant further submits that the "Tribunal has in the past awarded compensation many times for intangible damages, including emotional or stress damages." With respect to this compensation, the Applicant contends that the IFC's "negligence, and subsequent obstinacy and belligerence, has dragged the current stage of the already long process out for two years longer

than it needed to be.” The Applicant suggests that, as the LTD system pays 70% of his last salary, “a reasonable starting point for measuring the financial implication of the [IFC]’s negligence would [...] therefore be $30\% \times 2$ years or 7.2 months.” To support his reasoning, the Applicant notes that he was

advised by many medical professionals, including those that he was sent to for IMEs [independent medical examinations], to expect that it would take at least as long to recover from his ordeal, once it had ended, as he had spent going through it. By dragging out the process for two years, and delaying its ending for those two years, that rule of thumb would mean that an additional four years has unnecessarily been added to that recovery time through the [IFC]’s negligence.

24. Finally, the Applicant requests an interpretation of the Tribunal’s judgment in *EO* [2018]. Specifically, the Applicant asks “whether the Tribunal could clarify whether paragraph 2 in the [Decision section of the judgment] means that just the details of the OTI be removed, or whether all evidence that an OTI existed should be removed.”

The IFC’s Response

The Applicant has not suffered actual damages that warrant additional compensation

25. The IFC contends that the Applicant’s request for compensation should be rejected because he has not suffered actual damages. The IFC notes that Article XII of the Tribunal’s Statute provides that the Tribunal shall order the institution “to pay restitution in the amount that is reasonably necessary to compensate the applicant for the actual damages suffered.” The IFC submits that the Applicant has “failed to prove how the delay in attributing less than 2% of the Tribunal’s award has caused him actual damages.” To the IFC, the Applicant’s allegations of additional stress caused by his efforts in following up with the IFC and the LTD administrator do not satisfy the Tribunal’s standard for actual damages, as the Applicant has failed to show any specific injury or prejudice resulting from the delay.

26. The IFC also contends that the Applicant was consulted and accepted the calculations relating to his retroactive salary adjustment and LTD payment adjustment. With respect to the retroactive salary adjustment, the IFC notes that the Applicant did not question the \$190.00

missing from the payment until 3 February 2021 and submits that it is “unclear if [the] Applicant ever sought to resolve the issue with Compensation” prior to filing his Application. With respect to the retroactive LTD payment adjustment, the IFC suggests that a “simple email clarification could have resolved the issue” once the Applicant became aware that the incorrect COLA was being used for the calculations. The IFC distinguishes the present Application from cases where the Tribunal has awarded compensation for intangible damages by submitting that “in none of the cases cited [by the Applicant] was the applicant directly involved in the decision making.”

27. The IFC next contends that the Applicant’s requested formula for compensation (30% of his last salary for two years) is “excessive” in a “case where the amount in litigation is under \$3500.”

28. Finally, the IFC avers that the Applicant’s request for clarification regarding *EO* [2018] “is misplaced within the context of this Application” and does not further address the Applicant’s comments on the matter.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THERE WAS AN UNREASONABLE MANNER OF AND DELAY IN THE IMPLEMENTATION OF THE TRIBUNAL’S JUDGMENT

29. In his first application before the Tribunal, the Applicant challenged his FY2016 Staff Annual Review and performance rating, the OTI plan dated 28 November 2016, the recommended termination of his appointment, and the non-extension of his term appointment. In *EO* [2018], the Tribunal ordered the IFC to rescind and remove all records of the OTI from the Applicant’s personnel record and gave the IFC the option to either reinstate the Applicant or pay him three years’ net salary based on the last salary drawn. The IFC subsequently chose to pay the Applicant three years’ net salary.

30. In his second application before the Tribunal, the Applicant challenged his FY2017 Staff Annual Review and performance rating, a non-shortlisting decision, a non-selection decision, and

the failure to provide feedback on the non-shortlisting decision. In *EO (No. 2) (Merits)* [2020], the Tribunal ordered:

- (1) The IFC shall change the Applicant's FY2017 performance rating to a 3 and make the corresponding salary adjustments, as well as the necessary adjustments to the Applicant's previous award, disability payments, and pension contributions, as agreed by the IFC;
- (2) The IFC shall pay the Applicant compensation in the amount of nine months' net salary, based on the last salary drawn as adjusted, for procedural violations and unfair treatment in the shortlisting process, inclusive of the three months' net salary already agreed to by the IFC;
- (3) The IFC shall pay the Applicant compensation in the amount of one year's net salary, based on the last salary drawn as adjusted, for retaliation; [and]
- (4) The IFC shall pay the Applicant's legal fees and costs in the amount of \$8,249.27.

31. The parties received the Tribunal's judgment in *EO (No. 2) (Merits)* [2020] on 29 June 2020. It is apparent from the record that as of 7 May 2021 the IFC had fully implemented the Tribunal's judgment. The question for the Tribunal, then, is whether there was an unreasonable manner of or delay in the implementation of this judgment.

32. The Bank Group's obligation to comply with judgments delivered by the Tribunal is foundational to the legitimacy of the Tribunal's establishment as a judicial body charged with responsibility for determining issues of conflict between the Bank Group and its staff in a manner that is wholly independent and impartial. As the Tribunal stated in its first judgment in *de Merode*, Decision No. 1 [1981], para. 21,

the decision of the Board of Governors to establish this Tribunal introduced into the conditions of employment of Bank staff the right of recourse to this Tribunal, in accordance with the conditions laid down in the Statute. This right forms an integral part of the legal relationship between the Bank and its staff members.

33. Under Article XI of the Statute, the judgments of this Tribunal "shall be final and without appeal." Regarding remedies, Article XII of the Statute states as follows:

1. If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked unless the Tribunal finds that the Respondent institution has reasonably determined that such rescission or specific performance would not be practicable or in the institution's interest. In that event, the Tribunal shall, instead, order such institution to pay restitution in the amount that is reasonably necessary to compensate the applicant for the actual damages suffered.

[...]

3. In all applicable cases, compensation fixed by the Tribunal shall be paid by the respondent institution.

34. The Tribunal observes that there is nothing explicit in its Statute which sets a time by which its judgments must be fully implemented. The Tribunal notes, however, that Principle 2.1 of the Principles of Staff Employment provides that the "Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members." Therefore, the Tribunal considers that the Bank Group must act with fairness and diligence when complying with Tribunal judgments and, specifically, that the Tribunal's judgments carry with them an obligation for the Bank Group to implement them in a reasonable manner and within a reasonable time.

35. The Tribunal considers that a reasonable time for implementation may vary based on the specific circumstances and complexities of any given case. The Tribunal recognizes that the implementation of *EO (No. 2) (Merits)* [2020] was particularly complex, requiring retroactive adjustments to salary, disability payments, pension contributions, and the Tribunal's previous award in *EO* [2018]. The efforts of various Bank Group units as well as the LTD administrator were required to make the necessary adjustments. The Applicant received the adjustment to his previous Tribunal award and payment of the combined one year and nine months' salary awarded in *EO (No. 2) (Merits)* [2020], representing the bulk of his award, on 14 August and 19 August 2020, respectively.

36. The remainder of the judgment took more time to implement, and the record demonstrates that the Applicant was proactive in communicating with various units of the Bank Group once he learned who was responsible for the implementation of the adjustments. The Tribunal notes with

some concern that certain elements of the Tribunal's judgment, such as the adjustments to his LTD payments, were not implemented until the Applicant contacted the respective units. In fact, the Applicant was not told until 29 October 2020, four months after the Tribunal's judgment was received, that he needed to contact a different unit to process these elements. The Tribunal observes that the IFC should have taken greater care in its coordination of who in the Bank Group was responsible for implementing the judgment and in its communications with the Applicant. The Tribunal considers that the burden should not rest on successful applicants to pursue the Bank Group in order to obtain the redress which the Tribunal has ordered.

37. The record also demonstrates that errors were made in the implementation of the remainder of the judgment, such as omitting certain pay periods from the salary adjustment because of a system error and the use of the wrong COLA in the LTD payment calculations. The Tribunal observes that these errors resulted in an underpayment of less than \$3,500.00 and were remedied after being brought to the IFC's attention through this Application. The Tribunal observes, though, that it is unfortunate that the Applicant felt he had no choice but to file an application to have a resolution of the matter. The Tribunal considers that the IFC should have been more diligent in implementing the Tribunal's judgment.

38. The Tribunal notes the Applicant's contention that the delays in the compliance with the judgment caused him unnecessary stress and harm. The Tribunal considers the Applicant's statement that

this has not simply been a one-off case – [he] has been trying to vindicate his rights continuously since 2016 and has been under a constant pressure during that time as a result. The constant state of stress has left him stranded on LTD and unable to begin to properly put the whole ordeal behind him.

39. The Tribunal acknowledges the stress the Applicant has experienced but observes that the remedies awarded to the Applicant to date have not been for stress *per se*. In *EO* [2018], the Tribunal ordered a remedy for a violation of fair procedures in the course of the year-end meeting and for a failure in the proper exercise of managerial discretion in respect of the non-renewal of the Applicant's appointment due to poor performance, in light of a flawed OTI process. In *EO* (*No.*

2) (*Merits*) [2020], the Tribunal ordered remedies for procedural violations and unfair treatment in the shortlisting process and for retaliation.

40. The Tribunal notes that, despite delays and errors, the judgment in *EO (No. 2) (Merits)* [2020] was fully implemented as of 7 May 2021, with the bulk of its judgment being implemented far earlier and without difficulty. The Tribunal considers, then, that any harm to the Applicant from the difficulties in implementation of certain elements of the judgment was minimal when compared with the overall award. The Tribunal reminds the IFC that timely and correct implementation of Tribunal judgments is a fundamental right of IFC employees that requires assiduous follow-through in coordination, calculation, and communication. The Tribunal recognizes the complexity of operationalizing payments in a large institution where some calculations and adjustments are complicated. In this case it was indeed complex given that different units of the Bank Group were needed to correctly calculate the amount owed to the Applicant. Nevertheless, the Tribunal notes that its judgment was transmitted to the parties on 29 June 2020 yet fully implemented only on 7 May 2021, close to one year later. Given this delay, the Tribunal cannot say that the IFC fully implemented the judgment within a reasonable time and in a reasonable manner.

41. The question then is whether the Applicant is entitled to compensation for the IFC's lack of diligence. The Tribunal is not convinced that monetary compensation is the most appropriate remedy in this case. In this regard, the Tribunal is guided by its jurisprudence in *Yoon (No. 13, No. 14, No. 16, No. 17 and No. 18)*, Decision No. 447 [2011]. In that case, the Tribunal found that the Bank's overall treatment of the applicant was improper in many respects, concluding that

the Bank's treatment of the [a]pplicant has fallen short of appropriate standards in specific respects. While the Bank enjoys a discretion regarding control of access to its premises, it is responsible for a number of missteps in relation to the [a]pplicant. It has not always acted promptly, it has not always provided her the information that she should have, it has not always been clear in the information it has provided to her nor has it always given her the opportunity to respond to such information. [*Id.*, para. 130.]

On the issue of remedies, the Tribunal in that case held that

the terms of this judgment, in so far as they acknowledge missteps of certain officials in the Bank in relation to the [a]pplicant, [constitute] a measure of

satisfaction for the [a]pplicant and [are] the extent of compensation which, in the judgment of the Tribunal, is appropriate.

42. In this case, considering all the circumstances, the acknowledgement by the Tribunal that the IFC did not fully implement the judgment within a reasonable time and in a reasonable manner constitutes a measure of satisfaction for the Applicant, and the Tribunal considers that monetary compensation is not warranted.

REQUEST FOR INTERPRETATION OF *EO* [2018]

43. The Applicant raised an issue for the first time in his Reply, requesting an interpretation of the Tribunal's judgment in *EO* [2018]. Specifically, the Applicant asks "whether the Tribunal could clarify whether paragraph 2 in the [Decision section of the judgment] means that just the details of the OTI be removed, or whether all evidence that an OTI existed should be removed." The Tribunal finds that this request is separate from the present proceedings and will therefore not address it at this time. An application for interpretation of a judgment must be submitted following the applicable requirements under the Statute and Rules of the Tribunal in a timely manner.

DECISION

(1) The terms of this judgment, in so far as they acknowledge the failure of the IFC to fully implement the Tribunal's previous judgment within a reasonable time and in a reasonable manner, constitute a measure of satisfaction for the Applicant and are the extent of compensation which is appropriate; and

(2) All other claims are dismissed.

/S/ Mahnoush H. Arsanjani

Mahnoush H. Arsanjani

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 3 June 2022

* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.