



World Bank Administrative Tribunal

2021

Decision No. 662

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

v.

**International Finance Corporation,
Respondent**

(Preliminary Objection)

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

**EO (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 Mahnoush H. Arsanjani (Vice-President), Janice Bellace, Seward Cooper, and Lynne Charbonneau.
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.
4. On 2 April 2021, the IFC submitted preliminary objections. This judgment addresses the IFC's preliminary objections.

FACTUAL BACKGROUND

5. The historical context of this case is contained in *EO*, Decision No. 580 [2018] and *EO (No. 2) (Merits)* [2020]. In *EO (No. 2) (Merits)* [2020], which was received by the parties on 29 June 2020, the Tribunal ordered:
 - (1) The IFC shall change the Applicant's FY [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.

6. On 28 July 2020, a team member from Human Resources, Corporate Case Management 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 team member regarding the amounts that would be received.

7. 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 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 this time.

10. 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 30 November 2020. The payment was calculated using the European Cost of Living Adjustments (COLAs), which are lower than Headquarters (HQ) COLAs. The Applicant did not receive a retroactive adjustment to the LTD payments for the period of January 2018 to April 2018.

11. After an email exchange with the LTD administrator, on 21 January 2021, the Applicant received a deposit of \$1,064.00, representing the retroactive adjustment to the LTD payments for the period of January 2018 to April 2018.

The present Application

12. 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.

13. The Applicant requests as relief the amounts still owed to him following the Tribunal's judgment in *EO (No. 2) (Merits)* [2020] and "additional compensation as the Tribunal deems just and appropriate, if any, for the additional stress caused by the prolonging of the saga as well as the time spent on chasing up [the] IFC."

Events which occurred after the Application was submitted

14. Following the submission of the Application, the IFC instructed the LTD administrator to apply the HQ COLAs 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 COLAs and European COLAs 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.

15. The IFC states 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 in its pleadings before

the Tribunal that Human Resources was processing the payment manually. The Applicant received the payment for \$190.00 on 7 May 2021.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The IFC's Contentions

The Applicant's claims are moot, and the Tribunal lacks jurisdiction over the claims

16. The IFC contends that, since the Applicant has received the payments owed to him, his claims are now moot. The IFC submits that it never refused to make the payments and that, once it became aware of the discrepancies, it took steps to remedy the inaccuracies. To the IFC, it has fulfilled all of its obligations under *EO (No. 2) (Merits)* [2020] and the Applicant has been made whole.

17. The IFC submits in the alternative that the Tribunal lacks jurisdiction over the Applicant's claims as they do not relate to his terms of appointment or contract of employment. In the IFC's view, the Tribunal's Statute

makes clear that the Tribunal's jurisdiction extends to all matters in which the World Bank has undertaken a specific obligation in respect of a staff member's employment with the Bank. The timeliness of the implementation of a Tribunal Decision does not relate to [the] Applicant's contract of employment or terms of appointment. Therefore, the Application should be dismissed.

The Applicant's Response

The Tribunal has jurisdiction over the claims

18. The Applicant contends that the Tribunal does have jurisdiction over his claims relating to the implementation of the Tribunal's judgment. The Applicant notes that the final payment was received three months after the Application was filed and more than ten months after the Tribunal's judgment was received by the parties. To the Applicant, "[i]t is quite farcical that [the IFC] claims to deny the Tribunal jurisdiction over the timeliness of implementing a decision based on [the IFC's] intent to implement it at a point in the future." The Applicant further contends that,

[i]n asserting that the Tribunal does not have jurisdiction to decide whether its previous decisions were implemented correctly, [the IFC] is ultimately, and insultingly, relegating the Tribunal to the status of a body which issues only nonbinding recommendations.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICATION IS MOOT

19. The IFC claims that the Applicant's challenge to the implementation of the Tribunal's judgment in *EO (No. 2) (Merits)* [2020] is moot as the Applicant has now received the payments owed to him. The Applicant does not agree.

20. As stated in *BE*, Decision No. 407 [2009], para. 25:

The Tribunal, like other judicial bodies, will not review a claim if the claim has become moot. Generally a claim is considered moot when, due to an event or happening, it no longer presents a justiciable controversy and judicial intervention is no longer necessary to grant effective remedy. International courts and tribunals follow a similar practice and refrain from reviewing a claim if the claim no longer has any object. As the International Court of Justice stated in *Nuclear Tests (New Zealand v. France)*, *Judgment*, *I.C.J. Reports 1974*, at pp. 476–477:

The dispute brought before it must therefore continue to exist at the time when the Court makes its decision. It must not fail to take cognizance of a situation in which the dispute has disappeared because the final objective which the [a]pplicant has maintained throughout has been achieved by other means. [...]

Thus the Court concludes that, the dispute having disappeared, the claim advanced [...] no longer has any object. It follows that any further finding would have no *raison d'être*. [...]

Thus the Court finds that no further pronouncement is required in the present case. It does not enter into the adjudicatory functions of the Court to deal with issues *in abstracto*, once it has reached the conclusion that the merits of the case no longer fall to be determined. The object of the claim having clearly disappeared, there is nothing on which to give judgment.

21. In *BE* [2009], the primary object of the applicant's claim was to challenge the Bank's decision not to promote her to a GC-level position. During the course of the proceedings, however, the applicant was promoted to a GC-level position, thus satisfying the applicant's main claim. The Tribunal noted, however, that, even though it was no longer necessary to review the alleged violation of the applicant's rights due to her non-promotion, the applicant had remaining claims for compensation for moral and financial injury caused by undue stress from the promotion process. The Tribunal then considered those claims on the merits. *Id.*, paras. 27–38.

22. Here, the IFC claims that, once it became aware of the discrepancies in the Applicant's payments, it took steps to remedy the inaccuracies and notes that the Applicant has now received the correct payments. The Tribunal considers that, as the Applicant did receive payments for the corrected adjustments to his LTD and retroactive salary payments on 2 April 2021 and 7 May 2021, the IFC has satisfied the obligation to pay the amounts awarded pursuant to the Tribunal's judgment in *EO (No. 2) (Merits)* [2020]. As such, the Tribunal finds that the Applicant's claim regarding the payment, *per se*, of the amounts owed pursuant to the previous judgment is moot. The issue presented before the Tribunal, then, is whether there remains any justiciable controversy.

23. The Tribunal notes that the Applicant challenges both the failure to implement the judgment in *EO (No. 2) (Merits)* [2020] and the delay in its implementation. Accordingly, while the Applicant did eventually receive payments for the corrected adjustments, these payments do not address the Applicant's claim regarding the manner and timeliness of the implementation of the Tribunal's judgment. It is not the case, then, that the Applicant's claim "no longer has any object." Similar to the applicant in *BE* [2009], the Applicant here requests additional compensation for the stress allegedly caused by the IFC's delay in complying with the judgment. The Applicant thus believes he has not been made whole, despite the IFC having made the payments during the course of the proceedings.

24. The Tribunal observes that there are no provisions in the Tribunal's Statute or Rules relating to the time by which the Organizations must implement a judgment of the Tribunal, and so the question may remain as to whether the Applicant's claim regarding the manner and timeliness of implementation is a justiciable controversy. 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 Organizations must act with fairness when implementing Tribunal judgments and, specifically, that the Tribunal’s judgments carry with them an obligation for the Organizations to implement them in a reasonable manner and within a reasonable time. Accordingly, the Tribunal finds that the Applicant’s claim regarding the manner and timeliness of the IFC’s implementation of the Tribunal’s judgment is a justiciable controversy that should be considered on the merits.

WHETHER THE TRIBUNAL HAS JURISDICTION OVER THE CLAIMS

25. The IFC also objects to the Applicant’s claims on the ground that the Tribunal does not have jurisdiction over the matters. Specifically, the IFC contends that the Applicant’s claims do not relate to the Applicant’s terms of appointment or contract of employment. The Tribunal finds that such a contention cannot stand. The Tribunal has jurisdiction over the implementation of its judgments under its Statute. Additionally, the Tribunal held in *Rae (No. 2)*, Decision No. 132 [1993], para. 45, that a “decision of the Tribunal, properly viewed, becomes a term of the affected staff member’s employment.” The Tribunal is the sole authority and the proper forum to address whether there was unreasonableness on the part of the Organizations in the implementation of the Tribunal’s judgments.

26. In view of the foregoing, the IFC’s preliminary objections are dismissed. The Tribunal will 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.

DECISION

The IFC’s preliminary objections are dismissed.

/S/ Mahnoush H. Arsanjani

Mahnoush H. Arsanjani

Vice-President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 8 November 2021

* 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.