



**World Bank Administrative Tribunal**

**2019**

**Decision No. 606**

**ER (No. 2),  
Applicant**

**v.**

**International Bank for Reconstruction and Development,  
Respondent**

**(Preliminary Objection)**

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

**ER (No. 2),  
Applicant**

**v.**

**International Bank for Reconstruction and Development,  
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 Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), and Marielle Cohen-Branche.

2. The Applicant's second Application was received on 5 September 2018. The Applicant initially represented himself and later was represented by S. Saminadan, Advocate. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant appears to have made five claims in this Application: (i) the Office of Ethics and Business Conduct (EBC) should not have closed its investigation into the budget matter raised by the Applicant; (ii) the claims raised by the Applicant were part of his Fiscal Year 2016 (FY16) work program; (iii) the Bank violated the International Financial Institutions Act; (iv) the Applicant has been treated unfairly in reporting what he believes to be misconduct by Information and Technology Solutions (ITS) management; and (v) in his Fiscal Year 2017 (FY17) performance evaluation, the Applicant's line managers told the Applicant that he gets "distracted."

4. On 18 October 2018, the Bank submitted preliminary objections contesting the admissibility of the Application under Article II of the Tribunal's Statute and *res judicata*. This judgment addresses the Bank's preliminary objections.

**FACTUAL BACKGROUND**

5. The Applicant commenced employment with the Bank in 2004 as a Resource Management Analyst, Level GE.

6. Sometime between September 2014 and November 2014, the Applicant brought what he perceived to be budget related anomalies to the attention of EBC. According to the Applicant, EBC suggested the Bank's Internal Audit Department (IAD) as the appropriate avenue to report budget related anomalies.

7. The Applicant requested his line manager, the Vice President of the Budget, Performance Review and Strategic Planning VPU, to request an IAD audit to clarify the anomalies discovered by the Applicant. The line manager complied with the Applicant's request and initiated an IAD audit in December 2014.

8. On 19 May 2015, IAD concluded its audit finding neither a breach of Bank policies nor "any attempt to circumvent institutional governance arrangements," and recommended improvements to provide for a more robust documentation trail in tracking budget decisions.

9. On 1 June 2015, the Applicant met with an EBC representative. On 2 June 2015, EBC formally notified the Applicant that the matters he observed in relation to the ITS budgeting function "are not within the jurisdiction of EBC's investigative function" and accordingly closed the matter.

10. On 7 July 2015, the Bank's Chief Counsel, Legal Vice Presidency, emailed the Applicant in response to his "various telephone calls and email messages regarding the concerns [he had] raised about the ITSVP Capital Budget and related matters." In this email, the Chief Counsel informed the Applicant:

I would like to assure you that the Bank takes matters such as the ones you raised very seriously. We appreciate and share your desire for an ethical environment within the World Bank. I would like to thank you for raising these concerns.

Your concerns were the subject of a careful review by Bank Management as well as impartial reviews by EBC and by the Bank's Internal Audit Department, including for evidence of any possible staff member misconduct or unethical behavior. As you have been made aware on various occasions, none of these reviews has uncovered any evidence of misconduct or unethical behavior. The appropriate avenues for consideration of these issues have been fully pursued.

The reviews did help, though, to identify issues related to governance of the ITS capital budget, and these have led to specific recommendations to improve the practice and transparency of ITS capital budget. The Bank will follow up to supplement these and continue with internal process improvement as part of the ongoing fiduciary role of management.

Please be assured your management will continue to engage with you to address any remaining concerns.

11. On 15 June 2016, the Vice President of Budget, Performance Review and Strategic Planning awarded “Bravo Points” to the Applicant for his “appreciation for [the Applicant’s] work on the IAD audit” stating it was very “professionally done.”

12. On 28 April 2017, the Applicant again met with EBC to report budget anomalies.

13. On 17 May 2017, the Applicant provided documentation and information to EBC in relation to his reported budgetary concerns.

14. On 31 May 2017, EBC informed the Applicant that, after “thorough and careful review of the evidence available to us, which included a review of all documentation and information you provided to EBC, we have determined that there is insufficient factual basis to proceed to formal investigation. Therefore, EBC closed the case.”

15. On 21 November 2017, the Applicant filed his first application with the Tribunal. In its judgment of 18 May 2018, the Tribunal dismissed the application for failing to meet the jurisdictional requirements imposed by Article II of the Tribunal’s Statute. *See ER (Preliminary Objection)*, Decision No. 586 [2018].

16. In the meantime, the Applicant continued to raise concerns about budget anomalies. On 14 January 2018, the Applicant again contacted EBC to report what he believed to be budget anomalies and the false reporting of the ITS budget to the Bank’s Board. In his email of 14 January to EBC, the Applicant stated: “I am in the process of preparing a detailed note to EBC about possible retaliation, which I plan to send to EBC at a later date. Hence, I request EBC not to initiate a retaliation complaint from me (wait till I send a detailed note).”

17. On 27 February 2018, EBC informed the Applicant through a telephone conversation that his case was closed. The Applicant was again notified via email, on 7 March 2018, that his case with EBC was closed.

18. The Applicant submitted this second Application on 5 September 2018 after having been granted several extensions of time to file an application.

19. On 18 October 2018, the Bank filed a preliminary objection to the Application.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Bank's Main Contentions*

20. In its preliminary objection, the Bank argues that the Applicant's claims still do not relate to his contract of employment, nor do they allege any harm. The Bank also argues that the Applicant's claims should be dismissed due to *res judicata*, since the budgetary issues (and how they relate to the Applicant's employment) were decided by Decision No. 586.

21. The Bank asserts that "[e]ven if Decision No. 586 is not seen as *res judicata*, it is binding precedent." The Bank asserts that the precedent set in Decision No. 586 is that the general accounting standards and budget practices do not form part of an applicant's contract with the Bank, and so they cannot be part of a Tribunal claim.

### *The Applicant's Main Contentions*

22. The Applicant does not state any specific contentions refuting the Bank's jurisdictional challenge.

23. The Applicant claims that the issues raised in this Application were part of his FY16 work program and that the IT Benchmark results were shared with the Board in November of 2015, "which overlaps with [his] FY16 work program." The Applicant argues that the issues raised in

Decision No. 586 were not part of his work program, but that the issues raised in this Application were part of his work program.

24. The Applicant further asserts that he has shown that misrepresentations were made to the Board of the facts and that “WBG staff who compiled [the] IBRD response to the IT Gartner IFI survey [have] willfully misrepresented FY14 IT spend[ing] by substituting IT capital spend[ing] with IT depreciation.”

25. The Applicant claims that all of his complaints have been disregarded by management. The Applicant states that he would have preferred to report “to an independent unit like EBC, IAD or CRO rather than confronting [his] line management.” The Applicant claims that the Chief Legal Counsel is quoting line management’s factual errors, and that line management is not being diligent in dealing with his complaints. The Applicant alleges that false statements have been attributed to him by IAD, “Legal staff,” and line managers. He asserts that “various stakeholders” have failed to look at critical documents he has produced (which highlight “conceptual errors”), that they have not given him a safe space to raise his complaints, and that he could not identify an institutional mechanism for bringing conceptual error complaints.

26. The Applicant also claims that he suffered harm by having a panic attack, which he had while going to IAD, EBC, or other Bank personnel, and that he could not sleep properly during this time. The Applicant states that he had to receive stress counseling because he was ignored when he pointed out an over-allocation of \$20 million in the ITS FY17 budget process. The Applicant also states that he had to see a psychiatrist due to stress stemming from the ITS budget issue.

27. The Applicant asserts that, during his FY17 performance review, he “was told [he] got distracted by [his] line managers.” Lastly, the Applicant states that EBC has disclosed his name to ITS management.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

*Article II Jurisdiction*

28. The question presented in this Application, as with the first application, is whether the Application meets the jurisdictional requirements under Article II of the Tribunal's Statute.

29. Article II, paragraph 1, of the Tribunal's Statute provides:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.

30. In *Agodo*, Decision No. 41 [1987], para. 22, the Tribunal explained:

Article II, para. 1 of the Statute expressly limits the kind of claim that a staff member is able to present to the Tribunal. The staff member must allege non-observance of the employment contract or terms of appointment "of such staff member," that is, of the staff member filing the application. An application asserting a violation of some other staff member's contract of employment is clearly inadmissible under this provision. It is, indeed, an established principle of adjudication that claims for redress are properly to be asserted only by the injured party, lest there be gratuitous and vexatious litigation of claims of dubious and speculative merit.

31. In *Agodo*, the Tribunal found that the applicant had no standing to bring his claims because the applicant "as a staff member, ha[d] failed to identify a particular decision by the Respondent that ha[d] adversely affected him." *Id.*, para. 20. It further determined the applicant's claims were premature because the applicant "d[id] not claim that any adverse consequences ha[d] been actually suffered by him[.]" *Id.*, para. 30.

32. In line with Article II and the Tribunal's jurisprudence, the Tribunal dismissed the Applicant's first application for failing to meet the jurisdictional requirements imposed by Article II of the Tribunal's Statute. In *ER (Preliminary Objection)*, paras. 33–35, the Tribunal observed:

[T]he Applicant has not identified any adverse consequences actually suffered by him. Not only has the Applicant not identified any adverse employment consequences but he was also awarded “Bravo Points” in acknowledgment of his discovering budget anomalies. The Applicant’s concerns regarding budget anomalies were addressed through an IAD audit, and new practices were implemented to improve the budget record process as a result of the audit conducted at the Applicant’s insistence. These facts do not relate to an allegation of non-observance of the Applicant’s contract of employment or terms of appointment.

[...]

The Tribunal understands that the Applicant’s claim of unfair treatment may be a recognizable claim. But the Applicant does not make any plausible claim explaining how the Bank’s decisions resulted in unfair treatment violating his rights as a staff member. General accounting standards and budget practices do not form part of the Applicant’s employment contract with the Bank. The Tribunal cannot entertain claims that simply mention unfair treatment in a vague context.

33. Likewise, in this second Application, the Applicant has not demonstrated that he suffered any adverse employment consequences as a result of EBC closing its investigation into the Applicant’s allegations of budget anomalies. Not only has the Applicant not identified any adverse employment consequences, he was previously awarded “Bravo Points” in acknowledgment of his discovering budget anomalies. The Applicant’s concerns regarding budget anomalies were addressed through an IAD audit, and new practices were implemented to improve the budget record process as a result of the audit conducted at the Applicant’s insistence. ITS continued to use a specific and accepted type of budgeting formula to measure the ITS budget, despite the Applicant’s objections to that budgeting formula. These facts do not support an allegation of non-observance of the Applicant’s contract of employment or terms of appointment.

34. The Applicant maintains that the production of a document would be “one of the critical [pieces of] evidence to prove retaliation by my line management which I plan to file with EBC at later date.” However, the Applicant made clear in this Application that he had not yet attempted to file a retaliation complaint through EBC. Thus, it is premature to seize the jurisdiction of the Tribunal.

35. As to the claims about his FY17 performance evaluation and his FY16 work program, the Applicant does not make any plausible claim explaining how the Bank’s decisions resulted in unfair treatment violating his rights as a staff member. In any event, the Applicant must exhaust



internal remedies before coming to the Tribunal. The record does not show that the Applicant exhausted internal remedies relating to these claims.

36. Finally, the Applicant alleges that the Bank has violated the International Financial Institutions Act, and he desires that this Tribunal rule on that issue. A general claim regarding a breach of the International Financial Institutions Act by the Bank is outside the competence of this Tribunal.

37. The Tribunal finds that the Application does not meet the jurisdictional requirements imposed by Article II of the Tribunal's Statute.

#### DECISION

The Application is dismissed.

/S/Andrew Burgess

Andrew Burgess

Vice-President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 26 April 2019