



World Bank Administrative Tribunal

2019

Decision No. 609

**FB,
Applicant**

v.

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

(Preliminary Objection)

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

**FB,
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 Mónica Pinto (President), Abdul G. Koroma, and Janice Bellace.

2. The Application was received on 16 October 2018. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 5 April 2019.

3. The Applicant challenges (i) the Bank's alleged failure to attribute the Applicant as a co-author and co-editor of a Bank publication titled *Strengthening Post-Ebola Health Systems: From Response to Resilience in Guinea, Liberia, and Sierra Leone*; (ii) the Bank's decision to remove the Applicant's work program without notice in July 2018; and (iii) the Bank's decision not to renew the Applicant's Short Term Consultant (STC) contract for a period of one year.

4. On 26 November 2018, the Bank filed a preliminary objection contesting the admissibility of the Applicant's first claim on the basis of Article II(1) of the Tribunal's Statute. The Bank requests that the Tribunal decide on its jurisdiction in relation to this claim prior to considering this case on the merits. This judgment addresses the Bank's preliminary objection. Therefore, it will set out only the facts relevant to this claim.

FACTUAL BACKGROUND

5. The Applicant first joined the Bank in August 2010 as a Junior Professional Associate with the Health, Nutrition and Population unit. She left in 2012 to pursue advanced degrees at

Columbia University. The Applicant rejoined the Bank in 2014 under an STC contract to work on health system strengthening projects in the Health, Nutrition and Population (HNP) Global Practice.

6. From 2014 to 2017, during the Ebola outbreak in West Africa, the Applicant worked with an advisory services and analytics (ASA) team on a Bank project that resulted in the publication titled *Strengthening Post-Ebola Health Systems: From Response to Resilience in Guinea, Liberia, and Sierra Leone* (the publication). The publication was composed of three chapters and led by a Lead Health Specialist and two Senior Health Specialists as Task Team Leaders (TTLs) for each of the three chapters. The Applicant worked with the entire ASA team and assisted the third chapter's TTL in the writing of the third chapter.

7. Several working drafts of the manuscript of the publication were circulated between 2016 and 2017. In each of these drafts, the Applicant was listed on the cover as an editor. The acknowledgments section inside these drafts stated that “[t]he writing and editing of this paper was led by [the Lead Health Specialist], [the second chapter's TTL], and [the Applicant] from the World Bank.”

8. By email dated 23 March 2017, the Lead Health Specialist informed the ASA team, including the Applicant, that the project “has now been accepted for publication as a Category 2 World Bank (stand-alone) publication” and congratulated each member of the ASA team for the “hard work that all of you put into the preparation of this report.”

9. On 30 January 2018, the official publication was released by email. The Applicant's name had been removed as an author and editor of the publication. The cover listed as editors the three TTLs. The Applicant's contribution was recognized in the acknowledgements section of the publication, which stated that “[t]he writing team of the disease surveillance chapter and sections was [the Applicant] and [the third chapter's TTL] (both of the World Bank).”

10. On the same date, the Applicant wrote to the Lead Health Specialist seeking clarification regarding the removal of her name from the publication. In response, he replied that “[t]he

editorship decision was based on the fact that there are three designated TTLs for the ASA. Trust this clarifies.”

11. On 1 February 2018, the Applicant met with the Lead Health Specialist. She claims that the Lead Health Specialist told her that the Office of Publications had wanted to restrict the number of editors listed on the cover and that it had therefore directed that the list include only the TTLs on the project. The Applicant alleges that the Lead Health Specialist also stated that the decision was influenced by “HR [Human Resources] protocols” requiring the listing of only regular staff members.

12. In the subsequent days, the Applicant received assurances from the Lead Health Specialist and the second chapter’s TTL that they would contact the Office of Publications to make the necessary corrections. The Applicant states that she did not hear from them for over five weeks.

13. On 20 March 2018, the Applicant met with her department’s Practice Manager, the Lead Health Specialist, and a Staff Association Counselor. The Applicant states that the Lead Health Specialist denied at this meeting that the Applicant had served as an editor of the publication. The Applicant further states that following the meeting the Practice Manager justified the removal of the Applicant’s attribution on the basis that “it was not [the Applicant’s] responsibility to deliver on the publication, which was an important work for the Bank and all the partners involved.”

14. On 3 April 2018, the Applicant met with the HNP Director, the Practice Manager, the Staff Association Counselor, and an HR representative. At the meeting, the Applicant claimed that the removal of her name as author and editor from the final publication was unethical, and that her work had been falsely attributed to the third chapter’s TTL.

15. On 4 April 2018, the HNP Director wrote to the three TTLs on the project inquiring whether there was a business reason, “apart from the instruction or guidance from the publisher,” as to why the Applicant was not listed as an editor of the publication.

16. By email dated 9 April 2018, the Lead Health Specialist wrote to the HNP Director explaining in greater detail the reasons for the removal of the Applicant's attribution. He stated:

[T]he decision on editorship was based on our collective judgment of the respective roles played by the many people – both within and outside the World Bank – who participated in the study and made this publication possible, rather than simply the instruction of the publisher. We essentially had two choices: a) Listing all of the over two dozen authors on the cover; or b) Listing on the cover the editors, rather than those authoring individual chapters. While the Publications unit did suggest naming the editors on the cover, while acknowledging the contributions of the authors in the order of their contribution to each chapter, as is standard practice in the Bank's formal publications [...], they did not suggest any restrictions on the number of editors on the cover.

17. In this email, the Lead Health Specialist also conceded that the Applicant deserved to be the third chapter's "lead author" and "perhaps even the sole author." He argued, however, that the Applicant had not "played the role of editor of the volume, since her role [...] was restricted to finalizing her chapter[.]" He also stated that he had requested that the Applicant be named as the sole author of the third chapter, but the Office of Publications had advised him that "the request could not be accommodated" because it was "a major undertaking" and "did not meet the Bank's bar (which is evidently based on reputational risk to the Bank)."

18. On 2 May 2018, the HNP Director met with the Applicant and the three TTLs on the project and acknowledged that the removal of the Applicant's name from the list of authors and editors in the final publication was an error.

19. By email dated 3 May 2018, the HNP Director summarized the decisions made in the meeting as follows: "(i) [s]eek publication of the [third] chapter as a stand-alone report, with [the Applicant] as the sole author; (ii) [s]eek publication online of an amended version of the full report [...]" He also noted that a list of corrections would be sent to the Office of Publications seeking to remedy the misattribution of the Applicant's work.

20. By email dated 26 May 2018, the HNP Director wrote to the Acquisitions Editor, Office of Publications, proposing the following changes to the publication: "(i) recognition on the front cover of an expanded list of staff as Editors of the volume; and (ii) re-formatting of the Table of

Contents such that the authors of each Chapter can be listed below the Chapter Title.” He listed seven editors, including the Applicant, whose names should be added to the corrected publication and attached a list of the authors by chapter.

21. On 26 May 2018, the Acquisitions Editor rejected the proposed corrections noting that the modification of published files at that late stage is made only in “extenuating circumstances when there is reputational risk posed to the institution such as a misquote or a major error in data.” She concluded that the case presented to her did not “meet the bar for embarrassment to the institution” that would justify the modification of the Bank’s publication. The Applicant claims that she has not heard anything further from management following the Acquisitions Editor’s response.

22. On 30 May 2018, the Applicant filed a Request for Review before Peer Review Services (PRS) challenging (i) the “exploitation and misrepresentation of intellectual work by a lack of attribution” and (ii) “false attribution of [her] work as an author and editor” of a Bank publication.

23. On 18 June 2018, the PRS Chair dismissed the Applicant’s Request for Review for lack of jurisdiction, noting that “there is no right of attribution or authorship in staff members’ contract of employment or terms of appointment.”

24. On 27 June 2018, the Applicant’s STC contract was extended until 14 July 2018.

25. On 10 July 2018, the Applicant’s STC contract was extended for 10 more days from mid-July until the end of August 2018. It was subsequently extended until 30 September 2018, the date on which the Applicant’s employment with the Bank ended.

26. The Application was received on 16 October 2018. The Applicant challenges (i) the Bank’s alleged failure to attribute the Applicant as a co-author and co-editor of the Bank’s publication; (ii) the Bank’s decision to remove the Applicant’s work program without notice in

July 2018; and (iii) the Bank's decision not to renew the Applicant's STC contract for a period of one year.

27. On 26 November 2018, the Bank filed a preliminary objection challenging the admissibility of the Applicant's first claim on three grounds: (i) the Applicant has failed to state a claim alleging violations of her rights under her contract of employment or terms of appointment; (ii) decisions regarding Bank publications are not subject to the Tribunal's review; and (iii) the Applicant has failed to exhaust internal remedies.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank's Contentions

28. The Bank claims that the Application is outside the Tribunal's jurisdiction because the Applicant fails to state a claim which violates her rights as a staff member and for which she alleges unfair treatment. The Bank states that the Applicant's rights under the Staff Rules and her contract of employment or terms of appointment do not provide for a right of attribution for work produced as part of her official duties as an STC. The Bank explains that, pursuant to Principle 3.2 of the Principles of Staff Employment, all rights in any work produced by staff members as part of their official duties belong to the World Bank Group.

29. The Bank avers that discretionary decisions regarding Bank publications do not fall within the Tribunal's jurisdiction because they do not constitute employment decisions. The Bank states that the Applicant's managers acted within their authority in deciding to name the TTLs as editors of the Bank publication and in acknowledging the Applicant's contribution in the acknowledgements section. The Bank submits that the Acquisitions Editor also acted within her authority in rejecting the corrections requested by the HNP Director seeking to include the Applicant as a co-editor.

30. The Bank claims that the Applicant has failed to exhaust internal remedies because she has not allowed the Bank to give effect to the HNP Director's offer to publish the third chapter of the Bank publication as a stand-alone publication with the Applicant as its sole author. The Bank

asserts that the Applicant bears a burden to offer “evidence that the Respondent has now refused to implement” this offer.

The Applicant’s Response

31. The Applicant claims that she has stated a claim that falls under the Tribunal’s jurisdiction. She asserts that her claim with respect to the attribution of her work rests on a violation of the Bank’s obligation to treat its staff fairly. The Applicant contends that it is well established that fair treatment is part of the terms of employment at the Bank and failure to treat a staff member fairly gives rise to an appeal. For the Applicant, the fact that the Tribunal has yet to rule on a case involving the removal of an author’s attribution and the misattribution of an author’s work does not and cannot change this fundamental precept.

32. The Applicant submits that her claim regarding her right of attribution is in no way affected by the Bank’s ownership of the publication’s copyright. The Applicant explains that, while it would be within the Bank’s discretion not to name any authors, once the Bank has determined to name authors, the principles of fairness and equal treatment demand that the Bank name all the authors, and that it not mislead as to the contributions of those authors. In support of this contention, the Applicant relies on the jurisprudence of the Administrative Tribunal of the International Labour Organization.

33. The Applicant denies the Bank’s assertion that she has failed to exhaust internal remedies and submitted premature claims before the Tribunal. The Applicant contends that the response of the Office of Publications rejecting the corrections suggested by the HNP Director, and offering no further solutions since, constitutes clear evidence of the Bank’s decision not to remedy the removal of the attribution and misattribution of her work. She adds that, even if the Bank were to publish the third chapter as a stand-alone publication, this would not remedy her injury because her work would continue to be wrongly attributed to another staff member in every channel of distribution where the publication remains in its present form.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

34. The Bank's main argument is that, pursuant to Article II(1) of the Tribunal's Statute, the Applicant has failed to state a valid claim alleging a violation of her rights as a staff member. The Bank asserts that, pursuant to Principle 3.2 of the Principles of Staff Employment, all rights in any work produced by staff members as part of their official duties belong to the World Bank Group and, therefore, do not form part of the Applicant's contract of employment or terms of appointment. On her part, the Applicant argues that her claim with respect to the attribution of her work rests on a violation of the Bank's obligation to treat its staff fairly and is therefore a valid claim falling under the Tribunal's jurisdiction.

35. The essence of the Applicant's first claim is as follows. The Applicant worked on a Bank project that resulted in a Bank publication. She alleges that she joined the project with the express understanding that she would be the co-author of the publication's third chapter and co-editor of the publication as a whole. In each of the working drafts of the manuscript circulated between 2016 and 2017, the Applicant was listed on the cover as an editor. The Applicant also alleges that she was ultimately delegated all responsibility for the writing of the third chapter. When the publication was released, the Applicant's name as an editor had been removed from the final publication's cover and the writing of the third chapter had been attributed to the third chapter's TTL. After attempting and being unable to correct the non-attribution of her work, the Applicant filed this Application before the Tribunal claiming that the Bank, by removing her attribution from the Bank publication, failed to treat her fairly, as required by Principles 2.1 and 9.1 of the Principles of Staff Employment.

36. Article II, paragraph 1, of the Tribunal's Statute provides as follows:

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.

37. Principle 2.1 of the Principles of Staff Employment states in relevant part:

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. They shall not differentiate in an unjustifiable manner between individuals or groups within the staff and shall encourage diversity in staffing consistent with the nature and objectives of the Organizations. They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.

38. Principle 9.1 of the Principles of Staff Employment states in relevant part that “[s]taff members have the right to fair treatment in matters relating to their employment.”

39. The Tribunal has recognized that the Principles of Staff Employment form part of the contract of employment or terms of appointment of staff members. *BB*, Decision No. 426 [2009], para. 52.

40. More specifically, the Tribunal observed in *N*, Decision No. 356 [2006], para. 20:

The discussion whether there has been a breach of fairness and impartiality in this case pertains to the merits. For jurisdictional purposes, as the Tribunal held in *McKinney*, Decision No. 183 [1997], paras. 13, 16–17, it is enough that the Applicant has “alleged” a plausible claim of contract violation and that it is tenable that “there are circumstances that warrant an examination of the merits of his allegations.” It was there held by the Tribunal that “[i]t would be premature and improper for the Tribunal, by declaring this application inadmissible on the ground of jurisdiction *ratione materiae*, to deprive the Applicant of an opportunity to make his case.”

41. In *Naab*, Decision No. 160 [1997], paras. 26 and 27, the Tribunal observed:

All that Article II requires is that the Applicant be a staff member of the Bank Group and that he present “any application” alleging non-observance of “his contract of employment or terms of appointment.” The Applicant in this case is a staff member of the Bank and does in fact allege non-observance of his contract of employment. He alleges that the amended Staff Rule applied to him “establishes an arbitrary and unreasonable restriction on his employment at the Bank” and that it “alters an essential condition of his employment agreement.” The relief he is asking for, besides compensation, is that he should be grandfathered from the restriction introduced by the amended Staff Rule 4.01.

The Tribunal concludes that the contentions of the parties can only be disposed of once they have exhausted their right to substantiate their opposing views on the different aspects of the substantive elements of the dispute.

42. The Tribunal finds that, pursuant to Article II(1) of the Tribunal's Statute and its well-established jurisprudence, it has jurisdiction to examine the Applicant's first claim in the present case. In line with *N*, para. 20, and *McKinney*, para. 13, the Tribunal finds that for it to review a claim on the merits it suffices that an applicant alleges a plausible claim of the non-observance of his or her contract of employment or terms of appointment, including all pertinent regulations and rules. In the present case, whether the Applicant would ultimately succeed in her claim is a matter of merits not of jurisdiction. "Whether there is any factual support for this claim is not [...] a matter to be considered now, but only following a further exchange of pleadings on the merits." *Nguyen*, Decision No. 190 [1998], para. 7.

43. At this jurisdictional stage, the Tribunal is satisfied that the Applicant has presented a plausible claim of the Bank's violation of her rights under Principles 2.1 and 9.1 of the Principles of Staff Employment for its failure to attribute her work in the Bank publication. There are indeed circumstances in this case that warrant an examination of the merits of the Applicant's allegations. *See McKinney*, para. 16.

44. The Bank has filed another objection to the admissibility of the Applicant's first claim arguing that the decisions regarding Bank publications do not constitute employment decisions. The Bank states that the Applicant's managers and the Acquisitions Editor acted within their authority when they decided not to attribute the Applicant's work and subsequently rejected the corrections proposed by the HNP Director.

45. The Tribunal has held that it is within its authority to review discretionary decisions to determine whether they are "arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment." *See AK*, Decision No. 408 [2009], para. 41.

46. In the present case, the Applicant is alleging that the Bank breached its obligation to treat her fairly when it decided to exclude her from the list of editors and authors of the Bank publication and subsequently failed to correct the misattribution of her work. The Applicant argues that, while the Bank has discretion in not naming any of the authors of a publication, once it decides to name authors, the principles of fairness and equal treatment demand that the Bank name all the authors, and that it not mislead as to the contributions of those authors.

47. The Tribunal finds that it has jurisdiction to review the decisions made by the Applicant's managers and the Acquisitions Editor to determine whether they have been reached in violation of Principles 2.1 and 9.1 of the Principles of Staff Employment and therefore in violation of the Applicant's contract of employment or terms of appointment.

48. The Bank's final objection to the admissibility of the Applicant's first claim concerns the exhaustion of internal remedies. The Bank claims that the Applicant has filed a premature claim because she has not allowed the Bank to give effect to its offer to publish the third chapter of the Bank's publication as a stand-alone publication with the Applicant as its sole author. On her part, the Applicant contends that the response of the Office of Publications rejecting the corrections suggested by the HNP Director and offering no further solutions constitutes clear evidence of the Bank's decision not to remedy the removal of the attribution and misattribution of her work.

49. Article II(2)(i) of the Tribunal's Statute reads in relevant part as follows:

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

(i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal [...].

50. The Tribunal has expressed the importance of the requirement of exhaustion of internal remedies, which "ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action." *Moss (Preliminary Objection)*, Decision No. 571 [2017], para. 46; *Ampah*, Decision No. 522 [2015], para. 55.

51. The record shows that from early April 2018 the HNP Director took steps to remedy the misattribution of the Applicant's work in the Bank publication. Following email exchanges and meetings with the TTLs and the Applicant, it was decided on 2 May 2018 that the appropriate remedy for the Applicant would be to contact the Office of Publications to "(i) [s]eek publication of the [third] chapter as a stand-alone report, with [the Applicant] as the sole author; and (ii) [s]eek publication online of an amended version of the full report." Therefore, on 26 May 2018, the HNP Director wrote to the Acquisitions Editor proposing corrections to the Bank publication to add a longer list of editors on the cover and list the authors of individual chapters. Both proposals sought to remedy the exclusion of the Applicant as an editor and author of the publication's third chapter. However, the Acquisitions Editor rejected the proposed corrections stating that her office did not "modify published files" at that late stage, except for "extenuating circumstances when there is reputational risk posed to the institution such as a misquote or a major error in data." She concluded that the case presented to her did not "meet the bar for embarrassment to the institution."

52. Furthermore, the Bank contends that the Applicant has not "allowed Respondent to give effect to the Respondent's offer to publish chapter 3 of the Publication as a stand-alone publication with Applicant as its sole author." Based on the limited pleadings available to the Tribunal at this stage of the proceedings, it appears to the Tribunal that the Bank has not implemented the offer it made to the Applicant.

53. The Tribunal further observes that the Staff Rules and the Tribunal's Statute require that staff members exhaust internal remedies before coming to the Tribunal. The record shows that, prior to filing her Application to the Tribunal, the Applicant in this case exhausted the internal remedies required under Staff Rule 9.03, paragraph 7.01, which reads as follows:

[A] Panel may review any Request for Review in which a Requesting Staff Member alleges that a managerial action, inaction, or decision was not consistent with his/her contract of employment or terms of appointment. The phrases "contract of employment" and "terms of appointment" include the terms in a Staff Member's letter of appointment and all pertinent Staff Rules and policies, including the Principles of Staff Employment and the Staff Rules in effect at the time of the alleged action, inaction, or decision.

54. In her Request for Review before PRS, the Applicant challenged the lack of attribution of her work. But PRS dismissed the Applicant's request for lack of jurisdiction, noting that "there is no right of attribution or authorship in staff members' contract of employment or terms of appointment." The Tribunal finds that based on the record the Applicant has demonstrated that she exhausted the required internal remedies in a timely manner. As far as the Tribunal's jurisdiction is concerned, there is a plausible claim that warrants an examination of the Applicant's allegations on the merits.

DECISION

The Bank's preliminary objection is dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 26 April 2019