



World Bank Administrative Tribunal

2022

Decision No. 683

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

v.

**International Finance Corporation,
Respondent**

(Preliminary Objection)

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

**FR (No. 2),
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 31 January 2022. The Applicant was represented by Nat N. Polito of The Law Offices of Nat N. Polito, P.C. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency.

3. The Applicant requests the Tribunal to review the case closing memorandum by the Ethics and Business Conduct Department (EBC) and “supplement and complete its ruling in this matter” as provided in *FR (Merits)*, Decision No. 651 [2021]. The Applicant invokes Article XIII of the Tribunal’s Statute in support of his position.

4. On 29 March 2022, 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 *FR (Merits)* [2021]. A brief background of the facts relating to the Applicant’s claim in the present Application is as follows.

6. The Applicant joined the IFC on 29 November 2004 as a Senior Financial Officer, Grade Level GG Tier 2. He was later promoted to Principal Financial Officer, Grade Level GH Tier 1,

working within the Treasury Client Solutions (TCS) Global Support Unit within the Treasury & Syndications Vice Presidential Unit (VPU). According to the Applicant, he became the head of the TCS Global Support Unit on 1 July 2015.

7. In 2017, as part of a VPU reorganization, IFC senior leadership decided to form a new unit, to be called the Coordination Unit (CU), encompassing the duties and responsibilities of the Applicant's unit and spanning the entire VPU. The new head of the CU would report directly to the IFC Vice President (VP).

8. According to the Applicant, in July 2017, he was told by his immediate director (Director) that the TCS Global Support Unit would be dissolved in order to allow for the creation of the CU to be led by Mr. X. In a written statement filed with the Tribunal and dated 26 January 2021, the Director states, "I did not in July of 2017 or at any other time advise [the Applicant] that [the VP] had already decided that [Mr. X] was chosen to lead the Coordination Unit."

9. The CU was formed in January 2018, and the position of Head of the CU was advertised internally on 2 February 2018 with a closing date of 19 February 2018. The Applicant did not apply for the position. On 25 April 2018, following the selection process, the VP announced Mr. X as Head of the CU effective 11 June 2018.

10. In June 2018, there was a realignment of corporate titles within the IFC, which included the abolition of the title "Head." According to the IFC, "[t]his triggered a discussion about the configuration of the [VPU] leadership team, and it was subsequently decided that the leadership team would consist of only staff who were managers or acting as managers." According to the Applicant, on 26 June 2018, the Director advised him that "the VP had decided to drop [him] from the leadership team and that he would not be proposed for progression to grade H2."

11. On 17 July 2018, the Applicant filed Request for Review No. 434 with Peer Review Services (PRS). According to the PRS Panel's Report, the Applicant's Request for Review challenged the following World Bank Group decisions, actions, and inactions in Fiscal Year 2018 (FY18):

- (i) Removal from the Treasury and Syndications Vice Presidency (CFIVP) leadership team [...];
- (ii) Not to propose him for progression to Chief Officer, Level GH Tier 2 (GH-2) despite an alleged promise to do so [...];
- (iii) Transfer of a substantial portion of his responsibilities and staff to a new unit [...]; and
- (iv) Realignment of units based on the feedback from unit staff in the Staff Engagement Survey [...].

12. The Applicant filed a second Request for Review, No. 449, with PRS on 4 December 2018. According to the PRS Panel’s Report, the Applicant filed this Request for Review challenging the following:

- (i) Retaliation in the form of facing a more rigorous nomination process for the IFC “Top 30 for IFC 3.0 Individuals Award Category” in FY18 [...];
- (ii) Retaliation in the form of being “dropped” from a CFIVP planned trip to New York City to meet with Columbia University Officials [...]; [and]
- (iii) [I]nconsistent rules under which matters involving issues (discrimination, retaliation, among others) under the purview of EBC interact with the PRS process, particularly in regards to the timeliness requirements of each” [...].

13. On 20 December 2019, the PRS Panel issued the Panel’s Report in Consolidated Requests for Review Nos. 434 and 449, recommending that the Applicant’s requests for relief be denied. During the PRS proceedings, the PRS Panel learned that the Director had shared the parties’ written submissions with witnesses, in contravention of the PRS confidentiality standards. According to the PRS Panel’s Report, the Director stated that he had shared these documents with witnesses “to jog their memory.” The PRS Panel determined that these disclosures “(i) did not materially affect the Panel’s review [...] and, therefore, (ii) did not negatively impact the outcome of the Panel’s review.”

14. On or around 5 March 2020, the Applicant submitted a complaint to EBC, alleging abuse of authority, confidential disclosure of information, and retaliation. EBC thereafter conducted a preliminary inquiry into the Applicant’s allegations.

15. On 5 May 2020, the Applicant filed his first application with the Tribunal. The Applicant challenged (i) “the process for the selection of the person to lead the Coordination Unit”; (ii) “his non-selection to lead the Coordination Unit”; and (iii) “his demotion and removal from leadership.” The Applicant also contended that IFC management improperly disclosed confidential documents in the context of the Applicant’s Requests for Review with PRS.

16. Meanwhile, on 10 August 2020, EBC contacted the Applicant, notifying him that EBC was closing the case at the preliminary inquiry stage, as it “could not find sufficient evidence of a violation of staff rules to move forward with a formal investigation regarding [his] complaint of disclosure of confidential information, discrimination, abuse of authority and retaliation.”

17. On 17 August 2020, the Applicant responded to EBC and requested a discussion with EBC regarding its decision to close the case. The record suggests that the Applicant and EBC had a follow-up discussion on the case closure on 24 August 2020.

18. On 21 July 2021, the Tribunal transmitted its judgment to the parties in *FR (Merits)* [2021], in which it dismissed the first application. With respect to the Applicant’s allegations regarding improper disclosures made during the PRS proceedings, the Tribunal noted that the Applicant stated that he had filed a complaint with EBC regarding the disclosure of confidential documents. The Tribunal further noted:

The record suggests that the EBC process has not yet concluded. Accordingly, it would be premature for the Tribunal to pronounce on this issue. Based on the record before the Tribunal, there is no material harm to the Applicant for which a remedy must be given at this time. [*FR (Merits)* [2021], para. 101.]

19. On 5 November 2021, the Tribunal received a letter from the Applicant, requesting the record to be reopened and the Tribunal to order EBC to provide the parties and the Tribunal with the results of its preliminary inquiry and a copy of its case closing memorandum. The IFC submitted a response to the Applicant’s request on 29 November 2021, requesting that the Tribunal reject the Applicant’s request.

20. On 16 December 2021, the Tribunal informed the Applicant that its role was limited to providing information regarding its rules of procedure. To that end, the Tribunal informed the Applicant of the following:

- (i) Pursuant to Article XI of the Tribunal's Statute, the Tribunal's judgments are "final and without appeal." Should you wish to request a revision to *FR (Merits)*, Decision No. 651 [2021], you may do so in accordance with the requirements set out under Article XIII of the Tribunal's Statute.
- (ii) Alternatively, you may proceed to file a new application pursuant to the Tribunal's Statute and Rules challenging the EBC decision referenced in your 5 November 2021 letter.
- (iii) Kindly note, the Tribunal is not yet in a position to grant or deny a request for an order for production of the EBC report. For such request to be considered, the Tribunal must be properly seized, through the filing of a new application or request for revision of judgment. Accordingly, should you file a new application with the Tribunal or a request for revision under Article XIII, the Tribunal would then be in a position to consider any requests for preliminary or provisional relief including the production of documents.

21. The Applicant filed the present Application on 31 January 2022. The Applicant requests, pursuant to Article XIII of the Tribunal's Statute, that the Tribunal "review the Reports from [EBC] that it received from the [IFC] for *in camera* review on November 29, 2021, and supplement and complete its ruling in this matter as provided in [...] Decision No. 651."

22. The Applicant claims legal fees and costs in the amount of \$12,704.00.

23. The IFC filed its preliminary objections on 29 March 2022.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The IFC's Contentions

24. The IFC submits that the Applicant's request for revision does not meet the requirements of Article XIII of the Tribunal's Statute. As stated by the IFC, a request for revision pursuant to Article XIII of the Tribunal's Statute provides the sole exception to the rule of finality "in the event

of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party,” provided that such request is made within six months after the party acquired knowledge of the relevant fact.

25. The IFC contends that the basis for the Applicant’s request for revision is either the receipt by the Tribunal of the EBC case closing memorandum or the closure of EBC’s preliminary inquiry. In the case of the former, the IFC submits that the receipt by the Tribunal of the memorandum is not a fact that was discovered; rather, the IFC states that the memorandum is evidence that was neither submitted nor requested by the Applicant prior to the Tribunal’s judgment in *FR (Merits)* [2021].

26. In the case of the latter, the IFC accepts that the closure of EBC’s preliminary inquiry may constitute a fact under Article XIII of the Tribunal’s Statute. However, the IFC contends that the Applicant has “failed to show that this fact is of a nature that could have had a decisive influence on the judgment of the Tribunal.” The IFC further submits that “the closure of EBC’s preliminary inquiry is not a fact that was unknown to [the] Applicant at the time of the judgment of the Tribunal, and the request was not submitted within six months of him acquiring knowledge of the fact.” The IFC notes that the Applicant was informed of the conclusion of EBC’s preliminary inquiry on 10 August 2020, and the Tribunal decided *FR (Merits)* [2021] on 7 June 2021, which is almost a year later.

27. To the IFC, the Applicant was aware of the decision to close EBC’s preliminary inquiry almost a year before the judgment in *FR (Merits)* [2021], and he could at that time have submitted an application to appeal the decision or, at a minimum, informed the Tribunal that EBC’s preliminary inquiry had concluded. The IFC submits that the Applicant “did neither and should not now be permitted to argue or re-argue his case in full or in part, as he attempts in his request for revision.”

The Applicant's Response

28. The Applicant notes that he “is asking that the Tribunal finalize its decision as contemplated by *FR* Dec. No. 651. [The] Applicant is not appealing Decision Number 651 or seeking a revision under Article XIII.”

29. The Applicant submits that the *dies a quo* for his present claim began not when he was informed of the closure of EBC’s preliminary inquiry in August 2020, but rather when he was informed “of the Tribunal’s determination that the issue of the EBC investigation was not ripe” upon receipt of the Tribunal’s judgment in *FR (Merits)* [2021]. The Applicant cites *FR (Merits)* [2021], para. 101, to support his position that the Tribunal left open the issue of the EBC preliminary inquiry. The Applicant asserts, then, that it follows that his “request for revision currently before the Tribunal, to include its review of the EBC Memorandum, is timely.”

30. The Applicant contests the IFC’s assertion that, when he was notified of the closure of EBC’s preliminary inquiry in August 2020, he could at that time have submitted an application to appeal the decision or, at a minimum, informed the Tribunal that EBC’s preliminary inquiry had concluded. The Applicant submits that he “diligently did what the Tribunal envisioned in paragraph 101 [of *FR (Merits)* [2021]].” The Applicant states that “he attempted to obtain the EBC files and triggered IFC’s production of the EBC Memorandum to the Tribunal.”

31. The Applicant further submits that he

would not have known with certainty when, or even if, the Memorandum was prepared before November 29, 2021, as he never received any written notice regarding the production of a closing memorandum. Arguably, if the Memorandum was prepared before July 21, 2021, [the] IFC should have produced these documents before Decision Number 651 was issued, as it and it alone had possession of the Memorandum, but IFC’s failure to do so does not mean that [the Applicant’s] claim is untimely or that EBC may simply be allowed to escape review of its preliminary inquiry and findings.

32. The Applicant finally submits that, “if [the] IFC’s Preliminary Objection is granted, the result is that the EBC preliminary inquiry, including its review of the disclosure of confidential

information, will evade review altogether.” To the Applicant, the “IFC is not exempt from rules-based governance and oversight and the World Bank Group’s own avowed principles of transparency and full disclosure.” The Applicant avers, “Given this, as well as in the interest of fundamental fairness, the Preliminary Objection should be rejected by the Tribunal.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

33. The essential facts are as follows. On 5 May 2020, the Applicant filed his first application with the Tribunal. The Applicant challenged (i) “the process for the selection of the person to lead the Coordination Unit”; (ii) “his non-selection to lead the Coordination Unit”; and (iii) “his demotion and removal from leadership.” The Applicant also contended that IFC management improperly disclosed confidential documents in the context of the Applicant’s Requests for Review with PRS.

34. On 21 July 2021, the Tribunal transmitted its judgment to the parties in *FR (Merits)* [2021], in which it dismissed the first application. With respect to the Applicant’s allegations regarding improper disclosures made during the PRS proceedings, the Tribunal noted that the Applicant stated that he had filed a complaint with EBC regarding the disclosure of confidential documents. The Tribunal further noted at paragraph 101:

The record suggests that the EBC process has not yet concluded. Accordingly, it would be premature for the Tribunal to pronounce on this issue. Based on the record before the Tribunal, there is no material harm to the Applicant for which a remedy must be given at this time.

35. The record developed as part of the present proceedings now demonstrates that EBC had already closed its review at the preliminary inquiry stage, notifying the Applicant of that fact on 10 August 2020.

36. Article II(2) of the Tribunal’s Statute 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.

37. EBC's closure of its preliminary inquiry on 10 August 2020 was a triggering event which entitled the Applicant to file an application with the Tribunal challenging EBC's decision. Pursuant to Article II(2)(ii) of the Tribunal's Statute, the Applicant had 120 days from this event to file such an application. The Applicant did not either file an application or request an extension to file such an application within the requisite time. During the course of proceedings in his first application, the Applicant did not ask the Tribunal for permission to amend the pleadings to include consideration therein of the EBC decision, nor did he bring the decision to the Tribunal's attention.

38. The Tribunal notes the Applicant's concern that, "if IFC's Preliminary Objection is granted, the result is that the EBC preliminary inquiry, including its review of the disclosure of confidential information, will evade review altogether." The Tribunal observes that, to be receivable by the Tribunal, administrative decisions must be challenged according to the jurisdictional requirements of the Tribunal's Statute. Therefore, the lack of review of EBC's conduct and closure of the preliminary inquiry flows from the Applicant's own choice not to pursue any of the avenues available to him to request review.

39. The Applicant has invoked Article XIII of the Tribunal's Statute to request that the Tribunal review the EBC case closing memorandum. The Tribunal notes that the Applicant invokes Article XIII but nonetheless states that he "is asking that the Tribunal finalize its decision as contemplated by *FR Dec. No. 651*. [The] Applicant is not appealing Decision Number 651 or seeking a revision under Article XIII."

40. Article XI of the Tribunal's Statute provides that "[j]udgments shall be final and without appeal." In *van Gent (No. 2)*, Decision No. 13 [1983], para. 21, the Tribunal held:

Article XI lays down the general principle of the finality of all judgments of the Tribunal. It explicitly stipulates that judgments shall be "final and without appeal." No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal's judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

41. The Tribunal has also stated, "Once the Tribunal has spoken, that must end the matter; no one must be allowed to look back to search for grounds for further litigation." *Mpoy-Kamulayi (No. 7)*, Decision No. 477 [2013], para. 27.

42. The sole exception to the principle of finality is found in Article XIII(1) of the Tribunal's Statute, which provides that

[a] party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

43. The Tribunal has stated in a number of its judgments that "the powers of revision of a judgment are strictly limited and may be exercised only upon compliance with the conditions set forth in Article XIII." *Skandera*, Decision No. 9 [1982], para. 7. In *Kwakwa (No. 2)*, Decision No. 350 [2006], paras. 18–19, the Tribunal further held:

In this light, the character of Article XIII as a very limited exception should be obvious. Its requirements are not fulfilled unless the Tribunal is satisfied that newly discovered facts are potentially decisive.

It is difficult to define in a phrase the nature of factual revelations which might justify the disruption of a *res judicata*; it is a matter to be determined in the particular circumstances of each case. If it were left to any disappointed litigant to assess the relevance and decisiveness of subsequently discovered facts, the ingenuity of pleaders would ensure that few, if any, judgments would ever be final.

Unless some restrictive principle fulfills a rigorous screening function, the availability of revision would subvert a fundamental rule of tribunals such as this one: namely that its judgments are definitive. To ensure that Article XIII does not wreak havoc with the rule of finality, enshrined in Article XI, the former must be recognized as available only in exceptional circumstances. The “new fact” must shake the very foundations of the [T]ribunal’s persuasion; “if we had known that,” the judges must say, “we might have reached the opposite result.”

44. In *DC (No. 3)*, Decision No. 565 [2017], para. 32, the Tribunal observed:

Article XIII(2) provides that a request for revision must “contain the information necessary to show that the conditions laid down in paragraph 1 of this Article have been complied with.” The requisite conditions are:

- (a) Discovery of a fact which was unknown to both the Tribunal and the party seeking revision at the time the judgment was delivered;
- (b) The fact must be such that it “might have had a decisive influence on the judgment of the Tribunal”; and
- (c) The request for revision must be submitted within a period of six months after discovery of said fact.

45. In other words, the Tribunal considers that there are four strands to the test that must be met by a party who requests a revision of a Tribunal judgment, namely, (i) the discovery of a new fact; (ii) which said new fact was unknown both to the Tribunal and to the requesting party at the time the judgment was delivered; (iii) which said new fact, had it been known at the time of the judgment, might have had a decisive influence on the judgment; and (iv) the submission of the request for revision must be made within six months of the newly discovered fact.

46. The Tribunal will now assess whether the Applicant has satisfied these criteria for revision.

47. The Tribunal observes that the Applicant states that he is not seeking a revision of judgment under Article XIII. The Tribunal further observes that the Applicant purports to rely on Article XIII for a purpose that has no basis in such Article: to review evidence and to supplement and complete a ruling. The Applicant has failed to proffer any fact that was unknown to both himself and the Tribunal prior to its judgment and that might have had a decisive influence on the Tribunal’s judgment. Therefore, the Applicant has not met the requirements of Article XIII. There

is no other mechanism by which to disturb the finality of the Tribunal's judgment, and the Tribunal therefore dismisses the Application.

DECISION

The Application is dismissed.

/S/ Mahnoush H. Arsanjani

Mahnoush H. Arsanjani
President

/S/ Zakir Hafez

Zakir Hafez
Executive Secretary

At Washington, D.C., 18 November 2022*

* Judge Burgess attended deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.