



World Bank Administrative Tribunal

2022

Decision No. 674

**GT,
Applicant**

v.

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

(Preliminary Objection)

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

**GT,
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 Mahnoush H. Arsanjani (President), Janice Bellace (Vice-President), Seward Cooper, and Lynne Charbonneau.
2. The Application was received on 13 October 2021. The Applicant represented himself. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant’s request for anonymity was granted on 25 May 2022.
3. In his Application, the Applicant challenges the 8 February 2021 decision of the Peer Review Services (PRS) Chair to dismiss his Request for Review.
4. On 3 November 2021, the Bank raised a preliminary objection to the Application. This judgment addresses the Bank’s preliminary objection.

FACTUAL BACKGROUND

5. On 8 January 2018, the Applicant began working as an Economist, Grade Level GF, at the Bank’s Tanzania Country Office. The Applicant’s appointment was subject to a one-year probationary period that was due to end in January 2019.
6. On 14 December 2018, the Applicant and his Practice Manager had a performance discussion which was memorialized in an email dated 17 December 2018. According to the email, the Practice Manager had informed the Applicant that (i) his technical knowledge of macroeconomics was “less than satisfactory”; (ii) he did not fully integrate with the team and had not “demonstrated enough proactivity and a can-do attitude essential for growing into a successful

country economist”; and (iii) a task that the Applicant was assigned took longer than anticipated to complete.

7. According to the Applicant, the criticisms from the Practice Manager were likely based on the opinion of the Applicant’s immediate supervisor (Supervisor) with whom he had a “deteriorating and toxic relationship.”

8. Following the performance discussion, the Applicant’s probationary period was extended by six months, until 20 June 2019.

9. On 3 May 2019, the Applicant resigned from his position.

10. On 8 June 2020, the Bank published the Macro Poverty Outlook Report (MPO Report), a publication which contains a table that the Applicant alleges “reported the same information for which my immediate supervisor [...] had criticized me of incompetence.” According to the Applicant, he became aware of this MPO Report in “late September, 2020” or “October 2020.”

11. On 26 December 2020, the Applicant submitted a Request for Review to PRS alleging that he was forced to resign “due to the deteriorating relationship” with his Supervisor, citing various criticisms the Supervisor made regarding the Applicant’s performance.

12. On 8 February 2021, PRS dismissed the Applicant’s Request for Review as untimely in accordance with Staff Rule 9.03, paragraphs 8.01 and 8.02. In the decision letter, the PRS Chair noted that the Applicant had waited to file his Request for Review more than 120 days after his date of resignation, and further noted that he had filed his Request for Review more than 120 days after the date of the MPO Report’s publication.

13. On 1 October 2021, a second MPO Report was released, which the Applicant states again includes a table that was computed using the same method for which he was criticized while working at the Bank.

The present Application and remedies sought

14. On 10 October 2021, the Applicant filed an application with the Tribunal. However, on 12 October 2021, the Tribunal informed the Applicant that his submission did not conform to the requirements set out in its Rules. On 13 October 2021, the Applicant filed this amended Application with the Tribunal.

15. The Applicant seeks (i) “[f]inancial compensation for the loss of income [he] suffered since resignation”; (ii) to be “reinstated back to [his] position with the Bank from which [he] was forced to resign”; and (iii) to be “re-assigned a different supervisor and manager.”

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank’s Contentions

The Application should be dismissed because it is untimely, and no exceptional circumstances exist to excuse the untimely filing

16. The Bank contends that the Application should be dismissed because it was filed more than 120 days following the Applicant’s receipt of the PRS decision. To the Bank, the Application is time-barred as it did not conform to the statutory requirements set out in Article II(2)(ii) of the Tribunal’s Statute.

17. According to the Bank, for the Applicant’s claim to be admissible before the Tribunal, the Applicant was required to file his Application, or a request for an extension to file his Application, by 8 June 2021, 120 days after receiving notice of the contested decision.

18. To the Bank, even accepting 10 October 2021, the date the Applicant first attempted to file an application with the Tribunal, as the Application’s submission date, the Application would still have been filed 244 days after the date the Applicant received notice of the PRS decision.

19. The Bank further maintains that the Applicant has not put forward any exceptional circumstances that would allow an otherwise untimely filing to be accepted by the Tribunal.

The Applicant's Response

The Application was filed in a timely manner, and his circumstances warrant a different approach to the statutory time limits

20. The Applicant maintains that his Application was filed in a timely manner.

21. According to the Applicant, PRS erred in its calculation of the time limit to file his Request for Review. In the Applicant's view, because the MPO Report is what provided evidence to support his claim that he was wrongfully criticized by his immediate supervisor, the time limit should have been calculated from October 2020, which is when he states he became aware of the contents of the MPO Report.

22. Additionally, the Applicant contends that the 1 October 2021 publication of the second MPO Report "added more evidence to [his] case," and that the timeline for submitting his Application to the Tribunal should therefore be calculated from that date.

23. To the Applicant, his Application "ha[s] to be considered as a special case which need[s] a different approach of being handled," because his claim "continues living as long as new evidences [sic] from the MPO [Report] continue to be revealed."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICANT FILED HIS APPLICATION IN A TIMELY MANNER

24. The main issue is whether the Applicant filed his Application in compliance with the statutory requirements of the Tribunal.

25. Article II(2)(ii) of the Tribunal’s Statute sets out the requirements for admissibility of applications to the Tribunal. It states:

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.

26. In its jurisprudence, the Tribunal has emphasized the importance of the time limits prescribed by Article II(2)(ii). In *Agerschou*, Decision No. 114 [1992], para. 42, the Tribunal explained that the prescribed time limits are “important for a smooth functioning of both the Bank and the Tribunal.” *See also Tanner*, Decision No. 478 [2013], para. 45. The Tribunal has also observed that the “long-delayed resolution of staff claims could be seriously complicated by the absence of important witnesses or documents, and would in any event result in instability and unpredictability in the ongoing employment relationships between staff members and the Bank.” *Mitra*, Decision No. 230 [2000], para. 11.

27. In the present case, the Applicant received notice of the PRS decision on 8 February 2021. Pursuant to Article II(2)(ii)(b) of the Tribunal’s Statute, the Applicant had 120 days from the date of receipt of this “notice [...] that the relief asked for [...] would not be granted” to file an application.

28. Therefore, the Applicant should have filed his Application or request for an extension by 8 June 2021, within 120 days after receiving notice of the PRS decision. He did not do so. Instead,

the Applicant filed an application on 10 October 2021, and the amended Application on 13 October 2021. These dates are well beyond the time limit prescribed in the Tribunal's Statute.

29. Based on the foregoing, the Tribunal finds that the Applicant did not file his Application with the Tribunal in a timely manner.

WHETHER THERE WERE EXCEPTIONAL CIRCUMSTANCES TO EXCUSE THE LATE FILING OF THE
APPLICATION

30. Article II(2) of the Tribunal's Statute provides an exception to the late filing of an application on the basis of "exceptional circumstances."

31. In *BI (No. 4) (Preliminary Objection)*, Decision No. 540 [2016], para. 41, the Tribunal stated,

Article II(2) of the Tribunal's Statute allows the Tribunal to render a claim or application admissible even if it was not filed in a timely manner, if the Tribunal decides that there were exceptional circumstances justifying the late filing.

32. The Applicant has the burden to show that "exceptional circumstances" exist. *See Hristodoulakis*, Decision No. 296 [2003], para. 17. In *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30, the Tribunal articulated its approach to cases where "exceptional circumstances" are at issue, stating:

The jurisprudence of the Tribunal is well-established regarding the treatment of exceptional circumstances. In all such cases the Tribunal has followed a strict approach so as to prevent the undermining of statutory limitations. Exceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent "contemporaneous proof."

33. In determining what constitutes exceptional circumstances, the Tribunal will consider several factors, including "the extent of the delay and the nature of the excuse invoked by the [a]pplicant." *Yousufzi*, Decision No. 151 [1996], para. 28. In *Malekpour*, Decision No. 320 [2004], para. 22, the Tribunal stated that the circumstances invoked by an applicant must have imposed

“real and serious impediments” to fulfilling the statutory requirements in Article II(2) of the Tribunal’s Statute, and not be a “[m]ere inconvenience.” *See also Hristodoulakis*, [2003], para. 17.

34. With respect to the “nature of the excuse invoked,” the Applicant claims that his circumstances are exceptional because new publications have, in his view, added evidence to his original claim and he believes that these publications make “[his] case a very special case, not ‘a once for all phenomenon’ for its [*sic*] bears with it tortuous elements of which the time limit set in the Rules may not accommodate.”

35. The Tribunal finds the excuse invoked by the Applicant unpersuasive, especially considering that the Applicant knew of the first MPO Report at the time he filed his PRS Request for Review and still did not timely file his Application with the Tribunal.

36. The Tribunal notes that – even if, as the Applicant avers, the MPO Reports add evidence to his claim – the Applicant has nevertheless failed to show how these publications impaired his ability to file his Application with the Tribunal within 120 days of his receipt of the PRS decision, as is statutorily required.

37. The date from which the 120-day filing period began in this case is the date of the Applicant’s receipt of notice that the relief asked for or recommended would not be granted, and, as the Tribunal stated in *DU*, Decision No. 539 [2016], para. 21, the *dies a quo* “is not changed by [an] assertion of the subsequent discovery of circumstances.”

38. The Tribunal observes that there is nothing in the record which demonstrates a “real and serious impediment” to the Applicant in filing the Application with the Tribunal in a timely manner following receipt of the PRS decision.

39. The Tribunal finds that there are no exceptional circumstances that excuse the Applicant’s late submission of the Application before this Tribunal.

DECISION

The Application is 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.