



World Bank Administrative Tribunal

2022

Decision No. 675

**GU,
Applicant**

v.

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

(Preliminary Objection)

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

**GU,
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 19 December 2021. The Applicant represented herself. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant’s request for anonymity was granted on 20 May 2022.
3. The Applicant challenges the “[r]andom, untruthful, and unjustified decision to abolish [her] position which hurt [her] personally and financially.”
4. On 31 January 2022, the Bank submitted preliminary objections. This judgment addresses the Bank’s preliminary objections.

FACTUAL BACKGROUND

5. The Applicant joined the Bank in 1997 on a temporary assignment and was hired on an open-ended contract in 1998. At the time of the contested decision, the Applicant was a Senior Information Technology Assistant, Grade Level GD, based in Washington, D.C.
6. On 15 January 2015, the Applicant met with her Manager who informed her that her position would be “abolished under Staff Rule 7.01, Section 8.02(b).” The Applicant was then told that she could decide either to be considered for reassignment within Information Technology Solutions (ITS) or to take a separation package.

7. The Applicant claims that she was told by her Manager that the reason for abolishing her position was that the software on which she worked was being “sunset” and that her services would therefore no longer be required.

8. On 15 June 2015, the Applicant entered into a Mutually Agreed Separation (MAS) which provided that she would be placed on administrative leave from 1 July 2015 to 31 December 2015 and that her last day of service would be 31 December 2015. The MAS also provided that the Applicant agreed to “fully and finally settle and release all claims [she] might otherwise have against the Bank Group arising out of circumstances occurring or decisions taken on or before the date of [her] acceptance.”

9. On 1 January 2016, the Applicant separated from the Bank.

10. In early 2018 the Applicant was rehired as a Short-Term Consultant (STC) to join her former team. The Applicant states that she was hired “to perform the exact same duties and responsibilities as before” with “a fraction of [her] previous salary.” The Applicant further states that the software which she was told was being “sunset” in 2015 did not begin the “sunsetting” process until “the Spring of 2021.”

The present Application

11. The Applicant filed the present Application with the Tribunal on 19 December 2021. She challenges the “[r]andom, untruthful, and unjustified decision to abolish [her] position which hurt [her] personally and financially.”

12. The Applicant requests the following relief: (i) “Appropriate compensation for 6 years of lost annual salary due to a[n] unjustifiable, random decision (minus the benefit package received in 2015, and the hourly salary received as a part-time STC since 2018)”; (ii) “Appropriate compensation for [her] World Bank Retirement account due to the lost annual income for 6 years prior to [her] retirement”; (iii) “Appropriate compensation for [her] long-term US Social Security benefits which [have] also been affected by this wrongful and unjust decision for the same 6 year

period”; and (iv) “Appropriate compensation for having paid 6 years of higher health insurance premium as a retiree, (and not a lower premium as a staff member) for [herself] and [her] husband due to this decision.”

13. The Bank submitted preliminary objections on 31 January 2022.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank’s Contentions

The Applicant’s claims are untimely, and the MAS constitutes a full and final settlement of the Applicant’s claims

14. The Bank first contends that the Application is untimely and should be dismissed. The Bank notes that the Applicant signed the MAS on 15 June 2015, about six and a half years before the Application was submitted. The Bank avers that, in order for the Applicant’s claims to be admissible, she was required to file her Application by 15 October 2015. The Bank also submits in the alternative that, even if the Tribunal were to accept that the Applicant only became aware of a potential claim in 2018 when she was rehired as an STC, her Application would still be untimely as it would have been filed three years too late.

15. The Bank next contends that the Applicant has failed to demonstrate exceptional circumstances which would excuse the untimely filing of her Application. The Bank submits that the “special circumstances” proffered by the Applicant do not meet the exceptional circumstances threshold established by the Tribunal and that unawareness of grievance mechanisms or ignorance of the law does not constitute exceptional circumstances.

16. The Bank finally contends that the MAS constitutes a full and final settlement of all of the Applicant’s claims. The Bank notes that the Tribunal “has long recognized that staff members and the World Bank may execute agreements whereby staff members waive or release their claims against the World Bank.” The Bank submits that, by signing the MAS, the Applicant agreed to release all claims arising out of circumstances occurring or decisions taken on or before the date

of her acceptance of the MAS, thereby relinquishing her right to now bring her claims to the Tribunal. The Bank further submits that there is no basis to void the MAS and that the record shows that the Applicant did not enter into the MAS under duress. Accordingly, the Bank maintains that the Applicant is now precluded from raising her claims with the Tribunal.

The Applicant's Response

Exceptional circumstances exist which should excuse the untimeliness of her Application, and the MAS was signed on the basis of an untruthful justification and is therefore invalid

17. The Applicant first recognizes that she “may not be within the customary time frame to submit this [A]pplication to the attention of the Tribunal,” but she contends that exceptional circumstances should excuse the late filing. The Applicant contends that she did not bring the case to the attention of the Tribunal earlier because she only discovered that the reason given to abolish her position was false “years later” when she was rehired as an STC and because she only recently learned of the Tribunal’s existence. To the Applicant,

a fabricated reason was provided to abolish [her] position. Based on this fabrication [she] signed the MAS. [She] had no knowledge of this fabrication at the time and until years later therefore the 120 days['] time limit, or even 10 years for that matter, is irrelevant in this case.

18. The Applicant also contends that the MAS is invalid and therefore does not constitute a full and final settlement of her claims. The Applicant submits that she agreed to the MAS only because of her Manager’s statement that her position needed to be abolished as the platform she provided support to was being “sunset.” To the Applicant, because the reason given to abolish her position was false, the subsequent MAS “which was based strictly on this invalid explanation should be null and void.”

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICATION WAS FILED IN A TIMELY MANNER

19. Article II(2) 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:

(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; and

(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.

20. 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.

21. Pursuant to Article II of the Tribunal's Statute, the Applicant had 120 days from the date of the "occurrence of the event giving rise to the application" to file an application. According to

the Applicant, she was first notified by her Manager on 15 January 2015 that her position would be abolished. In her Application, the Applicant identifies the date giving rise to her Application as 15 January 2015. By her own account, the Applicant should have filed her Application or request for an extension by 15 May 2015, 120 days after she was notified that her position would be abolished. She did not do so.

22. The Applicant is also challenging the MAS which she entered into on 15 June 2015. Taking this as the triggering event for her claim, the Applicant should have filed her Application or request for an extension by 13 October 2015, 120 days after she entered into the agreement. She did not do so.

23. The Applicant notes that she did not bring a claim to the Tribunal at that time because she only discovered that the reason given to abolish her position was false when she was rehired as an STC years later. The Tribunal observes, however, that the Applicant was rehired as an STC in early 2018 and that it was at this point by her own account that she was made aware that the software on which she worked was still in use. Even if the Tribunal were to accept the facts as stated by the Applicant, the Applicant did not file her Application with the Tribunal until 19 December 2021, long after the 120-day period had passed.

24. The Applicant recognizes that her Application may have been submitted outside of the customary time frame, but she contends that exceptional circumstances exist which should excuse any failure to timely file her Application. In *Yousufzi*, Decision No. 151 [1996], para. 28, the Tribunal held that “[t]he statutory requirement of timely action may [...] be relaxed in exceptional circumstances.” Such circumstances, it added, are “determined by the Tribunal from case to case on the basis of the particular facts of each case.” *Id.*

25. In *Malekpour*, Decision No. 320 [2004], para. 22, the Tribunal clarified that exceptional circumstances are “real and serious impediments to exhausting internal remedies,” and that “[m]ere inconvenience” is not sufficient.

26. The Tribunal follows a “strict approach in determining what constitutes exceptional circumstances in the context of Article II(2).” *BI (No. 5) (Preliminary Objection)*, Decision No. 564 [2017], para. 20. Under this strict approach, “[e]xceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent ‘contemporaneous proof.’” *Id.*, citing *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30.

27. As evidence of exceptional circumstances, the Applicant submits that she did not bring the case to the attention of the Tribunal earlier because she only discovered that the reason given to abolish her position was false “years later” when she was rehired as an STC. The Tribunal recalls, however, that the Applicant learned that the software she worked on was still in use in early 2018 when she was rehired as an STC but that she did not file her Application until 19 December 2021. The Tribunal finds, then, that the Applicant’s 2018 discovery does not constitute exceptional circumstances that excuse the late filing of her Application.

28. The Tribunal also considers the Applicant’s contention that she should be excused from the time limits because she only recently learned of the Tribunal’s existence. The Tribunal has consistently held that ignorance of the law does not constitute exceptional circumstances. *See, e.g., de Vletter (Preliminary Objection)*, Decision No. 619 [2019], para. 49; *Nyambal (No. 2)* [2009] para. 30. In *Mitra* [2000], para. 9, the Tribunal rejected the applicant’s assertion that “the Bank failed to adequately inform him of his rights” and held that “ignorance of the law is not a valid excuse for failure to comply with the prescribed time limits.” In *A. Tucker*, Decision No. 238 [2001], para. 23, the Tribunal reiterated that “[t]he burden remains with disappointed applicants [...] to take the initiative to learn of whatever procedural and substantive rights they may have under the pertinent staff rules and Tribunal judgments.”

29. The Tribunal observes that the burden was on the Applicant to learn of her rights, particularly with regard to filing a claim with the Tribunal. The fact that the Applicant did not do so until recently cannot excuse her failure to file her Application in a timely manner. In view of the foregoing, the Tribunal finds that there are no exceptional circumstances that excuse the late filing of the Application.

30. Having found that the Application is untimely even under the most favorable interpretation of the facts and that no exceptional circumstances exist which excuse the untimeliness, the Tribunal finds that it is unnecessary to consider whether the MAS constitutes a full and final settlement of the Applicant's claims.

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.