



World Bank Administrative Tribunal

2023

Decision No. 689

**GZ,
Applicant**

v.

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

(Preliminary Objection)

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

**GZ,
Applicant**

v.

**International Bank for Reconstruction and Development,
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 6 December 2022. The Applicant was represented by Hatem Kotrane, Attorney of Law at the Tunis Bar. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 May 2023.

3. The Applicant alleges unfair treatment and violations of due process by the Ethics and Business Conduct Department (EBC).

4. On 7 March 2023, the Bank submitted preliminary objections to the Application. This judgment addresses the Bank's preliminary objections.

FACTUAL BACKGROUND

5. The Applicant joined the Bank in 2007 as a Short-Term Temporary staff member in the Tunisia Country Office. She became a Team Assistant in 2010 and a Program Assistant, Grade Level GC, in 2012, a position she holds to date on an open-ended contract.

6. On 3 March 2021, EBC received an allegation from the Applicant's Country Manager that three support staff, including the Applicant, may have misused World Bank Group (WBG) funds related to tuition assistance benefits.

7. As part of its preliminary inquiry into the allegations, between March and June 2021, EBC conducted witness interviews and collected relevant documentation and emails.

8. On 14 June 2021, EBC provided the Applicant with a Notice of Alleged Misconduct informing her of the allegations of her misconduct. On the same date, EBC interviewed the Applicant. At the start of the interview, EBC reminded the Applicant that she had the right to have an observer present during the interview, and the Applicant confirmed that she was willing to continue the interview without an observer. EBC's first interview with the Applicant took place from 8:13 a.m. to 10:36 a.m.

9. On 18 June 2021, EBC conducted a follow-up interview with the Applicant, lasting approximately two hours.

10. Between August and November 2021, EBC conducted several witness interviews.

11. On 11 February 2022, EBC provided the Applicant with a Draft Investigation Report and provided her with ten business days to respond with her comments.

12. On 25 February 2022, the Applicant provided EBC with her comments on the Draft Investigation Report, which EBC included in the Final Investigation Report.

13. Also on 25 February 2022, the Applicant sought the services of a "Certified Professional Member of the French National Group of Alternative Medicine," who provided a certificate stating:

I, the undersigned, certify that I have received, today, [the Applicant], suffering from a state of general fatigue and constantly evolving anxiety, making her irritable and nervous, thus affecting her inner calm and her cognitive abilities. Said patient declares that her illness is mainly due to the multiple contradictions and disappointments that she constantly experiences within her workplace. Long-term psychotherapeutic treatment is imperative. This certificate is delivered to the concerned person for all due intents and purposes.

14. On 3 March 2022, EBC received additional comments from the Applicant, which were also included in the Final Investigation Report.

15. On 3 March 2022, EBC sent its Final Investigation Report to the Human Resources Department Vice President (HRDVP) for decision. In its Final Investigation Report, EBC concluded:

[The Applicant] received and knowingly retained the benefit of the unauthorized overpayment from the WBG and by doing so, misused WBG funds.

[The Applicant] insisted several times that the resource management function and her former country manager were responsible for the consequences of her actions because they did not notice the mistake in the payment request and, the resource management function did not follow up on the overpayment reimbursement process to ensure deductions were made to her payroll.

Based on a careful review of the evidence, EBC concluded that there is sufficient evidence to substantiate the allegation that:

- a. [The Applicant] knowingly submitted for payment to the WBG a claim for tuition assistance covering one hundred percent of two years' tuition for her master's degree, despite having been informed and knowing that the WBG had only authorized payment of fifty percent of her tuition for one year of study; and
- b. [The Applicant] knowingly retained the financial benefit of the unauthorized overpayment, totaling 4,500 Tunisian Dinars (TND) (equivalent of US \$1,575), without notifying the WBG until the Tunisia Country Office discovered the overpayment and requested repayment on February 9, 2021. [...]

EBC found that the totality of her actions and omissions were inconsistent with (i) the fiduciary obligations imposed by the WBG on its staff; (ii) the requirement for financial integrity in dealings at the WBG; (iii) the responsibility of staff to ensure truthful and accurate communication of information reflected in accounting and other records; and (iv) the responsibility of staff to ensure the accuracy of data entry in accordance with WBG's business processes.

EBC found that [the Applicant's] actions and omissions amounted to a willful misrepresentation of facts and a misuse of WBG funds related to benefits. EBC further found [the Applicant's] actions to be contrary to the general applicable norms of prudent professional behavior and, inconsistent with the obligations of staff to behave in a manner befitting their status as employees of an international organization.

16. On 11 August 2022, the HRDVP informed the Applicant:

After a careful and thorough review of the EBC Report, I make no finding of misconduct. In my view, there is plenty of blame from all involved which led to this unfortunate matter. [...] As a World Bank Group (WBG) staff member, I remind you have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest. I appreciate your cooperation with this matter and your service to the WBG.

17. On 10 November 2022, the Applicant was again examined by the “Certified Member of the French National Group of Alternative Medicine,” who provided a certificate stating:

I, the undersigned, certify that I have today examined the patient, [the Applicant], who is still suffering from a state of anxiety and irritability affecting her inner calm and serenity. Said patient is still subjected to psychotherapeutic treatment in the form of successive or close sessions.

18. On 6 December 2022, the Applicant filed this Application with the Tribunal.

19. On 13 December 2022, pursuant to Rule 7, paragraph 9, of the Rules of the Tribunal, the Executive Secretary called upon the Applicant to make necessary corrections to her Application to ensure compliance with the formal filing requirements, stating:

[K]indly correct the following:

1. Annexes: As per paragraph 1 of Annex I(B) of the Tribunal’s Rules, “Each document shall constitute a separate annex and shall be numbered with an Arabic numeral. The word ‘ANNEX,’ followed by the number of the document, shall appear at the top of the first page.”

2. Table of Contents: As per paragraph 2 of Annex I(B) of the Tribunal’s Rules, “The annexed documents shall be preceded by a table of contents indicating the number, title, nature, date and, where appropriate, symbol of each annex.”

Additionally, in accordance with the filing instructions effective 13 March 2020, all electronic filings must be submitted in a [Portable Document Format (PDF)].

20. One week later, on 20 December 2022, the Applicant submitted a table of contents and labeled the annexes.

21. On 21 December 2022, the Executive Secretary informed the Applicant that, as noted in paragraph 5(a) of Rule 7 of the Tribunal's Rules, if an annex to an application is not an original, it must be certified as a true copy with the signature of the applicant or counsel.

22. On 5 January 2023, the Applicant submitted certification of the annexes as true copies.

23. In her Application, the Applicant seeks compensation for physical, psychological, moral, and reputational harm in the amount of \$500,000.00. The Applicant further seeks legal fees and costs in the amount of \$20,000.00.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank's Contentions

The Application should be dismissed because it was not filed in a timely manner and fails to identify any specific non-observance of the Applicant's contract of employment or terms of appointment

24. First, the Bank contends that the Application is untimely. The Bank acknowledges that, when the Applicant originally submitted her Application on 6 December 2022, it was timely filed. However, the Bank maintains that the Applicant's later resubmission date of 5 January 2022 should be considered the date on which the Applicant filed the Application, because that is the date the Application was compliant with the Tribunal's Rules. To the Bank, this date puts the Application "27 days in excess" of the filing deadline dictated by the Tribunal's Statute.

25. To the Bank, a "failure to meet the substantive requirements of a filing cannot reasonably justify circumventing the procedural requirement of a timely filing" because to do so "would wholly undermine the statutory requirement." Moreover, the Bank maintains, "an applicant should not benefit from their own mistakes."

26. The Bank further states that the Applicant did not seek an extension or provide any exceptional circumstances that would justify her late filing.

27. Second, the Bank contends that the Applicant failed to identify any specific non-observance of her contract of employment or terms of appointment. To the Bank, the Applicant's claim contesting the EBC investigative process is general and fails to identify or provide any evidence of a specific failure to observe the requirements of the Staff Rules.

28. The Bank maintains that the Applicant cannot generally contest the existence of Staff Rule 3.00, which requires subjects of an investigation to cooperate fully, nor can she contest, generally, the EBC investigative process simply because it is not to her liking. The Bank avers that, for the Tribunal to have jurisdiction, the Applicant must allege and provide evidence of any non-observance of the Applicant's contract of employment or terms of appointment.

The Applicant's Response

The Application is timely and the Applicant has alleged a breach of her contract of employment or terms of appointment

29. The Applicant contends that she respected the filing deadline, that she filed her Application in a timely manner, and that, afterward, she was responsive to the Executive Secretary's requests "to gather the files in one record." In the Applicant's view, she should not be faulted for responding to the Executive Secretary's request.

30. The Applicant also maintains that she was a victim of a specific breach of her contract of employment or terms of appointment and that the Tribunal therefore has jurisdiction over her claims. In this respect, the Applicant states that she was subjected to "a real interrogation" which was stressful, inhumane, and disproportionate "to the lightness of the alleged facts." Moreover, according to the Applicant, the investigation procedure, which lasted "from Feb[ruary] 2021 [until] August 2022," "took too long" and was "neither fair nor impartial." The Applicant contends that the faults committed "throughout the investigation proceedings" resulted in damages which are detailed in the Application. In the Applicant's view, her claims are not general complaints about being subjected to EBC's investigative process; rather, they are concrete claims specific to her circumstances, which demonstrate a non-observance of the rights and obligations of Staff Rule 3.00.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICATION ALLEGES NON-OBSERVANCE OF THE APPLICANT'S CONTRACT OF
EMPLOYMENT OR TERMS OF APPOINTMENT

31. The Bank contends that the Tribunal lacks jurisdiction over the Applicant's claims because the Applicant fails to identify or provide any evidence of the Bank's specific failure to observe her contract of employment or terms of appointment.

32. The Applicant maintains that she has alleged a breach of her contract of employment or terms of appointment, namely unfair treatment and violations of due process, and that, therefore, the Tribunal has jurisdiction.

33. The Tribunal held in *Q*, Decision No. 370 [2007], para. 36, that

[f]or a present or former staff member to have standing [...] [the claim] must relate significantly to the staff member's contract of employment or terms of appointment, for example with respect to the performance of the staff member's current duties, or to the staff member's enjoyment of the rights provided under the Principles of Staff Employment.

34. In *BB*, Decision No. 426 [2009], para. 53, the Tribunal, quoting *N*, Decision No. 356 [2006], para. 20, stated that

[t]he 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 [a]pplicant 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 [a]pplicant of an opportunity to make his case.”

35. Further, in *FB (Preliminary Objection)*, Decision No. 609 [2019], para. 42, the Tribunal found 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 [a]pplicant 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.

36. The cardinal rules governing staff rights and duties are those contained in the Principles of Staff Employment, which establish the constitutional foundations on which the Staff Rules and other regulatory elements are based. One such foundational principle, Principle 2.1, provides that “[t]he Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members.” Such Principles form part of the contract of employment or terms of appointment, as was held in *de Merode*, Decision No. 1 [1981], the Tribunal’s first judgment.

37. The discussion of whether there has been a breach of fairness and due process in this case pertains to the merits. For jurisdictional purposes, as the Tribunal held in *McKinney* [1997], para. 16, 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 [the] 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 [a]pplicant of an opportunity to make his case.” *Id.*, para. 17.

38. In *G*, Decision No. 340 [2005], para. 2, the Tribunal made clear that it could review a claim concerning an allegation of abuse arising from decisions made during an investigation that did not culminate in the imposition of sanctions. Just as in *G* [2005], so too in *D*, Decision No. 304 [2003], the Tribunal reviewed allegations of unfairness and due process violations occurring from the very outset of the preliminary inquiry stage and at other stages of a misconduct investigation. *See id.*, paras. 57–58, 61, 65.

39. Here, the Applicant is a current staff member who alleges unfair treatment and violations of due process by EBC during its investigation.

40. Consistent with the above jurisprudence, the Tribunal finds that the Applicant has presented an Application alleging a plausible claim of the non-observance of her contract of employment or terms of appointment and that the circumstances warrant an examination of the merits of her allegations.

WHETHER THE APPLICATION WAS FILED IN A TIMELY MANNER

41. The parties agree that 6 December 2022 was the appropriate deadline for the Applicant to file her Application in accordance with the Tribunal's Statute.

42. The Applicant contends that she submitted her Application on 6 December 2022 and that it is therefore timely.

43. In contrast, the Bank contends that the Application was not timely because it was not fully compliant with the Tribunal's Rules until it was corrected twenty-seven days past the filing deadline.

44. 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.

45. The Tribunal observes that the Application submitted on 6 December 2022 did not meet the formal requirements of Rule 7 of the Tribunal's Rules, as it did not include a table of contents, appropriate numbering to label the annexes, or certification that the annexes were true copies of the originals.

46. Rule 7, paragraph 9, of the Tribunal's Rules sets out the relevant process to be followed when an application does not fulfill the formal requirements of Rule 7. It states:

Corrections

If the formal requirements of this rule are not fulfilled, the Executive Secretary may call upon the applicant to make the necessary corrections in the application and the copies thereof within a period which the Executive Secretary shall prescribe. He or she shall return the necessary papers to the applicant for this purpose. The Executive Secretary may also, with the approval of the President, make the necessary corrections when the defects in the application do not affect the substance.

47. The Tribunal is mindful that there are no express warnings in the Tribunal's Statute, Rules, or jurisprudence to notify applicants of any jurisdictional repercussions for submitting an application that does not conform to the formal requirements of the Tribunal's Rules. Indeed, the Tribunal has had few occasions on which to consider the timeliness of deficient applications having corrections submitted after the statutory filing deadline.

48. The Tribunal therefore looks to the established jurisprudence of the International Labour Organization Administrative Tribunal (ILOAT). In *In re PARY* (No. 4), ILOAT Judgment No. 1500 (1996), the ILOAT found a deficient application, corrected after the initial filing deadline, but within the time limit set for such corrections, to be receivable. In so finding, it reasoned:

CONSIDERATIONS:

Receivability

1. Article VII(2) of the Tribunal's Statute says that a complaint must be filed within ninety days after the complainant had notice of the impugned decision; Article 6(1) of the Rules sets out the requirements of form; and 6(2) says that if not satisfied that the complaint meets those requirements the Registrar shall call upon the complainant to correct it within thirty days. The Rules do not say that all the formal requirements must be met by the date of filing.
2. The complainant filed within the time limit in the Statute the complaint form provided for in the schedule to the Rules. The entries sufficed to identify the decision he was impugning and the relief he was claiming. The registering of the complaint and the correcting of it within the time limit were in line with the Rules. Since the complaint was lodged in time the Organization's objection to receivability fails.

49. Similarly, in *In re Mrs. S.N.*, ILOAT Judgment No. 3225 (2013), para. 5, the ILOAT found:

The complaint form was filed within the time limit specified in Article VII, paragraph 2, of the Statute of the Tribunal, albeit without the brief and supporting evidence which, according to Article 6, paragraph 1(b) and (c) of the Rules of the Tribunal, had to be appended to it. Contrary to [the respondent's] submissions, this does not signify that the complaint was submitted out of time, since paragraph 2 of the above-mentioned article affords the complainant the possibility of correcting a complaint that does not meet the requirements of the Rules.

50. The Tribunal also looks to the established jurisprudence of the United Nations Appeals Tribunal (UNAT). In *Vangelova*, Judgment No. 2010-UNAT-046, para. 16, the UNAT rejected the respondent's submission that an appeal was time-barred; in reaching its conclusion, the UNAT explained that the appeal had been submitted in a timely manner but that, in view of the provision of Article 8(4) of its Rules of Procedure, the appellant was permitted thereafter to make corrections to fulfill the formal requirements of filing an appeal.

51. The Tribunal holds a view consistent with the above jurisprudence.

52. Here, the parties agree that the Application was filed within the time limit specified in Article II(2), albeit without meeting all of the formal requirements of Rule 7 of the Tribunal's Rules. However, as was reasoned in *In re Mrs. S.N.*, this deficiency does not signify that the Application was submitted out of time, because paragraph 9 of Rule 7 of the Tribunal's Rules affords the Applicant the possibility of correcting her Application.

53. The Tribunal observes that the Applicant was responsive when notified that her Application did not fully conform to the Tribunal's Rules and that she made corrections accordingly.

54. Given the circumstances, the Tribunal finds that the Application was filed in a timely manner.

55. The Tribunal therefore dismisses the Bank's preliminary objections and accepts jurisdiction over the Applicant's claims pertaining to unfair treatment and violations of due process by EBC.

DECISION

- (1) The Bank's preliminary objections are dismissed; and
- (2) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$2,500.00 for the preliminary objection phase of the proceedings.

/S/Mahnoush H. Arsanjani
Mahnoush H. Arsanjani
President

/S/ Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 12 May 2023