



World Bank Administrative Tribunal

2019

Decision No. 610

**Sara González Flavell (No. 10),
Applicant**

v.

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

(Preliminary Objection)

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

**Sara González Flavell (No. 10),
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 Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), and Marielle Cohen-Branche.

2. The Application was received on 21 November 2018. The Applicant represented herself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges: (i) the Administrative Review Panel's (ARP) consolidation of two appeals into one appeal; (ii) the ARP's "[f]ailure to consider the basis and matter appealed of 'Appeal Against determination made on June 7, 2017 and letter of June 7, [2017]'" ; (iii) the ARP's "[f]ailure to consider basis and matter appealed (THE 'SECOND APPEAL' [I])"; and (iv) the matters raised in the ARP Appeals.

4. On 18 January 2019, the Bank submitted preliminary objections contesting the admissibility of the Application under Article XI of the Tribunal's Statute and objecting to the timeliness of the Applicant's claims. This judgment addresses the Bank's preliminary objections.

FACTUAL BACKGROUND

5. The historical background of the present case is contained in *González Flavell*, Decision No. 553 [2017].

6. On 25 June 2015, the Applicant, a long-time employee of the Bank, was placed on Short Term Disability (STD).

7. On 1 July 2015, the Applicant was issued a Notice of Redundancy. Once the Applicant's managers became aware that she had been placed on STD, the Notice of Redundancy was suspended until the Applicant's health would permit her to return to work or engage in a job search.

8. On 19 January 2017, the Applicant's doctor completed a Return to Work (RTW) form noting that the Applicant was medically fit to return to work on 1 June 2017. On 27 January 2017, the Applicant submitted the RTW form to the Director General of her unit. On 14 February 2017, the Director General responded to the Applicant informing her that "[based] on the return to work form you have provided me with" the redundancy process will resume on 1 July 2017.

9. On 14 March 2017, the Applicant withdrew her Authorization for Release of Personal Medical Records, which prevented the Reed Group from accessing her medical records and verifying her fitness for duty. On 16 March 2017, the RTW form was amended by the Applicant's doctor to indicate that she was fit to return to work on 19 March 2017. The Reed Group, the Bank's disability administrator, requested additional information from the Applicant, which she declined to provide.

10. In April 2017, in connection with *González Flavell*, Decision No. 553 [2017], the Bank informed the Tribunal that the Applicant's STD benefits ended on 19 March 2017. However, the Bank stated that, due to the Applicant's refusal to participate in an independent medical evaluation, the Applicant was placed on Administrative Leave and continued receiving payments at 70% of her salary as if she remained on STD status. The Bank also stated that, since the Applicant's health status had not yet been established by the Reed Group, the Notice of Redundancy remained suspended.

11. On 19 May 2017, the Applicant submitted the application in *González Flavell (No. 2)*, Decision No. 570 [2017], to the Tribunal, which challenged the decision to place her on Administrative Leave at 70% of her salary (as if she were still on STD) and the decision to "unlawfully require the Applicant to undergo an Independent Medical Evaluation (IME) for Long Term Disability (LTD) despite the return to work medical certification" received from her doctor. The Applicant sought: (i) payment of full salary from after her submission of her medical

certification as fit to return to work on 19 March 2017; and (ii) a cease and desist order to the Bank and the Reed Group to withdraw its continuation of the STD and “confirm that the Applicant is already validly returned to the Bank on the basis of the Return to Work form of 16 March 2017.” The Applicant asserted that “[the] Reed Group has no right to ask [her] for further authorization to obtain her medical and other personal information since [she] is no longer under the disability program.” The Applicant further sought an order that the Bank and the Reed Group provide her with her entire medical records held by the Reed Group.

12. In the pleadings of *González Flavell (No. 2)*, Decision No. 570 [2017], the Applicant sought compensation in the amount of one year’s salary for the “interference in [her] right to return to work in a position suited to her professional capabilities and for administrative harassment.” The Applicant also requested six months’ salary for “placing her on Administrative Leave without informing her, and for failing to pay [her] 100% of her salary from the date of her being able to return to work and therefore exit the Disability Program and resume her Bank Staff employee status from the certified date of return to work (March 19, 2017).” Finally, for “ongoing failure by [the] Reed Group to provide medical and other information in accordance with Applicant’s request and her rights,” the Applicant requested four months’ salary.

13. On 25 May 2017, the Applicant received an email from a Human Resources Specialist at the Bank. The email contained information about the Applicant’s status at the Bank and how that status would change if the Applicant either did or did not submit her medical authorization. The email stated that, due to the Applicant’s withholding of medical authorization and Staff Rule 4.03 of the Disability Insurance Program, the Bank could withhold all payments to the Applicant, but that the Bank would continue to pay the Applicant as if she were on STD. The email informed the Applicant that her STD would expire on 1 June 2017 and that the Bank could neither place the Applicant on LTD nor authorize the Applicant’s RTW, unless the Reed Group was provided with a medical authorization to evaluate the Applicant’s fitness. The Applicant was further informed, in that email, that if she did not provide a medical authorization she would be placed on Leave Without Pay (LWOP) beginning on 2 June 2017 until 19 June 2017. At the expiration of the LWOP, on 20 June 2017, the Notice of Redundancy would go into effect and she would have six months on Administrative Leave to apply for positions within the Bank.

14. On 31 May 2017, the Applicant sent the Reed Group the Authorization for Release of Personal Medical Records and the Reed Group proceeded to review her medical records for the requisite health assessment.

15. A letter dated 7 June 2017 was sent to the Applicant confirming the information in the earlier email, and informing her that she had been considered fit to return to work with effect 2 June 2017. The letter stated that the, until then suspended, Notice of Redundancy was to be reinstated and the Applicant was to be placed on Administrative Leave with 100% pay to enable her to conduct job searches. The Applicant was told that she would remain on Administrative Leave for six months, until 1 December 2017, to enable her to devote time and attention to search for another position within the Bank, or employment elsewhere. After 1 December 2017, the Applicant's employment with the Bank would terminate unless she found another position within the Bank Group.

16. On 4 September 2017, the Applicant submitted to the Reed Group a "Formal Complaint and Request for Reconsideration and Financial Compensation for Wrongful Negligent conduct of Reed Group Employees" and a "Request for Reconsideration to the Disability Administrator."

17. On 19 September 2017, the Reed Group responded to the Applicant and denied the Applicant's requests for reconsideration.

18. On 25 October 2017, the Tribunal rendered its judgment in *González Flavell (No. 2)*, Decision No. 570 [2017].

19. On 20 November 2017, the Applicant submitted two appeals to the ARP. The First Appeal was the "Appeal of final Reconsideration regarding a decision taken in connection with the administration of a disability insurance claim of June 7, 2017[.]" The Second Appeal was the "Appeal on Final Reconsideration regarding a decision taken in connection with the administration of a Disability Insurance Claim Being A Formal Complaint Of The Handling Of My Disability Claim By The Disability Administrator[.]"

20. On 27 June 2018, the ARP issued a single decision which dealt with both of the Applicant's claims. The ARP stated that it was issuing a single decision due to the facts being essentially the same in both cases.

21. On 15 October 2018, the Applicant was granted an extension of time to file her Application before the Tribunal until 26 November 2018.

22. On 21 November 2018, the Applicant submitted this Application. This Application challenges:

- I. The ARP's consolidation of two appeals into one appeal.
- II. The ARP's "[f]ailure to consider the basis and matter appealed of 'Appeal Against determination made on June 7, 2017 and letter of June 7, [2017]' (the 'FIRST APPEAL')."
 - The basis of this First Appeal was the Disability Administrator's denial of the Applicant's request for reconsideration of the 7 June 2017 letter.
- III. The ARP's "[f]ailure to consider basis and matter appealed (THE 'SECOND APPEAL'[D])."
 - The basis of this Second Appeal was the Disability Administrator's denial of the Applicant's request for financial compensation for wrongful negligence of the Disability Administrator.
- IV. The matters raised in the ARP Appeals and also ancillary matters, including:
 - The Reed Group's failure to act on the RTW form, Staff Rule, and Disability Program;
 - "Wrongful Attempt To Assess The Applicant For LTD In January 201[7]";
 - "Wrongful Attempts" to obtain a medical authorization from the Applicant;
 - The Reed Group's failure to process the Applicant's claim under claims procedures in a reasonable and timely manner;

- The Reed Group’s failure to respond to the Applicant’s request for all medical information in the Reed Group’s possession in a reasonable and timely manner; and
- Not allowing the Applicant to return to work from 19 March 2017 to June 2017.

23. The Applicant contends that the ARP had no authority or right to combine her Appeals into one appeal, and thus they were handled incorrectly.

24. As relief, the Applicant seeks compensation in the amount of one year’s salary for the “interference in [her] right to return to work in a position suited to her professional capabilities and for administrative harassment.” The Applicant also requests six months’ salary for “placing her on Administrative Leave without informing her, and for failing to pay [her] 100% of her salary from the date of her being able to return to work and therefore exit the Disability Program and resume her Bank Staff employee status from the certified date of return to work (March 19, 2017).” Finally, for “ongoing failure by [the] Reed Group to provide medical and other information in accordance with Applicant’s request and her rights,” the Applicant requests four months’ salary.

25. The Applicant requests legal fees and costs in the amount of \$12,261.48.

26. On 18 January 2019, the Bank raised a preliminary objection.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank’s Preliminary Objection

27. The Bank contends that the Applicant’s claims are time-barred and that, even if the Applicant’s claims are not time-barred, they are subject to *res judicata*. The Bank also contends that the Applicant’s claims are non-justiciable since the Applicant is not attempting to reopen *González Flavell (No. 2)*, Decision No. 570 [2017].

28. The Bank asserts that the record shows that the Applicant filed her request for review before the ARP on 20 November 2017. The Bank relies on Staff Rule 9.03, para 8.01, and asserts that all decisions taken by the Disability Administrator prior to 22 August 2017 are inadmissible. In applying the rule to this case, the Bank contends that all decisions taken by the Bank were before the 22 August 2017 date and all of the matters raised by the Applicant are time-barred, since they are before that date.

29. The Bank next asserts that the Applicant is raising issues that are all subject to *res judicata*. The Bank contends that the issues raised in this Application have all been raised and addressed in *González Flavell (No. 2)*, Decision No. 570 [2017]. The Bank asserts that, when comparing Decision 570 and this case, both the parties are the same and the substance of the claims is essentially the same (being the Applicant's return to work date and the Bank's decision not to process the Applicant's RTW form without medical authorization).

The Applicant's Response

30. The Applicant asserts that this Application is strictly about the ARP process she had to undergo in order to bring a case to the Tribunal. She claims that the ARP failed to consider her claims properly and reiterates the claims listed above. The Applicant also disagrees with the Bank's timelines of the case, and upholds her case as timely brought before the Tribunal. Lastly, the Applicant asserts that if a review of the matters appealed needs to take place before her claims about the ARP can be addressed, she would submit to that review.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

31. Article XI(1) of the Statute of the Tribunal provides that "[j]udgments shall be final and without appeal." The Tribunal recalls that "previously adjudicated claims that an applicant attempts to submit again in another application are 'irreceivable under the principle of *res judicata*.'" *Pal (No. 2)*, Decision No. 406 [2009], para. 34, citing *Madabushi*, Order No. 2002-10 [2002], para. 4.

32. The two conditions that must be met for the application of *res judicata* are “that the parties are the same in both cases and that the substance of the claim is essentially the same in both applications.” *B (No. 2)*, Decision No. 336 [2005], para. 39.

33. In *C (No. 2)*, the Tribunal found that the complaint about the Bank’s denial of the applicant’s request to seal certain parts of the Bank’s investigation file was irreceivable under the principle of *res judicata*. *C (No. 2)*, Decision No. 312 [2004]. The Tribunal in *C*, Decision No. 272 [2002], had already considered “how, when and under what safeguards personnel information may be released to third parties.” *C (No. 2)*, Decision No. 312 [2004], para. 10. Therefore, the Tribunal held that the issues which would arise regarding the sealing of documents, as requested by the applicant in *C (No. 2)*, “are essentially the same as those dealt with by the Tribunal in the earlier claim and cannot now be raised.” *Ibid.*

34. In *B (No. 2)*, the Tribunal held that the applicant’s claim concerning misclassification was subject to *res judicata* because “by challenging the decision not to regularize her position or to extend her appointment [in the *B* case, previously decided by the Tribunal,] she was dealing with the very same questions that a misclassification claim would have involved.” *B (No. 2)*, para. 38.

35. Similarly, because the Tribunal had examined “the classification of the [a]pplicant’s appointments during the latter part of 1982” in *Pal*, Decision No. 365 [2007], the Tribunal refused to “entertain any attempt by the [a]pplicant to have this period re-examined now for the purpose of making a new determination as to the nature of the [a]pplicant’s appointments during such period.” *Pal (No. 2)*, para. 34.

36. The Tribunal, therefore, will examine the facts and claims in *González Flavell (No. 2)*, Decision No. 570, and compare them to those in the present Application.

37. *González Flavell (No. 2)*, Decision No. 570, concerned the Applicant’s return to work and the administration of the Applicant’s STD claim. In *González Flavell (No. 2)*, Decision No. 570, the Applicant challenged: (i) continuing her STD at 70% of her salary; (ii) not processing her return to work paperwork; (iii) “collusion” between the Bank and the Disability Administrator in

asking the Applicant to go through the IME for LTD; and (iv) the decision to place the Applicant on Administrative Leave and pay the Applicant 70% of her salary as if she were on STD.

38. In this Application, the Applicant refers to the ARP's decision to deny her claims and uphold the letter dated 7 June 2017, which granted the Applicant 70% of her salary and confirmed that her STD expired on 1 June 2017 and stated that her Notice of Redundancy would go into effect. The Applicant claims that it was erroneous to say that she was on Administrative Leave, and that she should have received 100% of her pay from 19 March 2017 until 1 June 2017, instead of the 70% pay that she actually received. The letter dated 7 June 2017 reconfirmed the information sent to the Applicant in an email on 25 May 2017, which described the current status of her employment at the Bank and how it would be affected if she did or did not provide medical authorization.

39. The Tribunal in *González Flavell (No. 2)*, Decision No. 570, para. 47, stated that "the Applicant's challenge of the decisions surrounding her return to work is inadmissible as she has failed to exhaust the requisite internal remedies and her claims are now time-barred." The Tribunal then held that "[t]here is no basis for the Tribunal to award the Applicant payment of full salary from and after her submission of her medical certification as fit to return to work on 19 March 2017." *González Flavell (No. 2)*, Decision No. 570 [2017], para 48. The Applicant's claims in *González Flavell (No. 2)* mirror those in the present Application. Therefore, these claims are clearly subject to *res judicata* as these issues have already been before the Tribunal in *González Flavell (No. 2)*.

40. The Applicant claims that the Reed Group negligently handled her STD. Specifically, the Applicant claims that her case was negligently handled since the Reed Group did not obtain the necessary paperwork, violated her right to privacy regarding her medical documentation, made her have an IME with one of the Reed Group's doctors, failed to provide her with copies of her records, did not process her claim in a timely manner, incorrectly processed her STD extensions, did not provide her with program documents, did not change her nurse case manager, asked her to undergo a second IME, asked her for authorization to access her medical records, and did not process her return to work paperwork.

41. In *González Flavell (No. 2)*, Decision No. 570, para. 43, the Tribunal addressed the issues raised by the Applicant and stated that “the Applicant’s assertions that it was the Bank that failed to process her Return to Work form, and that the ‘Reed Group released [her] from STD back to the bank and out of the disability program’ are incorrect.” In challenging the claims up to, and prior to, January 2017, the Tribunal in *González Flavell (No. 2)*, Decision No. 570, paras. 46–47, stated:

Finally, the Tribunal observes that the Application includes grievances about the manner in which the Reed Group administered her tenure on STD. These complaints include the assertion that the Reed Group sent her medical information to their medical examiners in January 2017 without obtaining the Applicant’s Consent. These issues, as with the Applicant’s claim on her return to work, should have been brought before the Disability Administrative Review Panel and not, in the first instance, to the Tribunal.

[...] In light of the above, the Tribunal finds that the Applicant’s challenge of the decisions surrounding her return to work is inadmissible as she has failed to exhaust the requisite internal remedies and her claims are now time-barred.

42. As to the Applicant’s claims after January 2017, the Tribunal in *González Flavell (No. 2)*, Decision No. 570, paras. 48–49, observed:

The evidence shows that any delays [with respect to the return to work] were caused by the Applicant’s inflexibility and refusal to provide a new and signed Authorization for Release of Personal Medical Records even when she was expressly informed that this authorization was needed to review her return to work claim. Furthermore, an order that the Bank and the Reed Group provide the Applicant with her entire medical records held by the Reed Group is unnecessary as the record shows that, on 16 March 2017, the Reed Group reminded the Applicant that she was sent her medical records on 6 February 2017 by encrypted email. The Applicant was informed that the Reed Group was “happy to send them again via US Mail, Certified Delivery to ensure you receive them once we receive your release of information.”

The Applicant challenges the manner in which the Bank handled her employment status pending the resolution of her return to work claim. The Tribunal finds this challenge to be manifestly unfounded and wholly lacking in merit. The record shows that any confusion about how to treat the Applicant’s employment status following the receipt of her Return to Work form stemmed solely from the Applicant’s own actions.

43. The Tribunal finds that the issues examined by the Tribunal in *González Flavell (No. 2)*, Decision No. 570, are essentially the same as those in the present Application. To resurrect these issues now would only defeat the purpose of Article XI(1) of the Statute of the Tribunal.

44. The Applicant claims that the ARP did not consider her claims and wrongfully consolidated her claims. The Tribunal has reviewed the Applicant's claims and the process taken by the ARP, and finds that the Applicant's claims are devoid of all merit and summarily dismisses them.

DECISION

The Application is dismissed.

/S/ Andrew Burgess

Andrew Burgess

Vice-President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 26 April 2019