World Bank Administrative Tribunal

2019

Decision No. 611

Sara González Flavell (No. 13),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

Sara González Flavell (No. 13),
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 Mónica Pinto (President), Abdul G. Koroma, and Janice Bellace.

2. The Application was received on 28 September 2018. The Applicant represented herself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. Invoking Article XIII of the Tribunal's Statute, the Applicant seeks revision of *González Flavell*, Decision No. 553 [2017].

FACTUAL BACKGROUND

4. The historical background of this case is contained in *González Flavell*, Decision No. 553. In that case the Applicant challenged (i) the decision to declare her position redundant; (ii) administrative decisions concerning her Fiscal Year (FY) 2015 Overall Performance Evaluation (OPE); and (iii) management's decision following the recommendations of the Peer Review Services (PRS) Panel.

5. Relevant to the present Application for Revision is the Applicant's contention that her FY2015 OPE was procedurally flawed. In Decision No. 553, the Applicant challenged the decision of the Independent Evaluation Group's Director General (IEGDG) that the Manager of the IEG Public Sector Evaluation Department (IEGPS Manager) should evaluate the Applicant's performance. According to the Applicant, the IEGPS Manager "was not [her] supervisor and was unqualified to evaluate her work for that period." The Applicant also challenged the retroactive

decision to name the IEGPS Manager as her supervisor for the OPE period under review, and the "serial decisions by the Bank to switch the Applicant's Reviewing Manager for this OPE period."

6. In that case, the Bank contended that the administrative decisions concerning the FY2015 OPE were fair and reasonable. The Bank stated that during the 2015 OPE year the Applicant (i) worked under the supervision of the IEGPS Manager between 1 July and 1 December 2014; (ii) chose to focus on job searches between 2 December 2014 and 12 March 2015; (iii) was on annual leave between 1 March and 11 May 2015; and (iv) was on sick leave between 2 June and 30 June 2015. As a result, the Bank argued, the Applicant's performance for FY2015 could only have been assessed on the basis of the work she performed in IEGPS, under the supervision of the IEGPS Manager.

7. The Tribunal addressed the Applicant's claims regarding her FY2015 OPE in paras. 158–162 of Decision No. 553. Specifically, the Tribunal ruled as follows in para. 159:

> The Tribunal is unpersuaded by the Applicant's arguments. The record shows that the IEGPS Manager was properly equipped to evaluate the Applicant's work as he was her supervisor for five months between 1 July and 1 December 2014. The record also shows that the Applicant focused on job searches between 2 December 2014 and 12 March 2015, was on annual leave between 1 March and 11 May 2015, and was on sick leave between 2 and 30 June 2015. The Tribunal notes that it has held that the redundancy decision was improperly implemented leaving the Applicant without a work program. Nonetheless, even if she had performed work for the Director General upon her return to IEGDG on 1 December 2014, the IEGPS Manager would still have been qualified to evaluate her performance as a supervisor.

8. The Tribunal further noted in para. 162 that the Applicant "raised several additional claims connected with the FY2015 OPE process." The Tribunal held these claims to be "unsuccessful, and that the issue of a failure to provide the Applicant with a work program [had] been appropriately addressed in connection with the redundancy decision."

9. On 28 September 2018, the Applicant submitted this Application for Revision. The Applicant requests the Tribunal to "re-open Decision 553 in so far as (i) that decision relied on leave records existing at the time of Decision 553 and (ii) in so far as Decision 553 concerned

failures in respect of following [the] established performance evaluation process in 2015." The Applicant submits evidence that the Bank's leave records incorrectly stated that she was on annual leave during a time when she was in the office and able to have a performance evaluation meeting with her manager. According to the Applicant,

> The validity and correctness of the leave records [have] now been disputed through the Bank's internal justice system. The leave records have been determined to have been inaccurate and were created wrongfully being improperly entered unilaterally by the Bank into its leave recording system and without my knowledge or consent or request.

10. The Applicant further avers:

> In arriving at Decision 553 the judgment specifically stated factors relied on included leave records existing in the Bank's leave recording system for me as a then current staff member, evidencing annual leave during a period from 1 March – 11 May 2015. The records also erroneously showed annual leave during February 2015, now found to be incorrect also. These leave records had been provided to the Tribunal by the Bank as Annexes to its Answer.

11. On 26 February 2019, the Bank submitted a Request for Summary Dismissal.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Main Contentions

12. The Applicant makes the following submissions in support of this Application for Revision. First, she states that the findings of the PRS Panel in Request for Review No. 393 were made after the delivery of the Tribunal's Decision No. 553. The PRS Panel found that the Bank incorrectly applied the Applicant's annual leave without her consent. The Applicant asserts that the facts, substantiated by the PRS Panel's report, constitute new and material evidence that the Tribunal is requested to revisit for that part of Decision No. 553 which relates to the lack of an OPE and Mid-Year Review in 2015 with the IEGDG.

13. Second, the Applicant submits that the discovery of the incorrect leave records is a new and material fact

> "which by its nature might have a decisive influence on the [judgment] of the Tribunal" concerning the failure to hold and carry out on-going performance review and evaluation in respect of a time-period to which the false leave records related and during which my manager was [the IEGDG], [the IEGPS Manager] having ceased being my manager as of December 2014.

14. The Applicant argues that the new facts overturn the Bank's stated arguments before the Tribunal which, she claims, were based on false leave records. The Applicant maintains that she was not on annual leave during the four critical months entitling her to have had this period taken into account for her Salary Review Increase (SRI) and OPE. The Applicant further argues that, since the fact of the leave records was the cornerstone of the Bank's arguments, it "shakes the very foundation" of the Tribunal's decision because the Tribunal, "(not knowing the facts to be false) [,] agreed with the Respondent's baseless arguments mounted on its falsified documents, because it believed the Respondent's LARS [Leave and Attendance Recording System] records correctly represented the situation." The Applicant claims that she had to file PRS Request for Review No. 393 to make the Bank rectify its falsified records.

15. Third, referencing the Tribunal's Decision No. 553, the Applicant argues that the Tribunal "clearly stated that the Applicant's records showed she had been on annual leave for the major part of 2015 for the 2014/2015 OPE period and that the Tribunal had taken the records concerning the leave into account." The Applicant claims that she unquestionably suffered loss by the lack of an OPE. She contends that the Bank's argument that the OPE was not conducted because she was on leave for over four months has been proven by PRS Request for Review No. 393 to have been untrue. According to the Applicant, the Tribunal "must revisit its decision [Decision No. 553] and determine that [,] since the Applicant was present, her manager should have fairly evaluated the Applicant both by holding an MTR [Mid-Term Review] and by holding an OPE later in connection with her work and performance during [the] 2014/2015 OPE cycle[.]"

16. Finally, the Applicant requests oral proceedings and legal costs relating to the FY2015 OPE. She also seeks legal fees and costs in the present case in the amount of $3,018.

The Bank's Main Contentions

17. According to the Bank, the Application is devoid of all legal merit and should be summarily dismissed. To the Bank, the Applicant is basing her request on a "mere correction to annual leave records that resulted from an administrative error." The Bank confirms that the administrative error was corrected following acceptance of the PRS Panel's recommendation by the Vice President, Human Resources (HRVP).

18. According to the Bank, should the Tribunal find that the corrected annual leave records constitute new material evidence, the leave records were nevertheless not relied upon as the basis of the Tribunal's judgment in Decision No. 553. According to the Bank, the question the Tribunal had to answer during its deliberation of that case was whether the IEGPS Manager was qualified to evaluate the Applicant's performance during the evaluation period. To the Bank, the correction to the Applicant's annual leave records to indicate that the Applicant was "working from February 18, 2015 to May 11, 2015 had no impact on the Tribunal's Decision."

19. The Bank further avers that, with respect to the standard of review in Article XIII revision applications, the Applicant has failed to demonstrate that the new evidence alleged in this Application meets the threshold established by the Tribunal. The Bank reiterates that the record shows that the Tribunal already considered the possibility that the Applicant worked more days when rendering its Decision No. 553 and, to the Bank, the Tribunal "explained that the precise number of leave days was not a material fact in its judgment."

20. According to the Bank, the Tribunal should find the Application irreceivable and devoid of all legal merit pursuant to Rule 7(11) of the Tribunal's Rules. In the alternative, the Bank argues that the Applicant has failed to demonstrate how the allegedly new evidence would have had a decisive influence on the decision of the Tribunal, or that the evidence "'shakes the very foundation' of the Tribunal's persuasion of Decision No. 553 and therefore warrants reconsideration of the Decision."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

21. 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.

22. In *Mpoy-Kamulayi (No. 7)*, Decision No. 477 [2013], para. 27, the Tribunal also held, "This rule of finality of the Tribunal's judgments is essential to the operation of the Bank's internal justice system. 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."

23. The sole exception to this principle of finality is contained in Article XIII(1) of the Tribunal's Statute which provides:

> 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.

24. Once an applicant has demonstrated that the new discovery "might have had a decisive influence" on the Tribunal's judgment, the Tribunal will assess whether this "new fact" indeed had such an influence in its adjudication of the claims. As stated in *Kwakwa (No. 2)*, Decision No. 350 [2006], para. 19, 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.'"

25. Upon review of the Applicant's submissions, the triggering event for the Applicant was the 2 April 2018 decision of the HRVP accepting the PRS Panel's recommendation to correct the

"administrative error of applying" the Applicant's annual leave for the period from 18 February to 11 May 2015. This, to the Applicant, was confirmation that the annual leave records presented by the Bank to substantiate its claims before the Tribunal in Decision No. 553 were inaccurate. The Applicant's request for revision has been brought within the time limit prescribed by Article XIII(1), and confirmation that the annual leave records were inaccurate was unknown to both the Applicant and the Tribunal at the time the judgment was delivered. The Applicant's annual leave records were relied upon by the Bank in its contentions before the Tribunal and were assessed by the Tribunal. Thus, from the Applicant's perspective, the new leave records were a fact which by their nature "might have had a decisive influence on the judgment of the Tribunal."

26. However, the discovery of new information does not entail the automatic revision of an existing judgment, in this case Decision No. 553. In order to revise the section of Decision No. 553 concerning the Applicant's FY2015 OPE, the Tribunal must be convinced that the annual leave records had a decisive and material impact on the judgment. Indeed, as held in *Kwakwa (No. 2)*, para. 19, "[i]f 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."

27. The Tribunal has revisited the record of the Applicant's prior application and found that the Bank did not proffer her annual leave records as the rationale for the IEGDG's refusal to conduct a mid-year review with the Applicant. Rather, the Bank contended that the IEGPS Manager, who had supervised the Applicant's work during her developmental assignment from 1 July until 1 December 2014, was qualified to conduct her mid-year review since the "only work the Applicant performed during FY15 was for IEGPS[.]"

28. The Applicant's annual leave was referenced by the Tribunal solely in the context of the question of the appropriate person to have conducted the Applicant's mid-year review. The Tribunal held in para.159 of the judgment:

> The Tribunal is unpersuaded by the Applicant's arguments. The record shows that the IEGPS Manager was properly equipped to evaluate the Applicant's work as he was her supervisor for five months between 1 July and 1 December 2014. *The*

> *record also shows that the Applicant focused on job searches between 2 December 2014 and 12 March 2015, was on annual leave between 1 March and 11 May 2015*, and was on sick leave between 2 and 30 June 2015. The Tribunal notes that it has held that the redundancy decision was improperly implemented leaving the Applicant without a work program. *Nonetheless, even if she had performed work for the Director General upon her return to IEGDG on 1 December 2014, the IEGPS Manager would still have been qualified to evaluate her performance as a supervisor*. (Emphasis added.)

29. It is evident from this paragraph in Decision No. 553 that the Applicant's annual leave records had no bearing on the question of who was supposed to evaluate her performance. In other words, the annual leave records – whether right or wrong – had no decisive impact on the Tribunal's finding that the IEGPS Manager was qualified to conduct the Applicant's FY2015 mid-year review.

30. The Applicant further requests the Tribunal to revisit its judgment in Decision No. 553 and determine that, since she was present in the office as confirmed by the updated leave records, the IEGDG should have held "an OPE later in connection with her work and performance during [the] 2014/2015 OPE cycle[.]" However, the fact that the IEGDG did not hold an OPE discussion with the Applicant was addressed and settled in Decision No. 553. The Applicant would recall that the IEGDG contacted her on 4 August 2015 to hold an OPE discussion. The Applicant would further recall that she responded expressing concern at the proposal to have discussions with the IEGDG on development objectives and performance evaluation when the Applicant did not have any FY2015 work programs in the IEGDG's office. The Applicant also notified the IEGDG that she had been placed on Short Term Disability (STD) leave. As the Tribunal stated in para. 161 of Decision No. 553:

> In light of the fact that the Applicant expressed concern about doing the OPE discussion while on STD, the Applicant cannot now fault the Bank for not holding an OPE discussion with her. Additionally, when the Director General offered to hold an OPE discussion with the Applicant, it was the Applicant who responded querying the purpose of such a meeting.

31. The Applicant's leave records had no bearing on the Tribunal's assessment of whether the IEGDG should have held an OPE discussion with the Applicant.

32. The Applicant also argues that the corrected annual leave records show that she was available to work upon her return to the office of the IEGDG on 1 December 2014 and her manager, the IEGDG, should have assigned her work. While this may be so, this claim is connected to the failure to provide the Applicant with a work program which was already appropriately addressed by the Tribunal in Decision No. 553. The Tribunal held in para. 156 of that judgment:

> In light of the fact that the Applicant's position was not officially declared redundant until 1 July 2015, steps should have been put in place to ensure that the Applicant had a work program and was able to perform her duties. On the contrary, it was the Applicant who, on 12 March 2015, contacted the Director General to state that she was available to perform her duties since SRG approval had not been obtained. The Director General's response that they "do not need [the Applicant's] assistance for any of the work accountabilities in the original job description of the Special Assistant to the Director General […]," further supports the finding that the redundancy decision was improperly implemented prior to complying with the procedural requirements.

33. The Applicant was duly awarded compensation in the amount of nine months' net salary based on her salary at the time of the contested decisions for the Bank's failure to comply with the requisite procedures. This amount included compensation for the failure to give the Applicant a work program prior to obtaining approval for the abolition of her position. Therefore, no additional legal costs are merited, nor are oral proceedings required to address this matter.

34. Finally, the Tribunal observes that the Applicant submitted an extensive list of requested remedies pursuant to her claim that she has been harmed by the inaccurate annual leave records. The Applicant requests:

- Re-instatement in a similar position to the one she held as Special Assistant to [a Senior Vice President] for the seven years left until her retirement age from the Bank is reached (age 67);

- An award to compensate the Applicant for the loss of benefits that she will, despite re-instatement, still suffer from the Respondent's wrong-doing as she is now a green card holder and no longer therefore eligible for G-4 ex-patriate benefits, as the Respondent intended through its wrongful actions;

- Two years' loss of salary for the time spent without salary since the redundancy took effect (this because the redundancy could have been avoided had the correct OPE procedures taken place and the Applicant assisted with her career

and having the benefit of career conversations with her [Senior Vice President] as required by the Staff Rules)[;]

- That her leave and attendance and performance records now be properly corrected, and copies provided to her[;]

- Re-assessment of her SRI for FY15 based on higher ratings that would have been possible had she been provided the opportunity of an OPE meeting;

- An increase in her pension to reflect the lack of growth for the last two years due to the Respondent's actions;

- That her salary on re-instatement be increased by an appropriate percentage of increase for each year she has been out of the Respondent's employment;

- Or alternatively, if the Tribunal cannot award reinstatement due to effluxion of time that the Respondent has allowed to pass before righting this matter, a financial award that is sufficient and adequate to cover the losses suffered and the injury sustained by the Applicant as a result of the [R]espondent['s] animosity and ill-treatment towards her and failure to respect the need for her performance evaluation, especially on her return to work from disability, and even more so since the respondent refused to accept her back in effect by placing her instead on "administrative leave" and vindictively asserting an unbalanced decision to declare her redundant[; and]

- Legal costs never awarded under Decision 553 relating to the legal fees to contest the lack of FY15 OPE […].

35. In the Tribunal's view, by submitting this long list of requests unconnected in any remote manner to the newly discovered fact of the correct annual leave records, the Applicant is attempting to relitigate the redundancy decision, thus not accepting the finality of the Tribunal's judgments. The Bank's redundancy decision was upheld in Decision No. 553. The fact that the Tribunal did not order rescission of the Notice of Redundancy was reaffirmed in *González Flavell (No. 4)*, Decision No. 597, para. 52. There is no legal basis for the Tribunal to order her reinstatement or the provision of any of the financial compensation she seeks.

DECISION

The Application is dismissed.

/S/ Mónica Pinto
Mónica Pinto
President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 26 April 2019