



World Bank Administrative Tribunal

2018

Decision No. 597

**Sara González Flavell (No. 4),
Applicant**

v.

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

(Preliminary Objection)

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

**Sara González Flavell (No. 4),
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 10 May 2018. The Applicant was represented by Mark Stephens of Howard Kennedy LLP. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges (i) the "decision communicated by email on 7th June 2017 to activate a hitherto suspended notice of redundancy, (ii) [t]he IBRD's failure thereafter to rescind and withdraw that notice, [and] (iii) [t]he IBRD's termination of the Applicant's employment in December 2017 pursuant to the activation of the suspended notice."

4. The Bank has raised a preliminary objection to the admissibility of this Application. This judgment addresses that preliminary objection.

FACTUAL BACKGROUND

5. The Applicant joined the Bank in October 1988. She served in different positions within the Legal Vice Presidency until August 2012 when she joined the Independent Evaluation Group (IEG) as a Level GG Special Assistant to the Senior Vice President and Director General of IEG (Director General).

6. Starting on 2 June 2015, the Applicant went on sick leave.

7. On 25 June 2015, the Applicant formally requested to be placed on Short Term Disability (STD) by the Bank's disability administrator.

8. On 1 July 2015, the Applicant received a Notice of Redundancy, which stated that the decision to declare her employment redundant with effect 1 July 2015 was taken in accordance with Staff Rule 7.01, paragraphs 8.02(b) and 8.03.

9. On 12 August 2015, the Bank's disability administrator notified the Director General that the Applicant had been approved for STD from 2 June 2015 until 18 September 2015. The Applicant's STD leave was subsequently extended.

10. By email dated 10 September 2015, the Director General informed the Applicant:

In light of [the Bank's disability administrator's] August 12, 2015 notification of your Short Term Disability (STD), the effectiveness of your July 1, 2015 Notice of Redundancy is being suspended until either i) you are off STD; or ii) the [Bank's disability administrator] advises me that you are fit to engage in a job search.

11. On 28 October 2015, the Applicant challenged the Notice of Redundancy and other decisions before the Tribunal, and the Tribunal issued Decision No. 553 on 21 April 2017, considering these matters. The Tribunal concluded, at para. 169, as follows:

Having reviewed the record, the Tribunal finds that, despite the legitimate reorganization process at IEG, the decision to abolish the Applicant's position and declare her employment redundant was affected by IEG management's perception of the Applicant's performance deficiencies and the working relationship she had with the Director General. In addition, the Bank failed to comply with the requisite procedures by effectively abolishing the Applicant's position, distributing her functions to others and failing to give her a work program prior to obtaining formal SRG [Severance Review Group] approval. The Tribunal's decision is made without prejudice to any decision that the Bank may make concerning the Notice of Redundancy.

12. The Tribunal ordered the Bank to pay the Applicant compensation in the amount of nine months' net salary and to contribute to the Applicant's legal fees and costs.

13. By email dated 25 May 2017, a Human Resources (HR) Specialist, Corporate Case Management wrote to the Applicant that:

The Bank has not changed your employment status to administrative leave [...] in order to keep the suspension of your Notice of Redundancy intact. [...]

To be clear (i) your current employment status is STD and will continue to be such until June 1, 2017; and (ii) in the event the Notice of Redundancy takes effect, you will have the full six months' job search/administrative leave period.

14. By email dated 7 June 2017, the HR Specialist noted that the Applicant had been found fit to return to work and that:

As such, your status will be changed from "Leave Without Pay" to "Administrative Leave," which will apply retroactively to June 2, 2017. In parallel, your Notice of Redundancy will become effective, also as of June 2, 2017. You will remain on this status for six months, or until December 1, 2017, to allow you to conduct your job search. After December 1, 2017, your employment with the Bank will terminate.

15. By email dated 16 June 2017, the HR Specialist wrote to the Applicant:

Per the terms of the Notice of Redundancy dated July 1, 2015, you will have six months (from June 2, 2017 to December 1, 2017) to search for jobs. If by the end of those six months you do not find another position, your employment with the Bank will be terminated, effective December 2, 2017, and you will receive a severance payment at that time.

16. On 15 September 2017, the Applicant met with the Vice President of Human Resources (HRVP) and asked, *inter alia*, to be reassigned. According to the Applicant, the HRVP told her "that he would not reassign her because she had applied to the Tribunal."

17. On 20 September 2017, the Applicant again met with the HRVP, who, according to the Applicant, refused to consider her reassignment or discuss the possible terms of her departure from the Bank.

18. On 28 September 2017, a Manager, Corporate Case Management informed the Applicant of the terms and conditions for her Notice of Redundancy and stated:

Further to your Notice of Redundancy dated July 1, 2015, I wish to confirm the terms and conditions of your leaving the service of the Bank Group under the provision of Staff Rule 7.01, Section 8.

19. According to the Applicant, on 5 December 2017, her colleagues informed her that she no longer appeared on staff profiles on the Bank's intranet directory.

20. In early December, the Applicant exchanged emails with the IEG Director of Strategy and Operations about the return of her personal belongings. By email dated 6 December 2017, the Applicant asked why she needed to retrieve her personal belongings and asked for an update "on the plans for [her] Farewell Party, or [was she] the only staff to leave IEG without a usual IEG party which are standard in our department[.]"

21. By email dated 11 December 2017, the IEG Director of Strategy and Operations informed the Applicant that "[a]s of December 2, 2017, your appointment terminated from the World Bank Group."

22. The Applicant filed her Application with the Tribunal on 10 May 2018, after having received an extension of time from the Tribunal. She challenges (i) the "decision communicated by email on 7th June 2017 to activate a hitherto suspended notice of redundancy, (ii) [t]he IBRD's failure thereafter to rescind and withdraw that notice, [and] (iii) [t]he IBRD's termination of the Applicant's employment in December 2017 pursuant to the activation of the suspended notice."

23. The Applicant seeks (i) rescission of the decision to activate the Notice of Redundancy, (ii) reinstatement to a position as a Level GH Adviser or, in the alternative, as a Level GG Special Assistant, (iii) in case of reinstatement, an order prohibiting retaliation against the Applicant, and (iv) if the Applicant is not reinstated, "an order declaring and establishing her right to accept long-term and short-term consultancies and to apply for full-term employment to vacant positions, as if the Applicant had not been made redundant." The Applicant also requests compensation, the quantum depending on whether reinstatement is ordered.

24. On 28 June 2018, the Bank filed a preliminary objection to the admissibility of this Application.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank's Contentions

25. The Bank contends that the Application should be dismissed on the principle of *res judicata*, or, in the alternative, because the Application is time-barred.

26. The Bank argues that “[t]he gravamen of the issues that the Applicant is raising in this Application is the Notice of Redundancy of July 1, 2015” and that her claims were already decided by the Tribunal in Decisions No. 553 and No. 570. It states that all of the issues surrounding the Notice of Redundancy have been decided by the Tribunal in Decision No. 553, so any new claims relating to the Notice of Redundancy are precluded under the principle of *res judicata*.

27. The Bank claims that the Applicant cannot seek a revision of Decision No. 553, under Article XIII of the Tribunal’s Statute, because, as of the date of the judgment, the Applicant and the Tribunal knew that the Notice of Redundancy would be reactivated, none of the facts about the timing of the reactivation of the Notice of Redundancy were concealed from the Applicant, and the Applicant failed to submit a request for revision within six months as required by Article XIII. Moreover, the Bank argues that the Applicant has not presented any new facts that would warrant the revision of the judgment under Article XIII.

28. The Bank avers that the activation of the Notice of Redundancy, once the Applicant was deemed able to return to work, is consistent with Decision No. 553 because the Tribunal did not order the rescission of the Notice. According to the Bank, “Decision No. 553 specifically permitted the Bank to act upon the Notice of Redundancy of July 1, 2015 as soon as the Applicant was deemed able to return to work. No new decision was anticipated.”

29. The Bank further pleads that the Application is time-barred, basing the date of the decision in question either as 2 June 2017, the date on which the Notice of Redundancy took effect, or as 7 June 2017, the date on which the Applicant received the email notifying her that the Notice of Redundancy had become effective. According to the Bank, the Applicant filed the Application on 10 May 2018, on the basis of an extension from 21 February 2018, which is beyond the mandatory 120 days provided for in Article II(2)(ii) of the Tribunal's Statute.

30. The Bank disputes the date of 11 December 2017 as the *dies a quo* for this Application because the email sent on this date reiterated previous correspondence, which put the Applicant on notice that her employment with the Bank would terminate after 1 December 2017.

31. Regarding the Applicant's allegation of retaliation, which is based on a conversation with the HRVP, the Bank responds that the Applicant "was told on numerous occasions that her Notice of Redundancy of July 1, 2015 had taken effect on June 2, 2017 and her employment would end December 2, 2017." The Bank denies that the reactivation of the Notice of Redundancy constitutes retaliation. More generally, the Bank submits that its actions complied with Decision No. 553 "and in no way can be considered as retaliation."

The Applicant's Response

32. The Applicant claims that she is contesting the actions of the Bank after Decision No. 553 was issued, which constitute a new cause of action. She also notes that Decision No. 570 addressed matters that are not the subject of the present Application.

33. According to the Applicant, because her complaints relate to actions taken between June and December 2017, a *res judicata* situation cannot arise. She submits that, when the Tribunal stated in Decision No. 553, para. 169, that its decision was made "without prejudice to any decision that the Bank may make concerning the Notice of Redundancy," the Tribunal pronounced that it "was not adjudicating (and could not adjudicate) on any future decision the Respondent 'may make' about the redundancy notice." (Emphasis in original.)

34. The Applicant denies that she is seeking a revision of Decision No. 553 under Article XIII of the Tribunal's Statute.

35. The Applicant submits that her complaint includes acts of retaliation that occurred during the notice period, which also "contributed to the failure to rescind the notice before its expiry." She argues that, "where the complaint is about the severance of employment," the *dies a quo* should be "the date of severance itself." In this case, the Applicant states that the time for appeal runs from December 2017 and so her Application was submitted to the Tribunal in time.

36. The Applicant also asserts that there was uncertainty about the exact date of termination in December 2017, and that she had definitive notice only in the email of 11 December 2017, in which she was informed that her employment had ended and that she should collect her belongings. Therefore, she claims that her Application was submitted in time.

37. In the further alternative, the Applicant submits that there are exceptional circumstances that warrant an extension of time, namely:

- (i) the continuation during the notice period of attempts at internal resolution by the Applicant;
- (ii) the feature that, on the Applicant's case, the failure to reassign the Applicant and withdraw the notice proceeded from fresh illegality during the notice period;
- (iii) the feature that various events leading to termination are intertwined but the complaint relates to severance [...];
- (iv) the flagrant nature of the Respondent's actions, on the face of the facts and/or allegations, in disregarding the Tribunal's Decision No[.] 553 and implementing a redundancy which had been declared unlawful;
- (v) the fact that the nature of the Respondent's actions means that the Applicant's career has been brought to a premature end, and she has been left in the situation of being unable to resettle overseas without potentially losing the right to reside in the country in which her children are resident; and
- (vi) the important issues of principle raised by the Application and the need to ensure respect for the rule of law.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

38. The first ground on which the Bank bases its preliminary objection is the principle of *res judicata*, submitting that the Applicant's claims have already been decided by the Tribunal in Decisions No. 553 and No. 570.

39. Article XI(1) of the Statute of the Tribunal provides: "Judgments 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.

40. 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.

41. In *C* (No. 2), Decision No. 312 [2004], 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*. The Tribunal, in the previous case of *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), para. 10. Therefore, the Tribunal held that the issues that 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." *Id.*

42. In *B* (No. 2), para. 38, the Tribunal held that the applicant's claim concerning misclassification was *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."

43. 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 in *Pal*

(No. 2), para. 34, 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.”

44. The Tribunal, therefore, will examine the facts and claims in Decisions No. 553 and No. 570 and compare them to those in the present Application.

45. *González Flavell (No. 2) (Preliminary Objection)*, Decision No. 570 [2017] concerned the Applicant’s disability benefits, placement on administrative leave, and fitness to return to work. The Tribunal finds that the claims raised by the Applicant in the earlier case are different from the present Application, where the Applicant challenges the reactivation of the Notice of Redundancy, which ultimately resulted in the termination of her appointment in December 2017.

46. In *González Flavell*, Decision No. 553 [2017], the Applicant challenged, among other things, the Notice of Redundancy dated 1 July 2015. The Bank suspended the Notice of Redundancy until the Applicant’s fitness to return to work, after Short Term Disability, was established by the Bank’s disability administrator.

47. Regarding the Notice of Redundancy, in *González Flavell*, para. 97, the Applicant asserted that the Notice was affected by several procedural irregularities. The Bank, for its part, submitted that it followed all procedures applicable to redundancy cases. *Id.*, para. 103.

48. The Tribunal examined each of the Applicant’s claims of procedural irregularities and found “that of these claims only one is sustainable, namely that the Bank failed to obtain SRG approval prior to notifying [the Applicant] of, and implementing the redundancy decision.” *Id.*, para. 155.

49. The Applicant also argued “that the redundancy decision was used as a masquerade for termination for perceived unsatisfactory performance” and that it constituted harassment and discrimination. She characterized the decision as an abuse of discretion that was motivated by “bias and dislike rather than any genuine improvement of the efficiency of the unit.” *Id.*, para. 98.

In response, the Bank maintained that the redundancy decision was “based on managerial considerations in the interest of efficient administration, as a result of the strategic review of the IEG Front Office.” *Id.*, para. 103. It claimed that there was no longer a need for the Applicant’s “legal and operational skills” because the Director General could manage her own agenda and other tasks could be performed by a lower-level administrative position. *Id.*, para. 104.

50. The Tribunal considered the parties’ submissions and was “satisfied that there was a legitimate basis for declaring the Applicant’s position redundant.” *Id.*, para. 143. The Tribunal took note of the strategic staffing exercise in IEG and accepted the Bank’s explanation that the Applicant’s position was no longer needed as some of the functions were no longer needed, while other functions would be reassigned to existing staff or to a new, lower-level staff member. *Id.*, para. 142.

51. Notwithstanding that the Bank demonstrated a legitimate basis for the redundancy, the Tribunal examined whether the redundancy decision was affected by improper motivations. The Tribunal took note of the concerns about the Applicant’s performance and the Applicant’s difficult working relationship with the Director General. It found “that the Bank has not convincingly demonstrated that the decision to declare the Applicant’s position redundant was taken independently of the perception of her performance and the working relationship with the Director General.” *Id.*, para. 152.

52. Therefore, in Decision No. 553, the Tribunal awarded the Applicant compensation but did not order rescission of the Notice of Redundancy. Instead, at para. 169, the Tribunal stated that its decision was made “without prejudice to any decision that the Bank may make concerning the Notice of Redundancy.”

53. In the present case, the Applicant challenges (i) the “decision communicated by email on 7th June 2017 to activate a hitherto suspended notice of redundancy, (ii) [t]he IBRD’s failure thereafter to rescind and withdraw that notice, [and] (iii) [t]he IBRD’s termination of the Applicant’s employment in December 2017 pursuant to the activation of the suspended notice.”

54. In Decision No. 553, the Tribunal already opined on the Notice of Redundancy dated 1 July 2015 and ordered the Applicant to be compensated accordingly. The Tribunal finds that the Applicant cannot now ask the Tribunal to re-examine the validity of that same Notice. To do so would be contrary to the principle of *res judicata*.

55. The Tribunal rejects the Applicant's argument that she has a fresh cause of action related to the Notice of Redundancy, arising from events between June and December 2017. The Tribunal finds that the date of the impugned decision was 1 July 2015, when the Notice of Redundancy was issued, and the implementation of that decision was suspended until the Applicant was fit to return to work. In this case, the Applicant was informed on 7 June 2017 that she had been considered fit to return to work effective 2 June 2017. As soon as the Applicant was found fit to return to work, the suspension of the Notice of Redundancy was lifted, and the Notice of Redundancy took effect. The Tribunal finds that no new decision was taken between June and December 2017 to make the Applicant's position redundant.

56. Having found that the Application is barred by *res judicata*, the Tribunal does not need to consider whether the Application should also be dismissed on the ground that it is time-barred.

DECISION

The Application is dismissed.

/S/ Mónica Pinto
Mónica Pinto
President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 18 October 2018