



**World Bank Administrative Tribunal**

**2022**

**Decision No. 684**

**Dalal Marafie,  
Applicant**

**v.**

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

**(Preliminary Objection)**

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

**Dalal Marafie,  
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 28 February 2022. The Applicant represented herself. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency.
3. The Applicant challenges the Bank's decision not to select her for an Operations Analyst position.
4. On 21 March 2022, the Bank submitted preliminary objections to the Application on the basis of lack of standing. This judgment addresses the Bank's preliminary objections.

**FACTUAL BACKGROUND**

5. The Applicant is a former staff member at the Bank. The Applicant was employed by the Bank as a Short-Term Temporary (STT), a Short-Term Consultant (STC), and an Extended-Term Consultant (ETC) between November 2013 and September 2020. According to the Applicant, she worked as a Team Assistant from 2013 to 2016 as an STT, and worked in operations roles, including as an Operations Analyst, from 2016 to 2020 as an STC and ETC. The Applicant's most recent assignment was as an ETC with Finance, Competitiveness, and Innovation, Middle East and North Africa region, also known as EMNF2, in the World Bank Country Office in Kuwait (Kuwait Country Office).

6. On 24 September 2020, the Applicant's ETC position with EMNF2 ended. According to the Applicant, this was her last day of employment at the Bank.
7. On 9 December 2020, the Kuwait Country Office advertised an Operations Analyst position with a closing date of 31 December 2020. The Applicant applied for the position on 9 December 2020.
8. On 24 February 2021, the Applicant was interviewed for the Operations Analyst position.
9. On 25 March 2021, the Applicant received an email from the Resident Representative of the Kuwait Country Office, who was the hiring manager, notifying the Applicant that she had not been selected for the Operations Analyst position.
10. On 9 June 2021, the Applicant filed a Request for Review with Peer Review Services (PRS) challenging the fairness of the hiring process for the Operations Analyst position and "the fact that [the Applicant] was not given priority as a well-reviewed productive former employee of the [B]ank." The Applicant also claimed that "[t]here [were] clear favoritism tactics deployed in the recruitment as evidenced by the hostility with which the interview was done."
11. On 21 November 2021, PRS issued an office memorandum informing the Applicant that the Peer Review Chair had rejected her Request for Review. The memorandum stated in part:

The record indicates that at the time when you applied and were interviewed for the Position, you did not have a contract of employment with the WBG [World Bank Group]. Accordingly, the RFR [Request for Review] did not identify any adverse managerial decision, action or inaction which plausibly impacted an employment contract or terms of appointment. Therefore, your claim "*is not permitted under, or is not in conformity with*" Staff Rule 9.03, including its paragraphs 3.01 and 7.01, and the Peer Review Procedures. [Emphasis in original.] Consequently, the Peer Review Chair has rejected your RFR pursuant to Staff Rule 9.03, paragraphs 11.02 and 11.03 (c), and the RFR is now closed in PRS.

12. On 28 February 2022, the Applicant submitted this Application to the Tribunal contesting (i) the non-selection decision for the Operations Analyst position, alleging that she was subject to unfair hiring practices, and (ii) PRS's dismissal of the Applicant's Request for Review.
13. The Applicant requests the following relief:
- Rescission of the non-selection decision and "reopening of the employment availability"
  - Reversal of PRS's dismissal of the Applicant's Request for Review
  - A finding by the Tribunal that the non-selection was "wrongful, discriminatory[,] and prejudicial"
  - Compensation in the amount of \$165,000.00 for lost wages
  - Compensation in the amount of \$165,000.00 "representing the sum of monies paid by [the] Applicant to medical therapists" as a result of the non-selection decision.
14. The Applicant claims "legal costs" in the amount of \$7,000.00.
15. On 21 March 2022, the Bank filed its preliminary objections requesting that the Application be dismissed and relief be denied.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Bank's Contentions*

#### *The Applicant lacks standing to file an Application with the Tribunal*

16. The Bank contends that the Applicant lacks standing to submit her Application to the Tribunal because at the time of the non-selection decision, on 25 March 2021, the Applicant was not employed with the Bank and was not a staff member with an appointment pursuant to Staff Rule 4.01. The Bank asserts that the Applicant acknowledged in her pleadings that she was unemployed from the time of her separation from the Bank on 24 September 2020 until the date of her Application to the Tribunal on 28 February 2022. Consequently, the Bank submits that there

cannot be any adverse managerial decision, action, or inaction which plausibly impacted an employment contract or terms of appointment.

17. The Bank contends that the Applicant does not allege the non-observance of her contract of employment or terms of appointment, nor does she allege that some illegality has been committed. Relying on *Azhar*, Decision No. 104 [1991], the Bank contends that the Applicant lacks standing before the Tribunal.

18. The Bank asserts that,

[a]lthough it is accepted that former staff members may bring applications to the Tribunal, they must allege a breach or non-observance of their contract of employment or terms of appointment. In this case [the] Applicant cannot do so as she held no appointment at the time of the non-selection decision. [The] Applicant therefore lacks standing under the Tribunal's Statute.

19. Further, the Bank asserts that (i) the Applicant's complaints are unrelated to the Applicant's previous contracts with the Bank as the position for which she applied was a new position and (ii) the decision the Applicant is contesting, namely the denial of the Applicant's employment application, occurred in March 2021, approximately six months after the Applicant left the Bank.

### ***The Applicant's Response***

#### *The Applicant has standing to file an Application with the Tribunal*

20. The Applicant contends that she has standing to bring her Application because as a former STT, STC, and ETC at the Bank she fits within the description of the expression "member of the staff" cited in Article II(1) of the Tribunal's Statute and defined in Article II(3) as "any current or former member of the staff of the Bank Group." The Applicant contends that it is established that the Applicant is a former staff member and therefore has standing. The Applicant further contends that the Tribunal need not make any further analysis or findings with respect to the question of standing.

21. The Applicant contends that, although she did not have a contractual relationship with the Bank at the time of the non-selection decision, the Tribunal has jurisdiction to review her Application because it alleges the non-observance of pertinent regulations and rules in force within the meaning of Article II(1) of the Tribunal's Statute. Specifically, the Applicant asserts that Article II(1) of the Tribunal's Statute defines the terms "contract of employment" and "terms of appointment" to include "all pertinent regulations and rules in force at the time of alleged non-observance." To the Applicant, this clause broadens the scope of the Tribunal's jurisdiction to include the Applicant's claims as she is challenging the Bank's non-observance of pertinent regulations and rules that were in effect at the time of the non-observance.

22. The Applicant contends that

the Tribunal must not conflate between the question of standing and the question of jurisdiction as sought by the [Bank]. The question of standing is answered quickly in the affirmative upon the finding that the [A]pplicant is a current or former member of the Bank's staff. However, the question of jurisdiction is more nuanced: must the [A]pplicant, who was a former member of staff and therefore has standing, only decry the Bank's actions in relation to the [A]pplicant's former employment with the Bank or can the [A]pplicant decry [the Bank's] actions which have no relation to the [A]pplicant's former employment? [The] Applicant again posits that the latter is true because similar to how applicants, who are current employees, can decry the Bank's non-observance of any rule which affects the applicant even if such non-observance bears no relation to the document governing the employment relationship, the contract of employment[,] here the Applicant should be able to decry the Bank's discriminatory and biased conduct with respect to the selection process.

23. The Applicant further contends that her Application is subject to the jurisdiction of the Tribunal because the Applicant sufficiently demonstrates in her pleadings that the non-selection decision may be a result of her previous employment with the Bank. According to the Applicant, these allegations are detailed in her pleadings, including inappropriate behavior toward her by a selection committee member during her interview, being subjected to questions to which other candidates were not subjected, and bias, prejudice, and improper procedures adopted by the selection committee in its refusal to take the Applicant's prior Bank experience into account, including positive reviews by the Applicant's previous supervisors. In the alternative, the

Applicant asserts that further information showing the nexus between the non-selection and the Applicant's previous employment will be discerned if documents relating to the non-selection are produced during the merits stage of the proceedings.

24. Finally, the Applicant contends that, although the Bank raised the issue of standing in its timely filed preliminary objections, the Bank "only made its jurisdictional arguments" in pleadings it filed fifty-three days after its receipt of the Application. The Applicant contends that the jurisdictional objection should be considered waived pursuant to Rule 8(1) of the Tribunal's Rules, as the deadline to file all preliminary objections is within twenty-one days of the Bank's receipt of the Application. The Applicant further contends that the fact that the Bank "conflated the questions of standing and jurisdiction" in its preliminary objections "does not mean that the [Bank] raised the jurisdictional objection in a timely manner."

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

25. The Tribunal observes that the Applicant filed her Application on 28 February 2022. The Application was transmitted to the Bank on the same day. The Bank timely filed preliminary objections on 21 March 2022. In its preliminary objections, the Bank contends that the Applicant has failed to meet the standing requirements under Article II(1) of the Tribunal's Statute. First, the Bank explains that the Applicant lacks standing to bring this Application because, at the time the Applicant applied for the position and was interviewed, she did not have an appointment pursuant to Staff Rule 4.01. Accordingly, the Bank asserts that there cannot be any adverse managerial decision, action, or inaction which plausibly impacted an employment contract or terms of appointment. The Bank further explains that,

[a]lthough it is accepted that former staff members may bring applications to the Tribunal, they must allege a breach or non-observance of their contract of employment or terms of appointment. In this case the Applicant cannot do so as she held no appointment at the time of the non-selection decision. [The] Applicant therefore lacks standing under the Tribunal's Statute. As a result, [the] Applicant's Application to the Tribunal should be dismissed.

26. The Tribunal considers that the Bank explained all of the grounds for its preliminary objections, including its contention that the Applicant has failed to meet the standing requirements under Article II(1) of the Tribunal Statute, in a timely made preliminary objection filing.

27. Accordingly, the Tribunal will now consider whether the Applicant has standing to challenge the Bank's non-selection decision.

28. Article II(1) of the Tribunal's Statute provides:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.

29. Article II(3) of the Tribunal's Statute provides:

For the purposes of this Statute:

the expression "member of the staff" means any current or former member of the staff of the Bank Group, any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

30. In *The World Bank Staff Association*, Decision No. 40 [1987], para. 82, the Tribunal stated:

The Statute is clear in defining not only the kind of person entitled to file an application but also the kind of claim that must be asserted in that application. The applicant must allege "non-observance of the contract of employment or terms of appointment of such staff member." By expressing the nature of the claim in these terms, the Statute reinforces further a construction that would require that the applicant be an individual presently or formerly employed by the [Bank] or be within the other narrow categories of individual applicants contemplated in paragraph 3. Obviously, the Staff Association fails to satisfy this requirement as



well, for it cannot properly allege the non-observance of an employment contract or terms of appointment of its own.

31. In *Azhar* [1991], the applicant held a temporary appointment at the Bank and left the service of the Bank in July 1986. In November 1987, the applicant applied for employment, but it was determined that no suitable position was available at the time. Over the next few years, the applicant exchanged correspondence with the Bank, but no position materialized. The applicant appealed to the Appeals Committee (the precursor to PRS), which dismissed his appeal, and the applicant filed an application with the Tribunal. The Tribunal dismissed the application, stating at para. 15:

The [a]pplicant was not a staff member at the time the decision complained of was adopted, nor is he alleging that there was a contract of employment whose terms had not been observed or in regard to which some illegality had been committed.

32. Moreover, the Tribunal held in *Q*, Decision No. 370 [2007], para. 36, that,

[f]or a present or former staff member to have standing to bring such a claim, [...] [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.

33. Citing Article II(1) and (3) of the Tribunal's Statute and the abovementioned Tribunal jurisprudence on its interpretation, the Bank asserts that the Applicant lacks standing to submit her Application to the Tribunal because at the time of the non-selection decision, on 25 March 2021, the Applicant was not employed by the Bank and not a staff member with an appointment pursuant to Staff Rule 4.01. Further, the Bank contends that the Applicant does not allege the non-observance of her contract of employment or terms of appointment, nor does she allege that some illegality has been committed. Finally, the Bank contends that, although it is accepted that former staff members may bring applications to the Tribunal, they must allege a breach or non-observance of their contract of employment or terms of appointment, which the Applicant in this case has failed to do.

34. The Applicant disagrees with the Bank's assertions. Instead, she contends that she has standing to bring her Application because as a former STT, STC, and ETC at the Bank she fits within the description of the expression "member of the staff" cited in Article II(1) of the Tribunal's Statute and defined in Article II(3) as "any current or former member of the staff of the Bank Group." Further, the Applicant contends that, although she did not have a contractual relationship with the Bank at the time of the non-selection decision, the Tribunal has jurisdiction to review her Application because it alleges the non-observance of pertinent regulations and rules in force within the meaning of Article II(1) of the Tribunal's Statute. Finally, the Applicant asserts that her Application is subject to the jurisdiction of the Tribunal because the Applicant sufficiently demonstrates in her pleadings that the non-selection decision may be a result of her previous employment with the Bank.

35. The Tribunal will first consider whether the Applicant fits within the definition "member of the staff" as set out in Article II(3) of the Tribunal's Statute, which is one of the requirements for standing under Article II(1) thereof.

36. The Tribunal observes that the Applicant was a consultant on several different contracts at the Bank from 10 November 2013 until 24 September 2020, which was her last day of employment at the Bank. Following the end of the Applicant's employment with the Bank, the Applicant applied for the Operations Analyst position on 9 December 2020, interviewed for the role on 24 February 2021, and was informed of the Bank's decision not to select her for the position on 25 March 2021. The Tribunal notes that the Applicant's employment with the Bank ended approximately six months prior to the non-selection decision she is now contesting. To be clear, on 25 March 2021, there was no contractual or employment relationship between the Bank and the Applicant.

37. The Tribunal further observes that the Applicant and the Bank agree that as a former staff member the Applicant fits within the expression "member of the staff" as defined in Article II(3) of the Tribunal's Statute. Nevertheless, meeting the requirement of "member of the staff" is not sufficient in itself to establish standing before the Tribunal under Article II(1) of the Tribunal's

Statute. The staff member must also allege “non-observance of the contract of employment or terms of appointment of such staff member.”

38. The Tribunal will next consider whether the Applicant, as a former staff member, alleges non-observance of her contract of employment or terms of appointment pursuant to Article II(1) of the Tribunal’s Statute.

39. The Tribunal notes the Bank’s contention that, although the Applicant has satisfied the “member of the staff” component of Article II(1) and (3) of the Tribunal’s Statute, the Applicant has failed to satisfy the other “essential criterion [in Article II(1)] for the Tribunal to assert jurisdiction” – that former staff members must allege “non-observance of the contract of employment or terms of appointment.” The Tribunal further notes the Bank’s position that in the present case the Applicant’s claims regarding the non-selection decision in March 2021 are unrelated to the Applicant’s previous contracts with the Bank.

40. The Tribunal observes the Applicant’s contention that “the [a]llegations in the Application clearly show that [the] Applicant’s non-selection may be a result of [the] Applicant’s recent previous employment with the Bank.” In support, the Applicant states that the selection committee members present at her job interview for the Operations Analyst position asked irrelevant questions and conducted themselves in an unprofessional manner. Specifically, the Applicant contends that the selection committee members engaged in behaviors such as eye-rolling, interrupting the Applicant’s answers, and being hostile to the Applicant. The Applicant further states that she was subjected to questions which were not posed to other candidates, and which were deliberately designed to place the Applicant in a false light and show the Applicant to be failing in her interview answers. The Tribunal also notes the Applicant’s contention that the non-selection decision is a product of bias, prejudice, and improper procedures given the refusal of the selection committee to consider the Applicant’s prior experience with the Bank, including the positive reviews of the Applicant’s former supervisors.

41. The Tribunal recalls the principle articulated in *Q* [2007], para. 36, that for a former staff member to have standing their claim “must relate significantly” to the staff member’s contract of employment or terms of appointment.

42. The Tribunal also notes the decision of the United Nations Appeals Tribunal (UNAT) in the case of *Khan*, Judgment No. 2017-UNAT-727. In that case, the applicant, Mr. Khan, was employed as a Security Officer by the Department of Safety and Security (DSS) from 2005 to 2010 on a fixed-term contract. He was separated from service from the DSS on 31 May 2010. In August 2015, the applicant requested reemployment as a Security Officer with DSS. In response, he was advised that someone from DSS would contact him if there were “an availability,” but he did not receive any offers of employment from DSS within the next few months. He challenged the purported 2015 decision not to reemploy him as a Security Officer before the United Nations Dispute Tribunal (UNDT), and the claim was rejected as not receivable on the basis that he lacked standing. *See Khan*, Judgment No. UNDT/2016/097. The applicant then appealed the decision to the UNAT. The UNAT agreed with the UNDT’s decision and concluded in paragraph 29 that,

since [Mr. Khan] had not maintained any of the terms of his former employment, including his right to be re-employed, there is no sufficient nexus between his former employment that ended in 2010 and the impugned decision in 2015 not to re-employ him as a Security Officer. [Mr. Khan] has no standing to contest the decision not to re-employ him with the Organization.

43. With regard to the present case, the Tribunal observes that in December 2020 when the Applicant applied to the Operations Analyst position, and in March 2021 when the non-selection decision was made, the Applicant was not employed at the Bank and was applying as a former staff member and external candidate. Therefore, the Applicant did not have a “contract of employment or terms of appointment” at the time of the impugned decision. Further, the Tribunal is not convinced that the allegations cited above relate significantly to the Applicant’s previous contracts with the Bank. The Applicant does not demonstrate how the incidents cited above and the general allegations of “bias, prejudice[,] and improper procedures” associated with the non-selection decision in March 2021 relate to any alleged violation of her rights as a former staff member. *See Kobli*, Decision No. 588 [2018], para. 17. Consequently, the Tribunal finds that the

Applicant has not satisfied the requirement in Article II(1) of the Tribunal's Statute that requires a "member of the staff" to allege non-observance of their contract of employment or terms of appointment. As such, the Tribunal is not in a position to hear and pass judgment upon the Application pursuant to Article II(1) of the Tribunal's Statute.

DECISION

The Application is dismissed.

/S/ Mahnoush H. Arsanjani

Mahnoush H. Arsanjani  
President

/S/ Zakir Hafez

Zakir Hafez  
Executive Secretary

At Washington, D.C., 18 November 2022\*

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\* Judge Burgess attended deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.