



World Bank Administrative Tribunal

2019

Decision No. 619

**Fion de Vletter,
Applicant**

v.

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

(Preliminary Objection)

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

**Fion de Vletter,
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), Marielle Cohen-Branche, and Seward Cooper.
2. The Application was received on 1 March 2019. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the termination of his contract “with immediate effect and without prior notice.” The Applicant also alleges that he was placed on a “blacklist” by his former Task Team Leader (TTL).
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 first joined the Bank as a full-time project consultant in 1989 and, since 2003, has held different Short Term Consultant (STC) contracts.
6. By letter of appointment (LOA) dated 30 June 2017, the Applicant was appointed as an STC in the Bank’s country office in Maputo, Mozambique. The LOA stated:

We expect to need your services for about 119 days from July 04, 2017 to June 30, 2018. Your appointment will terminate accordingly unless it is extended or a new appointment is made. In the event the World Bank finds it necessary to cancel the

assignment or to shorten its duration, the World Bank reserves the right to adjust the terms of appointment as necessary.

7. On 2 March 2018, the Applicant responded to an email from the TTL, and copied to others, in which the TTL asked the Applicant to “reflect on the professionalism of your behavior.” The Applicant responded, contesting statements in the TTL’s message.

8. On 6 March 2018, the Applicant sent an email to the TTL in which he criticized how certain events had been handled and expressed that he felt unsupported by the TTL. The Applicant stated, “Since September I have not had one positive or encouraging email from you despite the many positive things I have done for [the project].”

9. On 9 March 2018, the Applicant received an email from the TTL, copied to four senior Bank staff members, informing the Applicant that his contract was terminated with immediate effect. The email stated:

With reference to your letter [of] appointment dated June 30, 2017, and as per the 3rd paragraph in the first page of the said letter of appointment, we have decided to end your consultancy with [the project] with immediate effect.

10. On 12 March 2018, the Applicant sent an email to those who were copied on the TTL’s 9 March 2018 email. The Applicant stated that he would like to “take the opportunity to present the circumstances that led to my outburst in the email to [the TTL] dated March 6th. This was the result of what I feel was [the TTL’s] inappropriate handling of these three issues.” The Applicant received no response to, or acknowledgment of, his email.

11. Approximately two weeks after the termination decision, the Applicant contacted the Human Resources (HR) Manager based in the country office. The Applicant states that the HR Manager was unaware of the termination and showed no concern over the manner in which the decision was taken, nor did she provide any advice or guidance on procedures for review or redress.

12. The Applicant states that, in September 2018, he discovered the Tribunal's judgment in *Bauman*, Decision No. 532 [2016]. To the Applicant, the *Bauman* case indicated that there had been an absence of due process in the manner in which his STC contract had been terminated.

13. In October 2018, the Applicant sent an email to the Office of Ethics and Business Conduct (EBC) complaining about the lack of due process in the termination of his STC contract. The Applicant stated:

As an STC, I assumed that paragraph 3 was a convenient escape clause which allowed the Bank to dismiss consultants without having to justify cause. However, having read through the 2016 Decision Number 532 of the World Bank Administrative Tribunal in favour of Rene Michel Bauman, I am relieved to see, especially as a former fixed term ILO [International Labour Organization] staff member, that the Bank treats STCs in the same manner as normal staff.

The Applicant sought advice from EBC on how to proceed.

14. On 24 October 2018, the Applicant had a telephone interview with an EBC investigator, who advised the Applicant to contact Peer Review Services (PRS) but also informed him that he had exceeded the 120-day limit to submit a request for review.

15. On 15 November 2018, the Applicant filed a request for review with PRS.

16. On 30 November 2018, the Applicant received an email from the PRS Executive Secretary. The PRS Executive Secretary informed the Applicant that the PRS Chair dismissed his claim as out of time pursuant to Staff Rule 9.03, paragraphs 11.02 and 11.03(b).

17. In December 2018, the Applicant was hired by the Bank on another STC contract in the same country office but with a different TTL. According to the Applicant, the new TTL informed him that his name was on a blacklist and so the Applicant's contract would have to be administered by a third party.

18. In January 2019, according to the Applicant, his new TTL informed him that the “blacklisting” was probably the result of an email circulated by the former TTL, presenting reasons for terminating the Applicant’s STC contract on 9 March 2018.

19. On 1 March 2019, the Applicant filed an Application with the Tribunal. The Applicant challenges the termination of his STC contract, with immediate effect, and his subsequent “blacklisting.”

20. As relief, the Applicant seeks the “[d]eletion from his personnel records of any prohibition on his engagement as an STC” and compensation in the amount of a three-year STC contract estimated at \$270,000.00 for the wrongful termination of his STC contract.

21. On 10 April 2019, the Bank submitted a preliminary objection.

22. For the preliminary phase of the proceedings, the Applicant claims legal fees and costs in the amount of \$12,400.00.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank’s Contentions

23. According to the Bank, the Applicant’s claims are inadmissible “because the Applicant failed to submit his Application within the required one hundred and twenty (120) day limit. Additionally, the record shows no exceptional circumstances justifying Applicant’s failure to submit his claims to the Administrative Tribunal in a timely manner.” The Bank states that the record shows that the Applicant’s claims arise from and are directly related to the termination of his STC contract on 9 March 2018. To the Bank, the *dies a quo* for the Applicant’s claim was the date on which he was informed that his STC contract would be terminated, namely, 9 March 2018. The Bank asserts that, “[i]n the gap of more than seven months between the date on which he received notice of the termination of his STC contract and his first application with PRS, there

exists no evidence in the record showing that Applicant took any action at all to contest the termination of his STC contract.”

24. The Bank disputes the Applicant’s assertion of exceptional circumstances. First, the Bank contends that ignorance of the requirements of the Bank’s internal justice mechanisms does not constitute an exceptional circumstance. Second, the Bank states that the Applicant’s discovery of the TTL’s alleged email justifying the termination and the blacklisting of the Applicant in December 2018 and January 2019 does not change the *dies a quo* of 9 March 2018, when the Applicant was notified that his STC contract would be terminated. Finally, the Bank states that the Applicant “may only challenge the terms of his own appointment” and cannot “excuse the untimeliness of his application by appointing himself the representative of all STCs.”

25. The Bank further contends that the Applicant’s allegation of blacklisting is inadmissible as it does not relate to an employment decision. To the Bank, this does not constitute a valid claim nor has the Bank ever barred the Applicant from employment as evidenced by his multiple contracts. Citing *Van Vugt*, Decision No. 179 [1997], para. 12, the Bank maintains that the re-hiring of a former staff member as a consultant is at its “entire discretion.”

26. Finally, the Bank notes that, as an STC, the Applicant is a staff member and he is subject to the Staff Rules including those that pertain to the use of the Internal Justice Services (IJS). According to the Bank, “while [it] does what it can to inform staff members about the rules and regulations applicable to their work, ultimately, a staff member is responsible for reading these rules.” The Bank contends that the “Applicant’s attempt to claim ignorance when it was his duty as a staff member to read the Staff Rules should be rejected by the Tribunal.”

The Applicant’s Response

27. The Applicant states that his Application is admissible because he sought recourse to the IJS as soon as he became aware of his rights. The Applicant maintains that, due to the provisions in his STC contract, he believed he had no recourse against a summary decision to prematurely terminate his contract. The Applicant asserts that it was only on or about September/October 2018

that he learned he could contest the Bank's decision, after which he promptly requested an investigation by EBC, filed a request for review with PRS, and filed his Application with the Tribunal within 120 days from the PRS conclusion that PRS did not have jurisdiction.

28. To the Applicant, the *dies a quo* of 9 March 2018 proposed by the Bank is "not strictly speaking correct since [the] Applicant's contract remained in force to complete work that was underway." The Applicant contends that "[i]t is reasonable to conclude therefore, that the contract could not have terminated until June 30, 2018, its termination date, since work and payments continued."

29. The Applicant beseeches the Tribunal to accept that he acted reasonably given his "status as a contractual who looked only to the 'four corners' of the contract he signed." The Applicant states that his contract did not include a provision on any form of dispute resolution. To the Applicant, the Bank cannot deny access to the Tribunal on the grounds of timeliness "where it has failed to provide for specific and binding provisions for dispute resolution in a contract it imposes on temporary staff." The Applicant also states that there was no induction process to apprise him of his rights, "since his employment was itself not continuous and not guaranteed." The Applicant avers that the Bank "failed in its duty to do, in its own words, 'all that it can' to inform him of [his] rights." He further states that, when he sought assistance from the HR Manager in the country office, immediately after the termination, he was not given any information about the applicable Staff Rules or the IJS, nor did he ever receive the selected Staff Rules that were indicated as enclosures to his LOA.

30. The Applicant further contends that his Application is also receivable since it raises other issues about the Bank's responsibility, notably, "[t]he secret communications by the responsible staff member [...] who is alleged to have informed other staff members of his reasons for firing [the] Applicant and of which the Applicant only became aware in December 2018" and "[t]he blacklisting of [the] Applicant which he only learned of in December 2018/January 2019 when [the] Applicant was informed, he could only be hired through a third party to avoid the blacklisting." The Applicant states that he submitted his Application within 120 days of becoming aware of the blacklisting and so this claim is timely.

31. According to the Applicant, exceptional circumstances exist because he was “a short-term consultant dismissed without any recourse to person or persons to assist him to bring a complaint in the IJS, operating in a remote location under a one-sided, defective contract.”

32. The Applicant asserts that a “hard look at the situation of STCs shows that in fact they are ‘staff’ only when employed under their contract.” The Applicant states that STCs have “the right to use the rest of their available time in work for other clients provided only that work does not result in a conflict of interest. They are neither regular staff nor are they long term (100%) contractuels who have the full rights of staff.” The Applicant challenges the Bank’s statement that “STCs are considered staff members in all respects.” To the Applicant, “STCs are not treated as such.” The Applicant states that STCs can “be denied work at any time, their contracts can be summarily terminated as determined by [the Bank] and there is no right to renewal even if their work is superior[.] It is inexcusable of [the Bank] to seek to pretend otherwise.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

TIMELINESS OF THE APPLICATION

33. Article II(2)(ii) of the Statute of the Tribunal provides:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

[...]

(ii) the application is filed within one hundred and twenty days after the latest of the following:

- (a) the occurrence of the event giving rise to the application;
- (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
- (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

34. The Bank contends that the Applicant's claims are inadmissible "because the Applicant failed to submit his Application within the required one hundred and twenty (120) day limit." The Bank states that the record shows that the Applicant's claims arise from and are directly related to the termination of his STC contract, and therefore the *dies a quo* for the Applicant's claim was the date on which he was informed that his STC contract would be terminated, namely, 9 March 2018. The Bank asserts that, "[i]n the gap of more than seven months between the date on which he received notice of the termination of his STC contract and his first application with PRS, there exists no evidence in the record showing that Applicant took any action at all to contest the termination of his STC contract."

35. By a memorandum dated 30 November 2018, the PRS Executive Secretary informed the Applicant that the PRS Chair dismissed his request for review because it was not submitted in time.

36. In *Ampah (Preliminary Objection)*, Decision No. 522 [2015], para. 57, the Tribunal stated that

a failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. (*See de Jong*, Decision No. 89 [1990], para. 33; *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25–26; *Peprah*, Decision No. 275 [2002], para. 24; *Islam*, Decision No. 280 [2002], para. 7).

37. In *DG*, Decision No. 528 [2016], para. 55, the Tribunal emphasized

the importance of the timely filing of applications and respect for time limits prescribed by Article II of the Statute "for a smooth functioning of both the Bank and the Tribunal." Under the terms of Article II the specified time limits may be disregarded only when the Tribunal finds that exceptional circumstances exist.

38. In *DZ (No. 2) (Preliminary Objection)*, Decision No. 590 [2018], para. 88, the Tribunal stated:

[T]here is a time period within which a claim has to be pursued before the Tribunal or other internal bodies. Timely resolution of claims is an essential feature of the

Bank's internal justice system. A staff member has to pursue a claim within the time frame articulated by the Tribunal or other bodies, counting from the day staff members knew or should have known of the claim.

39. To the Applicant, the *dies a quo* of 9 March 2018 proposed by the Bank is "not strictly speaking correct since [the] Applicant's contract remained in force to complete work that was underway." The Applicant contends that "[i]t is reasonable to conclude therefore, that the contract could not have terminated until June 30, 2018, its termination date, since work and payments continued."

40. In *Al-Muthaffar (Preliminary Objection)*, Decision No. 502 [2014], para. 40, the Tribunal explained that

what is a timely manner is delimited by the time limit stipulated in the Staff Rules for the pursuit of internal remedies which, in this case, was triggered at the time at which the Bank's decision not to extend her appointment was first notified to the Applicant. That is the *dies a quo* and it is not changed by assertion of a subsequent discovery of circumstances or allegedly false reasons given for the Bank's decision.

41. The Applicant's contention that the *dies a quo* should be 30 June 2018, the end date of his contract, is clearly inconsistent with the Tribunal's jurisprudence. The Applicant was notified on 9 March 2018 that his contract would be terminated with immediate effect. Thus it is from this day that he became aware of the disputed employment matter. The Applicant could have filed an application directly with the Tribunal or a request for review with PRS, in either case, within 120 days of 9 March 2018. The Applicant chose to file a request for review with PRS, but filed his request for review on 15 November 2018, over eight months after the date of the impugned decision.

42. The Tribunal finds that PRS correctly dismissed the Applicant's claim because his request for review was time-barred. This failure to observe the deadline to file a request for review with PRS constitutes a failure to exhaust internal remedies. *See, e.g., Moss (Preliminary Objection)*, Decision No. 571 [2017], para. 56.

EXCEPTIONAL CIRCUMSTANCES

43. Notwithstanding his failure to exhaust internal remedies, the Applicant contends that his Application is admissible because of the existence of exceptional circumstances. First, he claims that he was “a short-term consultant dismissed without any recourse to person or persons to assist him to bring a complaint in the IJS, operating in a remote location under a one-sided, defective contract.” The Applicant maintains that, due to the provisions in his STC contract, he believed he had no recourse against a summary decision to prematurely terminate his contract. The Applicant asserts that it was only on or about September/October 2018 that he learned he could contest the Bank’s decision, after which he promptly requested an investigation by EBC, filed a request for review with PRS, and filed his Application with the Tribunal within 120 days from the PRS conclusion that PRS did not have jurisdiction.

44. In *Yousufzi*, Decision No. 151 [1996], para. 28, the Tribunal stated:

The statutory requirement of timely action may [...] be relaxed in exceptional circumstances. Such circumstances are determined by the Tribunal from case to case on the basis of the particular facts of each case. In deciding that exceptional circumstances exist the Tribunal takes into account several factors, including, but not limited to, the extent of the delay and the nature of the excuse invoked by the Applicant.

45. In *Malekpour*, Decision No. 320 [2004], para. 22, the Tribunal clarified what constitutes “exceptional circumstances” explaining that they must be “real and serious impediments to exhausting internal remedies” and that “[m]ere inconvenience” is not sufficient.

46. In *BI (No. 5) (Preliminary Objection)*, Decision No. 564 [2017], para. 20, citing *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30, the Tribunal stated that it takes a “strict approach” in determining what constitutes exceptional circumstances and that “[e]xceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent ‘contemporaneous proof.’”

47. The Tribunal observes that ignorance of the law does not constitute exceptional circumstances.

48. In *Mendaro*, Decision No. 26 [1985], paras. 32–33, the Tribunal rejected the applicant’s contention that exceptional circumstances existed where the applicant had doubts as to whether the Tribunal had jurisdiction over her claim due to her employment status.

49. In *Mitra*, Decision No. 230 [2000], para. 9, the Tribunal rejected the applicant’s claim that “the Bank failed to adequately inform him of his rights” and held “that ignorance of the law is not a valid excuse for failure to comply with the prescribed time limits.”

50. In *Levin*, Decision No. 237 [2000], para. 21, the Tribunal held that

the Applicant’s argument that he was unaware of the requirements for pursuing a claim through the Bank’s grievance system [...] does not justify his untimely request for administrative review. As the Tribunal has consistently held, ignorance of the law is no excuse. [...] Rather, it was the Applicant’s obligation to keep himself apprised of his rights and to submit his request for administrative review in good time. [...] Having worked at the Bank for more than five years, the Applicant was in a position to know of the time limits for making a request for administrative review. At the very least, he could have made a prompt attempt to assert his rights by contacting the obvious sources within the Bank, such as the Staff Association, the Office of the Ombudsman or the Ethics Office.

51. In *Tucker*, Decision No. 238 [2001], para. 22, the Tribunal again explained “that unawareness of the Tribunal’s precedents and of the time limits for pursuing review is no excuse” for failure to comply with the relevant time limits. At para. 23, the Tribunal reiterated that “[t]he burden remains with disappointed applicants [...] to take the initiative to learn of whatever procedural and substantive rights they may have under the pertinent staff rules and Tribunal judgments.”

52. In *Dey*, Decision No. 279 [2002], para. 17, the Tribunal held that

it is the Applicant’s obligation to keep himself apprised of his rights and to submit his appeal in good time. [...] Furthermore, the Tribunal has also held that the Bank has no obligation to apprise an applicant of his or her rights or to offer him or her

any assistance in contesting the decision to terminate his or her employment. [...] In any event, as the Tribunal has ruled in numerous cases, ignorance of the law is no excuse [...].

53. In *Islam*, Decision No. 280 [2002], para. 16, the Tribunal considered the applicant's assertion "that his lack of access to the Bank's electronic media and Web page, and to his Bank e-mail account, delayed the filing of his Appeal." The Tribunal "found that this is not an exceptional circumstance justifying the waiver of the requirement of exhaustion of internal remedies." *Id.*

54. In *Nyambal (No. 2)*, para. 30, the Tribunal found that

[t]he jurisprudence of the Tribunal is well-established regarding the treatment of exceptional circumstances. [...] Alleged unawareness of the grievance mechanisms or ignorance of the law do not constitute such exceptional circumstances [...].

55. The Applicant states that his contract did not include any provision for any form of dispute resolution and that the Bank cannot deny access to the Tribunal on the grounds of timeliness "where it has failed to provide for specific and binding provisions for dispute resolution in a contract it imposes on temporary staff." The Applicant avers that the Bank "failed in its duty to do, in its own words, 'all that it can' to inform him of [his] rights." The Tribunal's jurisprudence on the subject demonstrates that it is ultimately an applicant's duty to "keep himself apprised of his rights and to submit his appeal in good time" and that ignorance of his rights and the Staff Rules is no excuse for untimeliness. *Dey*, para. 17.

56. The Applicant asserts the nature of his contract as an exceptional circumstance, challenging the Bank's statement that "STCs are considered staff members in all respects." The Applicant contends that "STCs are not treated as such" and that they can "be denied work at any time, their contracts can be summarily terminated as determined by [the] Respondent and there is no right to renewal even if their work is superior." As an STC, the Applicant was a staff member and he was subject to the Staff Rules including those that pertain to the use of the IJS. *See* Staff Rule 1.01, paragraph 3.01(ii), and Staff Rule 4.01, paragraph 2.01(j).

57. The Applicant claims that he learned he could contest the Bank's decision in September/October 2018, after reading a judgment from the Tribunal. However, the Tribunal has affirmed that the subsequent discovery of circumstances surrounding the decision is not the relevant date; the relevant date is the date of the disputed decision. The Tribunal emphasizes that the subsequent discovery of grounds for contesting a decision does not constitute exceptional circumstances. *Moss (Preliminary Objection)*, para. 65.

58. The Tribunal concludes that there are no exceptional circumstances in this case.

ALLEGATION OF BLACKLISTING

59. The Applicant's allegation of blacklisting warrants separate consideration. The Applicant submits that he learned of the alleged blacklisting in December 2018, such that the *dies a quo* should be set from that time. The Applicant asserts that he submitted his Application within 120 days of becoming aware of the blacklisting and so this claim is timely.

60. Article II(2)(i) of the Statute of the Tribunal provides:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless: the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal.

61. In *Malekpour*, para. 20, the Tribunal stated

that all internal remedies have to be formally exhausted and that these include timely recourse to the Appeals Committee. [...] The Applicant must formally and in a timely manner invoke and exhaust available internal remedies in order that the allegedly improper Bank decisions may be challenged in an application before the Tribunal.

62. In *Ampah (Preliminary Objection)*, para. 55, citing *Berg*, Decision No. 51 [1987], para. 30, the Tribunal stressed

the importance of the requirement of exhaustion of internal remedies, which “ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action, short of possibly protracted and expensive litigation before this Tribunal.”

63. The Applicant states that his claim regarding blacklisting is currently before other IJS units. The Tribunal finds that the Applicant has not yet exhausted internal remedies. As such, this matter is not properly before the Tribunal.

DECISION

The Application is dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 25 October 2019