



The Bench

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Judge Burgess' term coming to an end

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After ten years of service, Judge Burgess' term is coming to an end in 2023. Having completed two consecutive five-year terms, Judge Burgess is not eligible for re-appointment under the Tribunal's Statute. While the [search](#) for Judge Burgess' replacement is underway, he continues to serve as a member of the Tribunal pursuant to Article IV, paragraph 5, of the Tribunal's Statute which provides that "members of the Tribunal remain in office until they are replaced."

Judge Burgess's tenure with the Tribunal was marked by his measured judicial temperament which contributed to the spirit of collegiality and respect among the judges of the Tribunal. Serving as Vice-President from 2017 to 2019 and President from 2019 to 2021, Judge Burgess commanded respect and was regarded with high esteem by his fellow judges.

Judge Burgess joined the Tribunal in 2013 as an accomplished jurist. In 2010, he became a Justice of Appeal in the Court of Appeal of

Barbados, where he served for eight years.

Prior to this, from 2004 to 2010, he was a judge of the Inter-American Development Bank Administrative Tribunal where he served as Vice President in 2007 and 2009 and thereafter as President in 2009 and 2010. Judge Burgess also served as Dean of the Faculty of Law of the University of the West Indies from 1989-1992 and 1995-2004; as a Senator in the Senate and as a Councillor in the Council of that University; as a Professor of Corporate and Commercial Law; as a member of the Barbados Judicial Council; as a member of the Tax Appeal Tribunal in Barbados; and as Chairman of a number of national and regional committees. He is the author of two books on company law and has published widely on a range of legal issues especially in corporate and commercial jurisprudence.

In 2019, Judge Burgess became a Justice of the Caribbean Court of Justice where he will continue to serve following his tenure with the Tribunal.



Judge Burgess answering questions posed by WBG staff during a Meet the Judges outreach event. From left to right: Judge Pinto, Judge Burgess, Judge Cohen-Branche.

Upcoming Events

Fall 2023 Session Dates

The Tribunal's next session will begin on November 6, 2023. Judgments, and summaries of the judgments, will be posted on the Judgments and Orders tab of the Tribunal's [website](#).

Two non-confirmation judgments highlight what it means to be given a fair opportunity to prove ability

During the Spring 2023 session the Tribunal issued two judgments addressing non-confirmation claims, expanding its jurisprudence relating to non-confirmation of appointment cases. While both applicants raised claims pertaining to non-confirmation, based on the circumstances of each case, the two judgments reached different conclusions, one reinstating the applicant, while the other dismissed the applicant's claims.

The applicant in *GW v. IFC* joined the IFC in July 2020, commencing a one-year probationary period. In February 2021, the applicant used inappropriate language during a meeting, but thereafter apologized to his colleagues, which they accepted, and used the services of an executive coach to better integrate into the workplace culture. In May 2021, a Director met the applicant for the first time and informed the applicant's Supervisor that he found the applicant to be condescending and arrogant. The applicant also received feedback indicating that his tone was "sometimes a bit sharp." On 26 May 2021, the Supervisor extended the applicant's probation by 6 months, indicating that the applicant should improve "a bit" on his professional behavior. The Tribunal upheld the probation extension decision and found the applicant's corresponding performance rating of 2 to be appropriately assigned.

Following the probation extension, no further incidents of unprofessional behavior were cited in the record. However, on 23 November 2021, the applicant's Regional Director wrote to the applicant informing him that the IFC decided not to confirm his appointment citing the applicant's behavior as the basis for the decision.

The Tribunal examined the behavioral issues occurring prior to the probation extension as the bases for the non-confirmation decision and determined that it was unreasonable, in the circumstances of the case, for the Regional Director to solely invoke behaviors occurring prior to the probation extension as the basis for the non-confirmation. The Tribunal also determined that there were due process violations and procedural irregularities in relation to the non-confirmation decision.

The Tribunal accordingly rescinded the non-confirmation decision and ordered the IFC to reinstate the applicant or compensate him in an amount equivalent to 1.5 years' net salary. Further, the IFC was ordered to pay the applicant 9 months' net salary for the procedural irregularities and due process violations and pay the applicant's legal fees and costs.

In *GY v. IBRD*, the applicant challenged the non-confirmation of her appointment, contending that her Manager failed to establish a clear work program at the outset of her employment and failed to fairly evaluate her performance due to the Manager's removal of one of the applicant's core responsibilities – the Fragility, Conflict, and Violence (FCV) Careers portfolio – only to replace it with ad hoc projects. The applicant further contended that she was not afforded a fair opportunity to prove her abilities, did not receive meaningful supervision and guidance, and was deprived of due process.

Based on the record, the Tribunal was satisfied that the Manager established a well-defined work program for the applicant and that there was a reasonable basis for the adverse assessment of the applicant's performance. The Tribunal also found that the applicant was given a fair opportunity to prove her abilities, was provided adequate supervision and guidance, and was accorded due process during the probationary period. Consequently, the application was dismissed.

“ The Tribunal views as unfair the IFC's failure to take into account the [a]pplicant's improved behavior and, thus, finds the IFC did not afford the [a]pplicant a genuine opportunity during the probation extension to demonstrate his suitability for continued employment with the IFC. ”

- *GW*, Decision No. 686, para. 142

Judgments address jurisdiction over mobility premium claims, eligibility for long-term disability benefits, among other issues

The World Bank Administrative Tribunal heard eight cases in its May 2023 session. Four cases involved preliminary objections: *HB v. IFC*, *GZ v. IBRD*, *HA v. IBRD*, and *GX v. IBRD*. Three cases were heard on the merits: *GW v. IFC*, *GY v. IBRD*, and *GJ (No. 2) v. IBRD*. In one case, *EO (No. 4) v. IFC*, the Tribunal summarily dismissed the application in an order.

In *HB v. IFC*, the applicant challenged a determination that he was ineligible for an IFC performance award based on disciplinary sanctions imposed two years prior. The Tribunal first determined that it had subject matter jurisdiction over the applicant’s claim as he had alleged a plausible claim of non-observance of his contract of employment or terms of appointment. The Tribunal next determined that the applicant had properly exhausted internal remedies and timely filed his application with the Tribunal. The Tribunal accordingly dismissed the IFC’s preliminary objections and found that it has jurisdiction.

In *GZ v. IBRD (Preliminary Objection)* and *HA v. IBRD (Preliminary Objection)*, the applicants (i) submitted applications which required amendments and (ii) alleged unfair treatment and violations of due process by the Ethics and Business Conduct Department. In both cases, the Tribunal determined that the applications were timely submitted because the Tribunal’s Rules allow for applicants to make corrections. The Tribunal further found that both applicants submitted claims alleging non-observance of their contract of employment or terms of appointment and that it therefore has jurisdiction over those claims.

In *GX v. IBRD (Preliminary Objection)*, the Tribunal considered the applicant’s challenge to the Bank’s denial of her request for a mobility premium following her promotion to an internationally recruited GF-level position. In its judgment, the Tribunal found that the triggering event for the applicant’s claim was not the receipt of her Letter of Appointment (LOA) which noted the mobility premium policy but rather her promotion to a GF-level position four years later. The Tribunal noted that it would have been speculative and premature for the applicant, upon receiving her LOA, to challenge the application of the mobility premium policy, the application of which would be contingent on her being promoted in the future to an internationally recruited, GF-level position. The Tribunal thus concluded that the applicant’s claim became ripe upon her promotion and that the applicant subsequently timely exhausted internal remedies and timely filed her application with the Tribunal. The Tribunal finally determined that the applicant had alleged a plausible claim of gender discrimination and concluded it had subject matter jurisdiction over her claim. The Tribunal accordingly dismissed the Bank’s preliminary objections and will consider the applicant’s claims on the merits at a future session.

In *GJ (No. 2) v. IBRD*, the applicant contested the decision that that he was ineligible for Long Term Disability (LTD) benefits. The Tribunal observed that “the standard for eligibility for LTD benefits does not depend on whether a staff member is limited from performing the materials duties of their own job,” and explained that “the LTD standard is not met if a staff member is able to perform another job—whether that be a somewhat different type or level of job or a job with some accommodations—for which they are nevertheless reasonably suited by education, training or experience, despite their illness or injury.” The Tribunal concluded that the applicant’s claim for LTD benefits was properly denied. The Tribunal found that there were processing delays on the part of the Claims Administrator for which the applicant would be compensated.

The text and summaries of all the Tribunal’s judgments and orders may be found [here](#).



2023 portrait of the Tribunal Judges and Secretariat. From left to right standing: Zakir Hafez, Devon Bromfield, Farkanda Haseen, Tara Ippoliti, Robert Newman, Kaara Martinez, Mohammad Faal. From left to right seated: Judges Ann Power, Andrew Burgess, Janice Bellace, Mahnoush H. Arsanjani, Marielle Cohen-Branche, Seward Cooper, Lynne Charbonneau.