The Bench
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Tribunal thanks Judges Arsanjani and Cohen-Branche for their 10 years of service

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Upcoming Events

Session Overview

On March 5, 2024, join the virtual presentation that will share key developments and summarize the Tribunal's newest decisions. The session overview is a forum for staff and stakeholders to ask questions about the judgments and express their views.

Spring 2024 Session Dates

The Tribunal's next session will begin on April 29, 2024.

Judges Arsanjani (left) and Cohen-Branche (right) attending an event at HQ to meet and hear from stakeholders

After a decade each of dedicated service, Judges Mahnoush H. Arsanjani and Marielle Cohen-Branche will be leaving the Tribunal as their terms conclude. Both women were greatly respected by their colleagues at all levels of the Tribunal. In the words of one staff member of the Tribunal's Secretariat, "I'm honored to have met them, let alone to have been mentored by them."

Judge Arsanjani, from Iran, recently served as the Tribunal's second female president. In her two years as president, Judge Arsanjani presided over dozens of cases that resulted in important rulings on employees' rights and responsibilities. While facilitating deliberations, she offered her own views but always remained open to others.

A native of France, Judge Cohen-Branche served as a Tribunal Vice President for four years. Her perspective, influenced by French administrative law, was valued by other Tribunal members as was her strong advocacy of her views, which she always balanced with efforts to build consensus.

Both judges brought a wealth of experience in international, administrative, and banking law to the Tribunal. Judge Arsanjani, besides having written extensively on topics such as international courts and law making, served over 30 years with the United Nations Office of Legal Affairs. In that office, she held various positions, including Director of the Codification Division and Secretary to the International Law Commission. She consulted on the drafting of the Charter of the International Energy Forum and was Vice President of the American Society of International Law.

Before joining the Tribunal, Judge Cohen-Branche acted as a judge at the French Cour de cassation and as a member of the World Bank's Sanctions Board and Sanctions Commission. Building on her work in the development and private banking sectors, the judge served as ombudsperson of the French Stock Exchange Regulator. France awarded her the French legion d'honneur for her distinguished national service.

During their time with the Tribunal, both women truly enjoyed "Meet the Judges" events that allowed them to interact with staff and stakeholders. On top of their own notable careers and experience, they welcomed hearing from staff and stakeholders of any background.

From left to right: Judges Arsanjani, Burgess, and Cohen-Branche at the World Bank Atrium

Tribunal awards substantial compensation in two cases of non-renewal

Two applicants challenged decisions not to renew their employment. In *HE v. IBRD* and *HC v. IBRD*, the Bank claimed that changing business needs justified the non-renewal decisions. Although the Tribunal acknowledged in both cases the Bank's right to determine its business needs and adjust staffing accordingly, its rulings reaffirm that the Bank must still show a reasonable and observable basis for non-renewal decisions and that such decisions must not otherwise constitute an abuse of discretion.

The applicant in *HE v. IBRD* joined the Bank in 2019 as its first Chief Data Privacy Officer in the new Data Privacy Office. In discussions in 2021 about reorganizing the office and regrading the position, the applicant and the Compliance Vice President voiced concerns about the proposed changes. No changes occurred at that time. In October 2022, the applicant received notice that the Bank would not renew her appointment because senior management had decided to adjust the data privacy function and cover its leadership with lower-level staff.

Analyzing the record, the Tribunal accepted the Bank's determination of changed business needs. That is, after its initial setup, the Data Privacy Office no longer needed a GI-level director and could move under a different unit. This change, however, did not provide a reasonable and observable basis for the non-renewal decision. The applicant's role continued in the reorganized office, her skills matched those required for the new position, and she had performed well. The Tribunal found that the Bank abused its discretion and failed to treat the applicant fairly because the decision lacked transparency and the applicant received no notice that not supporting the reorganization could affect the renewal of her appointment.

> **"[W]ith respect to the non-renewal of a term appointment, the Bank must provide reasons for the non-renewal decision and those reasons must be honest rather than pretextual."**
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> – *HC*, Decision No. 694, para. 120

The Tribunal awarded the applicant two years' salary for the improper non-renewal decision and its implication on her pension benefits; six months' salary for the Bank's failure to act with fairness and transparency; six months' salary for the harm to the applicant's career prospects, reputation, and professional life; and full legal fees and costs.

The applicant in *HC v. IBRD* began a three-year term appointment in 2019. In 2021, a colleague accused the applicant of discounting his input because of his gender and nationality. The applicant claimed that, after she reported this incident, her manager "turned on her." Because of the stress of this perceived hostility, the applicant took sick leave and ultimately transitioned to Short-Term Disability. While on this leave, the applicant received notice of non-renewal, based on her lack of availability and engagement and on changed business needs in the office.

The Tribunal accepted that business needs had changed but found that the Bank did not determine whether the applicant could meet those needs. With respect to availability and engagement, the Tribunal concluded that the Bank should have addressed these performance issues through the Bank's performance management mechanism. The Tribunal found that the Bank abused its discretion and violated due process: the applicant did not benefit from the performance management process, her Talent Review lacked fairness and transparency, and the Bank did not clearly inform her about concerns affecting her continued employment.

The Tribunal awarded the applicant nine months' net salary for the improper non-renewal decision, six months' net salary for violations of due process, and full legal fees and costs.

Two misconduct cases address evidence requirements and scope of sanctions

The Tribunal heard two cases, *HD v. IBRD* and *HB v. IFC*, involving misconduct findings and sanctions. Although the cases focused on different aspects of the disciplinary process, the Tribunal's decisions clarify the organizations' responsibilities when determining misconduct and imposing sanctions.

In *HD v. IBRD*, the applicant contested the determination made by the Human Resources Department Vice President that she had committed misconduct by falsifying a COVID-19 test result and by retaliating against a technical manager working on a Bank-financed project for a project implementation unit in the Angolan Ministry of Health. She contended that she did not falsify her COVID-19 test result or perpetrate retaliation against the technical manager. She further contended that the Bank violated her due process rights and that the sanction—termination—was disproportionate to her alleged misconduct.

The Tribunal analyzed the documentary, testimonial, and circumstantial evidence to determine if the applicant had falsified her test result and knowingly presented the falsified test result to national and international authorities. Based on that analysis, the Tribunal found that the Bank did not meet its burden of presenting substantial evidence meeting the requirement of higher than a mere balance of probabilities to prove that the applicant altered or falsified the result of her COVID-19 test. In the Tribunal's view, the evidence was inconclusive. As a result, the Tribunal set aside this misconduct finding.

In considering the issue of retaliation, the Tribunal was satisfied that (i) the technical manager engaged in a protected activity (reporting the discrepant test result and international travel to the Angolan Ministry of Health), (ii) the applicant was aware that the technical manager had engaged in a protected activity, and (iii) because the technical manager had engaged in a protected activity, the applicant took deliberate retaliatory actions that resulted in an adverse employment action—the non-renewal of the technical manager's employment contract. Consequently, the Tribunal was satisfied that the Bank met its burden of proof and that there was substantial evidence, higher than a mere balance of probabilities, to support a finding that the applicant committed misconduct by engaging in retaliation against the technical manager.

Finally, the Tribunal considered the questions of due process and proportionality of the termination sanction. Although satisfied that no violation of due process rights occurred, the Tribunal—considering the specific circumstances of the case—found the termination decision to be disproportionate. It ordered the Bank to reinstate the applicant as a staff member, noting that the Bank could impose any disciplinary measure, or a combination of disciplinary measures, contained in Staff Rule 3.00, paragraph 10.06, short of termination. It also ordered the Bank to contribute to the applicant's legal fees and costs.

The applicant in *HB v. IFC* challenged a 2021 determination that a 2019 sanction prohibiting salary increases for five years implicitly made him ineligible for Departmental Performance Awards. In its decision, the Tribunal observed that the scope of the 2019 sanction is limited to the precise language of the sanction. The Tribunal noted that explicitly and strictly stated sanctions guarantee against arbitrary expansion or retroactivity. To the Tribunal, the imposition of additional disciplinary sanctions beyond the scope of the original sanction would constitute a clear violation of a staff member's contract of employment or terms of appointment. In considering these points and the language of the sanction, the Tribunal found the determination of ineligibility for performance awards to be an impermissible expansion of the original sanction that constituted unfair treatment.

To determine relief, the Tribunal considered the actual harm to the applicant—loss of opportunity to be considered for an award rather than loss of the award itself. Because not every staff member eligible to receive a performance award is selected to receive one, the Tribunal determined compensation according to the likelihood that the applicant would have been selected to receive the award in the two years he should have been considered.

The Tribunal awarded the applicant compensation for the loss of opportunity in Fiscal Years 2021 and 2022. It also ordered the IFC to include a copy of the judgment in the applicant's personnel file and to pay all his legal fees and costs.

Judgments address timeliness and unfair treatment

The World Bank Administrative Tribunal heard nine cases in its November 2023 session. Three cases involved a preliminary objection and were decided in a single, consolidated judgment: *HF, HG, and HH v. IFC*. Six cases were heard on the merits: *HB v. IFC*, *HC v. IBRD*, *GZ v. IBRD*, *HA v. IBRD*, *HD v. IBRD*, and *HE v. IBRD*.

In *HF, HG, and HH v. IFC (Preliminary Objection)*, the applicants challenged the determination that all UK national staff members were liable for their share of the UK National Insurance Contribution (NIC) and that reimbursement on past and current NIC obligations was not possible. The Tribunal found that the applicants were aware of the WBG policy as early as 2010 or 2012 and that, because there was no change since with respect to their obligations or the policy, the applications were untimely. The Tribunal accordingly dismissed the applications.

In *GZ v. IBRD (Merits)* and *HA v. IBRD (Merits)*, the applicants alleged unfair treatment and violations of due process during investigations by the Ethics and Business Conduct Department (EBC). The Tribunal was satisfied, based on the records in each case, that EBC's investigations were in accord with the applicable Staff Rules and the due process rights of the applicants. Accordingly, the Tribunal dismissed both applications.

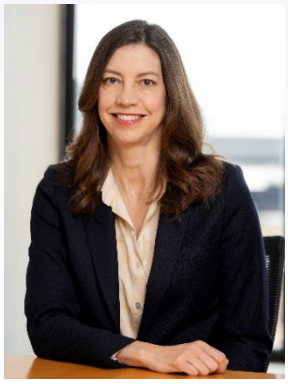
The text and summaries of all the Tribunal's judgments and orders may be found here.

Tribunal elects new leaders

During its most recent session in November 2023, the Administrative Tribunal elected Judge Janice Bellace as President and Judges Seward Cooper and Lynne Charbonneau as Vice Presidents. All three judges bring to their positions noteworthy experience.

Judge Bellace, from the United States, served as Tribunal Vice President before her recent appointment. She is a professor of legal studies, business ethics, and management at the University of Pennsylvania's Wharton School. Active in several professional organizations, she previously served as President of the International Labour and Employment Relations Association, the International Society for Labour and Social Security Law, and the US Labor and Employment Relations Association.

Judge Cooper served as the Legal Advisor to President Ellen Johnson Sirleaf of Liberia, his home country, from 2011 to 2016. Before that, he served as the first Chief Counsel and Head of Unit for Good Governance at the African Development Bank, and then as the first head of that bank's Integrity and Anti-Corruption Office.



Judge Charbonneau, from Canada, is a corporate director and lawyer with expertise in labor and employment law. She serves as Chair of the Human Resources and Compensation Committee at one of Canada's largest credit unions and is past Chair of the ActSafe Safety Association, which focuses on worker health and safety. She formerly worked in the private banking sector.