

Summary of EV v. IFC (Preliminary Objection), Decision No. 596 [2018]

The Applicant challenged the non-confirmation of his appointment. He claimed that the non-confirmation decision was based on an unfair and unbalanced performance evaluation and did not follow due process. According to the Applicant, during his probationary period, he was denied due process and a fair opportunity to prove his ability, he did not have adequate supervision and guidance, and management did not comply with Staff Rule 4.02, paragraph 2.02.

The IFC accepted that the Tribunal has jurisdiction to examine whether the IFC abused its discretion when it did not confirm the Applicant's appointment. However, it raised a preliminary objection to the admissibility of alleged administrative decisions that were taken prior to the non-confirmation decision on the basis that the Applicant had not exhausted all other remedies within the Bank Group. The IFC argued that the Applicant had not appealed, through internal mechanisms, his Fiscal Year 2016 Annual Review, two mid-year discussions, and two extensions of the probationary period. The IFC contended that the Applicant did not timely exhaust remedies with respect to his claims about management's deficiencies during the probationary period.

The Tribunal found that it may examine all of the relevant facts leading to the non-confirmation decision, such as performance evaluations, even if the only decision challenged by an applicant is the non-confirmation decision itself. The Tribunal stated that, in order to review the non-confirmation decision, it could not ignore the IFC's treatment of the Applicant throughout the probationary period as well as the IFC's assessment of the Applicant during this period. To do so would be to review the decision in a vacuum. The Tribunal held that there is no rule that requires the Applicant to appeal to Peer Review Services (PRS) every instance of management's failure to act according to the terms of his appointment, where he claims that these instances cumulatively led to an improper decision not to confirm his appointment. It would be contrary to the efficient administration of justice and impractical to require the Applicant to challenge before PRS every individual decision, directly related to the non-confirmation decision, each time it arose.

The Applicant's primary claim in this case is the non-confirmation decision, which he is entitled to submit directly to the Tribunal. The Tribunal found that the Applicant may also submit any claims directly related to the non-confirmation decision to the Tribunal.

Decision: The IFC's preliminary objection was dismissed. The IFC was ordered to pay the Applicant's legal fees and costs in the amount of \$25,582.11 for the preliminary phase of the proceedings.