

Summary of FZ v. IFC, (Preliminary Objection) Decision No. 653 [2021]

The Applicant challenged the validity of the Mediation Agreement (MOU) signed by her on 19 February 2017 and by the IFC on 16 February 2016 “on the basis that it was tainted by misrepresentation and violated the implied covenant of good faith.” The Applicant also challenged the non-renewal of her term contract with the IFC and raised various other claims in her Application. The IFC submitted preliminary objections to the admissibility of the Application.

The IFC contended that the Applicant’s challenge to the non-extension of her contract was time-barred. The IFC claimed the *dies a quo* was 15 December 2016, the date on which the Applicant received an email from a Human Resources Business Partner which stated that the Applicant’s appointment would end on 1 April 2019. The IFC claimed that the MOU of 19 February 2017 and the written notice the Applicant received on 19 September 2018 were reconfirmations of the 15 December 2016 management decision. To the IFC, the Applicant had 120 days from 15 December 2016 to challenge the non-extension of her contract but failed to do so. Further, the IFC contended that the Applicant’s challenge to her performance evaluation was inadmissible for failure to exhaust internal remedies and that the Applicant’s claims of due process violations by Peer Review Services (PRS) were outside of the Tribunal’s jurisdiction under Article II(1). Finally, the IFC contended that the Applicant failed to establish a *prima facie* case of systemic racism and that she failed to exhaust internal remedies with respect to this claim. To the IFC, the Applicant should have taken her allegations of systemic racism and retaliation to the Ethics and Business Conduct Department (EBC) before coming to the Tribunal.

The Applicant asserted that her claim regarding the non-extension of her contract was timely because she submitted her Request for Review to PRS within 120 days of her receipt of written notice of non-renewal dated 19 September 2018. The Applicant submitted that “exceptional circumstances” excused her failure to seek Administrative Review and Performance Management Review of her performance evaluation. Further, the Applicant contended that PRS violated her due process rights as a staff member. Finally, the Applicant contended that she did not fail to exhaust internal remedies with respect to her claim of systemic racism and retaliation because EBC addresses individual misconduct rather than the systemic racism she alleges, which she contends she properly reported to the office of the Chief Executive Officer of the IFC.

The Tribunal found the 15 December 2016 email did not constitute notice of the non-extension decision. Rather, the Tribunal found that the MOU left open the possibility for the Applicant’s contract to be renewed and that the written notice the Applicant received on 19 September 2018 was the effective date of notice. The Tribunal also noted that the Applicant had timely exhausted internal remedies by bringing this claim before PRS. For the performance evaluation claim, the Tribunal reiterated that it maintains a “strict approach” with respect to the statutory provision of exceptional circumstances and found the Applicant’s contentions of exceptional circumstances unpersuasive. The Tribunal also reiterated that “it is not for the Tribunal to review challenges to procedural decisions made by PRS” and found no fundamental due process rights violations which warranted its intervention in the PRS process. With respect to the systemic racism claim, the Tribunal observed that there may be a lacuna in terms of the availability of internal remedies for

This summary is provided to assist in understanding the Tribunal’s decision. It does not form part of the reasons for the decision. The full judgment of the Tribunal is the only authoritative document. Judgments are available at www.worldbank.org/tribunal.

claims of systemic racism. The Tribunal underscored the important role of EBC in conducting factual investigations relevant to discrimination claims, and, in accepting jurisdiction over this claim, the Tribunal noted that the Applicant has the option to take her claim of systemic racism and retaliation to EBC before the Tribunal examines the merits of her Application.

Decision: The IFC's preliminary objections to the non-extension claim and the systemic racism claim were dismissed. The IFC's preliminary objections to the performance evaluation claim and the due process claim were upheld. The Tribunal will address the validity of the MOU and the non-renewal of the Applicant's contract on the merits. The IFC was instructed to pay the Applicant's legal fees and costs in the amount of \$6,000.00.