



The Bench

Newsletter of the World Bank Administrative Tribunal

Tribunal Holds Session Amid COVID-19



The Administrative Tribunal's new president, Judge Andrew Burgess, led a May 25-30 session that decided 10 cases while working around pandemic-related restrictions on travel and gatherings. The session was conducted virtually, a first for the Tribunal.

"By and large, we were quite satisfied with the way in which we were able to manage the session," said Judge Burgess, noting that most of his colleagues had little or no prior experience with online deliberations. "Generally speaking, proceedings on virtual platforms in national and international courts is, in the main, a post-COVID-19 phenomenon. Speaking for myself, I had only participated in three or four virtual hearings as a judge at the Caribbean Court of Justice prior to the Tribunal's virtual session," he added.

Before joining the World Bank Administrative Tribunal, Judge Burgess served on the Court of Appeal of Barbados and the Administrative Tribunal of the Inter-American Development Bank (IDB). He was president of the IDB Tribunal in 2009 and 2010.

In his role as president of the World Bank Administrative Tribunal, Judge Burgess presides over sessions, determines when oral presentations are permitted in hearings, and facilitates consensus amongst the judges. Although dissenting opinions are permitted in the Tribunal's Statute, the Tribunal takes pride in reaching consensus. In its 40-year history, only one judgment has contained a dissenting opinion.

As president, Judge Burgess also sets the Tribunal's sessions. When COVID-19 forced lockdowns around the world, he called for the scheduled March session to be postponed. At his direction, the Tribunal rescheduled the session in May with all the work conducted remotely.

The Tribunal's seven judges come from Barbados, Canada, France, Iran, Ireland, Liberia, and the United States, and they had to coordinate the audio-visual hearings across several time zones. The session hearings required late night and early morning discussions for some.

"As president, I was encouraged by our judges' commitment to ensuring that applicants and the Bank are afforded expeditious justice," Judge Burgess said. Tribunal staff facilitated the judges' access to the Tribunal library and other resources during the session.

The Tribunal usually meets twice a year. Its next session is scheduled to begin on November 9, 2020.

"I was encouraged by our judges' commitment to ensuring that applicants and the Bank are afforded expeditious justice."

— Andrew Burgess,
Administrative Tribunal
President

Judgments Address Shortlisting, Retaliation, Misconduct

The World Bank Administrative Tribunal heard 10 cases in its May 2020 session resulting in nine judgments and one order.

Three cases involved preliminary objections: *Atkinson v. IBRD*, *FL v. IBRD*, and *FM v. IBRD*. In each case, the Tribunal dismissed the preliminary objection and the case will proceed to the merits phase during the Tribunal's next session. Notably, in *Atkinson*, the Tribunal confirmed its prior jurisprudence in interpreting Staff Rule 9.03, paragraph 7.03, which permits applicants the option to submit non-renewal claims directly to the Tribunal without first bringing them before Peer Review Services.

In *FG v. IBRD*, the Tribunal heard a challenge to a finding of misconduct in the context of provision of services to an outside entity and held that the Bank did not meet the requisite standard of proof to support such a finding. However, the Tribunal also found that the applicant did not observe generally applicable norms of prudent conduct such that some disciplinary sanctions were merited.

In *FH v. IBRD*, the Tribunal ordered a performance rating rescinded where there was no reasonable and observable basis for the rating and where the rating was set before the applicant was given the opportunity to have a performance discussion.

The Tribunal heard two challenges to redundancy decisions, *FI v. IBRD* and *FJ v. IBRD*, finding in each case that there was a lack of contemporaneous documentation surrounding the process by which the applicants' positions were identified as redundant and that there was no reasonable and observable basis for making either position redundant.

In *FK v. IBRD*, the Tribunal reaffirmed its jurisprudence that extension decisions, however discretionary, cannot be exercised in an arbitrary manner and must have a reasonable and observable basis. It ruled that the decision not to extend the applicant's Institutional Staff Resources Program assignment constituted an abuse of discretion.

Finally, in *EO (No. 2) v. IFC*, the Tribunal found that the treatment of the applicant by the shortlisting committee was arbitrary and contrary to fair procedures. It held that the applicant made a *prima facie* case of retaliation by demonstrating a direct link between the refusal to provide feedback on the non-shortlisting decision and the applicant's use of Internal Justice Services and the Tribunal.

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



Tribunal's Virtual Session – May 2020

Q&A: Judge Ann Power-Forde

The Tribunal's newest member, Judge Ann Power-Forde, is an experienced international judge currently serving on the Court of Appeal in Ireland.

Q. You have served on several courts, including the Kosovo Specialist Chambers in The Hague and the European Court of Human Rights. What sets the Administrative Tribunal apart from those experiences?

A. The Administrative Tribunal is ... comprised of judges who bring more than legal knowledge and practice to the table. Having distinguished professionals with experience from the world of business, employment, finance, and industry is something quite distinctive about the Administrative Tribunal.

Dealing with cases from all over the world was also unique. Prior to this, I had dealt only with cases coming from Europe. I found it heartening to know that all across the globe individuals at every level of the organization are working hard to achieve the commendable objectives of the World Bank. Disputes are inevitable but resolving them fairly and promptly and ensuring that both sides have equal access to an independent and impartial judicial body is what matters.

Completing deliberations shortly before midnight was also something new! Working across different time zones due to the need to deliberate remotely meant that the Tribunal sat from early morning to late at night depending on where one was situated.

Q. How was your first session with the Tribunal?

A. It's difficult getting to know new colleagues over Cisco Webex! However, in these exceptional times, that is what the prompt administration of justice required. We were assisted, admirably, by the Tribunal's staff who worked, tirelessly, to ensure that each meeting ran smoothly. My impression at the end of the session was that we had all worked hard and had succeeded in getting to know each other a little, notwithstanding the constraints imposed by remote deliberations.

I was impressed by the manner in which differences of opinion were resolved during deliberations. In principle, unanimous judgments of a collegial court, where possible, are preferable. That said, judicial independence is vital for the proper administration of justice and it is a principle which is of fundamental importance to me. When serving on the Strasbourg Court, filing a dissenting opinion was often the most effective way of developing the case law. Working with the Administrative Tribunal, I was struck by the commitment of all of the judges to reach consensus where there was disagreement without compromising respect for judicial independence.

Q. What do you do when you're not on the bench?

A. I love to sing! I love to have people gathered around our table for dinner and before the evening is out someone will sing a song or play a tune on the piano.

I also love to spend time alone, reflecting on the big questions of life. Philosophy is my first love. I am in constant amazement at this extraordinary chance of a lifetime. Every moment we get to live on this spectacular planet is precious and the challenge is that, as the human community, we look out for everyone. No matter how ostensibly insignificant our gestures may be, they can be a huge force for change. That's why the mission of the World Bank invigorates me.



“I was impressed by the manner in which differences of opinion were resolved during deliberations.”

— Ann Power-Forde,
Administrative
Tribunal Judge

About the Administrative Tribunal

Since 1980, the World Bank Administrative Tribunal has served as the independent judicial forum that decides employment-related cases submitted by World Bank Group staff members. Seven judges, all nationals of different Bank Group member states, sit on the Tribunal. They are appointed for fixed terms.

The Tribunal's decisions are final and binding.

For more information about the Administrative Tribunal and its work, visit the Tribunal's [website](#).



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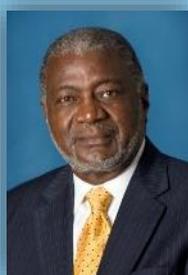


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Members of the Administrative Tribunal



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