

**ADMINISTRATIVE TRIBUNAL
OF THE AFRICAN DEVELOPMENT BANK**

QUORUM:	Judge Lombe CHIBESAKUNDA	Vice-President
	Professor Christian TOMUSCHAT	Member
	Professor Yadh BEN ACHOUR	Member
	Judge Salihu Modibbo Alfa BELGORE	Member

APPLICATION No. 2007/06

Mrs. Clotilde Anne Isabelle BAI, Applicant
African Development Bank, Respondent

Judgment of the Tribunal rendered on 8 August 2008

I. THE FACTS

1. Mrs. Clotilde Anne Isabelle BAI is senior architect currently with ONRI Department (NEPAD, Regional Integration and Trade). She joined the Bank on 14 April 2000. At the time the incidents narrated below occurred, she was serving in OCSD Department (Social Development).

The Incident of 10 April 2005

2. By Inter-Office Memorandum OCSD.2/MM/CLB/2005/03/0088 (not dated), the Applicant was ordered to proceed on mission to Burkina Faso to supervise social projects (education, health and poverty reduction) from 25 March to 10 April 2005. The actual mission ran from 27 March to 19 April 2005.
3. During the mission, she lodged at the same hotel (Hotel Silmande, Ouagadougou) as Mrs. Sylvie Anne CONDE. Mrs. CONDE is also a staff of the Bank and Chief Economist in OCCW Department (Country Operations, West Region). She was in Ouagadougou on another mission.
4. On 10 April 2005, the Applicant organized a working session in one of the Hotel meeting rooms with the following project team members: Dr. François Ramde (health), Mr. Dieudonne Sorgho (education) and Mr. Zemzari (health consultant from Tunis). The Applicant had thought that it would be useful for Mrs. Sylvie Conde - who had voiced the desire to obtain the support of the health consultant in collecting information that she would need in preparing her Country Strategy Paper (CSP) - to attend the meeting.
5. Thus, it was at the Applicant's invitation that Mrs. Sylvie Conde left her hotel room to attend the meeting with the others. However, tension mounted immediately on Mrs. Conde's arrival following her criticism of the late arrival in Ouagadougou of the health

consultant and the inadequate involvement of the Applicant's Department in the preparation of the CSP, the restitution meeting of which was planned for the subsequent day (Monday, 11 April 2005).

6. Under these circumstances, Mrs. Sylvie Conde hit the Applicant on the left side of the head. Propelled by the force of the blow, the Applicant fell backwards over her chair. The Applicant states that the blow she received is the cause of the trauma on the left auricle for which she underwent an initial medical examination the subsequent day. Thereafter, according to the Applicant, that otalgia persisted, leading to gradual loss of hearing.
7. On the evening of the day of the incident, the Applicant realized that she had lost her three earrings in the process. Thanks to the assistance of the hotel staff, two of the earrings were recovered.
8. On the evening of the same day, the Applicant sent an e-mail to her then Division Manager wherein she gave account of the mission status and the "slap" of which she was victim that day. Furthermore, she requested a meeting with Mrs. Sylvie Conde's division manager.

Attempts at an Amicable Settlement

9. On her return to Tunis, the Applicant's supervisor suggested that she should seek an amicable settlement with her attacker. On two occasions, the OSCD.2 division manager sought to reconcile the two colleagues (Mrs. Bai and Mrs. Conde). The two attempts proved unsuccessful, either party having set out hardly compatible conditions for an amicable arrangement. The Applicant demanded an objective narration of the events; Mrs. Conde demanded mutual apology.
10. By a memorandum dated 2 May 2005, the Applicant filed a complaint of "assault and battery" before the Bank. The Bank reacted by setting up an Investigation Committee on 26 May 2005. The Committee was charged with preparing a "confidential" report not later than 10 June 2005, including conclusions and recommendations addressed to the Director, Human Resources Department (CHRM). The Applicant was auditioned once by the Committee.
11. Following this complaint and with a view to settling the matter amicably, the Director of the Human Resources Department (CHRM) undertook a new initiative on 29 June 2005. During that meeting with the two parties, the CHRM Director invited the victim to accept Mrs. Conde's apology and, according to information given by the CHRM Director, the Applicant indeed accepted the apology. Moreover, since Mrs. Conde was required to confirm the apology in writing, she wrote the following Letter of Apology a few days later:

"Clotilde, Dear Colleague,

Following the meeting with the Bank's Director of Human Resources on Wednesday, 29 June 2005, to reconcile us in the wake of the regrettable incident that occurred in

Ouagadougou, I would like to confirm in writing the apology that I gave to you in his presence.

I would like to express my sincere regrets to you following the physical altercation between us on Sunday, 10 April 2005, at Hotel Silimande in Ouagadougou (Burkina Faso). I deeply regret my action which I am sure was induced by fatigue and stress. That incident should in no way affect the good professional relationship that we should have as colleagues. I am aware of the need for us as international civil servants to show exemplary conduct at all times. For my part, I hereby declare that such an incident will never happen again.”

12. The Applicant was not satisfied with this letter of apology. In a letter addressed to the Bank on 14 December 2005, she insisted that she be given access to the report of the Investigation Committee set up on 26 May 2005. She was refused access to the report.
13. On 28 December 2005, the CHRM Director sent a memorandum to the Applicant wherein he recalled that Mrs. Conde had “acknowledged her fault and expressed her deepest regrets”; that she had reiterated here regrets in writing on 7 July 2005; that she renewed “both her excuses and regrets”. Furthermore, the CHRM Director informed the Applicant that he would submit the “case to the Disciplinary Committee for consideration” should Mrs. Bai consider it “impossible” to “pardon” her colleague’s “act.”

The Pre-Jurisdictional Procedure

14. After several months (letter of 6 May 2006), the Applicant again wrote to the Bank requesting that the Bank seize the opportunity of the Annual Meetings in Ouagadougou to undertake an in-depth review of the 10 April 2005 incident by hearing from the witnesses present there. The Bank did not react to that request. By a letter dated 7 July 2006, CHRM informed the Applicant that the case was closed. By a letter dated 28 August 2006, the Applicant opposed that decision; on 4 September 2006, she requested an administrative review from CHRM.
15. On 3 November 2006, the Applicant filed an appeal before the Appeals Committee. The Bank did not submit a reply to the appeal filed by the Applicant. Instead, it decided on 1 February 2007 to set up another Investigation Committee. Considering that the matter was already before the Appeals Committee and that she had responded “unreservedly to all questions raised by members of the [first] Investigation Committee,” the Applicant refused to make any statement before the new Investigation Committee. Although the Bank [had not filed a reply], the Appeals Committee finalized its procedure by concluding on 26 March 2007 that the matter should be submitted to the Disciplinary Committee for consideration. On 30 April 2007, the Applicant was informed that the Bank President had accepted the recommendations of the Appeals Committee, judging it necessary that CHRM implement the Committee’s recommendations. Even so, no initiative was taken in that regard over subsequent months.

16. Under these circumstances, the Applicant filed an Application with the Tribunal on 18 September 2007. This Application was transmitted to the Bank on 16 October 2007. The Applicant specifies therein the subject of her claims, namely:

- “Wrongful closure of the case by CHRM” and;
- “Failure so far by CHRM to implement the recommendation of the Appeals Committee albeit approved by the Bank President, according to Mr. Daniel Tytiun’s correspondence dated 30/04/07.”

17. In a memorandum addressed to the Executive Secretary of the Tribunal dated 26 October 2007, the Bank indicated that a disciplinary procedure had been initiated against Mrs. Conde in accordance with the recommendations of the Staff Appeals Committee. The memorandum also stated that the Applicant had been accused of serious misconduct in connection with the incident that is the subject of her Application. Based on this information the Bank observed:

“As the Application sought to contest the non-implementation of a decision which has since been implemented there does not appear to be a dispute or subsisting cause of action, with regard to which an Answer may be filed by the Respondent at this time.”

II. MOTION TO DISMISS

A. The Respondent

18. In its submissions of 18 December 2007, the Respondent made a motion to dismiss this Application due to lack of a “valid reason to engage proceedings before the Tribunal” or “action pending in good and due form, of which the Tribunal had been seized”.

19. The Respondent states that it annulled “the decision of which the Applicant complains...” Even though “the Respondent had not yet implemented the decision communicated to the Applicant on 30 April 2007” at the time of filing this Application, the Respondent emphasizes that “administrative measures in the form of remedies sought before a Disciplinary Committee, is currently underway,” pursuant to the provisions of the Staff Regulations and the recommendation of the Appeals Committee.

B. The Applicant

20. The Applicant rejects the Respondent’s Answer in form and substance. She tasks the Respondent for breaching Rule XIV (1) and (2) and IX of this Tribunal’s Rules of Procedure by:

- not respecting the thirty- (30) day deadline counting from the date of filing the Application, to make a motion to dismiss. The Respondent’s submissions are dated 18 December 2007, that is, three (3) months after the filing of the Application on 18 September 2007;

- not forwarding the documents mentioned in the Motion to Dismiss that would likely buttress the Applicant's arguments before the Tribunal. That practice was clearly at variance with the position of jurisprudence (Judgment No. 1613, paragraph 14, ILO Administrative Tribunal).
21. The Respondent invokes the "absence of grounds" for the Application, claiming that there was no contested decision to attack. That argument was rather contradictory: the Respondent itself acknowledges that it took an inappropriate decision to the extent that it decided to unilaterally annul the decision.
 22. The Respondent asserts that it implemented the recommendation of the Appeals Committee not to close the case but to submit the dispute between Mrs. Bai and Mrs. Conde to the Disciplinary Committee for consideration. However, the Respondent's submissions contain no documentary evidence as proof of such action. As at the date of filing this Application (18 September 2007), the Respondent had not implemented "the decision communicated to the Applicant on 30 April 2007" (Answer, p.8). Therefore, from what time would the "so-called inadmissibility" be determined, when, at the time of filing the Application, no attempt had been made to initiate the implementation of the recommendations of the Appeals Committee? The Respondent's entire argument runs counter to paragraph 13 of Judgment No. 2584 (ILO Administrative Tribunal).

III. THE LAW

23. At the current stage of the proceedings, the Tribunal must limit itself to deciding on the Motion to Dismiss filed by the Respondent. It cannot deal with the merits of the case as questions regarding the merits of the Applicant's requests have not been sufficiently canvassed by both parties.
24. Since the Applicant asserts that the Motion to Dismiss was filed outside the time limits set by the Rules of Procedure, the Tribunal must verify if the Bank respected the 30-day deadline provided in Article XIV, paragraph 1 of these Rules. The memorandum that the Bank sent to the Executive Secretary of the Tribunal on 26 October 2007 cannot be viewed as such a motion. It was not designated as such. It aims rather to demonstrate that the claim has become moot. A Motion to Dismiss is a procedural document addressed to the other side. It must be stated clearly and unequivocally.
25. The Application was transmitted to the Respondent on 16 October 2007. However the Motion to Dismiss was only registered on 21 December 2007. It is therefore late and cannot be accepted, in accordance with Rule XIV, paragraph 1 of the Tribunal's Rules of Procedure.

IV. THE DECISION

26. For the above reasons, the Tribunal decides that:

The Respondent's Motion to Dismiss is denied.

Lombe CHIBESAKUNDA

Vice-President

Mrs. Albertine LIPOU MASSALA

Executive Secretary

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