



**World Bank Administrative Tribunal**

**2014**

**Decision No. 502**

**Ranan Al-Muthaffar,  
Applicant**

**v.**

**International Bank for Reconstruction and Development,  
Respondent**

**(Preliminary Objection)**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**Ranan Al-Muthaffar,  
Applicant**

**v.**

**International Bank for Reconstruction and Development,  
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, and Mahnoush H. Arsanjani.
2. The Application was received on 23 December 2013. The Applicant was represented by attorneys Rasem Kamal of Kamal and Associates and Ashraf Adawi. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. In this case, the Bank has raised a preliminary objection in which it requests that the Tribunal dismiss the Application on the ground that the Applicant's claims are inadmissible under Article II(2)(i) of the Statute of the Tribunal.
4. This judgment addresses this preliminary objection.

**FACTUAL BACKGROUND**

5. The Applicant had been appointed by the Bank on Short Term Consultant and Extended Term Consultant appointments since 2005. By letter dated 5 November 2009, the Applicant was offered a one year Coterminous Term appointment at the Bank as an Operations Officer at Grade F, in the Bank's West Bank and Gaza Country Office. Her appointment became effective on 9 November 2009. The letter of appointment stated, among other things:

Since your appointment is a Coterminous Term appointment under Staff Rule 4.01, you are advised that your appointment may be terminated, after the first year, as decided by the Bank Group, if the source of funding for the position terminates the funding, or if your employment is no longer required by the Bank Group, in accordance with Staff Rule 7.01 – Ending Employment.

6. The Applicant's contract was thereafter extended every year up to 31 December 2013. The Applicant claims that there was an agreement between her and the Bank Country Management office that, following 31 December 2013, her contract would be extended for at least one additional year as soon as funding from the Norwegian Trust Fund from which her Coterminous Term appointment was funded was secured.

7. On 1 July 2013, the Applicant received by e-mail a notice from the Country Director for West Bank and Gaza, Ms. M, stating that her contract would not be extended beyond 31 December 2013. The notice stated in pertinent part:

This email is in reference to our conversation today regarding the extension of your current term contract which ends on 12/31/2013. As I explained, in the context of the end of funding for the position from the Norwegian TF [Trust Fund] and in line with [Country Management Unit (CMU)] Task Force recommendations oriented to streamline the support function in CMUs, your contract will not be extended. I wanted to give you ample notice so you can start exploring alternative employment opportunities. As we also discussed there is a strong likelihood that [Finance Private Sector Development (FPD)] will be advertising a position to which you can apply if it is of interest.

8. On that same date, the post of Private Sector Development Specialist in the West Bank and Gaza Country Office was advertised on Job World. It was also advertised externally in the local newspapers as Private Sector Development Specialist/Economist.

9. The Applicant applied for the advertised position on 12 July 2013.

10. In late August 2013, the Applicant states that she found out that there would be funds available from the Norwegian Trust Fund to fund her position and that "the

information [she] has that the [Norwegian Representative Office (NRO)] will no longer fund this position is not correct.”

11. In August 2013, she was shortlisted, and was invited for an interview, for the Private Sector Development Specialist position. In September 2013, she was invited for an interview with the hiring manager, the FPD Sector Manager, Mr. B.

12. On 10 October 2013, the Applicant received an e-mail from Mr. B who informed her in respect of the post of the Private Sector Development Specialist that:

You were certainly an extremely strong candidate, however, after several interviews, considerable internal discussion, and extensive reference checking we finally decided to make an offer to another candidate, whom we feel is a better fit for this job, and who has now accepted this position.

13. The next day, the Applicant asked Mr. B the reasons behind the non-selection decision. On 5 November 2013, Mr. B informed her of those reasons and the next day the Applicant sent an e-mail to the new Country Director for West Bank and Gaza explaining the reasons for her being anxious to secure the advertised position for which she had been interviewed.

14. On 12 November 2013, the Applicant received an e-mail from the new Director for West Bank and Gaza in which he explained:

I had nothing to do with the selection of the FPD specialist, this is a sector matter.

...

[T]he short-listing and selection is a sector decision not one made by the CMU.

It was the CMUs decision to abolish the job on donor coordination and that decision I stand by. My understanding is that to facilitate your move to a sector job, the CMU has financed your work for FPD through the end of the calendar year. As you know, it is not standard practice for the CMU to pay for staff working on sector issues, this was done on an exceptional basis.

15. In November 2013, the Applicant contacted the Ombuds Services Office about the matter. After this, on 11 December 2013, she filed a request for review with Peer Review Services (PRS).

16. In her submission to PRS, she challenged the following decisions: (i) “Contract Termination by the former Country Director of West Bank and Gaza ... (‘non-extension decision’);” and (ii) “Selection Decision [for the position of Private Sector Development Specialist, Level GF in the Finance and Private Sector Development Department (MNSF1)] by the Sector Manager of FPD... (‘non-selection decision’).”

17. On 17 December 2013, PRS advised the Applicant of the partial dismissal of her claims in the decision of Peer Review Services on “the Request for Review No. 165.” It advised her among other things:

3. ... PRS has jurisdiction to review any managerial actions, inactions and/or decisions that occurred within 120 calendar days prior to the date of the filing of your submission on December 11, 2013.

4. With respect to your claims regarding the non-extension of your contract, the record shows that you received notice that your contract would not be extended on July 1, 2013. You did not file your submission until December 11, 2013, more than 120 calendar days of receiving notice of these claims. Therefore, the claims regarding the non-extension of your contract are untimely.

...

6. However, your claims regarding the non-selection decision appear to be timely as you state you received notice of these claims on October 10, 2013. You filed your submission on December 11, 2013, well within the 120 calendar day period. Accordingly, PRS will accept these claims for review.

18. On 23 December 2013, the Applicant filed her Application with the Tribunal. In it she challenges:

- a. The decision (notified to the Applicant on July 1, 2013) not to extend her employment contract with the IBRD. This decision was taken arbitrarily; and the Applicant was given false justifications for taking it; a new opening for a very similar job was announced by the [B]ank on the very same day;

- b. The decision (notified to the Applicant on October 10, 2013) not to select her for a new opening announced by the World Bank (following the decision not to extend her contract), despite her demonstrated credentials, skills, knowledge and experience; and to select an alternative candidate – for reasons not relating to merit as well as the selection process, which was tainted with irregularities and false information;
- c. The selection process through which the aforementioned selection decision was made, which was tainted with irregularities, and was made based upon false information; and
- d. Decision of the Peer Review Services #165 of partial dismissal of the Applicant’s claims; taken on December 17, 2013.

19. The Applicant requests (i) “[r]estitution to compensate [her] for the damages suffered”; (ii) “[c]ompensation in the amount of one year salary for the improper termination of the [Applicant’s contract] (failure of extension), for the irregularities in the selection process for the new position, and for the reputational and emotional damage incurred by the Applicant”; and (iii) attorney’s fees in the amount of US\$10, 000.

## THE PRELIMINARY OBJECTION

### *The Bank’s Contentions*

20. The Bank has raised a preliminary objection under Rule 8 of the Tribunal’s Rules mainly claiming that the Applicant has not satisfied the requirements for admissibility of applications set out in Article II(2) of the Statute of the Tribunal or the time limits set out by Staff Rule 9.03 (“Peer Review Services”) and requesting that the Application be dismissed as inadmissible.

21. First, the Bank contends that the Applicant’s claim regarding the non-renewal of her Term appointment is stale because she did not file a request for review with PRS within 120 days after receiving notice of such decision on 1 July 2013. It maintains that the Applicant’s argument that “she became aware of the circumstances surrounding such decision, as well as the fact that the justifications that were made to take the decision (namely the non-availability of Norwegian funds) were false, only in later August 2013” is

unavailing. This is so because the administrative decision subject to review is the decision not to extend her contract, and not the reason given for that decision. The Bank continues that, even if the Applicant “became aware of the circumstances surrounding [the non-renewal] decision ... only in late August 2013,” she may not, according to the Tribunal’s jurisprudence, seek to “toll the time limit” by contesting “alleged administrative decisions” which do not constitute separate administrative decisions but which are simply re-confirmations of the original administrative decision. The Bank maintains that whatever the Applicant allegedly became aware of in August 2013 was not a notice of a new administrative decision, and that, as such, it cannot serve as the *dies a quo* for challenging the non-extension of her contract before PRS.

22. Second, regarding the Applicant’s challenge of the “PRS’ decision to partially dismiss the Applicant’s appeal before PRS...,” the Bank concedes that the current Staff Rule 9.03 is silent on whether decisions taken by PRS relating to its competence and jurisdiction are subject to review by the Tribunal. However, the Bank argues that the Applicant’s claim as to whether PRS properly refused to assume jurisdiction and the question as to the untimeliness of her claim about non-extension of her contract are “two sides of the same coin.” The Bank’s argument continues that PRS refused to assume jurisdiction over the Applicant’s claim regarding the non-extension of her contract on the ground that it had not been filed in a timely manner and therefore the Applicant has not exhausted internal remedies. The Bank concludes that her claims before the Tribunal are inadmissible and should not be reviewed by the Tribunal.

23. Third, the Bank states that the Applicant’s claim before the Tribunal regarding non-selection for the position for which she applied is not ripe because this same claim is still pending before PRS. The Bank points out that as it has not agreed to the Applicant’s submission of her Application directly to the Tribunal and as there are no exceptional circumstances that would warrant the Applicant’s submission of her Application directly to the Tribunal, the Applicant needs to exhaust internal remedies with respect to this claim as required by the Tribunal’s Statute and its jurisprudence for her claim to be admissible before the Tribunal.

*The Applicant's Contentions*

24. The Applicant states that, while it is true that she received notice of the non-extension decision on 1 July 2013, she only became aware of the circumstances surrounding that decision, including the fact that the justifications for this decision were false, in late August 2013. Accordingly, she asserts that her submission was made well within the 120 days from the date on which she became aware of the facts and circumstances that gave rise to her request for review and that for that reason the PRS' partial dismissal of her claims is erroneous.

25. The Applicant maintains that the justification used by the former Country Director, Ms. M, not to extend the Applicant's contract did not correspond to the funding reality and was indeed false, as funding from the Norwegian Trust Fund would continue to exist beyond the end date of the Applicant's contract (31 December 2013). Furthermore, the Applicant adds that she was repeatedly promised that her contract would be renewed automatically after 31 December 2013 – a promise on which she relied and, accordingly, made critical personal decisions – and that management's breach of that promise had caused her, and will continue to cause her, severe and irreversible personal damage.

26. The Applicant also claims that the job description of the new position for which she applied was substantially similar to her job description and the tasks that she has handled throughout her employment at the Bank. This led her to believe that the ending of her contract and the posting of a new position was nothing but a process to replace her at the Bank. She adds that the decision not to select her as the winning candidate for the advertised position was improper, not based on objective and professional criteria, but rather tainted with nepotism and favoritism.

27. The Applicant rejects the Bank's claims regarding the Tribunal's lack of jurisdiction to examine her case and claims that with respect to the decision not to extend her contract, she has already exhausted all internal remedies before resorting to the Tribunal.



## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

28. The first claim of the Applicant to which the Bank has raised a preliminary objection relates to the decision of the Bank not to extend the Applicant's appointment beyond the day of its expiration on 31 December 2013. The Bank's objection is that the Applicant has not exhausted internal remedies in a timely manner with regard to this claim and that consequently it is inadmissible.

29. Article II(2) of the Tribunal's Statute sets out the requirements for admissibility of applications. It states in pertinent part:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

(i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and

(ii) the application is filed within one hundred and twenty days after the latest of the following:

(a) the occurrence of the event giving rise to the application;

(b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or

(c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

In its jurisprudence, the Tribunal has stressed the importance of the statutory requirement of exhaustion of internal remedies before an application is filed.

30. The Tribunal first held in *Klaus Berg*, Decision No. 51 [1987], para. 30, in relation to the Appeals Committee, which has now been replaced by PRS:

This statutory exhaustion requirement is of the utmost importance. It ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action, short of possibly

protracted and expensive litigation before this Tribunal. In addition, the pursuit of internal remedies, in particular the findings and recommendations of the Appeals Committee, greatly assists the Tribunal in promptly and fairly disposing of the cases before it. The Appeals Committee permits a full and expeditious development of the parties' positions, including the testimony of witnesses, and often results in the announcement of recommendations that are satisfactory to both the Bank and to the aggrieved staff member.

Since that precedent, the Tribunal has consistently affirmed this principle in its jurisprudence.

31. More importantly, in the context of this case and further to this principle, the Tribunal has in numerous decisions also regarded a staff member's failure to observe time limits for submitting an internal complaint or appeal as non-compliance with the statutory requirement of exhaustion of internal remedies. Quoting the above precedent, the Tribunal found in *de Jong*, Decision No. 89 [1990], para. 33:

On this basis the Tribunal has concluded that, where an Applicant has failed to observe the time limits for the submission of an internal complaint or appeal, with the result that his complaint or appeal had to be rejected as untimely, he must be regarded as not having complied with the statutory requirement of exhaustion of internal remedies (*Dhillon*, Decision No. 75 [1989], paras. 23-25; *Steinke*, Decision No. 79 [1989], paras. 16-17).

32. Before filing an Application with the Tribunal, the Applicant in the current case sought to pursue internal remedies by requesting review by PRS of the decision of the "Contract Termination by the former Country Director of West Bank and Gaza ... ('non-extension decision')." The real question, however, is whether she did so in a timely manner.

33. Staff Rule 9.03, Section 7, sets the time limitations for submitting a timely request for review to PRS:

7.01 A staff member who wishes to request peer review must submit a Request for Review with the Peer Review Secretariat within 120 calendar days of receiving notice of the disputed employment matter.

7.02 A staff member receives “notice” of a disputed employment matter when he or she receives written notice or ought reasonably to have been aware that the disputed employment matter occurred.

The record shows that the Applicant received written notice of the disputed employment matter (i.e. the decision not to extend her contract) on 1 July 2013 from the Country Director for West Bank and Gaza. Therefore, according to Staff Rule 9.03, paragraph 7.01, the Applicant would have had 120 days after the date of receipt of such notice, i.e. up to and including 29 October 2013, to file a timely request for review of the decision before PRS. The Applicant, however, filed her request for review with PRS on 11 December 2013, over a month after the 120-day time limit for filing a request for review had expired.

34. Given the foregoing facts and Staff Rule 9.03, paragraph 7.01, it would normally be concluded that PRS properly refused to review her claim as it was not filed in a timely manner. However, the Applicant claims that while it is true that she received notice of the decision that her contract would not be extended on 1 July 2013, she only became aware in late August 2013 of the circumstances surrounding that decision, as well as the fact that the justifications that were given for taking that decision, in her view, were false. On this basis, she asserts that her filing with PRS was made well within the 120 days from the date on which she became aware of the reasons and circumstances that gave rise to her request for review.

35. The Applicant’s assertion prompts this question: Was the date on which the Applicant had notice or ought reasonably to have known of the disputed employment matter triggering the time limit for the pursuit of internal remedies, the *dies a quo* or *terminus a quo*, (i) 1 July 2013, the date of the notice to the Applicant of the decision of the non-extension of her contract or (ii) sometime “in late August 2013,” when the Applicant says she became aware of all the circumstances surrounding that decision?

36. In considering this question, the Tribunal recalls that it has held in *Walden*, Decision No. 167 [1997], para. 20, that:

As a matter of principle, a staff member confronted with an adverse decision by the Bank should be careful to invoke administrative review within the

prescribed time. If clarification of the Bank's decision is sought by the staff member, it should be done promptly, for the time limits on administrative review would be effectively negated if the ninety-day period could be indefinitely suspended by a staff member's requests for further clarification of a decision whose purport is already quite clear.

The Tribunal also recalls that in *Kehyaian (No. 3)*, Decision No. 204 [1998], para. 23, it found that an applicant "cannot ... toll the time limit by requesting an administrative review of alleged 'administrative decisions' which do not constitute separate administrative decisions but which are simply re-confirmations of the original administrative decision." (*See also Vick*, Decision No. 295 [2003], para. 31; *Peprah*, Decision No. 275 [2002], para. 36; *Malik*, Decision No. 333 [2005], para. 32.)

37. In addition to the above precedents which support the conclusion that the *dies a quo* in the Applicant's case is the date of the notification of the non-extension of her contract, the Tribunal dealt with a case similar to the Applicant's in *Amaral*, Decision No. 250 [2001]. In that case, the Tribunal held at paras. 16-18 of its judgment:

16. The Applicant [claims] that her application to the Tribunal contests not the decision against the extension of her fixed-term contract but rather the Bank's alleged failure, contrary to its assertions in 1999, to eliminate her position and to disperse her responsibilities. The Applicant challenges "the assignment of all [her] duties to a consultant [Ms. X], and the conversion of that consultant to an open-ended staff position . . . at the World Bank some time between April and July 2000." The Applicant contends that she learned of the latter developments only in July and August 2000, so that her appeal to the Appeals Committee on September 29, 2000 should be viewed as timely.

17. The Applicant thus points to alleged circumstances arising after the expiry of her active employment on December 31, 1999, for the purpose of extending the period for filing with the Appeals Committee and the Tribunal. Even so, it is the conclusion of the Tribunal that this application must nonetheless be dismissed. The Applicant's claim in substance is that because the duties of the Secretary position were continued after December 31, 1999, she should have been allowed to continue in that post – so that it was an abuse of discretion for the Bank to let her appointment lapse on that date. The Applicant's contention is not so much that the assignment of tasks in early 2000 was in itself wrongful but rather that it confirms her charge that the so-called abolition of her position was manipulated in order that her supervisor could be rid of her.

18. Again, this is a challenge to the Bank's decision not to extend her appointment as Secretary, and it should have been pursued before the Appeals Committee in a timely fashion. The Tribunal has so held in other cases involving similar circumstances, in which the applicant has sought to extend the time for challenging an adverse decision by the Bank, by contesting instead a later communication from the Bank that simply confirmed the earlier one. (*See, e.g., Kehyaian (No. 3)*, Decision No. 204 [1998].)

38. In the present case, the Applicant, as in *Amaral*, points to alleged circumstances in relation to events that were to take place after the expiration of her contract and of which she became aware at a later time. She claims that the reasons she had been given for the non-extension of her contract, namely that (i) there would be no funding from the Norwegian Trust Fund and (ii) that CMU Task Force recommendations were made to streamline the support function in CMUs, were false. She claims that the NRO and later the CMU told her in late August 2013 that "the Norwegians would continue to fund her position." She also claims that, in fact, her job was never really abolished but that the new position that was advertised on the date on which she was given the notification of the non-extension of her contract and to which she applied was really her old job. She also claims that the ending of her contract and the posting of a new position was nothing more than a process to replace her at the Bank.

39. First, the Tribunal notes that the Applicant has not produced any evidence in support of the circumstances she claims to have discovered in relation to the non-extension decision. In fact, no evidence has been produced indicating that the Norwegian funds would still be used to fund her old position, or that she got such information from the NRO, or that the reason given for the abolition of her post was false. On the contrary, on record is an e-mail from the new Country Director that states that the CMU had abolished her post on donor coordination and that he stood by that decision. Furthermore, he explains that the CMU financed the Applicant's job on an exceptional basis until the end of her term while she worked on sector issues.

40. Second, if indeed the circumstances and false reasons which the Applicant alleges were given to her did exist and were discovered by her at a later time, the Applicant's

claim would be similar to that of the applicant in *Amaral*. The Applicant's claim then would be, as was the case in *Amaral*, that there was in fact an abuse of discretion by the Bank in not extending her appointment and that the Bank's true motivation for the termination of her contract was an improper one, namely to replace her. As found in *Amaral*, such a claim would be a challenge to the Bank's decision not to extend her appointment, contrary to her expectation, as to which the Applicant should have exhausted internal remedies in a timely fashion. Further, what is a timely manner is delimited by the time limit stipulated in the Staff Rules for the pursuit of internal remedies which, in this case, was triggered at the time at which the Bank's decision not to extend her appointment was first notified to the Applicant. That is the *dies a quo* and it is not changed by assertion of a subsequent discovery of circumstances or allegedly false reasons given for the Bank's decision. Thus, like the applicant in *Amaral*, the assertion of the Applicant in this case of a subsequent discovery of circumstances and allegedly false reasons given for the Bank's decision not to extend her contract is of no avail in determining the *dies a quo*.

41. Third, the Tribunal notes the Applicant's evidence that in November 2013 she contacted the Ombuds Services Office many times and eventually was advised to contact PRS. The Tribunal finds that there is nothing in its jurisprudence or in the Bank's rules which suggests that engaging the services of the Ombuds Services Office by itself suspends the limitation period for filing requests for review with PRS, or indeed the Tribunal. The Tribunal notes that Staff Rule 9.02, ("Ombuds Services Office"), paragraph 6.01 suggests that if the Ombuds Services Office so requests and PRS so accepts a request for extension of the time limit for filing a request for review suspends the running of the time limit in Staff Rule 9.03, Section 7. The Tribunal finds that, as there was no evidence of a request for extension of the time limit by the Ombuds Services Office in this case, the Applicant's recourse to the Ombuds Services Office in November 2013 did not operate to extend the time limit for the filing of her request for review before PRS.

42. For all of the foregoing reasons, the Tribunal finds that the Applicant did not exhaust internal remedies in a timely manner with regard to this claim. Consequently, the Tribunal finds that the Applicant's claim is rendered inadmissible unless the Applicant can

bring herself within an exception to the requirement for exhaustion of internal remedies mandated in Article II(2) of its Statute.

43. In this regard, the Tribunal recalls that, under Article II(2) of its Statute, the requirement of exhaustion of internal remedies is excused if there are “exceptional circumstances.” In *Malekpour*, Decision No. 320 [2004], para. 22, the Tribunal stated that:

The burden is on the Applicant to show that “exceptional circumstances” exist which justify relief from or suspension of the exhaustion requirement in Article II(2) of the Statute of the Tribunal. (*Hristodoulakis*, Decision No. 296 [2003], para 17).

The Tribunal finds that, in this case, the Applicant has not presented any exceptional circumstances which would justify relief from or suspension of the requirement of exhaustion of internal remedies in Article II(2) of the Statute of the Tribunal.

44. The Tribunal also recalls that, under Article II(2)(i) of its Statute, the requirement for exhaustion of internal remedies is excused “if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal.” The Tribunal finds that there is no evidence that the Bank entered into any agreement with the Applicant to allow her to submit her claim challenging the termination of her employment directly to the Tribunal pursuant to this provision.

45. Finally, the Tribunal notes in respect of the requirement for exhaustion of internal remedies that the new Staff Rule 9.03 provides at paragraph 6.02:

A staff member seeking a review of a disputed employment matter is required to submit the matter first to the Peer Review Services prior to appealing to the World Bank Administrative Tribunal, unless the matter comes under one of the exceptions listed in paragraphs 6.03 or 6.04 below.

46. Furthermore paragraph 6.03 of Staff Rule 9.03 provides:

A staff member seeking review of a decision to terminate his or her employment may elect to bypass the peer review process and file an application concerning the matter directly with the World Bank Administrative Tribunal.

47. Under this Staff Rule, the Applicant would have had the option to file an application with the Tribunal directly challenging the termination of her employment within 120 days after the notification of such termination which as seen above was 1 July 2013. However, she chose instead to file a request for review with PRS challenging both the non-extension of her contract and her non-selection to the new position for which she had applied.

48. On the basis of the above analysis, the Tribunal finds that the Applicant's claim against the decision of the Bank not to extend the Applicant's appointment beyond the day of its expiration on 31 December 2013 is inadmissible.

49. The second claim of the Applicant to which the Bank has raised a preliminary objection relates to the Applicant's challenge of the "[d]ecision of the Peer Review Services #165 of partial dismissal of the Applicant's claims; taken on December 17, 2013." Under the former Staff Rule 9.03, "Appeals Committee," paragraph 4.03, the decisions taken by the Appeals Committee relating to its own competence and jurisdiction were subject to review by the Tribunal. This was upheld by the Tribunal's jurisprudence in *Sharpston*, Decision No. 251 [2001], paras. 26-29 and *Peprah*, Decision No. 275 [2002], para. 21. While the current Staff Rule does not explicitly have any such provision, in its examination of whether an applicant has exhausted internal remedies in a timely manner pursuant to its Statute and jurisprudence, the Tribunal must of necessity examine whether an applicant brought his or her claim in a timely manner before PRS and the decision of PRS on such request for review. As the Tribunal found in *Sharpston*, at para. 26:

To the extent such remedies are subject to time requirements, failure to seek them in a timely fashion is equivalent to failure to use them, and thus a jurisdictionally fatal failure of exhaustion.

50. Recalling its earlier finding on the admissibility of the Applicant's challenge of the non-extension of her contract and its jurisprudence above at paragraph 49, the Tribunal finds that PRS arrived at the proper decision regarding its jurisdiction and competence on the Applicant's challenge of the non-extension of her contract of employment when it



found that the Applicant had failed to bring her request for review in a timely manner and that it, therefore, had no jurisdiction to review her claim.

51. The third claim of the Applicant to which the Bank has raised a preliminary objection relates to the challenge before the Tribunal of “[t]he decision (notified to the Applicant on October 10, 2013) not to select her for a new opening announced by the World Bank (following the decision not to extend her contract)” and the selection process pursuant to which this decision was reached. The Bank’s objection to this claim is that it is not ripe as it is still under review by PRS.

52. As is evident from the memorandum from the PRS Executive Secretary to the Applicant of 17 December 2013 informing her of the partial dismissal of her claims, PRS has accepted this claim for review and it is still before PRS awaiting review. Therefore, the Applicant has not yet exhausted internal remedies with regard to this claim. The Bank has not agreed to the Applicant’s submission of that claim directly to the Tribunal nor has the Applicant shown exceptional circumstances that would warrant her submission of this claim directly to the Tribunal. The Tribunal notes in this respect that a claim of non-selection does not fall under the matters that PRS does not review under paragraph 6.04 of Staff Rule 9.03 nor is it a challenge to a termination decision which the staff member may choose to bring directly before the Tribunal pursuant to paragraph 6.03. Accordingly, the Tribunal finds that this claim is not yet ripe for adjudication.

## DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 26 September 2014