



World Bank Administrative Tribunal

2013

Decision No. 479

**CE,
Applicant**

v.

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

(Preliminary Objection)

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

**CE,
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), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Ahmed El-Kosheri, Andrew Burgess and Abdul G. Koroma.
2. The Application was received on 16 November 2012. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 1 October 2013.
3. The Applicant challenges the decision that she was still disabled on 18 May 2012 and eligible for Long Term Disability benefits, such that her World Bank employment was terminated. She contends, among other things, that a wrong standard was applied and that the medical evaluations undertaken were influenced by the Bank's Health Services Department and a performance evaluation of which she was unaware and to which she had no opportunity to respond. She also claims that her termination was discriminatory.
4. The Bank has filed a preliminary objection to the Applicant's claim and requests that it be decided prior to a consideration of the merits. This judgment addresses the preliminary objection.

FACTUAL BACKGROUND

5. The Applicant joined the Bank as a Short-Term Consultant in 2000. In 2006, she was selected for the Bank's Young Professionals Program and went on to work as an Economist (Level GF).

6. In May 2010, she suffered serious injuries in a car accident while on mission in Haiti. Despite severe injuries, she made, in her words, “an almost miraculous recovery.” In February 2012, she was able to return to part-time work at the Bank, gradually increasing to four days a week.

7. During her recovery, the Applicant was placed on the Bank’s Short Term Disability program. Pursuant to Staff Rule 7.01, paragraph 7.02(a) and Staff Rule 6.22, paragraph 3.07, as then in force, the World Bank employment of a staff member who remains on Short Term Disability for two years and is still found to be disabled is terminated, and the staff member is placed on Long Term Disability. The Long Term Disability benefit is calculated as 70% of net salary during Short Term Disability. On 22 March 2012, the Applicant was notified of a preliminary determination by Reed Group (the “Disability Administrator”) that, based on the medical information then available, she would qualify for Long Term Disability as of 20 May 2012.

8. Following the car accident, the Applicant sought compensation from the Bank. After several months of settlement negotiations, on 17 May 2012, the Applicant and her husband signed an agreement with the Bank waiving and releasing certain claims against the Bank in return for a payment of a significant lump sum (the “Agreement”). This payment was intended to compensate for, among other things, the difference between the Long Term Disability benefit payments and the future salary payments the Applicant would have received had she remained employed by the Bank until the age of 62. The material terms of that agreement, for present purposes, are the following.

9. Paragraph II.3 of the Agreement states that the parties enter into the Agreement

to fully and finally settle any and all claims [the Applicant] ... may have or assert against the [World Bank] ... the bases for which exist or might exist as of the date of this Agreement, including, without limitation, all claims and controversies that arise out of or are related to the Haiti Car Accident, the administration of the Workers’ Compensation and Disability Programs, including, without limitation, a claim that the determination on [the Applicant’s] Long Term Disability eligibility or ineligibility is being made on May 18, 2012 in an unduly accelerated or rushed manner as well

as any other compensation, insurance and/or benefit whether health-related or of any other nature that may be applicable ... that were asserted in the Tribunal Action or which could have been asserted in the Tribunal Action and/or any claim or action that [the Applicant] ... may bring in any other jurisdiction or judicial or administrative body ... (hereinafter referred to as the “Claims”).

10. Paragraph III.3 of the Agreement states that the parties acknowledge

that at the time of execution of this Agreement, it is unknown whether [the Applicant] will be declared eligible for Long Term Disability insurance under Staff Rule 6.22 (Disability Insurance Program) and will therefore, be separated by the [World Bank] in or about May or June of 2012.

11. The same paragraph notes that “[t]he parties agree, therefore, to set out two alternative and mutually exclusive scenarios under which they wish to conclude the settlement.”

12. Paragraph III.2 sets out “Scenario 1” and states that the parties agree that

[i]f, on or about May 18, 2012, [the Applicant] is declared to be eligible for Long Term Disability under Staff Rule 6.22 (Disability Insurance Program), and is therefore separated from service with the [World Bank], the parties agree to the following:

- a. In return for the consideration and payments promised hereunder, [the Applicant] ... fully release[s] and waives[s] all Claims against the [World Bank] as of the effective date of this Agreement.

...

- d. In the event [the Applicant] is determined, within five years of being placed on Long Term Disability, to no longer be disabled and therefore, no longer qualified for Long Term Disability under the [World Bank] disability policy, the [World Bank] shall pay to [the Applicant] [a lesser significant lump sum] ... Under these circumstances and pursuant to Staff Rule 4.01 ¶ 8.06, the [World Bank] will endeavor to find an appropriate position for [the Applicant] at the [World Bank].

13. Paragraph IV.2 states that

[the Applicant] ... agree[s] not to make or initiate directly or through others on their behalf or with their participation any complaints,

grievances or allegations about or against the [World Bank] ... either within or outside the Conflict Resolution System and any other channels designated by the [World Bank] for such purposes, in connection with the Claims and/or any other issues resolved through this Agreement.

14. Paragraph IV.3 states

If a party believes that there has been a breach of this Agreement, either party may request the assistance of the World Bank Office of Mediation Services in an attempt to resolve the issue. If mediation is unsuccessful, [the Applicant] may request the WBAT to decide the allegation of breach of this Agreement as provided in the relevant rules.

15. Paragraph IV.4 states

Resolution: This Agreement constitutes a full and final settlement of the Claims and the issues herein agreed between the parties. **Each of the parties to this Agreement ... forever releases, remises and discharges the other from any and all actions, claims, causes of actions, contracts, covenants, whether express or implied, in any way relating to, the Claims.** ... The parties hereby release the Claims as well as any claims connected to the issues that are part of this Agreement and refrain from future legal or administrative actions related to such issues and Claims, except for purposes of implementing and if needed enforcing the terms and conditions of this Agreement. The parties fully intend that the foregoing releases are valid, effective, binding and enforceable in accordance with their terms and other terms of this Agreement, notwithstanding the possibility that the parties may thereafter discover facts that, if such facts had been known by them as of the time of execution of this Agreement, may have materially affected their decision to enter into this Agreement. Additionally, [the Applicant and her family] ... declare and represent that they fully understand the terms of this settlement and voluntarily agree to the settlement for the purpose of making full compromise, adjustment and settlement of the Claims and any claims the undersigned may have against the [World Bank] ...

16. Page 6 of the Agreement states

By signing this Agreement, the parties confirm ... that they do so voluntarily and in good-faith to fully and finally settle any and all claims.

17. The Applicant signed the Agreement on 17 May 2012.

18. On 18 May 2012, based on an Independent Medical Examination (“IME”) conducted during the period of the Applicant’s return to work, the Disability Administrator determined that the Applicant remained disabled and, in accordance with Staff Rule 7.01, paragraph 7.02(a), she was given notice of her separation from the Bank. On 12 June 2012, her World Bank employment was terminated.

19. On 16 November 2012, the Applicant filed the present Application. The Applicant challenges the standard that was used in determining that she was still disabled, arguing that a staff member is only disabled if she is unable to undertake any duty which the Bank might reasonably assign and that the assessment of her capabilities was made against a Level GF Economist position when it should have been made against “the material and substantial duties of any occupation for which the staff member is reasonably fitted by education, training or experience” in line with Staff Rule 6.22, paragraph 3.09, as in force at the material time. She also contends that the IMEs undertaken were not independent, but influenced by the Bank’s Health Services Department. In addition, she challenges a performance evaluation purportedly conveyed to the Independent Medical Evaluators on grounds that she was unaware of it, that she never had an opportunity to respond to it, and that it was inconsistent with verbal feedback she was given and therefore violated her due process rights. Finally, she claims that her termination was discriminatory and based on her disability in that, in her submission, the Bank failed to consider reasonable accommodations for her disability. The Applicant seeks specific performance of what she conceives as the Bank’s obligations, including her reinstatement to a position for which she is reasonably qualified; implementation of medical recommendations that the Applicant receive speech and language therapy and be assigned a mentor; and that the alleged irregular performance evaluation be expunged from the Bank’s records. She does not seek any damages.

20. On 20 December 2012, the Bank filed a preliminary objection relating to the admissibility of the Applicant’s claim. The parties exchanged pleadings on the preliminary objection.

THE CONTENTIONS OF THE PARTIES

21. The Bank raises two preliminary objections to the Application. First, that the Applicant has, contrary to Article II(2)(i) of the Tribunal Statute, failed to exhaust available remedies by failing to appeal the decision on her eligibility for Long Term Disability to an Administrative Review Panel. Second, the Bank contends that the claims purportedly raised by the Applicant have been waived and released pursuant to the Agreement. The parties' principal contentions on each objection are set out in turn below.

The Bank's main contentions on the first preliminary objection

22. In respect of its objection based on the non-exhaustion of available remedies, the Bank contends that the Applicant should have appealed the decision on her eligibility for Long Term Disability to an Administrative Review Panel, pursuant to Staff Rule 6.22. According to the Bank, the composition of the Panel (including a representative of the Health Services Department, the Bank's Compensation and Benefit Unit, a representative of the Staff Association and, as needed, outside medical and legal professionals) provides the medical and benefits policy expertise necessary to adjudicate any claim related to disability benefits. The Bank contends that in "a case like the one presented by Applicant, which challenges the medical determination of Applicant's disability by the Disability Administrator, the input of the medical experts on the Panel is crucial."

23. The Bank argues that the Applicant's interpretation of Staff Rule 6.22, paragraph 6.01, that only a "denial" of disability benefits can be appealed to an Administrative Review Panel, is "extremely narrow," and submits that the Staff Rule "was drafted at [a] time when no one could foresee any other kind of a challenge to the Disability Administrator's decision." In the Bank's view, while "the vast majority of cases that come before the Panel are denials of disability, the mandate of the Panel is much broader, and encompasses all decisions rendered by the Disability Administrator." The Bank considers the Panel "the only appropriate level of review because the Tribunal should reasonably rely on the Panel to evaluate the medical evidence presented and create the necessary record." The Bank further argues that "it would make little administrative

sense” if a claim related to the Disability Administrator’s decision could proceed straight to the Tribunal when a claim in connection with the Workers’ Compensation Program would have to proceed to an Administrative Review Panel under Staff Rule 6.11.

The Applicant’s main contentions on the first preliminary objection

24. The Applicant contends that on 18 May 2012, when the Disability Administrator issued its decision that she was eligible for Long Term Disability, the clear language of Staff Rule 6.22, paragraph 6.01, permitted an Administrative Review Panel to consider only claims involving “a final denial” of disability benefits. The Applicant notes that she was not denied benefits, but rather was *granted* them, leading to her termination. In the Applicant’s view, the Bank should not be permitted to “ignore the plain language [of the Staff Rule] ... just to satisfy its own position in this case.” The Applicant submits that the Bank foresaw a need to change the words of the Staff Rule months before her Application to the Tribunal, in fact amending it on 1 July 2012. Further, the Applicant argues the procedure for an appeal related to the Workers’ Compensation Program, prescribed in a separate Staff Rule, is irrelevant to that for an appeal related to the Disability Benefits Program provided in Staff Rule 6.22. In the alternative, the Applicant argues that the Tribunal has jurisdiction because she is “in essence, appealing her termination” and is therefore entitled to appeal this decision directly to the Tribunal pursuant to Staff Rule 9.03, paragraph 6.03.

The Bank’s main contentions on the second preliminary objection

25. As to its objections based on the Applicant’s alleged waiver and release of the claims made in her Application, the Bank contends that the 17 May 2012 “settlement was generous and broad in its terms, with Applicant (upon advice of counsel) agreeing to waive all claims against Respondent and Respondent’s Disability Administrator.” Further, the Agreement “was all-encompassing and forward-looking,” comprising two alternative scenarios because at the time the settlement agreement was executed it was not known whether the Applicant would qualify for Long Term Disability. According to the Bank, “the Settlement Agreement contemplated in advance the possibility of Applicant’s separation from the WBG and compensated her

accordingly ... Applicant agreed to waive her claims related to her separation from the WBG in advance.” The Bank contends that, as was the case in *BU v. IBRD*, Decision No. 465 [2012], the Applicant’s claims are reasonably related to those referred to in the waiver language of the Agreement. Similarly here, says the Bank, “the challenged decision on separation due to Applicant’s disability is not a ‘new’ decision which would fall outside the parameters of the ... Agreement ... Applicant was aware, at least as of March 22, 2012, that if Applicant could not resume her full time employment as of May 1, 2012, she would be separated from the WBG under the Disability Program.”

26. The Bank recalls that the Tribunal has emphasized the importance of allowing it to settle claims with certainty, and contends that if the Applicant is able to successfully challenge her termination this may unravel the entire agreement, requiring that she repay the substantial sum she received pursuant to it. The Bank also points out that, as early as June 2013,

as reflected in the Settlement Agreement, at the time it is determined that Applicant is not disabled, Respondent would endeavor to find an appropriate position for Applicant. Therefore, the remedy that Applicant seeks - employment at the WBG - is still available to her under the existing framework of Respondent’s rules and procedures, without the need for the Tribunal’s intervention.

27. Referring to the additional e-mail evidence, which relates to statements made during the settlement negotiations and was introduced by the Applicant in her second round pleading on the preliminary objections, the Bank deplors its disclosure and argues that it should be removed from the record of this case as it breaches the confidentiality of those negotiations. The Bank states that the negotiations were conducted under the auspices of the World Bank Office of Mediation Services. The Bank notes that Staff Rule 9.01 (“Office of Mediation Services”), paragraph 4.08, states that “information learned during the mediation process (intake, sessions, or follow up) is confidential” and “cannot be disclosed or used in any other proceeding (e.g., before ... the World Bank Administrative Tribunal).” The Bank argues that any discussion or exchange of settlement proposals in follow-up meetings to sessions facilitated by the World Bank mediators cannot be disclosed or used in Tribunal proceedings, and notes that the parties again met with the mediators when they signed the final version of the Agreement. The Bank

says further that if such evidence is admissible before the Tribunal it will reduce the candor that is possible in negotiations, and notes that there are many reasons why parties may take different positions or make various statements during negotiations.

28. The Bank further submits that the use of extrinsic evidence to interpret the Agreement is improper, unnecessary and inadmissible because: (i) the Agreement is not ambiguous and is, by its own terms, a fully integrated agreement superseding “all prior negotiations and understandings of any kind”; (ii) the evidence relates to settlement discussions conducted under the auspices of the World Bank Office of Mediation Services and the confidentiality provisions of Staff Rule 9.01; and (iii) the evidence does not, in any event, establish that the Bank agreed that claims related to the Long Term Disability determination would not be waived.

The Applicant’s main contentions on the second preliminary objection

29. The Applicant argues that the waiver was limited, by its terms, to “all Claims against the [World Bank] ... as of the effective date of this Agreement.” She states she was not aware that the Disability Administrator had used an incorrect standard in breach of the Staff Rules, nor that her manager had provided a negative evaluation of her performance, until she received the IMEs on 29 June 2012. In the Applicant’s view, her present claims fall outside of the waiver in the Agreement because they post-date it.

30. In her Response to the Preliminary Objection, the Applicant argues that the Disability Administrator’s decision was “separate and apart” from the Agreement, and that the only prospective claims the Applicant waived were expressly referenced at paragraph II.3, namely any claims that the Disability Administrator’s determination on Long Term Disability eligibility was “unduly accelerated or rushed.” The Applicant argues that her claims in the present case relate only to the Disability Administrator’s determination that was reached after the Agreement was signed and the “interference of the World Bank in influencing the outcome.”

31. The Applicant seeks to distinguish *BU* arguing that, unlike in that case, the claims in the present Application were unknown to the Applicant until after she signed the Agreement and are

quite different from the claims advanced by the Applicant prior to its signing. While the Agreement included terms that applied if the Applicant were terminated legitimately under the Staff Rules, “those terms certainly did not include any acceptance of a decision that was an abuse of discretion, was based on the wrong standard, was not independent, violated due process, and was discriminatory.” The Applicant submits that she “had every expectation that her medical situation would be fairly evaluated according to the Rules. It was not.”

32. The Applicant further contends that it is hyperbole to say that the Agreement would unravel should the Tribunal accept her claims. Rather, another part of the Agreement would come into effect. She submits that the Tribunal “should not endorse a situation where the Respondent would be free in the future to ignore its own rules and procedures simply because at some earlier time it had reached a settlement with a staff member.” She also contends that the Bank is wrong to suggest that the Applicant has the “option” to work at the Bank in future, and that she would in fact have to apply for appropriate vacancies subject to normal selection procedures.

33. When she filed her second round pleading on the preliminary objections, the Applicant attached an annex containing e-mail correspondence between her attorney and counsel for the Bank which, the Applicant submits, proves that the Applicant did not waive her claims to challenge the Long Term Disability determination.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

34. The Bank’s preliminary objections raise two issues. The first is whether the Applicant failed to exhaust other available remedies within the Bank Group before filing her Application, as required by Article II(2)(i) of the Tribunal’s Statute.

35. Article II(2)(i) of the Statute provides that no application shall be admissible, except under exceptional circumstances or where the respondent has so agreed, unless the applicant has “exhausted all other remedies available within the Bank Group.” This requirement “ensures 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 the Tribunal” (*Klaus Berg*, Decision No. 51 [1987], para. 30).

36. The Bank contends the Applicant should have appealed the decision of the Disability Administrator before an Administrative Review Panel pursuant to Staff Rule 6.22, before proceeding to the Tribunal. The Applicant contends that she is entitled to apply directly to the Tribunal because the Staff Rules did not provide her with any other internal remedy.

37. Staff Rule 6.22, paragraph 6.01, as in force at the relevant time, states, in relevant part:

A claimant who wishes to appeal the final denial of a claim for disability benefits by the Disability Administrator may, within 90 days of receiving notice of the decision, request administrative review of the decision from an Administrative Review Panel.

The parties agree that this is the Staff Rule applicable in the present case. The Applicant argues her situation falls outside this rule because she is challenging the fact that she was *granted* Long Term Disability, rather than a denial of a claim for disability benefits.

38. The Tribunal has held that questions of interpretation of rules governing the employment relationship must be decided by application of “the internal law of the Bank as the law governing the conditions of employment.” (*de Merode*, Decision No. 1 [1981], para. 27.) The Tribunal first looks to the plain and ordinary meaning of the rule (*Mould*, Decision No. 210 [1999], para. 13.) In appropriate cases, in addition to the text itself, the Tribunal may have regard to the object and purpose of the rule (*Cissé*, Decision No. 242 [2001], para. 23.) The Tribunal has also held that, where there is ambiguity, the applicant should receive the benefit of the doubt (*Cissé*, para. 31.)

39. These canons of interpretation in mind, the Tribunal cannot accept the Bank’s contention that the Applicant’s interpretation of the Staff Rule is overly narrow or illogical. The Applicant is entitled to rely on the plain and ordinary meaning of the Staff Rule. While it is true that Annex B to Staff Rule 6.22 uses the term “decision” rather than “denial,” this does not change the meaning of the Staff Rule itself. That the Bank deemed it appropriate to amend Staff Rule 6.22 on 1 July 2012 and that the relevant provision, paragraph 9.01, now refers to appealing “the

denial of a claim for disability benefits *or a decision taken in connection with the administration of a claim*” (emphasis added) supports the Applicant’s contention that the plain and ordinary meaning of the Staff Rule previously in force provided no avenue for the pursuit of a claim arising out of the grant of benefits.

40. The Bank submits that the Tribunal should have the benefit of an Administrative Review Panel’s evaluation of the medical evidence. The Applicant rebuts that the issue in the present case is not the Applicant’s medical condition, but whether the Disability Administrator applied the wrong standard (namely, assessing her capabilities against a Level GF Economist position as against “the material and substantial duties of any occupation for which the staff member is reasonably fitted by education, training or experience”); whether the Independent Medical Evaluators were independent; whether her manager’s assessment of her performance violated due process; and whether her termination was discriminatory. The Tribunal accepts the Applicant’s position that these claims require the application of legal standards and that it would be possible to evaluate them without special medical expertise.

41. The Tribunal now turns to consider whether the 17 May 2012 Agreement embodies a waiver of the Applicant’s right to bring the present claims.

42. The Tribunal has long accepted that staff members may release claims and waive recourse to the Tribunal; *Mr. Y*, Decision No. 25 [1985]; *Kirk*, Decision No. 29 [1986]; *Gamble*, Decision No. 35 [1987].

43. In *BU*, Decision No. 465 [2012], paras. 24 and 33, the Tribunal held that the interpretation of waiver agreements is “based on the plain, ordinary and generally accepted meaning of the words used” and acknowledged the importance of giving effect to binding settlements of disputes. In *Mr. Y*, para. 26, the Tribunal remarked that:

It would unduly interfere with the constructive and efficient resolution of ... claims if the Bank could not negotiate – in exchange for concessions on its part – for a return promise from the staff member not to press his or her claim further. If such an agreed settlement were not binding upon the affected staff member, there would be little incentive for the Bank to enter

into compromise arrangements, and there might instead be an inducement to be unyielding and to defend each claim through the process of administrative and judicial review.

44. The 17 May 2012 Agreement between the Applicant, her immediate family and the Bank incorporates a very broad waiver and release of the Applicant's claims. Paragraph II.3 of the Agreement states that the parties agree to "fully and finally settle *any and all* claims [the Applicant] ... may have or assert against the [World Bank] ... the bases for which exist *or might exist* as of the date of this Agreement" (emphasis added). The same paragraph then goes on to detail certain categories of claims, including those arising out of or related to the Haiti car accident and the administration of the Disability program, but expressly states that these categories are included in the waiver "without limitation."

45. The Applicant argues that what she calls the Disability Administrator's "abusive decision-making process" was "separate and apart" from the Agreement, and that the only prospective claims she waived were expressly referenced at paragraph II.3, namely any claims that the Disability Administrator's determination on Long Term Disability eligibility was "unduly accelerated or rushed." The wording of paragraph II.3, however, supports neither contention. On the contrary, paragraph II.3 expressly waives claims "that arise out of or are related to ... the administration of ... the Disability Programs." The Tribunal considers a determination on benefits eligibility to be central to such administration. Furthermore, the reference in paragraph II.3 to a claim based on an unduly accelerated or rushed decision is once again prefaced by the words "including, without limitation."

46. The Applicant refers to the fact that paragraph II.3 of the Agreement waives claims "the basis for which exist or might exist as of the date of the Agreement" as a material limitation on the scope of the waiver. This scope, however, is clearly expanded by paragraph IV.4 which specifically "releases, remises and discharges" claims "relating to, the Claims ... as well as any claims connected to the issues that are part of this Agreement."

47. The Applicant also argues she could not have waived her present claims since they were unknown to her until after she had signed the Agreement. As a matter of law, however, the

Tribunal considers it possible to waive unknown claims, including claims that may arise in future, if that is what the parties contract to do. Paragraph II.3 refers to the waiver of claims “which exist or might exist as of the date of the Agreement.” Should there be any doubt as to whether a particular claim “might” have existed as of the date of the Agreement, paragraph IV.4, in a section marked in bold, goes on to “forever release, remise and discharge ... any and all actions, claims, causes of actions ... *in any way relating to, the Claims*” (emphasis added). The same paragraph adds that the “parties hereby release the Claims *as well as any claims connected to the issues that are part of this Agreement*” (emphasis added). The parties went on, in the same paragraph, to record their agreement that the “foregoing releases are valid, effective, binding and enforceable ... notwithstanding the possibility that the parties may thereafter discover facts that, if such facts had been known by them as of the time of execution of this Agreement, may have materially affected their decision to enter into this Agreement.” These provisions have the effect of waiving claims that come into existence after the date of the execution of the Agreement as long as such claims *relate to or are connected to* the claims and issues referred to in the Agreement. Given the terms of paragraph IV.4, the dispositive issue is whether the Applicant’s present claims at least relate to or are connected with the claims released by the Agreement. The Tribunal considers that they are so related and connected.

48. Paragraph IV.4 also stands at odds with the Applicant’s submission that the Agreement “did not address or settle any claims relating to” the Long Term Disability determination. Reading paragraphs II.3 and IV.4 together leaves the Tribunal in no doubt that the Applicant waived any claims related and connected to the administration of the Disability Programs, and the related termination of the Applicant’s employment which was specifically anticipated in the terms of the Agreement.

49. The Tribunal does not accept that waivers stated in such broad terms were intended to preserve the Applicant’s right to bring a claim related to the process underlying the decision of the Disability Administrator that, as the parties were fully aware, was due very soon after the execution of the Agreement. The Tribunal is mindful of the fact that many courts take a cautious approach to upholding waivers of employment rights, in light of presumed unequal bargaining power, and the importance of certain rights. In all the circumstances of this case, however,

including the substantial nature of the financial settlement, the Applicant's representation by counsel and the broad terms used in the Agreement, the Tribunal considers the waiver of rights to be valid and enforceable. Faced with such terms of settlement, the Tribunal would discourage future settlement efforts if it held these claims admissible. The Tribunal considers that the Agreement waives the Applicant's present claims and that no policy reason prevents the Tribunal from upholding such a waiver in the circumstances of this case.

50. As regards the e-mail evidence submitted by the Applicant, the Tribunal notes that Staff Rule 9.01 ("Office of Mediation Services"), paragraph 4.08, states that "information learned during the mediation process (intake, sessions, or follow up) is confidential" and "cannot be disclosed or used in any other proceeding (e.g., before ... the World Bank Administrative Tribunal)." As the Bank notes, there are important policy reasons for protecting the confidentiality of statements made in good faith settlement negotiations, and in particular, those that follow on formal mediation sessions. The Tribunal notes the Bank's submission that the parties attended sessions facilitated by the World Bank Office of Mediation and that the parties again met with the mediators when they signed the final version of the Agreement. The Tribunal concludes that Staff Rule 9.01, paragraph 4.08, is intended to exclude evidence of negotiations conducted in the context of a mediation from consideration by the Tribunal. The statements on which the Applicant attempts to rely are consequently inadmissible.

51. In addition, the Agreement is detailed, specific, and, when read as a whole, in particular with the conjunction of paragraphs II.3 and IV.4, unambiguous. As the Bank points out, paragraph IV.9 expressly states that the Agreement "supersedes and cancels all prior negotiations and understandings of any kind with respect to the subject matter." It is plain that the Agreement represents the parties' final terms. Even in the absence of express exclusion by an applicable Staff Rule, for reasons of practical policy, evidence of negotiations preceding a final written agreement cannot generally be admitted.

52. In the context of an agreement involving a substantial financial settlement knowingly concluded prior to receipt of a key decision, with the benefit of legal counsel on both sides, and in light of the importance that disputes can be efficiently resolved through binding settlements,

the Tribunal holds the Applicant's present claims have been waived and are consequently inadmissible. Having regard to the exceptional circumstances of the case, the fact that the Applicant prevailed on one issue, as well as the quality and economy of the presentations of her case, the Applicant's application for costs is granted in full.

DECISION

- (1) The Preliminary Objection is upheld and the Application is accordingly dismissed.
- (2) The Bank shall pay the Applicant's costs in the sum of US\$14,500.04.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D.C., 3 October 2013