



World Bank Administrative Tribunal

2017

Decision No. 575

**DG (No. 2),
Applicant**

v.

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

(Preliminary Objection)

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

**DG (No. 2),
Applicant**

v.

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

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Stephen M. Schwebel (President), Abdul G. Koroma, and Marielle Cohen-Branche.
2. The Applicant's second Application was received on 28 April 2017. The Applicant was represented by Stephen Schott of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges: "a. [t]he decision to force her to take Long Term Disability [LTD]; b. [s]eparation from the Bank Group on grounds of LTD; c. [f]ailure to implement the Tribunal's Decision No. 528 in a fair and timely fashion; and d. [f]ailure to properly notify her of decisions affecting her career."
4. On 30 June 2017, the Bank submitted a preliminary objection contesting the admissibility of the Application under Article II of the Tribunal's Statute. This judgment addresses the Bank's preliminary objection.

FACTUAL BACKGROUND

5. The historical context of this case is contained in *DG*, Decision No. 528 [2016]. In that case, the Applicant challenged the termination of her employment despite her placement on Short-Term Disability (STD). The Tribunal held, *inter alia*, that "the Bank shall reinstate the Applicant to its employ and treat her as a staff member on STD whose start of disability or 'first day of absence due to illness or injury which leads to disability' is 10 December 2014." *DG*, para. 170.

6. The Applicant was reinstated as a staff member of the Bank on STD.

7. According to Staff Rule 6.22 on the Bank's Disability Insurance Program, the maximum period a staff member can be on STD is two years from the date of disability after which a staff member either: a) returns to work full time; b) is declared eligible for LTD and is separated from the Bank with LTD benefits; or c) is declared ineligible for LTD and is separated from the Bank.

8. The Applicant was assessed by the Bank's Disability Administrator, the Reed Group, for eligibility for LTD benefits. Following an Independent Medical Evaluation (IME) in September 2016, the Reed Group determined that the Applicant qualified for LTD benefits. The IME found that the Applicant was "limited from performing the material duties of any occupation for which the staff member is reasonably suited by education, training or experience."

9. On 10 October 2016, the Reed Group sent the Applicant an email message which included a letter on its determination of her LTD status. The determination letter stated:

After careful review of your case, Reed Group has determined that you are eligible for Long Term Disability benefits effective 12/10/2016, in accordance with World Bank Group Staff Rule 6.22.

[...]

IMPORTANT: Your employment with the World Bank Group ends on 12/09/2016. You will be contacted separately by a representative from Human Resources [HR] who will assist you with your ending employment benefits.

[...]

Enclosures: Staff Rule 6.22 for Long Term Disability.

10. On 20 October 2016, the Applicant's counsel sent a letter to a Lead HR Specialist seeking an agreement "whereby [the Applicant] would accept to separate from the World Bank into retirement on the basis of a [Mutually Agreed Separation (MAS)] giving her a severance payment equivalent to redundancy terms." According to the Applicant's counsel, the Bank "would also provide [the Applicant with] assistance for training and for regularizing her legal status in the U.S. through the services of an immigration attorney." The Applicant's counsel argued that the Bank's implementation of *DG* had serious shortcomings stating: "Despite our request we have not been given the information we requested of sick leave balance and accruals of leave during STD." He

further noted that “the Bank has made no attempt to put [the Applicant] back in her proper visa status as a G4.” The Applicant’s counsel made the following offer:

In consideration of the above, [the Applicant] is prepared to withdraw her disability claim and surrender her right to return to the WB for the 37 days['] employment to which she is entitled under decision No. 528 of the WBAT and forego all other claims against the WB that result from the implementation of the WBAT decision, such as restoration of her G4 visa.

11. On 27 October 2016, a Senior Counsel in the Bank’s Legal Department responded to the Applicant’s counsel’s correspondence, with the Applicant in copy. The Senior Counsel conveyed the Bank’s view that mediation would not be productive. She stated:

As we advised you during our meeting in July, 2016, we are unable to accept your settlement offer. [The Applicant] had made her choice to pursue [the Institutional Staff Resources Program (ISRP)] under the terms of which she waived her right to a redundancy. Paying her severance payment now would result in a double recovery to which we cannot agree. You may continue to disagree with the terms of the ISRP, but the Tribunal’s decision is conclusive in that respect.

12. The Senior Counsel added:

As you know, [the Applicant] was approved for Long Term Disability as of December 10, 2016, which is the date she will be separated from WBG. Should she wish to withdraw her claim for disability and return to work for 37 remaining days of employment, an IME would need to be conducted to confirm that she can fulfill the material duties of her job on a full time basis.

13. Regarding the Applicant’s counsel’s assertions on the sick leave balance, the Senior Counsel responded:

[B]oth you and [the Applicant] have been informed regarding the sick leave balance that [she] has accrued. Please refer to [the Lead HR Specialist’s] email of June 3, 2016 and my email to you of August 15, 2016. [The Lead HR Specialist] offered, on several occasions, to meet with [the Applicant] to discuss any particular questions she may have regarding calculations, and he is yet to be taken up on his offer.

14. The Senior Counsel included in her message a portion of Staff Rule 6.22, paragraph 7.10 which notes that “[s]taff do not accrue sick, annual, or maternity leave, provided under Staff Rule 6.06, ‘Leave,’ and do not use any paid leave benefits while receiving Disability Pay.”

15. With respect to the Applicant’s counsel’s comments about the G-4 visa, the Senior Counsel stated the following:

[The Lead HR Specialist] advised you on June 3, 2016 of the Bank’s position and proposed a way forward. We have not heard from you or your client whether [the Applicant] was going to leave the country to obtain her G-4 visa, nor did she request a letter from the Visa Office confirming her employment status. At this point, considering that [the Applicant’s] separation is happening in a little bit more than a month, I am not sure what kind of employment verification letter the Visa Office will be able to issue her.

16. On 9 November 2016, the Applicant’s counsel sent a letter to the Lead HR Specialist in response to the email from the Senior Counsel. In his letter, the Applicant’s counsel reiterated that several aspects of the Tribunal’s judgment had not been properly implemented such as her visa status, the financial payments including legal fees, revision of medical reimbursements for her dependent spouse, and an accounting of her sick leave. The Applicant’s counsel restated his proposal for mediation or direct negotiation.

17. On 16 November 2016, the Senior Counsel responded by email to the Applicant’s counsel. She noted that with respect to the enquiry on payments, the Lead HR Specialist was waiting for the Applicant’s confirmation to release the funds to the Applicant, and indicated that the funds were being authorized for payment that week. The Senior Counsel further addressed the accounting of the Applicant’s sick leave stating that a balance of the leave would be provided to the Applicant’s counsel. She provided the Applicant’s counsel with the contact information of the person who could address the medical reimbursements for the Applicant’s dependent spouse. With respect to the Applicant’s immigration status and G-4 visa, the Senior Counsel reiterated the Bank’s views expressed in her email of 27 October 2016. She noted that the Bank’s Visa Office is “obligated to report terminated staff to the State Department following their termination. This, indeed, occurred in [the Applicant’s] case shortly after her separation in January, 2015.” The Senior Counsel stated that the Applicant had the responsibility to ensure that she was in the correct

visa status and that the Bank was aware that the Applicant was eligible for a “green card either through her spouse or through a special immigration provision.” The Senior Counsel informed the Applicant’s counsel that the Visa Office was reaching out to the State Department to re-register the Applicant as an active staff member. She specified that there was a thirty-day grace period given to staff members whose employment with the Bank had ended to either depart the United States or begin the process to change their visa status.

18. On 18 November 2016, the Applicant received an email message from an HR Specialist who wrote to her to review “the benefits you will have under the Long-Term Disability (LTD) program for which the Reed Group has deemed you eligible for as of 12/10/2016.” The Applicant was expressly informed that “[w]hen you begin LTD on 12/10, your employment with The World Bank Group will terminate.”

19. On 5 December 2016, the same HR Specialist sent an email message to the Applicant to review the Applicant’s sick and annual leave, provide her with her annual leave balance, and enumerate the options which were available to the Applicant.

20. On 12 December 2016, the Applicant went to the Bank seeking to return to work on the grounds that she was fit to return.

21. On the same day, the Applicant received an email message from HR notifying her that the U.S. Department of State had returned her passport with a renewed G-4 visa. Two days later, the same HR representative contacted the Applicant by email to remind her that her passport was available for collection. The Applicant was also reminded that as a “G4 visa holder who has officially departed the World Bank, please be advised that US Customs and Immigration (USCIS) allow a 30-day grace period from completion of assignment to either depart the United States or begin the change of visa process. After 30 days, USCIS may start to count those days as overstay which could affect any change of visa status requests submitted to them.”

22. On 16 December 2016, the Applicant received a copy of the Ending Employment Memorandum noting that she was separated from employment with the Bank on LTD effective 10 December 2016.

23. On 20 December 2016, the Applicant held a meeting with the HR Corporate Operations Manager to discuss the Ending Employment Memorandum. Pursuant to the meeting, the HR Corporate Operations Manager sent the Applicant an email message stating: “As for your LTD, and your objection thereto, I attach an electronic pdf File outlining the appeals procedures with respect to STD/LTD determinations.” The Applicant responded reiterating some of the “unresolved issues” which included the “poor and non-implementation of Decision 528 such as delayed payment of monies owed, no accounting for sick leave until today, repeated incorrect and improper guidance on how to reinstate me, e.g., in the matter of the G4 visa.”

24. On 21 December 2016, the HR Corporate Operations Manager informed the Applicant that he had “double checked” and the appeals procedure was “applicable for staff who wish to contest approval of LTD.” In response to the Applicant’s request for clarification, the HR Corporate Operations Manager responded on 22 December 2016 attaching the appeals procedure document. He stated, “[m]y understanding from our meeting is that you wish to contest the determination you remain unfit for work duty inside the WBG as well as outside the WBG, and thus you have been placed on the WBG’s LTD program. The Appeals Procedure that I attached in my previous e-mail (and hereby attach again) is the correct procedure.”

25. On 28 April 2017, the Applicant submitted an Application to the Tribunal challenging: “a. [t]he decision to force her to take Long Term Disability; b. [s]eparation from the Bank Group on the grounds of LTD; c. [f]ailure to implement the Tribunal’s Decision No. 528 in a fair and timely fashion; and d. [f]ailure to properly notify her of decisions affecting her career.” In addition, the Applicant refers to the Institutional Staff Resources Program (ISRP) Agreement which was addressed in *DG*, and claims that the Bank’s actions and inactions following the decision in *DG* contribute to the invalidity of the ISRP Agreement. The Applicant seeks:

1. Reinstatement for the 37 days owed pursuant to Staff Rule 6.22. Or, in the alternative, a severance package commensurate to the package a Staff Member

would have received upon a procedurally proper premature separation from employment, i.e., violation of contractual rights.

2. Damages for lost career opportunity, for reputational damage, lost work opportunities and physical/mental/emotional stress, reasonably assessed.

26. The Bank submitted a preliminary objection arguing that: a) the claim that the Applicant was wrongfully terminated by being placed on LTD is not properly before the Tribunal because the Applicant failed to exhaust internal remedies; b) the Applicant raises issues in her Application which are *res judicata*; and c) the only admissible claim is the allegation that the Bank failed to implement Decision No. 528 in a fair and timely manner, which the Bank will contest in its Answer.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank's Preliminary Objection

The Application does not comply with the requirements of Article II, paragraph 2(i) of the Statute of the Administrative Tribunal

27. According to the Bank, the only claim which is properly before the Tribunal is the contention that the Bank failed to timely and appropriately implement the Tribunal's decision in *DG*, Decision No. 528 [2016]. To the Bank, the Applicant's other claims, namely the challenge of the Reed Group's determination of her LTD status and her continued challenge of the ISRP Agreement, are untimely and barred by *res judicata*, respectively.

28. The Bank contends that the Applicant failed to exhaust the administrative remedies available to her by not appealing the Reed Group's determination of her LTD status in a timely manner. According to the Bank, the Applicant should have challenged the decision to place her on LTD before the Administrative Review Panel pursuant to Staff Rule 6.22. The Bank asserts that the record shows that the Applicant never appealed the Reed Group's decision before the Administrative Review Panel, nor did the Bank agree for the Applicant to submit her claim directly to the Tribunal.

29. The Bank notes the Applicant's assertion that she never received the Reed Group's letter, nor did the letter, once received, indicate how she was supposed to challenge it. The Bank submits evidence that the Reed Group sent its decision on 10 October 2016 to the Applicant's email address, an email address she previously used to communicate with the Bank. The Bank argues that even if the Applicant did not receive it, she nevertheless received notice on 17 November 2016 when the Bank's Senior Counsel forwarded the Reed Group's determination letter and the transmittal email to the Applicant's counsel. The Applicant also received an email on 18 November 2016 from an HR Specialist on Compensation and Benefits regarding the Applicant's benefits under LTD. The Applicant was informed that her LTD status would commence on 10 December 2016. The Bank produced further evidence that the Applicant was reminded of the LTD determination on 5 December 2016 and provided with a checklist for staff who are separating from the Bank. Finally, the Bank notes that the Applicant was expressly told by the HR Corporate Operations Manager on 20 December 2016 that she needed to follow the appeals procedures outlined in Staff Rule 6.22 if she wanted to challenge the LTD determination. This information was clearly noted in the email that the HR Corporate Operations Manager sent to the Applicant.

30. To the Bank, the Applicant therefore had ample opportunity to file a claim with the Administrative Review Panel within 90 days from 10 October, 17 November, 5 December or even 20 December 2016. The Bank contends that the Applicant's claim that she did not know how to file a challenge is false as the determination letter included Staff Rule 6.22 which sets out the appeals procedure.

31. With respect to the Applicant's claims on the ISRP which she repeats in her Application, the Bank contends that the principle of *res judicata* precludes the Applicant's claim on the validity of the ISRP Agreement. The Bank refers to paras. 37 and 38 of the Application in which the Applicant asserts that "[i]n various ways, the ISRP Agreement may still be held invalid because its purpose was frustrated both by the Respondent's failure to carry out its obligations, by the lack of work needed within IEG and by forcing the Applicant to take leave." The Applicant argued that "[e]ffectively, [she] was deemed redundant without a proper determination of redundancy, depriving her of proper procedure and a redundancy payment." The Bank states that this section of the Application is a restatement of her claims against her former manager and the Overall

Performance Evaluation (OPE) process which were dismissed by the Tribunal in *DG*, paras. 144-147. Furthermore, the Bank contends that the Applicant has not provided any evidence to satisfy the requirements of Article XIII of the Statute in the event she seeks a revision of the Tribunal's judgment with respect to the ISRP Agreement.

The Applicant's Response

The Tribunal has jurisdiction over the Application

32. The Applicant asserts that the "primary purpose of the Application is contesting the Respondent's failure to properly, fairly and timely implement the World Bank Tribunal's Decision, *DG*, Decision No. 528 [2016]." The Applicant nevertheless makes the following assertions in her response to the Preliminary Objection.

33. First, the Applicant admits that her claims concerning the Reed Group's determination on LTD status "are secondary in comparison with the Respondent's mishandling of her case." It is the Applicant's assertion that her claim is "foremost with the Respondent's mishandling of her case and seeking to precipitously but illegitimately assure itself of [the] Applicant's separation from WBG employment – as it has repeatedly sought to do before and throughout these proceedings." In connection with this, the Applicant asserts that her claims are twofold: first disputing that she received the Reed Group's LTD determination letter; and secondly, that she is disabled and cannot return to work. On the first claim, the Applicant provides a notarized affidavit stating that she never received the 10 October 2016 determination letter from the Reed Group. On the second claim, the Applicant argues that "the Respondent's and/or Reed Group's LTD claims that she cannot return to work are unsubstantiated and they have failed to show any 'material duties' which the Applicant is allegedly unable to perform." According to the Applicant, the Tribunal is the correct venue to adjudicate these claims because she did not receive a determination of disability on 10 October 2016 and she was not "afforded the proper due process rights in order to challenge the determination."

34. Second, the Applicant asserts that the first time she received notice of the LTD determination was 17 November 2016 through an email message that was forwarded as an

attachment “without a confidentiality cover (as required), that was unsigned, to Applicant’s counsel.” It is the Applicant’s claim that the Bank knew that she was not satisfied with the LTD determination and intended to challenge it “but said nothing on the applicable procedures for Appeals.” To support this contention, the Applicant refers to the correspondence dated 20 October and 9 November 2016 from her counsel expressing the Applicant’s intention to decline LTD status. The Applicant notes that the Senior Counsel responded that “[a]s we have previously advised you, should [the Applicant] decline to go on LTD, the Bank would have to conduct an IME to determine [the Applicant’s] fitness to return and fulfill her material duties.” The Applicant argues that “[i]f [the] Respondent had answered appropriately, [she] would have had adequate time to file a challenge to the Reed Group’s LTD determination.” It is the Applicant’s conclusion that “[b]ecause of the actions of the Respondent, [she] was not afforded satisfactory due process in this case. Therefore, the Tribunal is the appropriate venue to adjudicate this case.”

35. With respect to the Bank’s *res judicata* claims, the Applicant disagrees with the Bank’s characterization of her ISRP claims as a “mere restatement” of past claims. To the Applicant, objectively, she has suffered hardships stemming from the actions and inactions of the Bank following the decision in *DG*. The Applicant argues that “[a]llowing the Respondent to continue to avoid recourse for creating those hardships goes against a number of the fundamental principles of the Bank, including: fairness and following appropriate, rule-based policies and procedures.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

36. Article II(2) of the Tribunal’s Statute provides as follows:

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[.]

37. The internal remedies available, and the procedural requirements applicable in this case, are addressed in Staff Rule 6.22. Referring to the copy of the text provided to the Applicant by the Reed Group, paragraph 9, which describes the disability insurance program, provides that:

9.01 A claimant who decides to appeal the denial of a claim for Disability Benefits or a decision taken in connection with the administration of a claim may, within 90 days of receiving notice of the final decision from the Disability Administrator, request administrative review of the decision from an Administrative Review Panel in accordance with Annex B, Appeals Procedure.

9.02 If a claimant, after receiving the final decision of the Administrative Review Panel, decides to pursue his/her complaint further, the claimant then files an appeal with the World Bank Administrative Tribunal in accordance with the provisions of Staff Rule 9.05, "The World Bank Administrative Tribunal."

38. Annex B of Staff Rule 6.22, which was attached to the determination letter sent to the Applicant, details the process through which a staff member can appeal to the Bank Group's Administrative Review Panel for further review of a final decision rendered by the Bank Group's Disability Administrator. It notes, for instance, that:

3.0 Request for Administrative Review

3.1 A claimant who wishes to appeal the Disability Administrator's decision to deny a claim for Disability Benefits or a decision taken in connection with the administration of a claim may, within 90 days of receiving notice of the final decision on reconsideration from the Disability Administrator, request administrative review of the decision from the Administrative Review Panel by completing and submitting a Request for Administrative Review form. The form may be accessed via the links provided or from the Bank Group Benefit unit responsible for the Disability program.

39. The Tribunal has previously expressed the importance of the requirement that applicants first exhaust internal remedies prior to filing applications before the Tribunal as this 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." *Berg*, Decision No. 51 [1987], para. 30.

40. The Applicant does not dispute that she did not submit an appeal to the Administrative Review Panel nor does she contend that there were exceptional circumstances justifying non-compliance with the exhaustion of internal remedies requirement. Rather, it is the Applicant's contention that: a) she did not receive timely notice of the LTD determination; b) the Bank was aware that she was dissatisfied with the LTD determination and intended to challenge it, "but said nothing on the applicable procedures for Appeals"; and c) she received conflicting information on the next steps following the LTD determination. The Applicant argues that "[i]f [the] Respondent had answered appropriately, [she] would have had adequate time to file a challenge to the Reed Group's LTD determination." It is the Applicant's conclusion that "[b]ecause of the actions of the Respondent, [she] was not afforded satisfactory due process in this case. Therefore, the Tribunal is the appropriate venue to adjudicate this case."

41. The Applicant's claims are unavailing. The record shows that the LTD determination letter was sent on 10 October 2016 to an email address which the Applicant provided to the Bank, and continued to use in communications with the Bank on matters pertaining to her employment and disability status. The Applicant sent an email message to the Lead HR Specialist using that same email address less than a month before the LTD determination letter was sent to her. Additionally, the Applicant used the same email address to correspond with the HR Corporate Operations Manager on 21 December 2016 seeking clarification of the appeals procedure to challenge the approval of her LTD status. There is no evidence that the Applicant communicated to the Bank that the email address was momentarily invalid between October and December 2016, nor is there evidence in the record that the Reed Group received notification that the email message was undelivered.

42. Notwithstanding this observation, the Applicant certainly had notice of the LTD determination and appeals procedure available to her from the Senior Counsel's 27 October 2016 email message. The Applicant also had notice of the LTD determination as of 17 November 2016, when the letter was sent to her counsel. The letter included a copy of Staff Rule 6.22 which expressly states that the Applicant had 90 days to contest the decision taken in connection with the administration of the claim. Staff Rule 6.22 also itemizes the procedure the Applicant was required to adopt. Even as late as 5 January 2017, the Applicant and her counsel were expressly informed,

in an email message from the Bank's Senior Counsel, that if the Applicant "disagrees with Reed Group's determination of her disability status, she can appeal the determination, as provided in SR 6.22." Nevertheless, the Applicant failed to do so, seeking instead to bypass the appeals procedure and lay her claims directly before the Tribunal.

43. The Applicant cannot claim ignorance of the grievance mechanisms, which in any event would be an unsuccessful defence of her failure to comply with the obligation to first exhaust internal remedies. *See Nyambal (No. 2)*, Decision No. 395 [2009], para. 30. It is reasonable to expect staff members to "take the initiative to learn of the avenues of redress that are available within the Bank [...]," (*Motabar*, Decision No. 346 [2006], para. 22), and in the present case the Applicant and her counsel were well equipped with the necessary information to submit an appeal through the appropriate channels. For the above reasons, the Applicant's claims concerning the Reed Group's determination on LTD status are deemed inadmissible.

44. The Tribunal will now address the Bank's contention that the Applicant's claims regarding the ISRP Agreement are *res judicata*. It is recalled that the Applicant's claims relating to the ISRP Agreement are that the Bank did not take prompt and adequate measures to restore her to her position as a regular staff member following the decision in *DG*. The Applicant asserts that "[i]n various ways, the ISRP Agreement may still be held invalid because its purpose was frustrated both by the Respondent's failure to carry out its obligations, by the lack of work needed within IEG and by forcing the Applicant to take leave." The Applicant argues that when she signed the ISRP Agreement,

she understood its purpose to be assisting Mr. B in IEG for a full year and that she would have the opportunity to find another position within the Bank. [...] Mr. B's retirement and thus, the lack of need for the Applicant's services 7 months into the Agreement Term, was unforeseeable to the Applicant. This purpose was obviously not met due to not only Mr. B's retirement, but also when Ms. W sent her home, without work, which made the principal purpose of the ISRP Agreement radically different than when the Applicant had entered into it. Effectively, the Applicant was deemed redundant without a proper determination of redundancy, depriving her of proper procedure and a redundancy payment.

The Applicant claims that the Bank "could have reinstated her and cleared her to return to work for the 37 remaining days of her ISRP agreement, pursuant to Staff Rule 6.22."

45. The Tribunal finds that there is no basis for the Applicant to raise claims under the ISRP Agreement in this case. The Applicant's claims are connected to her challenge of the LTD determination and not to any rights or entitlements under the ISRP. As was held in *DG*, para. 78, the Applicant's claims on the validity of the ISRP are time-barred, and she failed to prove "the existence of any exceptional circumstances on account of medical problems or other reasons that would have prevented her from challenging the validity of the agreement in a timely manner." The Applicant cannot resurrect these claims in the present case as these matters are indeed *res judicata*.

46. Similarly, contentions regarding the breach of the ISRP Agreement are inadmissible. In *DG*, para. 169, the Tribunal ordered that the Applicant was to remain on STD

at 100% of her net salary while using her accrued sick leave and she cannot be separated from her employment, i.e., the ISRP agreement of 15 January 2014 cannot be enforced until, under Staff Rule 6.22, she is cleared for return to work, separated on Long Term Disability, or separated on reasons of ill-health pursuant to Staff Rule 7.01, paragraph 7.02.

47. The Tribunal expressly held in para. 170 that "the Bank shall reinstate the Applicant to its employ and treat her as a staff member on STD whose start of disability or 'first day of absence due to illness or injury which leads to disability' is 10 December 2014."

48. On 10 October 2016, a determination was made by the Disability Administrator that, following the expiration of the STD period, the Applicant would be separated from the Bank through LTD, effective on 10 December 2016, after two years on STD. This was one of the legitimate means of terminating the Applicant's employment at the Bank provided for in Staff Rule 6.22, and recognized by the Tribunal in *DG*. If the Applicant wanted to challenge the LTD determination and contend instead that she was fit to return to work, the Applicant should have done so, as noted above, through the process outlined in Staff Rule 6.22. However, she failed to do so and is therefore properly barred from raising these claims before the Tribunal.

49. Finally, the Tribunal will address the Applicant's claim that the "primary purpose of the Application is contesting the Respondent's failure to properly, fairly and timely implement the World Bank Tribunal's Decision, *DG*, Decision No. 528 [2016]." It is the Applicant's assertion

that her claim is “foremost with the Respondent’s mishandling of her case and seeking to precipitously but illegitimately assure itself of [the] Applicant’s separation from WBG employment – as it has repeatedly sought to do before and throughout these proceedings.” It is the Tribunal’s finding that this claim is devoid of all merit as the evidence provided by the parties shows. As was held in *DG*, para. 144: “The Tribunal does not find support in the record of the Applicant’s claim that ‘her manager attempt[ed] to free up [her] position by shunting her into disability despite the fact she was 100% budgeted.’” There is still no merit in this claim, even as the Applicant now argues that the Bank seeks to “precipitously but illegitimately” separate her from its employment.

50. With respect to the implementation of the Tribunal’s decision, *DG*, Decision No. 528 was communicated to the parties on 16 May 2016. The record shows that the Bank, through the Lead HR Specialist, sought to meet with the Applicant to address the implementation of this decision. The Applicant did not challenge the statements made in the Bank’s Senior Counsel’s email messages that the Lead HR Specialist advised the Applicant on 3 June 2016 of the Bank’s position and proposed a way forward with respect to her G-4 visa. Yet, the Applicant did not indicate whether she was going to leave the country to obtain her G-4 visa, nor did she request a letter from the Visa Office confirming her employment status. The Applicant finally submitted the request to the Visa Office on 23 November 2016 but did not submit her passport. The Applicant was reminded on 1 December 2016 to submit her passport to enable the Visa Office to process her request. Having received her passport, the Visa Office submitted the request to the State Department on 7 December 2016, and received the Applicant’s passport with a G-4 visa on 12 December 2016.

51. Regarding payment of sums owed to the Applicant, the record contains a 9 September 2016 email message from the Lead HR Specialist seeking confirmation from the Applicant on “whether we should deposit the \$33,353.04 and the attorney fees” into the Applicant’s bank account. The Lead HR Specialist stressed that though he understood that the Applicant’s counsel “has been and may still be out of the country,” he “would not like to hold up payments due much longer anymore.” So, “for purposes of expediency,” the Lead HR Specialist contacted the Applicant directly and enquired how she “would like [him] to handle the money transfer.” The Applicant

responded thanking the Lead HR Specialist for his “repeated calculations as well as arranging for resumption” of electronic transfers to her account, and posed additional questions on one of the calculations. This communication demonstrates the efforts which were made to implement the Tribunal’s decision and pay the Applicant sums owed to her. The record also contains evidence that, once raised, the Applicant’s claims regarding payment of medical bills and requests for clarification of her leave records were addressed.

52. Bearing in mind that prompt implementation of Tribunal decisions is of the utmost importance, the Tribunal finds that any errors or delays in this case are devoid of the sinister motivations alleged by the Applicant, and her claims in this regard are wholly unfounded. Not only did the Applicant contribute to some of the delays herself, she has failed to demonstrate in her Application the prejudice which she asserts she suffered. In the interest of judicial efficiency, the Tribunal finds that further pleadings on this matter are not warranted.

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., 25 October 2017