



World Bank Administrative Tribunal

2016

Decision No. 536

**DJ,
Applicant**

v.

**International Finance Corporation,
Respondent**

(Preliminary Objection)

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

**DJ,
Applicant**

v.

**International Finance Corporation,
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 Application was received on 2 October 2015. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 28 March 2016.

3. The Applicant contests the following alleged decisions: (i) the non-renewal of his contract; (ii) the "[u]nauthorized disclosure of confidential personal information" about him; (iii) harassment and discrimination on the basis of sexual orientation; (iv) retaliation; (v) failure of senior management, Human Resources, and the Office of Ethics and Business Conduct (EBC) to protect him from discrimination and retaliation; (vi) unlawful manipulation of his email account after the termination of his contract; and (vii) non-selection for the Insurance Officer position.

4. The IFC has raised a preliminary objection to the admissibility of certain claims in the Application. This judgment addresses that objection.

FACTUAL BACKGROUND

5. The Applicant worked at the IFC as a Short Term Consultant (STC) from October 2008 to 30 June 2015. For the relevant period, he was an STC for the Insurance Services Group ("the unit"). His manager was Ms. A. The Applicant states that he is gay and is married to a male Bank staff member.

6. The Applicant maintains that his work in the unit was praised by his colleagues. He states that Ms. A gave him many of her assignments to complete. The Applicant states that he and Ms. A got along and frequently had contact with one another, including lunches together. He alleges that during one of their lunches in 2013, Ms. A, not knowing that the Applicant was gay, made remarks that “revealed her strong anti-homosexual bias” and that had the effect of discouraging the Applicant from disclosing his sexual orientation to her or his other colleagues in the unit.

7. In July 2014, the unit advertised two job openings for Level GG Insurance Officers. The closing date of the postings was 31 July 2014. According to the Applicant, Ms. A encouraged him to apply for one of the open positions, which he did. He observes that the job application required him to disclose whether he was related to a Bank staff member, and so he disclosed his marriage to another staff member.

Ms. A’s allegedly discriminatory comment and subsequent treatment

8. The Applicant claims that Ms. A discovered his sexual orientation when she looked at the applications for the position. He alleges that either on 28, 29, or 30 July 2014, while a staff member from another unit was discussing with Ms. A the Applicant’s qualifications for the Insurance Officer position, Ms. A made the following statement: “Well, you know... he is gay and married to a man who works for the Bank. He even took his name. Who knows what else he is hiding?” The Applicant claims that the staff member to whom she allegedly made this statement told one of the Applicant’s colleagues about it, who told the Applicant about it on 31 July 2014. The Applicant contends that once he found out about Ms. A’s alleged statement, he contacted the Coordinator of the IFC’s Lesbian, Gay, Bisexual, and Transgender (LGBT) Employee Resource Group (ERG) and EBC the same day although he did not file a formal complaint with EBC at that time.

9. The Applicant claims that he was subsequently subject to a hostile work environment, including comments made by other staff members about his “wife” and gossip that affected both him and his spouse. He also claims that Ms. A stopped having frequent contact with him as before and generally did not act in a friendly manner. He further claims that she began giving him less

work, assigning the projects instead to a new consultant, Ms. B. The Applicant claims that Ms. A assigned work to Ms. B even when it was not warranted, such as in a situation where she allegedly assigned review of a Spanish language policy to Ms. B, who does not speak Spanish, while the Applicant speaks Spanish and had previous experience reviewing Spanish language policies for the unit.

The EBC investigation

10. The Applicant filed a formal complaint with EBC on 1 October 2014. In his complaint, he asked EBC to investigate Ms. A's alleged comment about the Applicant being married to a man, Ms. A's alleged release of confidential information about the Applicant's sexual orientation, and the allegedly discriminatory nature of the recruitment process for the Insurance Officer position.

11. After the Applicant filed his complaint with EBC, he claims that Ms. A began retaliating against him by removing her work portfolio from him and making it harder for him to get work from other staff members in the unit. She also subjected him to a procedure, under which the Applicant could only work on projects that were pending for longer than 30 days, which, according to the Applicant, was rare for projects in the unit, meaning that Ms. A intended to deprive him of work by subjecting him to this new procedure. The Applicant claims that Ms. B, as the other STC in the unit, continued receiving projects that were not subject to the 30-day condition.

12. During this time, the Applicant continued to update EBC on the alleged retaliation by Ms. A. On 2 August 2015, the Applicant was notified that EBC had completed its investigation and had submitted its report to the Vice President of Human Resources (HRVP), on 31 July 2015. On 19 October 2015, the Applicant was notified that the HRVP had made a decision, finding no misconduct committed by Ms. A. The Applicant states that he "was not allowed to see what EBC found so that he can fairly and fully assess how the decision was made to allow Ms. [A] to get away scot free while his suffering remains completely unaddressed."

Non-selection for the Insurance Officer position

13. After the Applicant applied for the Insurance Officer position, he claims that he was not given a telephone interview before the shortlisting process, like some of the other candidates, and that he was not included in lunches that were arranged for some candidates and team members in the hiring unit.

14. The Applicant and Ms. B were both shortlisted for the position. The Applicant was invited to an interview on 23 September 2014. On 23 September, he was interviewed by three panels. One of the panels was composed of Ms. A and two other members of the unit. The other two interview panels were composed of investment, insurance, and credit officers.

15. The Applicant complained to EBC and Human Resources about what he considered an unfair selection process. Human Resources suspended hiring for the Insurance Officer position, and the Applicant was notified of the suspension on 21 November 2014. On 21 January 2015, the Executive Vice President approved hiring for the two Insurance Officer positions, and on 22 January, the Director of Human Resources allowed Ms. A to proceed with hiring for the positions, subject to “additional steps in the selection process.” Three of the five shortlisted candidates, including the Applicant, were interviewed by a fourth panel.

16. On 2 March 2015, the Director of the unit notified the Applicant that he was not selected for the Insurance Officer position. On 6 April 2015, staff members in the unit were informed that Ms. B had been selected for one of the two Insurance Officer positions.

17. The Applicant filed Request for Review No. 259 with Peer Review Services (PRS) on 29 July 2015, alleging that the selection process was unfair and procedurally improper. On 20 October 2015, PRS dismissed his Request for Review because it was not filed in a timely manner. Specifically, PRS found that since the Applicant was notified of the non-selection decision on 2 March 2015, he had until 30 June 2015 to file a Request for Review, but he did not do so until 29 July 2015.

The Applicant's attempts to seek protection from senior management, Human Resources, and other officials

18. The Applicant contacted several officials in the IFC and the Bank in an effort to seek “interim help or protection” from the alleged ongoing discrimination and retaliation by Ms. A.

19. He contacted Ombuds Services in October 2014 and told them about his claims of discrimination, disclosure of confidential information, and inequitable selection process that he had alleged before EBC. He requested information on how he could take his allegations to IFC management and Human Resources, but he claims that he did not receive the assistance he sought from the Ombudsmen he contacted.

20. He also contacted the IFC Vice President of Diversity and Inclusion, Mr. X, and had the Chair of the IFC's LGBT ERG, as well as the President of GLOBE, the World Bank Employee Resource Group for LGBT staff members, contact Mr. X as well. Mr. X responded to the Applicant on 21 March 2015 as follows:

As you are aware, we carefully reviewed our selection process and are satisfied that the ultimate process has led to the selection of best qualified candidates for the two vacancies in our insurance unit.

The Applicant alleges that Mr. X did not attempt to provide him protection from discrimination and retaliation.

21. The Applicant also approached officials from Human Resources, including the Director of Human Resources, and had the Vice President of GLOBE contact the HRVP. On 30 December 2014, the Director of Human Resources told him the following:

Unfortunately, I do not have any news yet regarding next steps in the hiring process for the position to which you have applied. As I explained when we met, it is subject to the very stringent employment controls put in place for the entire WBG by Senior Management and applies to all external recruitment – and as you are aware, the hiring of current STCs is considered external recruitment in the context of these hiring controls.

I am very sorry to hear that you continue to perceive discrimination and retaliation in your current role and I am glad the colleagues from the Ethics Office are fully aware of the situation and the urgency. As per our discussion, such matters need to be addressed by way of an Ethics investigation, which I understand is underway. Management and HR will be in a position to take action once the investigation has been completed.

22. The Applicant's lawyer contacted the World Bank Group President, Dr. Jim Yong Kim, on 3 February 2015 and 13 March 2015. The two letters sent to Dr. Kim detailed the discrimination and harassment the Applicant allegedly faced, as well as the selection process for the Insurance Officer positions. The letters also requested Dr. Kim's intervention to protect the Applicant. The first letter was not responded to, but the second letter received a response from a Senior Counsel, Institutional Administration, Legal Vice Presidency, on 17 March 2015, who said:

At present, the Office of Ethics and Business Conduct is reviewing the complaints raised by your client according to their process. The President will not interfere in that ongoing, independent process. Your letters also refer to a recruitment process in which your client was involved. As I understand it, this process has concluded, and your client has been informed of the results.

The non-extension of the Applicant's contract

23. On 4 June 2015, the Applicant was notified that his STC contract would not be extended beyond 30 June 2015. The email stated that the justification for the non-extension decision was the hiring of two additional Insurance Officers in the unit.

Alleged post-termination manipulation of the Applicant's email account

24. The Applicant claims that after his contract was terminated, his work emails were manipulated. Specifically, according to the Applicant, his work email account should have been closed within 14 days after his contract terminated, but instead, his email account was not closed until 5 or 6 August 2015. A staff member from the unit sent to his email address a test email on 2 July 2015 to confirm that his email account was still working, and the message was delivered.

25. The Applicant contacted EBC on 27 September 2015 requesting that a new investigation be opened against Ms. A, Ms. B, and another staff member from the unit because he alleged that they attempted to manipulate or succeeded in manipulating his email account. He was notified on 16 October 2015 that EBC concluded that there was no factual basis for his allegations and “no ill intent in the time it took the WBG to close [his] account after [his] contract ended on 6/30/15.” EBC thus closed the matter. The EBC official who notified him that the matter was closed attached certain emails in which it was confirmed that no one accessed the Applicant’s email account and that the account was disabled on 3 July and deleted on 7 August.

The present Application

26. The Applicant filed his Application on 2 October 2015. The Applicant seeks the following relief: (i) his appointment to a staff position at Level GG but not under Ms. A as manager and (ii) written apologies from the HRVP, the Chief Ethics Officer, Mr. X, and the Director of the unit. Additionally, he seeks compensation in the forms of: (i) payment for at least 34 consultant days due to the IFC’s alleged failure to provide him adequate notice of the non-renewal of his contract; (ii) back pay from 1 October 2014 at the rate of a Level GG Insurance Officer until he “is appointed to a comparable staff position”; and (iii) at least two years’ consultancy fees (i.e. \$126,900) for the pain and suffering caused by the discrimination and retaliation he allegedly suffered. He requests costs in the amount of \$30,043.23.

27. On 23 November 2015, the IFC filed preliminary objections.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

Preliminary Objections

The IFC’s Contentions

28. The IFC contends that the Applicant did not exhaust internal remedies for the following claims because he did not allege them before PRS: (i) disclosure of confidential personal information; (ii) harassment and discrimination on the basis of sexual orientation; (iii) retaliation;

(iv) failure by senior management, Human Resources, and EBC to protect him; and (v) unlawful manipulation of his email account after the termination of his contract.

29. The IFC also argues that the following claims were not filed in a timely manner: (i) disclosure of confidential personal information; (ii) harassment and discrimination on the basis of sexual orientation; (iii) retaliation; and (iv) failure of senior management, Human Resources, and EBC to protect him.

30. The IFC contends that the Applicant's claim of non-selection for the Insurance Officer position was not filed in a timely manner before PRS.

The Applicant's Contentions

31. The Applicant argues that under Staff Rule 9.03, paragraph 6.04(d), PRS cannot consider claims relating to misconduct investigations by EBC. According to the Applicant, because all of the claims that he made in his Application were reported to EBC, he was not required to go before PRS. Therefore, the Applicant contends that he was allowed to come to the Tribunal directly, rather than going through PRS first.

32. Regarding the IFC's objection on the grounds of timeliness, the Applicant argues that he filed his grievances with EBC within 120 days of the date each of his claims arose, despite the fact that EBC does not have time limits for reporting misconduct. The Applicant contends that he kept updating EBC as new complaints arose. He argues that he "sought relief from the appropriate administrative body in an exceptionally expeditious manner."

33. Specifically regarding his non-selection claim, the Applicant argues that PRS erroneously decided that his Request for Review was not filed in a timely manner. He also argues that he was not required to go before PRS for his non-selection claim at all, since he filed it before EBC. Therefore, according to the Applicant, his claim is properly before the Tribunal.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

34. In his Application of 2 October 2015, the Applicant contests the following alleged decisions:

Non-renewal of contract.

Unauthorized disclosure of confidential personal information.

Harassment and discrimination based on [his] sexual orientation.

Retaliation for reporting his Manager's abuse to EBC.

Failure of his Senior Management, of Human Resources, and of EBC to protect him from harassment, discrimination, and retaliation.

Unlawful manipulation of [his] email account after his contract terminated on June 30, 2015.

Non-selection to a staff position as an Insurance Officer.

35. In the Supplement to the Application, filed on 18 December 2015, the Applicant provides additional arguments in support of his claims regarding the above decisions. He adds that his due process rights were violated, and that the HRVP should have recused himself from being the decision maker in the EBC investigation because of a conflict of interest. He also claims that his due process rights were violated in the EBC's investigation of the alleged manipulation of his email account.

36. The IFC has made preliminary objections with respect to all the claims except one. The parties are in agreement that the Applicant's challenge to the non-renewal or non-extension of his contract is properly before the Tribunal.

Unauthorized disclosure of confidential personal information, harassment and discrimination on the basis of sexual orientation, retaliation, failure of senior management, Human Resources, and EBC to protect the Applicant from further discrimination and retaliation, and manipulation of his email account

37. The IFC argues that the Applicant has not exhausted internal remedies under Article II(2) of the Statute of the Tribunal because the Applicant has not challenged these alleged actions or claims before PRS. The IFC invokes Staff Rule 9.03, paragraph 6.02 and states that under this Rule, he was required to file claims with PRS before coming to the Tribunal. The IFC argues that

the Applicant was free to complain to EBC, but that he must also raise the claims in a timely manner before PRS to satisfy the requirement of exhaustion of internal remedies. The IFC contends as follows:

The timing of a complaint to EBC is simply independent of any recourse to PRS. Contrary to Applicant's implication, many staff members have indeed been able to file a PRS claim in a timely manner after complaining to EBC about some related conduct. Just because Applicant did not file a PRS claim after complaining to EBC does not mean that it is generally impossible, or that there is some kind of prohibition against doing so. In those instances, a PRS case may actually be stayed pending resolution of the EBC proceeding.

38. The Applicant argues that he was not required to allege the claims before PRS because under Staff Rule 9.03, paragraph 6.04(d), PRS cannot consider claims relating to EBC misconduct investigations. He claims that he reported the above matters to EBC, and his report resulted in factual findings by EBC and a decision by the HRVP, finding that his manager, Ms. A, did not commit misconduct. The Applicant argues that Staff Rule 9.03, paragraph 6.04(d) prevents him from taking challenges to EBC's factual findings and the HRVP's decision to PRS. The Applicant argues that he did not need to allege the claims before PRS in order to exhaust remedies.

39. The Tribunal notes that EBC is the appropriate body for staff members who wish to complain of misconduct. Staff Rule 3.00, paragraph 7.01 states that: "Staff members are encouraged to report suspected staff misconduct that falls within the scope of matters addressed by EBC." Staff Rule 3.00, paragraph 6.01 states that: "EBC shall review and assist in the resolution of allegations of misconduct." If the Applicant believed that actions committed by his manager fell within the scope of misconduct, it was appropriate for him to report them to EBC.

40. In *Sekabaraga*, Decision No. 494 [2014], para. 42, the Tribunal observed that:

Retaliation is one of the more serious forms of staff misconduct. In the present case, there is no indication in the record of a review by the Office of Ethics and Business Conduct ("EBC") of the Applicant's allegation of retaliation. [...] However, it appears to the Tribunal that there are good grounds for having EBC undertake a review of allegations of retaliation before such allegations are considered by PRS or by the Tribunal. EBC is the unit with the primary mandate and the resources to review allegations of retaliation, and review by EBC could make an important

contribution to a proper consideration of the often complex factual background against which retaliation is alleged. In addition to ensuring a more complete factual record, prior review by EBC would also eliminate the possibility of EBC reaching conclusions that are at variance with findings of fact made by PRS or the Tribunal. In appropriate cases, the Tribunal may suspend proceedings before it to allow for review of retaliation claims by EBC.

41. When EBC receives enquiries and complaints of potential misconduct by a staff member against his or her manager or against another staff member, EBC makes an initial assessment as to whether the matter is suitable for investigation or more appropriately could be resolved by resorting to other units of the Bank's internal justice system, such as Ombuds Services, Mediation Services, or PRS. According to EBC's 2015 Annual Report, "22 enquiries were referred to other parts of the [Internal Justice Services]." In the Applicant's case, the IFC does not claim that EBC referred the Applicant's complaint to other units of the internal justice system like the PRS. Rather, EBC proceeded to conduct an investigation.

42. Once an EBC investigation is completed, the HRVP makes the final decision as to whether any misconduct has been committed. If unsatisfied, the complainant, as well as the subject of the investigation, can challenge the actions of EBC and the HRVP's decision before the Tribunal. If misconduct is found, the subject of the investigation often petitions the Tribunal. If no misconduct is found, then the complaining party may petition the Tribunal challenging EBC's actions as well as the HRVP's decision. *See Rendall-Speranza*, Decision No. 197 [1998].

43. The Applicant, as the complainant before EBC, has fashioned his petition before the Tribunal in like manner. He states that:

[The Applicant's] appeal to the Tribunal concerns a series of actions taken against him by his manager, all of which EBC investigated to determine whether or not they constituted discrimination, retaliation, or other misconduct. To the extent EBC found that Ms. [A] ... did not commit misconduct on any or all of the matters he reported, [the Applicant] disputes those "factual findings." [...] He also appeals the actions and inactions of EBC and Human Resources in failing to protect him and in clearing Ms. [A].

44. Once the EBC process is completed, the Applicant is not required to go to PRS before coming to the Tribunal. Staff Rule 9.03, paragraph 6.04(d) dealing with Peer Review Services states:

6.04 Panels may not review Requests for Review concerning:

[...]

d. actions, inactions, or decisions taken in connection with staff member misconduct investigations conducted under Staff Rule 3.00, Staff Rule 8.01, or Staff Rule 8.02, including decisions not to investigate allegations, decisions to place a staff member on administrative leave, alleged procedural violations, factual findings, performance management actions taken pursuant to Staff Rule 3.00, and the imposition of disciplinary measures.

45. The Staff Rule refers to “actions, inactions, or decisions taken in connection with staff member misconduct investigations” and includes as examples both decisions made by EBC in a misconduct investigation, as well as “alleged procedural violations” and “factual findings” made in the context of such investigations. The language of the Staff Rule is broad and includes not only decisions made by EBC or other bodies but actions and inactions taken in the context of misconduct investigations as well. The Tribunal has had occasion to interpret paragraph 6.04(d) in *Kim (No. 1 and No. 2)*, Decision No. 448 [2011], para. 30:

The Applicant’s Request for Review pertained to the Bank’s decision to terminate his employment following the outcome of an investigation into allegations that he committed misconduct, and other actions taken in connection with that investigation. The Tribunal finds that the decision of PRS to deny jurisdiction to consider his request was a correct application of Staff Rule 9.03, paragraph 6.04(d).

46. In *Kim (No. 1 and No. 2)*, the HRVP had made a decision, concluding that there was sufficient evidence that the Applicant had disclosed confidential Bank documents, finding that the Applicant committed misconduct, and imposing certain disciplinary measures on the Applicant, including termination of his employment with the Bank. The Applicant challenged that decision in a Request for Review with PRS, which PRS did not accept on the grounds that it did not have jurisdiction over his claims due to Staff Rule 9.03, paragraph 6.04(d). See *Kim (No. 1 and No. 2)*, paras. 15-17. The Tribunal interpreted the Staff Rule in *Kim (No. 1 and No. 2)* to apply to the

Bank's termination decision, as well as "other actions taken in connection with that investigation," allowing applicants to bring challenges to decisions relating to misconduct investigations, as well as other actions taken in the context of misconduct investigations, to the Tribunal without being required to bring them before PRS first.

47. In the current case, the Applicant's claims involve unauthorized disclosure of confidential personal information, harassment and discrimination on the basis of sexual orientation, retaliation, failure of senior management, Human Resources, and EBC to protect him from further discrimination and retaliation, and manipulation of his email account.

48. These claims are not typical administrative decisions of a manager for which the natural first place of complaint is PRS. Rather, these claims represent potential misconduct in the Applicant's view, because of which he chose to go to EBC. After its routine initial assessment, EBC did not refer the matters to PRS nor did it advise the Applicant to do so, but rather it proceeded with an investigation.

49. The IFC seems to suggest that irrespective of whether EBC referred the matters to PRS, the Applicant concurrently and in a timely manner should have gone to PRS to file these claims. The Staff Rules, however, are not clear on this. The IFC invokes Staff Rule 9.03, paragraph 6.02 and states that under this Rule he was required to file the claims with PRS before coming to the Tribunal. However, paragraph 6.02 must be read together with paragraphs 6.03 and 6.04.

50. Staff Rule 9.03, paragraphs 6.02-6.04 state as follows:

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.

6.03 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 pursuant to Staff Rule 9.05.

6.04 Panels may not review Requests for Review concerning:

[...]

d. actions, inactions, or decisions taken in connection with staff member misconduct investigations conducted under Staff Rule 3.00, Staff Rule 8.01, or Staff Rule 8.02, including decisions not to investigate allegations, decisions to place a staff member on administrative leave, alleged procedural violations, factual findings, performance management actions taken pursuant to Staff Rule 3.00, and the imposition of disciplinary measures.

51. It is reasonable to conclude that the Applicant's claims in question come within the exceptions stated in paragraph 6.02 of Staff Rule 9.03. His claims come under the exception of paragraph 6.04(d). Should the Bank wish that in the circumstances of the Applicant, a staff member must concurrently file claims with PRS, it may decide to make that clear in its Staff Rules. According to the plain reading of Staff Rule 9.03 and the paragraphs quoted above, and given that his claims involve potential misconduct, it was reasonable for the Applicant to conclude that since he had resorted to EBC, and EBC had not referred his complaints to PRS or advised him to go to PRS himself, he could come to the Tribunal without going through PRS.

52. Accordingly, the Tribunal concludes that the claims in question are properly before the Tribunal, and it may examine them in the same manner it examines claims when a complainant comes to the Tribunal to challenge misconduct investigations.

53. However, the IFC raises a legitimate concern in this regard. It cautions that since there is no time limit to file a complaint to EBC, a staff member who is out of time, i.e., is outside the 120-day period, can go to EBC and then come to the Tribunal, thereby undermining the 120-day requirement to file a complaint to PRS. The IFC expresses its concern as follows:

Finally, Applicant's proposed exception [of not being required to go to PRS] would undermine the timeliness requirement of the Tribunal's statute. Applicant admits that there is no time limit to make a complaint to EBC. [...] A witness may report a matter to EBC at any time -- EBC presumably can take into account the "staleness" of the events complained of as one factor in its decision as to whether to investigate further. If the Tribunal's jurisdiction could be obtained by making an EBC complaint, therefore, it would not make sense to require timely exhaustion of remedies. An Applicant could wait for years after an event, then make an EBC

complaint, then follow up with a Tribunal claim, having fulfilled the jurisdictional requirements. The Tribunal's statements about the important purposes to be served by jurisdictional time limits would be rendered meaningless.

54. In the view of the Tribunal, these concerns do not apply in the Applicant's circumstances. The claims at issue here are not typical managerial decisions but rather potential misconduct. The Applicant here resorted to EBC in a timely manner. For example, according to the Applicant, he discussed the disclosure with EBC on the same day that it happened and filed a formal complaint within 120 days, although EBC has no time limit for reporting misconduct. With respect to other complaints, he resorted to EBC in a timely manner and updated EBC as further events occurred. Moreover, after EBC completed its investigation, the HRVP made his decision on 2 October 2015, and the Applicant was notified of it on 19 October 2015. The Applicant filed his Supplement to the Application challenging that decision on 18 December 2015, which was within 120 days of when he was notified of the decision. Therefore, the Tribunal does not find that the claims at issue were not filed in a timely manner or that the Applicant took an undue advantage of the lack of a time limit for reporting misconduct to EBC.

Non-selection to an Insurance Officer position

55. The IFC argues that the Applicant's claim of non-selection was not filed in a timely manner. While the Applicant filed a Request for Review before PRS for this claim, PRS dismissed the Request because it was not filed in a timely manner. The IFC contends that the PRS dismissal was proper because the Applicant was notified of his non-selection decision more than 120 days before he filed his Request for Review, and the PRS dismissal is fatal to the claim before the Tribunal. The Applicant responds that the PRS dismissal was not proper because while he was notified of the non-selection decision outside of the 120-day time period, he discovered the discriminatory nature of the non-selection decision on a later date.

56. A non-selection decision is a typical managerial action, and the proper place to challenge such a claim is PRS. In this case, the Applicant went to PRS but not in a timely manner. The Tribunal has previously found in *CO (Nos. 1&2)*, Decision No. 504 [2015], para. 65:

[I]nvocation of circumstances surrounding an administrative decision and of the reasons for it do not change the fact that what is actually challenged is the administrative decision. [The Tribunal] then held in *Al-Muthaffar*, para. 40, that in challenging a decision

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 [...] 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.

Therefore, the relevant date for the purposes of the Applicant's non-selection claim is the date on which he was notified of the non-selection decision, rather than the date on which he discovered the allegedly discriminatory nature of the decision.

57. The Applicant was notified that he was not selected for the Insurance Officer position on 2 March 2015. He alleges that he discovered that the decision was discriminatory when he was notified that Ms. B had been selected for the position on 6 April 2015. He filed his Request for Review with PRS on 29 July 2015. The relevant date for this claim is the date on which he was notified of the administrative decision, i.e., the non-selection decision, rather than when he may have discovered the circumstances surrounding his non-selection and the selection of another candidate for the position. The relevant date is 2 March 2015. He filed his Request for Review more than 120 days later, and PRS dismissed his Request on the basis that it was not filed in a timely manner. Since the Applicant did not exhaust internal remedies in a timely manner, the Tribunal finds that his non-selection claim is inadmissible.

58. However, to the extent that there are any matters relating to the non-selection decision that were referred by the Applicant to EBC, these matters are properly before the Tribunal for review.

DECISION

- (1) The IFC's preliminary objections are dismissed save the objection relating to the non-selection for the Insurance Office position.
- (2) The IFC shall pay the Applicant the amount of \$4,000 for attorney's fees arising from the preliminary objections phase of these proceedings.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 8 April 2016