



World Bank Administrative Tribunal

2016

Decision No. 537

**DK,
Applicant**

v.

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

(Preliminary Objection)

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

**DK,
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 Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, and Mahnoush H. Arsanjani.

2. The Application was mailed on 2 October 2015 and received by the Tribunal on 7 October 2015. The Applicant was represented by Christina Quashie and Alan Lescht of Alan Lescht and Associates, P.C. The Bank 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 states that she challenges the following decisions: (i) the decision by the Office of Ethics and Business Conduct (EBC) not to reinvestigate her allegations; (ii) her non-selection for the Senior Knowledge Management Officer position; (iii) the Peer Review Services (PRS) Chair's decision to dismiss some of her claims in Request for Review No. 195; (iv) the non-extension of her contract; (v) the failure of management to provide her interim protection; (vi) false revision of her personnel records and People Page profile on the Bank's intranet; and (vii) the termination of her contract. In addition, she alleges certain procedural violations committed by EBC in its investigation of her allegations and by PRS in her Requests for Review.

4. The Bank 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 Bank from 13 August 1997 to 15 September 2015, first as a Long-Term Consultant, and after 2006, as a Short-Term Consultant (STC) under different contracts.

6. The Applicant claims that in June 2012, when her contract at the time was set to expire, she had a brief conversation with one of her former supervisors, who was a Senior Advisor to one of the Bank's Vice Presidents. The Applicant claims that she told the Senior Advisor that she was looking for another position, and that he told her to contact him because he had an idea for her.

7. The Applicant met with the Senior Advisor in his office on 26 June 2012. During this meeting, the Applicant claims that he mentioned that a Senior Knowledge Management Officer position was open in the Bank. She also claims that he told her that he knew the hiring manager for the position, a Chief Economist, and indicated that he would attempt to influence the Chief Economist to hire the Applicant. On 3 July, the Senior Advisor told the Applicant in an email that he had strongly recommended her to the Chief Economist for the open position and had advised the Chief Economist to schedule an interview with her. The Applicant requested another meeting with the Senior Advisor.

Allegations of sexual assault and sexual harassment

8. On 6 July 2012, the Applicant claims that she arrived at the Senior Advisor's office at their scheduled time and saw that he was leaving for the day. He allegedly told her that she should follow him if she still wanted to talk, and when they arrived at his car, he opened the passenger door and told her to get in. The Applicant claims that she needed his advice immediately because she believed the interview with the Chief Economist would be scheduled for the following week, and so she got in the car. She alleges that he drove them to his condominium in Alexandria, Virginia, and invited her inside, telling her that his wife was in India. The Applicant says that she declined his invitation and suggested they go to a nearby bakery, where they continued their meeting.

9. The Applicant claims that on 13 July 2012, the Senior Advisor drove her to Alexandria, where they had dinner at a restaurant. While at the restaurant, he allegedly told her that he needed more time to get her the job with the Chief Economist and that in the meantime, he would hire her under an STC contract. The Applicant accepted this offer. She claims that during their dinner, he invited her to his home, and she declined.

10. The Applicant claims that the following events took place on the evening of 28 July 2012. She claims that she and the Senior Advisor met for dinner at a restaurant, and when they arrived, the Senior Advisor insisted that they go to his home after dinner. The Applicant says that she did not want to offend him, as he was her new manager, and thereby agreed to go to his home. She claims that while they were at his home, he sexually assaulted her.

11. The Applicant received her Letter of Appointment on 1 August 2012, which stated that she would work “for about 10 days” under the Senior Advisor. The Applicant claims that she had dinner with the Senior Advisor on 3 August 2012 in order to discuss her work program. After dinner, she says that he drove her back to her home and followed her inside. While they were at her home, according to the Applicant, he sexually assaulted her again. The Applicant reported this incident to the local police on 21 January 2015.

12. The Applicant began working for the Senior Advisor on 6 August 2012, after which time he allegedly continued to make sexual advances towards her. The Applicant claims that later in August, he moved her out of her office and to a cubicle outside the unit. She also claims that between August and December 2012, he sexually assaulted her on approximately seven other occasions. She contends that he decreased the number of days in a contract extension if he thought she was too reluctant or impolite to his advances.

13. On 1 September 2012, the Applicant claims she was ordered to stay overnight with the Senior Advisor at a hotel. During this trip, he told her to continue working even though she had already worked for the 10 days on her contract. On 8 October, he processed her contract extension, which, according to the Applicant, meant that the work she had performed from roughly mid-August to early October was unpaid.

14. The Applicant claims that she tried to avoid the Senior Advisor, but as she did so, his retaliation worsened. She claims that in early October 2012, he called her at her home and told her that she was not qualified for a job at the Bank. She contends that the Senior Advisor attempted to get her to come to work during the weekend of 3 and 4 November, but she told him that she was not feeling well. When she went to work the following Monday on 5 November, she claims that he had demoted her from task manager to team member on a project. The Applicant claims that the Senior Advisor delayed further contract extensions and instructed her to keep working, all the while making sexual advances towards her.

15. The Applicant claims that the Senior Advisor sexually assaulted her again on 26 December 2012. She contends that he was out of the country from 28 December 2012 to 27 January 2013. She claims that during this time, he promised to process her contract extension but did not do so. He also encouraged her to find a job outside the Bank. While he was out of the country, he tried to engage her in online sexual chats, including a chat in late January.

16. On 1 March 2013, the Senior Advisor processed a contract extension for the Applicant.

17. The Applicant claims that she attempted to find other job opportunities in the Bank but was blocked by the Senior Advisor from getting them because he would intervene and say that she already had work to do under him. She claims that the East Asia Region Sustainable Development Network team leader requested some work from her, but that the Senior Advisor refused to let her perform the work.

18. In May 2013, the Applicant applied to the Senior Knowledge Management Officer position open in the Bank. On 20 June, she was shortlisted for the position, and on 27 or 28 June, she was interviewed. On 29 July, she was notified that she was not selected for the position.

19. The Applicant says that she reported the Senior Advisor's alleged sexual harassment and retaliation to the Senior Advisor's supervisor, one of the Bank's Vice Presidents, on 1 August 2013. She maintains that the Vice President told her that this was not a good time for her to be raising this issue and that she should start contacting the Senior Advisor by email rather than in

person. She alleges that the Vice President took no further action to assist her, and that despite the confidential nature of the meeting, the Senior Advisor learned about her report of harassment immediately.

The Applicant's reports to EBC

20. The Applicant reported the Senior Advisor to EBC on 16 September 2013. She provided testimony to EBC investigators on 16 and 17 September about the Senior Advisor's alleged sexual abuse, sexual harassment, and retaliation. She provided further testimony to EBC on the following dates: 6 November 2013, 5 December 2013, 13 March 2014, and 13 or 14 May 2014. She claims that the 5 December interview was not recorded or transcribed.

21. During the 13 March 2014 EBC interview, the EBC investigators presented the Applicant with a document that was submitted by the Senior Advisor that showed a sexually explicit chat between him and the Applicant. She claimed during the interview that she did not recognize some of the language used in the chat and would not have used it due to her limited English skills. After the interview, she expressed her belief to the EBC Senior Investigator who interviewed her that the document had been fabricated because it was in Microsoft Word form, rather than Gmail chat form. She claims that the EBC investigators did not investigate whether the document may have been fabricated or request that the Senior Advisor provide a copy of the chat in its original form.

22. On 21 April 2014, the Applicant was told by the EBC Senior Investigator who interviewed her that EBC sent a report of its findings to the Human Resources Vice President (HRVP) for a final decision on whether the Senior Advisor had committed misconduct.

23. The Applicant claims that her private email addresses were posted on a Bank external online publication, and that there had been some incorrect changes to her People Page profile on the World Bank Group's intranet, such as inaccurate listings of the Task Team Leaders for whom she had worked and the units in which she worked. She reported these incorrect changes to EBC as further examples of retaliation.

24. On 2 June 2014, the Applicant was told by the EBC Manager that the incorrect information on her People Page profile was probably the responsibility of Information and Technology Solutions (ITS) or Human Resources (HR), rather than the Senior Advisor. He also told her that EBC would not be able to proceed with a misconduct investigation of her claim relating to the incorrect information on her People Page profile and suggested that she raise her concerns with PRS.

25. On 9 June 2014, the Applicant was told that the HRVP had made a decision with a finding of misconduct against the Senior Advisor. On 11 June, she found out that the finding of misconduct was based specifically on a conflict of interest arising from the Senior Advisor participating in what was determined to be a consensual affair. The Applicant was not provided a copy of EBC's Investigative Report or the HRVP's final decision.

26. In the meantime, the Applicant's contract expired on 30 September 2013, and the Senior Advisor did not further extend her contract. The Applicant's personnel record indicates that she worked a total of 90 days for the Senior Advisor from August 2012 to September 2013. The Senior Advisor retired in January 2014.

Termination of the Applicant's subsequent contract

27. In November 2013, the Applicant began working as an STC for the Program Manager in another unit in the Bank. She was hired, according to her Letter of Appointment, for "about 40 days from November 12, 2013 to February 28, 2014."

28. In February 2014, the Program Manager extended her contract for 100 days and wrote a letter of intent explaining that he expected to need her consultancy services until the end of 2014. At the end of June 2014, he approved a second contract extension for her from 1 July to 29 August. She was told that there were issues with securing a workspace for her, so she should expect to be on standby for the first few weeks of July.

29. On 14 July 2014, the Applicant saw that she had been denied access to her Bank email account. The Program Manager emailed her on 15 July to tell her to submit a hand-over note, if she wanted to do so. He emailed her again on 21 July and told her that her contract had been terminated. He told her that he “was not satisfied with [her] work.” Specifically, he said in the email:

As you would recall the issue of satisfaction about your work has been debated several times and the termination of your contract was not arrived at suddenly or based on anything but on my assessment of the quality of your work.

You seem to avoid several key emails exchanges [...] you could claim I did not read your emails or review your work: I did review the work and was not satisfied and communicated this to you. I recently took away what I had considered the priority #1 because of unsatisfactory progress. Interestingly you offered recently to refund for payment made to you without accompanying satisfactory deliverable.

The Applicant accessed her Human Resources records and learned that her contract had been terminated on 11 July 2014.

The Applicant’s Requests for Review with PRS

30. In the meantime, the Applicant filed multiple Requests for Review with PRS on the various issues she alleges she faced.

Request for Review No. 191

31. On 23 April 2014, she filed Request for Review No. 191 with PRS, regarding her non-selection for the Senior Knowledge Management Officer position. She claimed in her Request that the selection process for the position “was strongly prejudiced against [her] from the beginning due to negative influence from [her] manager/supervisor in the unit.” She also argued that there was a flawed process and improper motivation in the non-selection decision.

32. On 24 April 2015, the PRS Panel decided not to call certain witnesses proposed by the Applicant because “there [was] no basis to conclude these individuals [had] direct knowledge of

the recruitment process for the job at issue, nor of the non-selection decision in this matter.” The Panel requested that “one or two of the proposed witnesses [...] be on ‘stand by’” in case they would be asked to provide testimony at another time. The Panel decided to call an HR official proposed by the Responding Manager as a witness.

33. On 21 May 2015, the PRS Panel decided that there was no violation of the Applicant’s contract of employment or terms of appointment on the basis of procedural errors in the selection process or the non-selection decision. The Panel also concluded that the decision not to select the Applicant for the position was “reasonable and supported by the evidence.” In addition, the Panel did not find sufficient evidence that the Senior Advisor interfered in the selection process for the position, or that the management did not act in good faith. The Panel concluded that

the Bank acted consistently with [the Applicant’s] contract of employment and terms of appointment in making the non-selection decision. Specifically, the Panel determined that the Bank made its decision on a reasonable and objective basis and that the Bank followed the applicable procedures. The Panel therefore recommends that [the Applicant’s] requests for relief be denied.

The responsible Vice President accepted the Panel’s recommendation on 4 June 2015.

Request for Review No. 195

34. On 29 May 2014, the Applicant filed Request for Review No. 195 with PRS. This Request for Review included the following complaints as disputed employment matters: sexual harassment and sexual abuse, abuse of position and authority for sexual gain, retaliation, non-extension of the Applicant’s contract, creation of a hostile work environment and character assassination, coerced labor due to work for no payment, threat of physical harm and intimidation, deception and cover-up, abuse of U.S. immigration law, violation of the Staff Rules regarding confidentiality, and failure of the Bank to provide her with protection.

35. On 27 June 2014, the PRS Chair decided that PRS did not have jurisdiction over all of the claims in the Applicant’s Request for Review. The Chair decided that PRS had jurisdiction over the following claims, which were filed in a timely manner: the non-extension of the Applicant’s

contract by the Senior Advisor in retaliation for her report of alleged sexual harassment, the claim that her People Page profile was falsely revised, and the Bank's failure to provide her with interim protection against retaliation insofar as incidents or inactions constituting that failure occurred within the 120 day period before the Applicant filed her Request for Review. The PRS Chair dismissed all other claims because they were not filed in a timely manner. In addition, the Chair emphasized that PRS does not have jurisdiction over allegations of misconduct, which are reviewed by EBC. The Chair noted that the following claims were not within PRS's authority to review: sexual harassment, sexual abuse, abuse of position and authority for sexual gain, creation of a hostile work environment and character assassination, threat of physical harm and intimidation, deception and cover-up, and abuse of U.S. immigration law.

36. On 17 September 2015, the Applicant contacted the PRS Panel and the PRS Secretariat and told them that she believed certain issues were not adequately addressed during the hearing on 11 September. Specifically, she said that the Panel originally omitted the issue of the failure of management to protect her from retaliation but then added it as an *ad hoc* issue later in the hearing. She also took issue with some of her proposed witnesses not being called to testify and with the testimony that was provided by other witnesses.

37. On 19 October 2015, the PRS Panel made its final decision on Request for Review No. 195. The Panel decided that there was a reasonable and observable basis for the non-extension of the Applicant's contract beyond 30 September 2013. Additionally, the Panel concluded that the Bank did not act inconsistently with her contract of employment or terms of appointment with regard to the errors on her People Page profile. The Panel also concluded that during the time period under review, the Bank did not act inconsistently with her contract of employment or terms of appointment in failing to provide her with interim protection against retaliation. Accordingly, the Panel recommended that her requests for relief be denied. The responsible Vice President accepted this recommendation on 26 October 2015.

Request for Review No. 217

38. On 16 December 2014, the Applicant filed Request for Review No. 217 with PRS, challenging the Program Manager's termination of her contract. She argued in the Request that the termination of her contract was improperly motivated and may have been a result of retaliation because the Program Manager may have found out about her reporting the Senior Advisor for misconduct.

39. On 25 June 2015, the PRS Panel decided that the Applicant filed her Request for Review in a timely manner. The Panel decided to call some but not all of the witnesses proposed by the Applicant. The Panel also requested that the Applicant provide a ranked list of other proposed witnesses and that the Program Manager suggest additional witnesses.

40. On 16 November 2015, the PRS Panel decided that the Program Manager had a reasonable and observable basis for terminating the Applicant's appointment. The Panel concluded that while "it was a procedural error not to notify [the Applicant] in advance of the termination of her appointment," this was not an error that supported a recommendation that she be awarded monetary or other relief. Accordingly, the Panel recommended that her requests for relief be denied. The responsible Vice President accepted this recommendation on 18 November 2015.

The Applicant's requests for an EBC reinvestigation

41. The Applicant made multiple efforts to contact senior officials at the Bank to request a reinvestigation of her claims before EBC. She sent emails to the World Bank Group President on five occasions: 30 September 2014, 30 March 2015, 12 April 2015, 26 April 2015, and 20 May 2015. She did not receive a response from the World Bank Group President to any of her emails. However, her 30 March email was referred to the Lead HR Specialist, who told her on 10 April that since she had submitted a complaint about her sexual assault allegations to Washington, D.C. law enforcement, the Bank considered that those allegations were "properly before the relevant law enforcement authorities."

42. The Applicant contacted other senior Bank officials about the EBC investigation. On 1 April 2015, she met with the Senior Vice President and Chief Ethics Officer and requested transcripts of her five recorded interviews with EBC. The Chief Ethics Officer suggested that she report her sexual assault allegations to the relevant Washington, D.C. authorities because they were “beyond EBC’s mandate.” The Applicant requested copies of the transcripts of her interviews, audio recordings of her testimony, and clarification over how much of her testimony was included in EBC’s Investigative Report to the HRVP, from the EBC Senior Investigator who interviewed her during her investigation. In response, the Senior Investigator told her over email on 18 May 2015:

EBC is under no obligation to inform you of what was or was not included in the investigative report. [...] Going forward, we will provide you only the transcripts of your interviews included in the investigative report. They are as follows:

- Interview transcript dated September 16, 2013
- Interview transcript dated September 17, 2013
- Interview transcript dated November 6, 2013.

Regarding your other queries about contacts with EBC; since those contacts did not result in an investigative report sent to HRSVP we will not be providing them to you. Further, EBC will not provide you the opportunity to review any audio files that we obtained from you as this is EBC work product and does not belong to the individual who has provided the information. Please let me know when you would like to pick up the transcript’s listed above.

43. The Applicant sought further clarification of the EBC investigation and her request for a reinvestigation and received a reply to her queries from the EBC Manager on 2 July 2015, in which he told her: “This disciplinary decision by the HRDVP [against the Senior Advisor] and the underlying EBC investigation may only be reviewed by the World Bank Administrative Tribunal. Consequently, EBC or HRDVP cannot re-investigate your allegations.”

The present Application

44. The Application was mailed on 2 October 2015 and received by the Tribunal on 7 October 2015. An amended Application was received on 26 October 2015. The Applicant contests the

following decisions: (i) “EBC’s decision not to reinvestigate the case”; (ii) her non-selection for the Senior Knowledge Management Officer position; (iii) the PRS Chair’s decision to dismiss some of her claims in Request for Review No. 195; (iv) the non-extension of her contract; (v) failure by management to provide her interim protection; (vi) false revision of her personnel records and People Page profile on the Bank’s intranet; and (vii) the termination of her contract.

45. The Applicant also alleges the following procedural violations: (i) EBC did not consider her allegations with fairness; (ii) PRS improperly rejected some of her proposed witnesses, dismissed her objections to the Panel members, and denied her Request for Additional Documents in Request for Review No. 191; (iii) PRS delayed the hearing, did not approve most of her proposed witnesses, wrongfully excluded her claim of failure to protect before the hearing, and improperly limited the review period for her claim of failure to protect in Request for Review No. 195; and (iv) her access to her “case evidence emails” that had been deleted from “the Bank system” was wrongfully restricted by PRS in Request for Review No. 217.

46. The Applicant seeks the following relief: (i) a reinvestigation by EBC or an independent investigation by a third party; (ii) reinstatement to the Senior Knowledge Management Officer position or an equivalent position; (iii) back pay for the work she performed under the Senior Advisor that was not covered by an existing contract; (iv) lost wages for the non-extension of her contract under the Senior Advisor and the subsequent termination of her contract under the Program Manager; (v) compensatory damages of \$1 million for “emotional pain and suffering and moral injury, as well as for harm done to her professional and personal life and reputation” as specific performance; and (vi) as compensation in the event that she is not provided her requested specific performance, compensatory damages of \$3 million for “lost career opportunities, emotional pain and suffering and moral injury, as well as for harm done to her professional and personal life and reputation.” The Applicant also seeks reimbursement of costs and legal fees in the amount of approximately \$40,000.

Preliminary Objections

The Bank's Contentions

47. In its Preliminary Objection, the Bank argues that many of the Applicant's claims are outside of the Tribunal's jurisdiction. Specifically, the Bank contends that her claim challenging EBC's decision not to reinvestigate her case is out of time. The Bank argues that while the Applicant claims to have been notified of EBC's decision not to reinvestigate her case on 2 July 2015, she was actually notified that EBC had concluded its investigation on 9 June 2014 and thus should have brought a claim regarding EBC's decision not to reinvestigate the case, as well as any claims challenging the EBC investigation itself or contesting the resulting decision, within 120 days after 9 June 2014.

48. The Bank also argues that because PRS made its decisions in Requests for Review Nos. 195 and 217 after the Application was filed and the Applicant has not challenged those decisions in an amended Application, she therefore has not stated cognizable claims with regard to those decisions.

49. The Bank contends that the Applicant's claims regarding alleged procedural violations committed by PRS in her Requests for Review "are not properly before the Tribunal" because the Tribunal does not conduct appellate review of PRS proceedings and rather reviews claims *de novo*. Specifically, according to the Bank, "the Tribunal evaluates the underlying facts alleged by [the] Applicant, without regard for any procedural decisions made by the PRS Panels." Thus, the Bank argues that the Applicant's claims of procedural violations during the PRS proceedings are not reviewable by the Tribunal. The Bank also contends that while the Tribunal has previously held that it may review decisions of PRS resulting in violation of a staff member's rights, it should not review the Applicant's challenges to procedural choices and decisions made by PRS, since "PRS did in fact review her claims in accordance with its mandate and the Staff Rules."

50. The Bank also argues that the Applicant's claim relating to PRS's dismissal of some of her claims in Request for Review No. 195 is out of time because PRS made that decision on 27 June 2014, which is outside of the 120-day deadline.

The Applicant's Contentions

51. The Applicant argues that her claims were filed in a timely manner. With regard to her claims relating to the EBC investigation, the Applicant contends that she sought information and assistance from different people but was given conflicting information. She claims that she reached out to the Lead HR Specialist, the World Bank Group President, the Chief Ethics Officer, and the EBC Manager, among others. She argues that she was told concretely how to pursue her EBC-related claim further on 2 July 2015, when she was told that EBC would not reinvestigate her allegations, and that the EBC investigation and the HRVP's decision may only be reviewed by the Tribunal. According to the Applicant, because she was given conflicting information in her continuous efforts to learn more about the EBC investigation and the HRVP's decision, and because she was told in July 2015 that she could seek relief through the Tribunal, her claims related to the EBC investigation were filed in a timely manner.

52. The Applicant argues that her allegations of procedural violations by PRS and EBC are cognizable before the Tribunal. She contends that the Tribunal will review decisions of PRS that resulted in the violation of a staff member's rights, and that the procedural violations she is alleging relate to "violations of her due process rights" and "the Bank's mishandling of [her] sexual harassment and abuse claims." Therefore, she argues that because her claims of procedural violations by PRS and EBC relate to violations of her rights, those claims are reviewable by the Tribunal.

53. The Applicant contends that her claim relating to the partial dismissal of her claims by PRS in Request for Review No. 195 was filed in a timely manner. She relies on a previous Tribunal decision to argue that it was "highly suggested" that she wait for PRS to finish processing all of her claims in Request for Review No. 195 before filing an application with the Tribunal challenging the partial dismissal decision.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

a) Whether the Applicant's claim challenging EBC's decision not to reinvestigate her allegations was filed in a timely manner

54. The Bank argues that the Applicant's claim contesting EBC's decision not to reinvestigate her case was not filed in a timely manner. Specifically, the Bank contends that the Applicant was notified that the EBC investigation had concluded on 9 June 2014 and should have brought any claims challenging that investigation, including claims relating to EBC's decision not to reinvestigate her case, within 120 days of that date.

55. The Applicant responds that she contacted several senior Bank officials, requesting them to get EBC to reinvestigate her case and seeking information from them about the EBC investigation, but that she was given conflicting information. She claims that it was only on 2 July 2015 that she was told that EBC would not reinvestigate her allegations, and that the EBC investigation and the subsequent HRVP decision could only be reviewed by the Tribunal. The Applicant argues that her claim is timely because she was given conflicting information and was only given a concrete answer in July 2015, which is within the required 120-day period.

56. Article II(2)(ii) of the Tribunal's Statute states:

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

[...]

- (ii) the application is filed within one hundred and twenty days after the latest of the following:
 - (a) the occurrence of the event giving rise to the application;
 - (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
 - (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

57. The Applicant was first notified on 9 June 2014 that the EBC investigation against the Senior Advisor had concluded with a finding of misconduct. On 11 June 2014, she learned that the finding of misconduct was based on a determination that he had engaged in a consensual affair that gave rise to a conflict of interest. From 11 June 2014 to July 2015, she contacted or was contacted by several Bank officials, including the World Bank Group President, the EBC Senior Investigator who interviewed her during the investigation, and the EBC Manager. She sought information about the investigation, including copies of the transcripts of her interviews, and she requested that EBC reinvestigate her allegations. She was specifically told on 11 June 2015 by the Advisor to the U.S. Executive Director that: “There is currently no process for re-investigating a closed EBC investigation.” On 2 July 2015, the EBC Manager told her in his email that: “This disciplinary decision by the HRDVP and the underlying EBC investigation may only be reviewed by the World Bank Administrative Tribunal. Consequently, EBC or HRDVP cannot re-investigate your allegations.”

58. Therefore, the timeliness of the filing of her Application depends on the determination of the date that the Applicant could first have been expected to know that EBC would not reinvestigate her allegations, and that she should have sought recourse from the Tribunal.

59. The Applicant requested reinvestigation of her allegations as early as 30 September 2014 in her email to the World Bank Group President. She did not receive a reply from the World Bank Group President about her request for a reinvestigation although she contacted him again on four other occasions from March through May 2015. She was told by the Lead HR Specialist on 10 April 2015, in response to her letter to the World Bank Group President of 30 March 2015, that the Bank considered her allegations to be before the proper authorities due to the report she made to Washington, D.C. police regarding her alleged sexual assault.

60. It was not until 2 July 2015 that the EBC Manager informed the Applicant that the EBC or the HRVP cannot reinvestigate the Applicant’s allegations but that the EBC investigation can only be reviewed by the World Bank Administrative Tribunal. The Tribunal is mindful of the independent status of the EBC: because of the nature of its work, it cannot be influenced, with respect to any aspect of an investigation (including a request for reinvestigation), by decisions of

other high officials of the Bank, including its President. The Tribunal recalls Staff Rule 3.00, paragraph 2.03 which provides: “In carrying out its functions under this Rule, EBC shall be free from improper interference, by any official or staff member of the Bank Group.” Hence, it appears that a “decision” as to whether to reinvestigate an already completed investigation can only be made by the EBC and not by other officials or offices of the Bank.

61. The Tribunal would observe that where a corporate entity, such as the Bank, has established accessible procedures for lodging requests for reconsideration, a staff member does not have a right to ignore those procedures. It is, moreover, not reasonable, for the President of the Bank to have to respond to every request, when an adequate institutional procedure for such requests has been established.

62. The lack of a response from the World Bank Group President, or on his behalf, regarding the Applicant’s request for a reinvestigation, as well as the email from the Lead HR Specialist that the Applicant’s allegations were before the proper authorities, could have indicated to her that her request for an EBC reinvestigation could not be granted. Be that as it may, there is no established procedure for a staff member who files a complaint with EBC which investigates and makes a report that contains certain adverse factual findings about that staff member to access the report. Since staff members in this scenario have not been provided with the report, they cannot know of the report’s adverse factual findings. Not knowing, they cannot exercise their rights to challenge them if they so wish within the allotted 120 days. In the absence of clear established procedures, and in the circumstances of this case, the Tribunal considers that the 120 days within which the Applicant should have made her complaint to the Tribunal begins from 2 July 2015, when she was informed by the EBC Manager that the EBC could not reinvestigate her allegations and that she could seek recourse from the Tribunal. The Applicant filed her Application within the allotted time limit; hence, this claim is admissible.

63. The Applicant has made an additional claim before the Tribunal that EBC committed certain procedural violations during the investigation, including “failure to record, transcribe, and submit all of [the Applicant’s] testimony to the HRSVP.” However, by an email of 9 June 2014, the Applicant was informed in clear terms that EBC had completed its investigation and found

misconduct against the Senior Advisor. The email stated as follows: “[T]he Vice President of Human Resources has now made its decision on the matter you reported to EBC against [the Senior Advisor] with a finding of misconduct.” Moreover, the Applicant discussed in detail the result of the EBC investigation with the Lead HR Specialist on 11 June 2014. Therefore, the Tribunal concludes that any challenge to procedural violations committed during that investigation should have been filed within 120 days from 9 June 2014 or at the latest, 11 June 2014. Her claim was filed more than a year later, and it is inadmissible.

b) Whether the Applicant has challenged the decisions in PRS Requests for Review Nos. 195 and 217 before the Tribunal

64. The Bank argues that the Applicant has not challenged the decisions in PRS Requests for Review Nos. 195 and 217. The Bank offered the Applicant an opportunity to amend her Application to include claims challenging those decisions, on the grounds that said decisions had been adopted once she had seized the Tribunal. The Applicant has not responded to this specific objection by the Bank.

65. The original Application was received on 7 October 2015, and an amended Application was received on 26 October 2015. In Request for Review No. 195, the responsible Vice President accepted the PRS recommendation to deny the Applicant’s requests for relief on 26 October 2015. In Request for Review No. 217, the responsible Vice President accepted the PRS recommendation to deny her requests for relief on 18 November 2015.

66. In *Rittner*, Decision No. 335 [2005], para. 27, the Tribunal stated:

It may be recalled in this connection that it is the duty of every international tribunal “to isolate the real issue in the case and to identify the object of the claim,” and that “this is one of the attributes of its judicial function.” (*McNeill*, Decision No. 157 [1997], para. 26.)

67. Regarding the proceedings in Requests for Review Nos. 195 and 217, in her Application, the Applicant lists the following under “decisions which the applicant is contesting”:

- The decision by the PRS Chair on June 27, 2014 to dismiss [the Applicant's] claims of sexual abuse, sexual harassment, abuse of position and authority for sexual gains, retaliation, creating a hostile work environment and character assassination, coerced labor (work without pay), threat of physical harm and intimidation, deception and cover-up, violation of the Staff Rules regarding confidentiality and protection of reporting misconduct, management failure to provide protection and abuse of U.S. Immigration Law.
- The non-extension of [the Applicant's] contract on September 30, 2013 by [the Senior Advisor] after her reporting of his misconduct, which was contested in her PRS Request for Review No.195 and heard in the PRS hearing on September 11, 2015.
- Management failure to provide interim protection, which was contested in her PRS Request for Review No.195 and heard in the PRS hearing on September 11, 2015.
- False revision of [the Applicant's] HR personnel records and professional profile displayed on the Bank Intranet, after her reporting of the misconduct, which was contested in her PRS Request for Review No.195 and heard in the PRS hearing on September 11, 2015.
- The termination of [the Applicant's] contract on July 11, 2014, which she obtained from a different Bank unit after [the Senior Advisor]. The issue was contested in her Request for Review No.217 and heard in the PRS partial hearing on September 4, 2015.

In this list, the Applicant challenges the basis of her complaints to PRS in her Requests for Review Nos. 195 and 217, namely, the non-extension of her contract, failure of management to provide her protection, false revision of her personnel records, and the termination of her contract. She also provides factual details and legal arguments with regard to each of the claims she has made before the Tribunal that relate to the PRS Decisions in Requests for Review Nos. 195 and 217 in the remainder of her amended Application.

68. Additionally, Staff Rule 9.03, paragraph 6.03 states:

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.

Therefore, with regard to her non-extension and termination claims, the Applicant was not required to exhaust internal remedies through PRS but could have come to the Tribunal directly. The Applicant was not required to challenge the final decisions in her Requests for Review with regard to those claims because PRS was not a necessary step for her.

69. The Tribunal thus finds that it is able to review those claims without there being a final decision by the responsible Vice President on a PRS recommendation and that the Applicant was not required to mention specifically the final decisions in those Requests for Review in her Application.

70. While the Applicant did not amend her Application specifically to take into account the final decisions made by the responsible Vice Presidents in Requests for Review Nos. 195 and 217, the Tribunal finds that it would not have been necessary for her to do so because she alleged the claims presented in those Requests for Review in her Application with sufficient detail and clarity for those claims to be reviewed by the Tribunal. The contention of the Bank, that when filed in her amended Application those claims were not ripe because there was not a final decision in those Requests for Review, does not change the above conclusion.

c) Whether the Applicant's claims regarding procedural violations committed by PRS in her Requests for Review are reviewable by the Tribunal

71. The Bank argues that the Applicant's claims of certain procedural violations by PRS, including selections of witnesses and a decision to exclude certain claims from review, are not cognizable by the Tribunal. According to the Bank, the Tribunal reviews claims *de novo* and does not review procedural decisions made by PRS or the regularity of PRS proceedings.

72. The Applicant responds that the Tribunal is able to review procedural decisions and violations by PRS, if they violate a staff member's rights. She argues that the procedural decisions by PRS that she is challenging before the Tribunal violated her due process rights and as such, are reviewable by the Tribunal.

73. In *de Raet*, Decision No. 85 [1989], para. 54, the Tribunal stated:

[T]he relationship of the Appeals Committee to the Tribunal is not that of an inferior to a superior court. The Tribunal is not a court of appeal from the Appeals Committee and does not review the manner in which the Appeals Committee has dealt with a case before it. The proceedings before the Tribunal are entirely separate and independent despite the fact that recourse to the Appeals Committee is a condition precedent to the commencement of proceedings before the Tribunal.

74. In *Lewin*, Decision No. 152 [1996], para. 44, the Tribunal stated:

The Tribunal is not an appellate body reviewing the proceedings, findings and recommendations of the Appeals Committee. Its task is to review the decisions of the Bank; it is not to review the Report of the Appeals Committee.

75. Additionally, in *Yoon (No. 11)*, Decision No. 433 [2010], para. 16, the Tribunal stated:

The Tribunal's jurisprudence is clearly to the effect that it will not readily review procedural decisions by the Appeals Committee such as those identified in paragraph 2 of this judgment. It is evident that, while it is an important part of the CRS [Conflict Resolution System], the Appeals Committee is not a typical unit of the Bank; it does not make decisions on behalf of the Bank. The Tribunal does not micromanage the activities of such a body. In this case, the Appeals Committee was in the best position to make these procedural decisions given the multiple appeals the Applicant filed, and the Tribunal will not second-guess them. True enough, as a matter of abstract principle, decisions of the Appeals Committee could be subject to the Tribunal's review in the event that they resulted in violation of a staff member's rights, e.g. a refusal to deal with a complaint at all. The Tribunal will intervene whenever staff members' rights are violated. In this case, however, the Applicant has failed to show even a *prima facie* violation of her rights. At the most, hers are complaints about routine procedural arrangements, with no demonstration of the manner in which they prejudiced her access to consideration by the Appeals Committee.

76. The Tribunal notes that the Appeals Committee was later renamed PRS. According to the Tribunal's prior jurisprudence, it is not for the Tribunal to review challenges to procedural decisions made by PRS. However, as mentioned in *Yoon (No. 11)*, para. 16, the Tribunal may review such challenges if "they [result] in violation of a staff member's rights." The Tribunal otherwise will not review "routine procedural arrangements" and decisions by PRS.

77. The Applicant challenges the following alleged procedural violations by PRS in Request for Review No. 191: the Panel's rejection of some of her proposed witnesses; the Panel's dismissal of her objection to the designated Panel members; the Panel's denial of her Request for Additional Documents; and the Panel's lack of effort in obtaining the additional documents she requested. She challenges the following procedural decisions made by PRS in Request for Review No. 195: the delay by PRS in providing her a hearing; the Panel's rejection of some of her proposed witnesses; the Panel's exclusion of her claim of failure to protect before the hearing; and the decision by PRS to limit the reviewable time period for her claim of failure to protect. For Request for Review No. 217, the Applicant challenges PRS's alleged restriction of access to her "case evidence emails."

78. Like in *Yoon (No. 11)*, here, the Applicant is challenging procedural decisions made by PRS that constitute "routine procedural arrangements," rather than a refusal by PRS to properly consider her claims and restrict her access to PRS. In *Yoon (No. 11)*, para. 16, the Tribunal indicated that a violation of a staff member's rights for these purposes would be PRS refusing to consider her claims or PRS prejudicing her access to have her claims considered. The Applicant's challenges to procedural decisions made by PRS in her three Requests for Review do not constitute a refusal to deal with her claims or to restrict consideration of her claims. For example, the decisions made by PRS in her Requests for Review to exclude certain witnesses while hearing others cannot be said to represent a failure to deal with her claims. Rather, PRS is entitled to make such procedural decisions, as certain witnesses may provide more relevant information than others.

79. Likewise, her challenges to PRS denying her Request for Additional Documents or not obtaining her requested documents in Request for Review No. 191 go to the heart of the types of procedural decisions that PRS is entitled to make when considering claims. According to Staff Rule 9.03, paragraph 10.03(g), a PRS Panel may "[d]ecide upon the parties' document and witness requests."

80. Similarly, PRS has the power to dismiss claims that it decided were not filed before it in a timely manner and consider claims to the extent that there are aspects of the claims that are timely. According to Staff Rule 9.03, paragraph 10.03(b), a PRS Panel may:

Dismiss a Request for Review, or one or more of the claims made therein, when circumstances warrant, including when:

- (i) The Request for Review was not timely submitted pursuant to Staff Rule 9.03, section 7.

Therefore, the PRS Panel in Request for Review No. 195 had the power to limit the scope of review of her claims to the extent that aspects of her claims were filed before it in a timely manner.

81. With regard to her claims relating to the delay in providing her a hearing and PRS's exclusion of her claim of failure to protect before the hearing in Request for Review No. 195, and the Panel's dismissal of her objection to the designated Panel members in Request for Review No. 191, the Tribunal notes that these are procedural decisions that are within the purview of PRS to make. Moreover, the Applicant has not presented the factual basis that would make such claims cognizable before the Tribunal. Specifically, she has not provided the decision where PRS dismissed her objection to the Panel members, nor has she provided a decision made by PRS in which her claim of management's failure to protect her was excluded before the hearing. Similarly, with regard to the Applicant's claim that PRS restricted her access to her emails in Request for Review No. 217, the Tribunal notes that she has not provided the factual background to make such a claim cognizable before the Tribunal.

82. Thus, the Tribunal finds that the claims regarding procedural violations allegedly committed by PRS in the Requests for Review submitted by the Applicant are inadmissible.

d) Whether the PRS Chair's decision to dismiss some of the Applicant's claims is reviewable by the Tribunal

83. The Bank argues that the Applicant's challenge to PRS's dismissal of some of her claims in Request for Review No. 195 is not cognizable before the Tribunal. The Bank alleges that this is also a procedural decision made by PRS, and that the Applicant's claim challenging the partial dismissal decision was not filed before the Tribunal in a timely manner.

84. The Applicant responds that she has filed this claim before the Tribunal in a timely manner because it was “highly suggested” that she wait for PRS to finish its consideration of all of the claims in Request for Review No. 195 before filing a claim with the Tribunal challenging PRS’s partial dismissal decision.

85. In its decision of 27 June 2014, PRS dismissed certain claims made by the Applicant on two grounds, namely that they were related to misconduct, and that the Applicant did not raise these claims before it in a timely manner. The PRS Chair stated:

4. The Chair notes that the other managerial decisions and/or actions you raise in your Request for Review that are not identified [...] were not timely filed within the applicable time period. Because PRS does not have jurisdiction to review these claims, the Peer Review Chair has decided to dismiss them pursuant to Staff Rule 9.03 (Peer Review Services), paragraphs 10.02 and 10.03(b)(i) (Powers of the Peer Review Chair and Panels).

5. The Staff Rule governing Peer Review further provides that a Panel may review any Request for Review in which a staff member alleges that a managerial action, inaction or decision was not consistent with her contract of employment or terms of appointment. Peer Review does not have jurisdiction to review allegations of misconduct, which are reviewed by [EBC].

6. Accordingly, the Chair further notes that the following allegations of misconduct you identify in your Request for Review are not within the peer review’s authority to review: “sexual harassment;” “sexual abuse;” “abuse of position and authority for sexual gains;” “creating a hostile work environment and character assassination;” “threat of physical harm and intimidation;” “deception and cover-up;” and “abuse of U.S. Immigration law.”

86. The Tribunal observes that the main question to be addressed is not whether the Applicant filed her claim before the Tribunal in a timely manner, but rather whether PRS had jurisdiction to hear the claims which were dismissed in the 27 June 2014 decision of the PRS Chair. As is stated in Staff Rule 9.03, paragraph 6.04(d):

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.

87. While the Tribunal is able to review decisions where staff member's rights have been violated, in the present case, the Tribunal finds that the decision of the PRS Chair that the above allegations of misconduct were not within PRS's authority was a proper application of Staff Rule 9.03, paragraph 6.04(d), and was therefore not a violation of the Applicant's rights.

Concluding Remarks

88. The Tribunal upholds the Bank's preliminary objection with respect to the following claims: (i) the Applicant's claim that EBC committed certain procedural violations during its investigation; (ii) the Applicant's claim that PRS committed procedural violations in her Requests for Review; and (iii) the Applicant's challenge to the decision of the PRS Chair to dismiss some of her claims in Request for Review No. 195.

89. The Tribunal finds that it has jurisdiction over the following claims: (i) EBC's decision not to reinvestigate the Applicant's allegations; (ii) the Applicant's non-selection for the Senior Knowledge Management Officer position; (iii) the non-extension of her contract on 30 September 2013; (iv) failure of management to provide her protection, to the extent it was raised before PRS in Request for Review No. 195; (v) false revision of her People Page profile; and (vi) the termination of her contract on 11 July 2014.

DECISION

- (1) The Preliminary Objection filed by the Bank is upheld with respect to the claims listed in paragraph 88 above;
- (2) The Tribunal will address on the merits only the claims it has jurisdiction over, as listed in paragraph 89 above; and
- (3) The Applicant is awarded attorney's fees in the amount of \$5,000 for this preliminary phase of the proceedings.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 8 April 2016