



**World Bank Administrative Tribunal**

**2015**

**Decision No. 520**

**Saad Abdulrazak Alrayes,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

**(Preliminary Objection)**

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

**Saad Abdulrazak Alrayes,  
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), Andrew Burgess, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 26 January 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.

3. The Applicant challenges a number of decisions of the IFC relating to the January 2010 cancellation of his G4 visa and various legal fees he incurred as a result, his subsequent placement on a Short Term Assignment, and a December 2011 Memorandum of Understanding which he claims to have signed under duress. He also claims separation payments allegedly due to him when his employment with the IFC ended in January 2013.

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

**FACTUAL BACKGROUND**

5. The Applicant, a Saudi Arabian national, joined the IFC on 8 January 2007, as a Senior Business Development Officer on a Term contract, level GG. His most recent Term contract was due to expire on 9 January 2011. He worked in the Washington, D.C. office, retained a G4 visa for the United States (most recently renewed in 2009), and travelled abroad on numerous missions on behalf of the IFC.

6. The Applicant is divorced, and with his ex-wife has joint custody of their four children – two girls (born 1998 and 2000) and two boys (born 1990 and 1992). Until January 2010, the Applicant saw his children on a weekly basis, and had custody on alternate weekends and holidays. The Applicant lived in Virginia. His ex-wife was required to live in the Washington, D.C., area so that these custody arrangements could be implemented.

7. In January 2010, the Applicant left for a two week mission to the Gulf States to market the IFC's new corporate fund in emerging countries to regional national banks. At the end of this mission, he attempted to board a flight at Dubai airport, to return to the United States. However he was informed by airline personnel that his G4 visa had been cancelled and that he could not travel to the United States. He did not know why the visa had been cancelled.

8. The Applicant consulted his supervisor at the IFC, and the IFC legal and visa services. He was advised to travel to London and apply for a new G4 visa from there. The Applicant did so, and remained in London for one month. In February 2010 the IFC filed an application for a new G4 visa with the U.S. Embassy in London. While waiting for the decision on this application, the IFC instructed the Applicant to return to Dubai and work from its office there.

9. On 7 July 2010, the Applicant wrote to Ms. Maureen Brookbank, a Director in the Human Resources Vice Presidency of the World Bank, who had been leading the institution's attempts to resolve his case, copying a number of IFC colleagues. The Applicant related some of the measures he had taken, including requesting that the Saudi Ministry of Foreign Affairs raise the issue with the U.S. Department of State, and his plans to raise the matter with various Heads of State. The Applicant expressed disappointment that the World Bank appeared to lack the influence necessary to resolve his situation. He stressed the personal cost which his inability to return to the United States was having: he was separated from his children, had missed important family celebrations including a high school graduation, and his ex-wife was planning to move from Washington, D.C. to Boston in light of the Applicant's alleged failure to exercise his parental visitation rights.

10. On 20 October 2010, the Applicant – speaking from Dubai – participated in an IFC Town Hall meeting and made a plea to Mr. Lars Thunell (then head of the IFC) to resolve his case. The Applicant complained that the Bank should have sufficient leverage with the United States to be able to challenge allegations made against employees, particularly where, as here, it seemed likely that the employee was a victim of racial profiling. The Applicant requested that Mr. Thunell contact the U.S. President for assistance, and again emphasized the difficulty he was encountering in being separated from his children. The Applicant sent a follow-up email to Mr. Thunell on 21 October 2010, again requesting intervention by the Bank with the U.S. Government. On 25 October 2010, the Applicant sought the assistance of a U.S. Senator.

11. In November 2010, the IFC proposed that the Applicant be formally appointed to its Dubai office, on a Short Term Assignment (STA) contract for six months, to terminate on 17 June 2011. On 2 November 2010, the Applicant emailed his manager to express concern at this change, and stressed that this would aggravate the severe financial difficulties he was already facing as a result of his G4 visa issues. The Applicant stated that “you are offering me new terms and trying to negotiate while I am strained, both emotionally and financially. I am away from home and kids for no fault or choice of my own and cannot connect with loved ones or even plan a normal life.” He stated his appreciation that the Bank had stood by him thus far. On the contractual situation, he suggested that his term contract be extended for a further two years, but that if his visa issues were not resolved by the end of the current term (January 2011), he be allowed to take leave without pay so as to fully resolve the situation. The Applicant also told his manager that Mr. Thunell had offered for the Bank to pay the travel costs for the Applicant’s family to visit him outside the United States.

12. The Applicant had retained an immigration lawyer, Ms. Denyse Sabagh of the firm Duane Morris, to assist with his G4 visa issues. On 30 October 2010, Ms. Sabagh advised the Applicant of various actions which could be taken, including the possibility of filing a mandamus action in a U.S. District Court, with the objective that the court would order the U.S. State Department to adjudicate on the Applicant’s visa application. According to the Applicant, Ms. Sabagh told him that such actions “usually resulted in a visa being issued within a short

period of time.” At the very least, this step would have enabled the Applicant to find out why exactly his G4 had been cancelled in the first place.

13. On 3 November 2010, the IFC issued a statement regarding G4 visas, in which it referred to the recent IFC Town Hall meeting at which the Applicant had spoken (see above), expressed concern for the “plight of the affected staff member,” and stated that it was “doing everything we possibly can to resolve the matter.” It stressed that it had reached out to the governments of the United States and Saudi Arabia, and that it had “offered to pay travel costs for [the Applicant’s] family” to visit him outside the United States.

14. In an email to the Applicant of 4 November 2010, Ms. Rachel Robbins, Vice President and General Counsel of the IFC, stated that: “We all empathize deeply with your difficult personal situation and want to help you. I do not think a mandamus action is the right way forward but we will continue to press for attention at high levels in the US Government.” In response, the Applicant asked Ms. Robbins to at least engage legal counsel to work on his case.

15. In late November 2010, the United States Embassy in Riyadh, Saudi Arabia, contacted the Applicant’s sister in relation to a potential interview of the Applicant regarding his visa issues. The Applicant moved to Riyadh to follow-up but, having heard nothing further from the U.S. authorities, moved back to Dubai the following month.

16. On 10 December 2010, the Applicant was formally offered a six month STA with the IFC, to begin on 18 December 2010. Under the terms of the STA, his home duty station of Washington, D.C., would remain unchanged, though his work location would be changed to record his physical presence in Dubai. The Applicant signed the STA agreement on 21 February 2011.

17. In an email of 14 December 2010, the Applicant repeated his request that the IFC take legal action on his behalf. He stated that “the Bank has been hesitant but not against using such a solution and asked for time before resorting to such action, it wanted to use other means, which so far proved ineffective,” and questioned “when will they admit that such other means have

failed and it's time to move to plan B?" He contended that the lack of action was not in the best interests of the organization, and may have constituted a violation of the Bank's fiduciary duties and/or its obligations towards its employees. He suggested that if the Bank did not wish to engage legal counsel itself, it (or the Staff Association) could provide him with financial support to do so himself. Alternatively, he suggested that the Bank could initiate a media campaign in his favor. In her response of 16 December 2010, Ms. Robbins reiterated her refusal, stating that "as I have said before I do not believe that suing the US Government is the right path" but that "we will do all we can within diplomatic channels to help resolve this situation."

18. On 17 December 2010, the Applicant sought to take the IFC up on its offer to pay the travel costs for his children to visit him. At that time (during semesters), it was only possible for one of his boys to visit him. The Applicant intended the visit to take place between 29 December and 10 January, and requested an expense code against which he could charge the ticket.

19. The Applicant had continued making his own representations with the United States Government. On 21 December he contacted an agent from the Federal Bureau of Investigation (FBI) who had recently interviewed the Applicant's sister, and offered to speak to the FBI regarding any concerns they might have. He received no response.

20. On 13 January 2011, the Applicant requested assistance from the World Bank Staff Association.

21. On 9 February 2011, the Applicant was formally notified by the U.S. Consulate in Riyadh that he had been found ineligible for a G4 visa because of alleged terrorist activities.

22. On 25 March 2011, the Applicant's lawyer, Ms. Sabagh, contacted the Advisory Opinion Division of the U.S. Department of State to request an opinion on "the legal determination underlying denial of [the Applicant's] visa." She further requested that this denial be reversed, and that his application to renew his G4 visa be granted.

23. In June 2011, with the visa situation still unresolved, the Applicant's STA was extended for a further six months, until 6 January 2012.

24. On 18-21 July 2011, the FBI interviewed the Applicant in Vienna, Austria. As the IFC had recently agreed to pay up to \$25,000 in legal fees "for your lawyer to accompany you during this interview," the Applicant was accompanied by his lawyer to these meetings, as well as a lawyer from the Staff Association.

25. In November 2011, the Applicant submitted a request for reimbursement of the legal fees he had incurred thus far (approximately \$24,000). He also sent a reminder to the IFC the following month.

26. In December 2011, with his existing STA set to terminate the following month, the Applicant had multiple communications with IFC Human Resources regarding his employment status. On 7 December he received a one month contract expiration notice. In an email of 14 December, Mr. Oumar Seydi, a colleague in Human Resources, advised the Applicant to "rest assured that your contract will NOT be ended in January 2012 so there is no need for you to do anything at this stage."

27. On 27 and 29 December 2011, the Applicant participated in mediation sessions by video conference. According to the Applicant, he was essentially given the choice of termination when the existing STA expired (a few days later), or signing a Memorandum of Understanding (MOU). The Applicant states that, given his "appalling position and financial desperation," he had no choice but to agree to whatever terms the IFC imposed to avoid termination.

28. The Applicant signed the MOU on 30 December 2011. The MOU was stated to document the parties' agreement on the Applicant's completion of employment with the IFC, and his status at the IFC until the conclusion of his employment in light of his visa issues. The terms of the MOU were as follows. First, the Applicant agreed to "fully and finally settle and release all claims against IFC" regarding the conclusion of his employment with the IFC and his status with the organization pending resolution of his visa issues, "in addition to all employment

issues that arose prior to the execution of this MOU.” Second, the Applicant’s Term Appointment was extended until 5 January 2013, though he was to resign from the IFC immediately with his resignation becoming effective on that date. Third, the MOU provided for two different arrangements depending on the resolution of his visa situation. In the event that he was unable to secure a visa to enter the United States he would continue to work out of the Dubai office “under the Short Term Assignment (STA) program” until 17 December 2012. From 18 December 2012 until 5 January 2013 he would be placed on Administrative Leave. Conversely, if the Applicant were to obtain permission to enter the United States prior to his termination date he could return to the United States but would not work with the IFC there, instead he would be placed on Administrative Leave. Fourth, the Applicant “agrees that this is a final settlement and that he will not receive any additional monetary or non-monetary payments or benefits other than what he would normally receive upon his termination of employment.”

29. The Applicant had hoped that the July 2011 Vienna interviews with the FBI would finally resolve his visa difficulties, but no decision from the U.S. authorities was forthcoming. Eventually, he was informed that he would need to undergo a further interview. This took place in Abu Dhabi, UAE, in December 2012.

30. Following this interview, the Applicant was told that he had received clearance and that he should apply for a new U.S. visa. However, as this was just two weeks before the scheduled termination of his employment with the IFC, the Applicant could not apply for a G4 visa. He instead applied for a visitor’s visa. Though he was told that he would receive this within a week, in practice it took “months and months” for the U.S. Department of Homeland Security to clear him.

31. On 21 December 2012, the Applicant wrote to the IFC requesting payment of the \$25,000 for legal costs associated with the Vienna interviews, and a further \$15,000 for costs associated with the Abu Dhabi interview.



32. On 5 January 2013, the Applicant's employment with the IFC terminated. According to the Applicant, neither at this point nor later did he receive any information about processes associated with termination, separation payments, etc.

33. On 8 January 2013 he received an answer to his email of 21 December 2012 from Ms. Eva Mennel, the IFC Director of Human Resources. She stated, in relevant part, as follows:

I have now concluded that I am not in a position to approve another payment for your legal fees. As indicated in Rachel Robbins' message of July 16, 2011 to you, it was our intent to contribute 'up to \$25,000' to your legal fees, not cover these fees in their entirety.

Overall, I feel it is fair to say that the support the WBG has provided you during your extraordinary ordeal over these past years has been very generous.

34. On 15 July 2014, the Applicant finally received his visitor's visa for the United States. He then promptly returned to the United States.

35. On 29 July 2014, when back in the United States, the Applicant emailed twelve IFC and World Bank staff members with whom he had been communicating during his years outside the United States. He expressed a wish to "close any standing issues, review closing procedures settlements, reimbursements of legal fees or other entitlements at closing if any," and requested a meeting with Human Resources to this end. He stated that he had not yet received any information regarding "closing balances or pension amounts," nor "notification of legal fees payments as agreed and requested." According to the Applicant, the only response he received to this email was from the mediation office.

36. The Applicant entered mediation in October 2014. The mediation proved to be unsuccessful and was closed on 8 January 2015.

37. On 16 January 2015, the Applicant filed a case with Peer Review Services (PRS). He requested review of a number of actions or inactions of the IFC, under three main headings. First, he requested payment of extraordinary expenses incurred while on mission, in particular his various visa-related legal fees. Second, he requested payment for costs incurred to enable his

children to visit him while he was stranded outside the United States – both travel costs and associated legal fees. Third, he claimed that he had been illegally placed on a two-year STA, resulting in no salary increases while on mission, and that he had not received various payments due to him (vacation days, return travel from mission, relocation allowance, and end of service benefits).

38. The Application was filed with the Tribunal on 26 January 2015. In addition to reiterating the claims made before PRS, the Applicant challenged two further decisions of the IFC. The first was the decision not to seek a writ of mandamus in order to expedite resolution of the G4 visa issue. The second was the termination of his employment in January 2013 under an MOU which, he claimed, had been imposed on him and signed under duress. In respect of those claims which had been already filed before PRS, the Applicant requested that the Tribunal either “take jurisdiction” in respect of these elements, or stay his case before the Tribunal pending the outcome of his PRS case. On 24 February 2015, the President of the Tribunal acceded to the latter request.

39. On 27 February 2015, PRS dismissed the Applicant’s Request for Review in its Case No. 224 for lack of jurisdiction. PRS determined that all three claims raised by the Applicant were untimely: in respect of the first two claims he had raised before PRS he had failed to file within 120 days of the 8 January 2013 communication from Ms. Mennel, while in respect of his third claim he had failed to file within 120 days of his termination date of 5 January 2013. In light of this development, the Applicant requested that the Tribunal lift the stay on proceedings. The President of the Tribunal granted this request on 7 April 2015.

40. The IFC filed a Preliminary Objection to the Application on 28 April 2015. After filing his responses to this Objection, the Applicant requested that the Tribunal award him \$20,042.94 for attorney’s fees incurred to date.

## PRELIMINARY OBJECTION

## SUMMARY OF THE IFC'S CONTENTIONS

41. The IFC contends that the claims raised in the Application are time-barred because they were not filed within the time-limits set forth in Article II(2) of the Tribunal's Statute, and therefore requests that the Application be dismissed in its entirety. The IFC submits that the Applicant has failed to show any exceptional circumstances that would justify making an exception to the statutory time-limits.

*Failure to exhaust internal remedies in a timely manner*

42. The IFC notes that all claims relating to reimbursement of legal fees and expenses connected to the G4 visa issue were raised before PRS but dismissed for being out of time. According to the IFC, the *dies a quo* for these claims was the 8 January 2013 email from Ms. Mennel, informing the Applicant that she was "not in a position to approve another payment for [his] legal fees." A request to review this decision should have been brought to PRS by 8 May 2013, whereas in fact the Applicant submitted his request more than two years after this email.

43. Similarly, the IFC submits that whereas the Applicant's claim for certain termination benefits should have been raised before PRS within 120 days of the Applicant's termination date of 5 January 2013, again he did not file until 16 January 2015, "when he was, without a doubt, out-of-time to do so."

44. On the failure to seek a writ of mandamus, the IFC contends that the Applicant received notification of its decision in the email of Ms. Robbins dated 4 November 2010, reiterated in a further email of 16 December 2010. According to the IFC, the Applicant has not yet sought a PRS review of this decision, and is now clearly out-of-time to do so as four years have elapsed.

45. The IFC accepts that the Applicant's claim to have signed the MOU under duress can be brought directly before the Tribunal, without a prior review by PRS, but submits that the Applicant is, once more, out of time as the MOU was signed on 30 December 2011.

*No exceptional circumstances*

46. The IFC argues that the Applicant has not shown exceptional circumstances under Article II(2) of the Tribunal's Statute. The burden of proving such circumstances is on the Applicant and the extent of the delay weighs heavily against the Applicant, who is "at least more than 2 years out-of-time." While the Applicant was physically based in the IFC's Dubai office at the relevant time, "there were no real or serious impediments to him seeking the necessary administrative redress while he was overseas." The IFC argues that despite being abroad, the Applicant nevertheless "had, at his disposal, the resources to file a PRS Request or an application to the Tribunal remotely via electronic means." The IFC notes that the Applicant has not provided any corroborating evidence or substantiation in the form of reliable and pertinent "contemporaneous proof," as is required by the Tribunal's case-law.

SUMMARY OF THE APPLICANT'S CONTENTIONS

*Timeliness of Application*

47. The Applicant "readily admit[s] that he filed his claims with PRS and with the Tribunal long after the applicable 120-day period." He makes two main arguments on the question of timeliness, however. First, he argues that it is not clear when the statute of limitations should begin to run for some of his claims. Second, he contends that "it is hard to imagine a set of circumstances which could be more exceptional" than his case.

48. On the first argument, the Applicant contends that when Ms. Mennel sent the email of 8 January 2013 on the reimbursement of legal fees, she either did not know that the Applicant had in fact never received the first \$25,000 and/or she lacked the authority to make a final decision on reimbursing an additional amount. If the former, the Applicant has never received a denial of his request to be paid that sum, hence no statute of limitations should apply. If the latter, the Applicant "felt it would be more appropriate to discuss the issue face-to-face."

49. In addition, the Applicant argues that there is no clear statute of limitations regarding the IFC's failure to pay expenses relating to his daughters' travel to see him, as he "could not have foretold that he would have to expend years of legal fees fighting to have a court enforce the

right of his daughters to travel to see him,” or that the IFC would terminate him before they could travel, and he “could not have been expected to appeal the non-payment of his children’s travel and legal fees before he was finally able to return to the United States.”

50. The Applicant contends that the 8 January 2013 email of Ms. Mennel constituted a denial of payment for the legal fees associated with the Applicant’s G4 visa only, and did not address the question of payment of legal fees or other costs associated with the travel of his daughters to see him. As such, this email should not be used as the notice date for claims relating to the latter.

*Exceptional circumstances*

51. The Applicant states that while in Dubai, “abandoned and desolate” and with “terrible expenses both legal and otherwise,” he had to devote any spare time he had to resolve his situation. This was “a full time job,” and he “did not have any time to consider taking legal action against IFC; his other legal problems at that stage were overwhelming.” He submits that his circumstances were “so extraordinary” that he has met the standard of exceptional circumstances, and requests the Tribunal to take jurisdiction over all his claims “regardless of any time limitations.”

52. The Applicant contends that in his circumstances “compliance with normal deadlines was all but impossible,” and that his case is “not merely exceptional” but “also raises an issue of extraordinary importance, namely the obligations of the World Bank Group to support and provide due process to staff members on missions who are prevented from returning to the United States due to diplomatic circumstances beyond their control.”

53. The Applicant acknowledges that several of the Tribunal decisions on this issue stress the need for medical evidence, but submits that the Tribunal has never held, or even implied, that a medical condition is the only circumstance in which this threshold is met.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

## STATUTORY FRAMEWORK

54. 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; and

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

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

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

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

55. The Tribunal has often expressed the importance of the requirement of exhaustion of internal remedies (*see, e.g., Berg*, Decision No. 51 [1987] at para. 30). Furthermore, the Tribunal has stressed in numerous decisions that a failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies (*see de Jong*, Decision No. 89 [1990], para. 33; *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25-26; *Peprah*, Decision No. 275 [2002], para. 24; *Islam*, Decision No. 280 [2002], para. 7).

56. The Tribunal has emphasized that the prescribed time limits are very "important for a smooth functioning of both the Bank and the Tribunal" (*Agerschou*, Decision No. 114 [1992], para. 42; *see also Tanner*, Decision No. 478 [2013], para. 45). In *Mitra*, Decision No. 230 [2000], para. 11, the Tribunal observed that the resolution of claims brought many years after the operative events could be "seriously complicated by the absence of important witnesses or documents, and would in any event result in instability and unpredictability in the ongoing employment relationships between staff members and the Bank."

## FILING DEADLINES FOR THE VARIOUS CLAIMS

57. The Applicant raises a number of distinct claims. In brief, he challenges: (i) the decision not to seek a writ of mandamus regarding his G4 visa; (ii) his termination under an MOU; (iii) the non-payment of separation payments allegedly due at the time of his termination; (iv) the lack of any salary increases during the time of his exile; (v) his placement on a two-year STA; (vi) the non-payment of his legal fees for meetings with the FBI in July 2011 and December 2012; (vii) the non-payment of other legal fees incurred between January 2013 and July 2014 associated with obtaining a valid U.S. visa; (viii) the non-payment of his legal fees and costs associated with arranging for his children to visit him outside of the United States; and (ix) the non-payment of all additional expenses incurred as a result of his exile.

58. These various claims relate to entitlements alleged to have arisen, and to contractual violations alleged to have occurred, at different times. Some of these claims required prior exhaustion of internal remedies, namely the filing of a Request for Review before PRS, while others could be brought straight to the Tribunal. The Tribunal's assessment of the IFC's preliminary objection will consider the Applicant's claims in three categories.

*Claims agreed to be out of time*

59. Regarding the first category, the parties are in agreement that the Applicant missed the filing deadlines for certain claims he raised before PRS and/or the Tribunal. This is true of claims in respect of which the Applicant was obliged to first exhaust internal remedies (namely, the claims regarding the IFC's decision not to seek a writ of mandamus, and the Applicant's placement on a two-year STA), as well as the Applicant's claim regarding the validity of the MOU which, under Staff Rule 9.03, paragraph 6.04(e), could be brought directly to the Tribunal.

60. In respect of these claims, the Applicant invokes the "exceptional circumstances" provision in Article II(2) of the Tribunal's Statute. This is considered in detail below (paragraphs 99-111).

*Staff Rule 11.01*

61. Turning to the second category of claims, the parties have also made submissions on the applicability of Staff Rule 11.01. This governs claims against the Bank Group for money owed by it to staff members, as well as claims by the Bank Group for money owed to it (paragraph 1.01). Staff Rule 11.01, paragraph 2.01 provides that:

Except where otherwise specifically provided to the contrary, whether in these Rules or elsewhere, the right of a staff member to claim any refund, allowance or payment due but unpaid or any benefit not credited shall lapse three years after the date on which a right to the benefit, allowance or payment claimed arose.

62. The Tribunal has previously observed that this Rule is one of jurisdiction rather than substantive rights (*Prescott*, Decision No. 253 [2001], para. 31). The Rule prevents claims being made indefinitely into the future, and addresses the need to avoid “unlimited or undefined claims proceedings” (*Mitra*, para. 14).

63. The three-year period “will begin on the date that the identifiable right arose” (*B (No. 2)*, Decision No. 336 [2005], para. 25; citing *Taborga (No. 2)*, Decision No. 324 [2004], paras 21-24), and “cannot be counted from a date unconnected to a specific right enjoyed by the Applicant” (*B (No. 2)*, para. 27). This can be the date of a Bank decision establishing the entitlement (in amending a Staff Rule relating to pension credits, for example, as in *Prescott*, para. 31), or the date at which a change in the staff member’s status or activities triggers the application of an existing Staff Rule to him or her (as in *Blair*, Decision No. 281 [2002], paras. 20-21).

64. The rights which a staff member invokes must be rights the staff member is specifically and individually entitled to in accordance with the contract of employment and terms of appointment: “they are not abstract or theoretical rights, even less so speculative” and so a staff member “must show, at least *prima facie*, that he is entitled to a certain right that has not been paid or credited, and claim it within the three-year time period” (*Taborga (No. 2)*, para. 23).

65. It is important to note that this provision does not operate independently of other Staff Rules on the timely submission of claims to PRS or, indeed, the provisions of the Tribunal’s



Statute on the timely exhaustion of internal remedies. Where a claim relates to allowances or payments allegedly due to the staff member, under Staff Rule 11.01, paragraph 2.01 the latter has three years from the date on which a right to the allowance or payment claimed arose, in which to raise the claim with the Bank. Once that claim is rejected by the Bank, the standard 120-day time-frame in which the staff member can challenge that rejection applies. Where, for example, a staff member claims monies owed within six months of the date on which his or her right to the monies allegedly arose, the *dies a quo* is still the date when the staff member ought reasonably to have been aware that the claim was rejected by the Bank (*Motabar*, Decision No. 346 [2006] para. 16). A challenge to that rejection must be filed with PRS within 120 days. That the staff member could have waited a further 2.5 years before claiming the money in the first place, does not mean that the time period in which to challenge the Bank's negative decision is extended by this, or any other, amount of time.

66. The Applicant contends that all his claims were made well within the Rule 11.01 three year time-limit. For its part, the IFC has made two main contentions on the relevance of this Rule. First, that in respect of the Applicant's claims regarding fees for the FBI meetings, and costs associated with his daughters' travel, he pursued the necessary internal remedies more than three years after any such right arose. Second, that in respect of the separation payments claimed, paragraph 3.06 of this Rule imposes a 30-day calendar period within which the Applicant should have made his claims, but he failed to do so.

67. The IFC's second argument here can be dealt with briefly, as it is plainly without merit. Rule 11.01, paragraph 3.06 applies to "outstanding receivables", which are clearly defined in paragraph 1.03(a) as monies owed *by* a staff member *to* the Bank. At issue in the present case, however, are monies allegedly owed *by* the IFC *to* a staff member.

68. The Tribunal will now consider the timeliness with which the Applicant filed those claims in respect of which Staff Rule 11.01 may have significance.

69. *Legal fees related to (first) FBI interviews.* On the Applicant's account, the entitlement here arose from the July 2011 commitment of the IFC to pay up to \$25,000 "for your lawyer to

accompany you during the interview.” Under Staff Rule 11.01, the Applicant had three years from July 2011 in which to claim this money. He did so, having first requested reimbursement of the approved \$25,000 in November 2011. As such, Staff Rule 11.01 does not operate to bar this claim. That is not the end of the matter, however, as there is then the question of whether this claim was filed with PRS, and the Tribunal, within the statutory time-frames.

70. The Applicant contends that when Ms. Mennel sent the email of 8 January 2013 on the reimbursement of legal fees, she may not have known that the Applicant had in fact never received the first \$25,000. If so, the Applicant argues that he has never received a denial of his request to be paid that sum, and that no statute of limitations should apply.

71. This argument is not convincing. The IFC had agreed to pay \$25,000 fully 18 months prior to Ms. Mennel’s email, in July 2011. Her email did not dispute any such agreement, but rather stated a refusal to reimburse the Applicant any expenses incurred beyond that amount. There is a strong argument that, if anything, the *dies a quo* for reimbursement of the \$25,000 occurred earlier: the Applicant had first requested reimbursement of the approved \$25,000 in November 2011, and sent a reminder in December 2011. Neither resulted in payment of the \$25,000 so the Applicant could reasonably be held to have been on notice of this non-payment well in advance of the 8 January 2013 email of Ms. Mennel. In any event, for present purposes it is not necessary for the Tribunal to decide whether that email in fact affected the *dies a quo*, as the Applicant failed to file a formal grievance until two years later, in January 2015. Absent exceptional circumstances (considered below), this claim is out of time.

72. *Other legal fees associated with his G4 visa.* The Applicant also claims reimbursement of legal fees incurred beyond the \$25,000 for the (first) FBI interviews. He claims that in total he spent \$48,979 on legal fees, comprised of \$39,689 for the two sets of FBI interviews (\$25,000 of which the IFC had agreed to cover, see above), and a further \$9,289 incurred between January 2013 and July 2014. On his account, his entitlement to the additional sums also arose from the commitment made by the IFC in July 2011.

73. Under Staff Rule 11.01, the Applicant had three years within which to claim this money. He wrote to the IFC in December 2012 to claim the additional \$15,000 for costs associated with the Abu Dhabi interview. In respect of this element of the claim he accordingly complied with Staff Rule 11.01. Again, the next issue to consider is whether the statutory time-limits for filing with PRS and the Tribunal were complied with.

74. The claim made by the Applicant in December 2012 was rejected by the IFC, in the 8 January 2013 email of Ms. Mennel, who stated that she was “not in a position to approve another payment for your legal fees ... it was our intent to contribute ‘up to \$25,000’ to your legal fees, not cover these fees in their entirety.”

75. The Applicant contends that when Ms. Mennel sent this email, she lacked the authority to make a final decision on reimbursing an additional amount, that he “felt it would be more appropriate to discuss the issue face-to-face,” and could not have known that it would take a further 18 months before he could travel to Washington, D.C.

76. Given that Ms. Mennel was the IFC Director of Human Resources when she sent the 8 January 2013 email, however, it is difficult to see why the Applicant considered that she might have lacked the authority to take a final decision on this request.

77. Having received the email of 8 January 2013, the Applicant was clearly on notice that the IFC would not reimburse any visa-related legal fees beyond \$25,000. This email therefore constitutes the *dies a quo* for the Applicant’s claim for reimbursement of such monies. As discussed above, even if under Staff Rule 11.01 the Applicant may have had three years after incurring these expenses in which to claim payment thereof by the IFC, this does not affect the time-frame for filing a formal grievance once the Applicant was put on notice that such payment would not, in fact, be made. The Applicant was on such notice as of 8 January 2013. However, he did not file a formal grievance in respect of this claim until 16 January 2015. Absent exceptional circumstances (discussed further below), this claim is out of time.

78. *Salary increases.* The Applicant contends that under Staff Rule 6.01, paragraph 3.01, he was due salary increases on 1 July 2010, 1 July 2011, and on 1 July 2012, but received no increases at all during his exile from the United States. Under Staff Rule 11.01, the Applicant was required to claim the monies allegedly owed within three years of the date on which the right to be paid the money arose. In the event, the Applicant's email to various IFC and World Bank Staff Members of 29 July 2014 made no mention of unpaid salary increases, and it was only in his Request for Review, filed with PRS on 16 January 2015, that the Applicant made an express claim for these monies.

79. The extent to which his Request for Review thereby satisfied the requirements of Staff Rule 11.01 in respect of (some of) the claimed salary increases is for present purposes not decisive, however. Turning to the 120-day deadline for filing a formal grievance, the Tribunal has previously clarified that "the time to challenge Bank decisions starts to run from the 'date when the Applicant ought reasonably to have been aware that there could have been [an adverse decision]'" (*Motabar*, para. 16, citing *Thomas*, Decision No. 232 [2000], paras. 29, 31; *see also Prescott*, para. 28). In *Mitra*, para. 10, the test was articulated as "when the Applicant became aware of a wrongful conduct or treatment."

80. The Applicant's employment with the IFC ended on 5 January 2013. At this point, if not sooner, the Applicant must have realized that the IFC was not intending to pay him for the annual salary increases he claimed to have been due from 1 July 2010 onwards. On the Applicant's own account, no such increases were given at any point between mid-2010 and the end of his contract. With the beginning of each fiscal year, the Applicant would have been aware that he had not received a salary increase; all the more so given that, as the Tribunal has previously observed, staff members are informed each year of the average increase in Bank salaries overall (*Moussavi*, Decision No. 354 [2006], para. 27). Even taking the latest year of his contract, the Applicant would have known by mid-2012 that he had not received a salary increase for the forthcoming fiscal year. This therefore constitutes the latest possible *dies a quo* for the claimed salary increases. As noted, the Applicant did not file a formal grievance in respect of this claim until 16 January 2015, that is more than two years later. Absent exceptional circumstances, discussed further below, this claim is therefore out of time.

81. *Separation payments.* The Applicant claims that he is owed “any and all separation payments due ... at the time of his termination.” He observes that a staff member who separates from the IFC “is routinely sent a large packet of materials which provides information on all matters relating to the termination, such as information about pension benefits, continued health coverage, leave payouts, and all other termination benefits.” The Applicant states that he did not receive this information and that “he was not – as far as he knows – paid any of the benefits to which he was entitled.” In particular, the Applicant refers to unused annual leave, resettlement and travel benefits, a resettlement grant and a separation grant: the Applicant, on his account, “was given nothing.”

82. The IFC contends that the Applicant ought reasonably to have been aware of these issues on 5 January 2013 when he was separated from the IFC, that if he thought that he was owed any other separation payments or benefits, he ought to have filed a PRS request within 120 days, but that he failed to do so. The IFC does not dispute the Applicant’s claim that he received no information regarding his separation entitlements. The IFC has, however, produced the Applicant’s closing payroll statement, provided to him on 29 March 2013.

83. The Applicant has not stipulated whether the separation payments allegedly due to him arose as a result of the time he spent working in Washington, D.C., as a GG level staff member on a Term contract from 2007 to 2010, and/or as a result of the time he spent in Dubai (for part of which, at least, the Applicant was placed on Short Term Assignments). For present purposes, however, the Tribunal must only satisfy itself that the Applicant has established *prima facie* that he had a certain entitlement (*B (No. 2)*, para. 25). Under Staff Rule 7.02, having been appointed on a Term contract in Washington, D.C., the Applicant would normally have become entitled to certain separation payments upon the end of his employment with the IFC. There is no suggestion that he received any such payments prior to the end of his employment with the IFC in January 2013. It can therefore be held *prima facie* that this entitlement existed as of the latter date.

84. Under Staff Rule 11.01, the Applicant had three years from January 2013 within which to claim these monies. On 29 July 2014, when back in the United States, the Applicant emailed

twelve IFC and World Bank staff members with whom he had been communicating during his years outside the United States, stating that he:

[W]ould like to close any standing issues, review closing procedures settlements, reimbursements of legal fees or other entitlements at closing if any. I would like to understand closing procedures and obligations of both parties to finalize this closing.

[...] I have not received any information regarding closing balances or pension amounts, nor did I get notification of legal fees payments as agreed and requested.

[...]

I am eager to close all outstanding issues with IFC to move on and wish we could finalize it this week.

85. The focus of this email was on entitlements (and procedures) relating to the Applicant's separation from the IFC. It can accordingly be considered to satisfy the requirements of Rule 11.01 with respect to separation payments. The more difficult question relates to the *dies a quo* for filing a formal grievance in respect of these claims.

86. On the one hand, it could be argued that the Applicant was on notice that he would not receive such payments from the date when his employment with the IFC ended or, at the latest, from the date he received his closing payroll statement which listed the monies paid to him. If this is taken as the *dies a quo*, then the Applicant is out of time and, absent exceptional circumstances (considered below), this claim is inadmissible before the Tribunal.

87. On the other hand, the Applicant had not received the standard information pack from the IFC on separation entitlements and procedures when his contract ended, and indeed was still requesting such information as late as 29 July 2014. The Applicant asserts, and the IFC has not disputed, that staff members are routinely sent detailed information on their entitlements in advance of their separation from the IFC. The Tribunal has previously made reference to such memoranda, and the detail which they provide on the entitlements (and obligations) of staff members upon separation (*see*, for example, *Kanja*, Decision No. 460 [2011], para. 7). In addition, the Tribunal notes that the Bank Group's Human Resource Guidelines list the following as "Action for HR" where a staff member's appointment ends:

Send the staff member the checkout procedures and a personalized ending employment memorandum. The memorandum includes information regarding:

- Payment for any unused annual leave
- Separation grant, if eligible
- Resettlement benefits, if eligible
- Medical and life insurance options after termination of employment
- Contact list for pension, recognition of service, tax, and career services
- G4 visa implications, for non-US citizens only
- Reappointment as a consultant or temporary staff on a G4 visa
- Dependency allowance
- Certification of benefits
- Staff's forwarding address.

88. The IFC has not explained why this practice was not followed with respect to the Applicant. In view of the IFC's failure to follow standard practice, and given the particular circumstances of the case, where the Applicant's employment situation had evolved and where he was facing a range of other difficulties associated with his G4 visa issues and family circumstances, it is reasonable for the Applicant to have found it difficult to keep track of his various entitlements upon separation.

89. If the Applicant's 29 July 2014 email to various IFC and Bank officials is taken as the point at which he made a claim for these monies, the question then arises as to when the IFC rejected this claim, or indeed when the Applicant ought reasonably to have known that the claim was rejected.

90. The Applicant received no response to his email of 29 July 2014. The parties entered mediation in October 2014. While the precise discussions which took place during mediation remain confidential, the parties have both stated before the Tribunal that the IFC insisted that mediation would *only* address the issue of the \$25,000 for legal fees associated with the FBI interviews. That is, by the time mediation between the parties commenced in October 2014, the Applicant ought reasonably to have known that the IFC had rejected his request for payment of separation payments.

91. Under Staff Rule 9.03, paragraph 7.01, the Applicant had 120 days from this date within which to file a formal grievance with PRS. He did so, filing his Request for Review on 16 January 2015. This claim was accordingly filed with PRS in a timely manner, and, the Application having been filed on 26 January 2015, is now admissible before the Tribunal.

*Other claims*

92. Turning to the third category, the Applicant contends that no clear limitation period applies regarding his request for reimbursement of the costs he incurred when his daughters travelled to see him in April 2014. In addition to travel costs, the Applicant has requested reimbursement of legal fees incurred “fighting to have a court enforce the right of his daughters to travel to see him.” The Applicant states that Ms. Mennel’s email of 8 January 2013 did not address this request, but rather was limited to the question of reimbursement of legal fees relating to his G4 visa.

93. In making this claim in his Request for Review, the Applicant stated the following:

The Bank agreed to pay for children travel to see their father on its IFC-Broadcast on Nov 3, 2010. That promise was made by Executive VP, Lars [Thunell] and conveyed by VP, Rashad [Kaldany] post the Townhall meeting when the case was brought up. Part of this cost is the legal fees that were required to facilitate children travel and add up to about \$80,614; I had to get a court order to allow my children to travel out of my assigned post station in the US. [...]

I reminded [t]op management of expenses 2 weeks prior to my last day at work. This was during Christmas season and I get a response from Rashad telling me he will discuss it with the New HR director, Ms. Mennel.

Ms. Mennel was newly installed as the HR director with no knowledge of the case details or understandings of support vowed by top management and predecessor HR director, Mr. Oumar Sheikh. She declined to pay for any agreed expenses! Further, she never corresponded on end of term benefits inquiries or other rights [...]

94. The Applicant now submits that his December 2012 communication with management, and the 8 January 2013 response by Ms. Mennel, related only to visa-related fees and not to a request for reimbursement of legal fees relating to his children’s travel. While this appears somewhat inconsistent with his statement of facts in the Request for PRS Review (above), it is



supported by documents in the record – notably, his email to Ms. Mennel of 21 December 2012 and follow-up to Mr. Kaldany of 4 January 2013, which mentioned visa-related fees but not legal fees relating to his children.

95. The Applicant has provided copies of invoices for legal fees and other expenses incurred in arranging for his children to visit him outside the United States. These date from March 2010 to July 2014. The Applicant's sons visited him in Dubai in 2010. His daughters visited him in April 2014. The Applicant claims that he was only in a position to know the full extent of these legal expenses when he was actually able to travel to the United States. However a number of factors indicate that before he returned to the United States in July 2014, the Applicant was already on notice that the Bank would not reimburse the legal fees relating to his children. First, the November 2010 communication from the IFC regarding his children stated a willingness to cover travel costs, but said nothing of any associated legal costs. Second, the July 2011 email from the IFC had confirmed that they would cover "up to \$25,000 in legal fees *for your lawyer to accompany you during this interview* [with the FBI]," thereby stipulating both the purpose of the IFC's contribution to his legal fees and the maximum amount thereof. Third, on 8 January 2013 the Applicant had received an email from the IFC which, even if it did not address the question of legal fees for children's travel directly, did express a clear refusal by the IFC to pay legal fees beyond the \$25,000 set aside specifically to cover the FBI interviews. Fourth, the record does not include any communications subsequent to 8 January 2013 in which the Applicant followed up (with Ms. Mennel herself, Mr. Kaldany, or another IFC official) regarding his claim for payment of the legal fees associated with the travel of his children. For two years, the Applicant acted as if the issue of reimbursement of these expenses was closed.

96. At the very latest, the *dies a quo* for the Applicant's claim for reimbursement of legal fees he incurred in arranging for his daughters' travel was in April 2014, when his daughters did finally travel to visit him. Any claim relating to these fees should, therefore, have been filed within 120 days of that date. The Applicant neither filed with PRS nor, indeed, requested mediation on this issue, within that timeframe: he filed with PRS on 16 January 2015. Absent exceptional circumstances, discussed below, this claim is therefore out-of-time.

*Conclusion on filing deadlines*

97. In light of the foregoing, the Tribunal finds that the Applicant's claim relating to separation payments was filed in a timely manner, and is admissible before the Tribunal.

98. In respect of all other claims, the Applicant failed to comply with the statutory requirements on timeliness. The Tribunal will now turn to consider whether "exceptional circumstances" existed such as to excuse the delays in filing these claims.

EXCEPTIONAL CIRCUMSTANCES

99. The Tribunal has considered this standard in a number of cases, though neither the Statute nor the Tribunal's jurisprudence provides a complete list of the factors to be considered in determining whether exceptional circumstances exist in a given case (*BC*, Decision No. 427 [2010], para. 25). In *Yousufzi*, Decision No. 151 [1996], para. 28, the Tribunal stated that:

The statutory requirement of timely action may [...] be relaxed in exceptional circumstances. Such circumstances are determined by the Tribunal from case to case on the basis of the particular facts of each case. In deciding that exceptional circumstances exist the Tribunal takes into account several factors, including, but not limited to, the extent of the delay and the nature of the excuse invoked by the Applicant.

100. The Applicant states that while in Dubai, "abandoned and desolate" and with "terrible expenses both legal and otherwise," he had to devote any spare time he had to resolve his situation. This was "a full time job," and he "did not have any time to consider taking legal action against IFC; his other legal problems at that stage were overwhelming." On his account, this is "a truly exceptional case; the Tribunal has never considered a similar situation."

101. While the IFC expresses sympathy for the Applicant's difficulties in getting the U.S. Government to overturn its decision to cancel his G4 visa, it states that "these unfortunate circumstances do not meet the high threshold of 'exceptional circumstances' under Article II(2) of the Tribunal's Statute."

102. The Tribunal considers that the extent of the delays in filing the various claims does not favor the Applicant. The Applicant's challenge to the IFC's decision not to seek a writ of mandamus was filed more than four years after the IFC had informed him of this decision (in November and December 2010). His claim for non-payment of the agreed \$25,000 for the first FBI interviews was filed three and half years after those expenses were incurred (in July 2011) and more than three years after he sent repeated requests for reimbursement to the IFC (in November and December 2011). The claims relating to the Applicant's placement on a second STA and the MOU were filed at least four years after the relevant events occurred (in June and December 2011, respectively). His claim regarding lack of salary increases during his exile was filed two years after his employment ended (on 5 January 2013). His claim for non-payment of additional legal expenses for the later FBI interviews was filed two years after the IFC clearly rejected this request (on 8 January 2013).

103. Turning to the nature of the excuse invoked by the Applicant, as noted above there is no exhaustive list of justifications which could be held to constitute exceptional circumstances for the purpose of Article II(2) of the Statute. The Tribunal considers the justifications invoked on a case-by-case basis (*Tanner*, para. 46). Whatever type of justification is invoked, however, the Tribunal has clearly stated the standard of proof which must be met. In *Nyambal (No. 2)*, Decision No. 395 [2009], at para. 30, it recalled that:

In all such cases the Tribunal has followed a strict approach so as to prevent the undermining of statutory limitations. Exceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent 'contemporaneous proof' (*Mahmoudi (No. 3)*, Decision No. 236 [2000], para. 27).

104. In that earlier case of *Mahmoudi (No. 3)*, at para. 27, the Tribunal had stated that it was

unwilling to make exceptions to orderly procedure based on applicants' own descriptions of their emotional state without substantiation. Reliable contemporaneous proof is required. [...] In the absence of evidence, such as medical reports, the Tribunal is unwilling to accept self-serving declarations by an applicant to the effect that he was unable to deal with this issue, especially since no more was required than the simple articulation of grievances [...]

105. On this basis, the Tribunal distinguished the facts of *Mahmoudi* (No. 3) from the earlier case of *Mustafa*, Decision No. 195 [1998], in which it had accepted an application notwithstanding untimeliness after the applicant provided evidence that he was ill and confined to bed for one month during the period when he ordinarily should have acted upon his grievance. The Tribunal also stressed the importance of corroborating evidence to support the explanations proffered as “exceptional circumstances” in *Dey*, Decision No. 279 [2002], para. 15.

106. The IFC observes that the Applicant has not provided any independently verifiable proof, such as a medical report, to substantiate his assertion that while in Dubai he was incapable of filing a grievance with the Bank’s internal justice system. In response, the Applicant submits that the Tribunal has never held, or even implied, that a medical condition is the only circumstance in which this threshold is met. The Applicant is correct on this point.

107. It is true that some of the factors which the Applicant invokes have previously been considered by the Tribunal, and held not to satisfy the standard required for “exceptional circumstances.” For example, the Applicant has mentioned the serious financial difficulties he encountered during his exile due to his having “duplicate expenses in two continents,” as well as the changing nature of his employment with the IFC, and the legal fees relating both to his own G4 visa issue and the travel of his children to visit him. The Tribunal has frequently held, however, that financial difficulties do not constitute exceptional circumstances for the purpose of Article II(2) of the Statute. Neither the Tribunal nor PRS require applicants to engage attorneys, nor are any fees imposed when filing with either body (*see Yousufzi*, para. 29; *Islam*, para. 20).

108. However, to consider the various issues facing the Applicant while outside the U.S. as unrelated factors, to be assessed in light of what the Tribunal has previously stated when considering such factors in isolation, would be to miss the point.

109. What makes this case “exceptional” is the confluence of factors which the Applicant encountered from January 2010 to July 2014. These have been outlined above, but included: the shock of being prevented from re-entering the United States following a routine mission to the Middle East; the uncertainty that arose from waiting over one year before being even informed

of the reason for this; the stresses of trying to prove his innocence when accused of particularly serious offences, through a number of interviews with the FBI and a lengthy legal battle to secure clearance to return to the United States; the uncertainty arising from the evolution of his employment situation with the IFC; the personal difficulties in being unexpectedly separated from his children for an extended period; the legal difficulties involved in arranging for their travel to visit him outside the United States, complicated by the existing custody arrangements with his ex-wife; and the additional stresses that must have existed regarding the effect which all this would have on his career. It is, moreover, significant that this sequence of serious difficulties began while the Applicant was travelling on mission for the IFC. As the Applicant correctly notes, the Tribunal has never considered a similar situation.

110. While the Applicant has not produced a medical report in support of his contentions, the Tribunal does indeed have before it numerous documents which attest to the pressures which he was facing during his time outside of the United States: notably, a constant stream of communications from the Applicant to various IFC and World Bank colleagues, beginning as early as 7 July 2010, imploring their assistance in resolving his situation. What is apparent in many of these emails is, in particular, the difficulty which the Applicant experienced in being separated from his children, and his overwhelming desire to be reunited with them. Moreover, while the Applicant did not explicitly so argue, the fact is that, as reflected in these emails, he was crucially dependent upon the continuing support and goodwill of the IFC to rescue him from his dire situation. It is understandable that in view of this fact, his thoughts did not run, at that juncture, towards bringing claims against the IFC.

111. In view of the foregoing, the Tribunal concludes that the circumstances facing the Applicant from January 2010 until his return to the United States in July 2014, were indeed exceptional such as to excuse his delays in filing the various claims with the Bank's dispute resolution mechanisms.

## ADDITIONAL DELAYS FOLLOWING RETURN TO THE UNITED STATES

112. The above finding is not the end of the matter, however. The exceptional circumstances which the Applicant faced resulted from his extended stay outside the United States, away from his family and original IFC duty station, and with many other pressing legal issues to resolve. The Applicant has not argued that the hardships that arose from his exile continued after he returned to the United States in July 2014. The question which the Tribunal must now consider is whether, upon returning to the United States, the Applicant acted sufficiently expeditiously to file formal grievances.

113. The Applicant has directed the Tribunal to the International Labour Organisation Administrative Tribunal (ILOAT) case of *Stulz*, Judgment 1232, 1993. In that case, the applicant (a staff member of UNESCO) was a national of the former German Democratic Republic (GDR) who, while on a private trip to East Berlin in 1980, was arrested, tried in secret by a military tribunal, and sentenced to three years' imprisonment. Though released after 18 months, the authorities prevented him from leaving the GDR and so he was unable to return to work. He was later forced to write to UNESCO requesting early retirement. This request was granted by UNESCO. In April 1990, nine months after he was finally allowed to leave the GDR, he sought to challenge the acceptance of his request for early retirement which, he argued, had been made under duress. As a preliminary matter, UNESCO argued that the applicant should have filed his internal appeal as soon as he had left the GDR. The ILOAT rejected this, holding that "the delay was understandable in the unusual circumstances of his case: his difficulty in taking up life again, his fears for the future at a time when the political forces that led to his detention were still firmly entrenched, and his desire to settle out of court with the Organization" (at 3).

114. While, as the Applicant in the present case acknowledges, his circumstances while outside the United States were "less brutal" than those in *Stulz*, the Tribunal finds that it would be unreasonable to require the Applicant to have filed formal grievances immediately upon his return to the United States. That is not to say that upon returning to the United States the Applicant had an indefinite period in which to file his grievances, however. This is an unusual case and, as discussed above, with the exception of the claim for separation payments, by July

2014 the Applicant can be considered to have already made claims in respect of his various grievances and to have already been on notice that the IFC would not accede to his various requests. What the Tribunal must now determine, therefore, is whether the Applicant acted expeditiously, upon his return to the United States, in pursuing those grievances before PRS and/or the Tribunal.

115. In his submissions before the Tribunal, the Applicant has stated that once he was back in the United States in July 2014 he “moved promptly to try to sort things out with IFC.” He emailed a large number of IFC and World Bank officials (see paragraph 84, above), but received no response. He then entered mediation in October 2014. Within days of the end of mediation in January 2015, he filed with both PRS and the Tribunal. According to the Applicant, “he filed well within the 120 day period following his startling discovery, at the end of July 2014, that IFC would not engage in a discussion or provide him with any relief at all.”

116. In view of the circumstances, the Tribunal determines that the Applicant ought reasonably to have filed with PRS and/or the Tribunal, as appropriate, within 120 days of his return to the United States in July 2014. The Tribunal will now assess whether he did so in respect of his various claims.

*Claim for \$25,000 for FBI interviews*

117. The parties entered mediation in October 2014. Under Staff Rule 9.01, paragraph 4.04, requesting mediation can “stop the clock” for the purpose of PRS requests, where it is initiated before the 120 days have elapsed. Here, mediation was indeed requested by the Applicant within 120 days of his return to the United States. For those claims which were the subject of the request for mediation, therefore, the 120 day term was stayed from October 2014 until 8 January 2015, when mediation ended. From the latter date, the Applicant had the remainder of the 120 day term in which to file with PRS.

118. It is common ground between the parties that the one issue which was the subject of mediation between October 2014 and 8 January 2015 was the Applicant’s claim for \$25,000 for

legal fees related to the FBI interviews (see paragraph 90 above). The Applicant subsequently filed with PRS on 16 January 2015; that is, well within the remainder of the 120 day term. The Applicant's Request for Review expressly referred to the fees incurred with respect to his FBI interviews. Similarly, the Application, filed with the Tribunal on 26 January 2015, lists among the decisions being contested the non-payment of these legal fees.

119. In view of the foregoing, the Tribunal concludes that the Applicant's claim with respect to the \$25,000 for legal fees associated with his FBI interviews is admissible.

120. The Tribunal observes that the parties have had ongoing discussions regarding payment of the \$25,000. On 13 August 2015, the IFC stated that "as it relates to legal fees for the FBI interviews, it remains 'prepared to pay up to \$25,000 in legal fees'" provided that the Applicant furnishes invoices, details of the work carried out, and proof of payment. The IFC asserts that this willingness "was duly communicated to Applicant by IFC through his counsel but he has to-date failed to submit the required information to IFC." In support, the IFC has produced a statement from a Senior HR Officer. On 3 September 2015, the Applicant argued that the IFC has omitted "critically important information," in particular that it would only pay this debt if the Applicant waived all his numerous other claims. The Applicant was not prepared to do so, but states that if the IFC is now willing to drop this requirement, he is willing to provide any information required. The Tribunal takes note of these ongoing exchanges regarding the \$25,000, and encourages the parties to continue their discussions.

#### *Claim regarding MOU*

121. One of the Applicant's claims is a challenge to the validity of the MOU which he entered into, allegedly under duress, on 30 December 2011. Under Staff Rule 9.03, paragraph 6.04(e), such matters are not subject to review by PRS but must be brought directly to the Tribunal.

122. As discussed above, Staff Rule 9.01, paragraph 4.04 provides that a request for mediation stays the 120 day term for filing a Request for Review before PRS. It does not make similar provision with respect to the Tribunal, however. Accordingly, even were it the case that the



Applicant had also requested mediation in respect of the claim regarding the validity of the MOU, this would not automatically stay the 120 day term for filing that claim with the Tribunal.

123. The Tribunal is well aware of the crucial role played by mediation within the Bank's conflict resolution system. That system seeks to balance a number of important principles, including the need for non-adversarial procedures such as mediation, and the need to impose time-limits for the formal resolution of claims before PRS and/or the Tribunal (for the reasons outlined in paragraphs 55-56, above). In light of these principles, the Tribunal has developed a practice to accommodate efforts at mediation. Where an applicant requests mediation in respect of claims which, in the event that mediation does not succeed, must be brought directly to the Tribunal, he or she can communicate with the Tribunal as soon as possible after requesting mediation, either to request an extension of the time-limit for filing a prospective claim with the Tribunal, or to file such a claim and then request a stay of Tribunal proceedings pending mediation. The Tribunal considers such requests on a case-by-case basis.

124. In the present case, it was the Applicant's obligation to keep himself apprised of his rights and to submit his challenge in good time (*see Islam*, para. 14; *Levin*, Decision No. 237 [2000], para. 21; *Setia*, para. 31). The Applicant returned to the United States in July 2014. He did not contact the Tribunal regarding his challenge to the validity of the MOU at any point prior to filing his Application with the Tribunal on 26 January 2015. He thereby exceeded the 120 day term by approximately two months. This claim is therefore inadmissible before the Tribunal.

*The IFC's decision not to seek a writ of mandamus*

125. The IFC contends that, in addition to issues of timeliness, the Applicant failed to contest the writ of mandamus issue before PRS. The Applicant disputes the latter contention, arguing that he did in fact "raise the mandamus issue" in his Request for Review. On reviewing the latter document, the Tribunal agrees with the IFC's contention. First and foremost, the issue of a mandamus writ was not mentioned among the 'Disputed Employment Matters' in respect of which the Applicant requested review. Nor did the Applicant mention it when outlining the relief he was requesting. Rather, it was mentioned by the Applicant as part of the "Facts leading to dispute." Though the Applicant did mention the issue of a mandamus writ in explaining why he

was challenging the 'Disputed Employment Matters', this was done in passing and, contrary to his statements on the other claims, without assertion that this (in)action by the IFC was inconsistent with the Applicant's contract of employment or terms of appointment. Further confirmation that the issue of a mandamus writ was not raised as a distinct challenge in the Request for Review can be seen in the 27 February 2015 Report of PRS in this case, which makes no mention of the issue.

126. Having failed to contest this decision before PRS, and this decision not being of a type which can be brought directly to the Tribunal, the Applicant has therefore failed to exhaust the remedies available as required by Article II(2) of the Tribunal's Statute. This claim is therefore inadmissible before the Tribunal.

*Other claims*

127. To suspend the 120 day term for the purpose of filing a Request for Review with PRS, the staff member concerned is required to request mediation on the issue(s) in question. Staff Rule 9.01, paragraph 4.04 does not make this suspension contingent on those issues necessarily being discussed to any particular extent during mediation itself. This is logical, given the importance of maintaining the confidentiality of mediation discussions.

128. As noted above, the parties have confirmed before the Tribunal that the one issue which was the subject of mediation between October 2014 and 8 January 2015 was the Applicant's claim for \$25,000 for legal fees related to the FBI interviews. In his submissions before the Tribunal, the Applicant has asserted that he had in fact requested mediation on *all* outstanding issues, not just the legal fees relating to the FBI interviews. The Applicant made this assertion in successive pleadings filed with the Tribunal. Since the Applicant first made this assertion, the IFC has filed three written submissions with the Tribunal; it has addressed the purpose of the mediation between the parties, and provided a statement by a Senior Human Resources Officer who represented the IFC in that mediation. At no point has the IFC disputed the Applicant's assertion that he had initially requested mediation in respect of all outstanding issues.

129. This being so, the 120 day term for filing a formal grievance in respect of those claims, which in view of the exceptional circumstances discussed above began when the Applicant returned to the United States in July 2014, can be considered to have been suspended from October 2014 until the end of mediation. As noted, the Applicant filed a request for review with PRS on 18 January 2015 and an application with the Tribunal on 26 January 2015.

130. In these circumstances, the Tribunal concludes that the following are also admissible: the Applicant's claim regarding visa-related legal fees beyond the \$25,000; his claim for fees associated with the travel of his children to visit him outside the United States; his challenge to his placement on a two-year STA; and his claim regarding the lack of salary increases while working in Dubai.

#### CONCLUSION

131. In view of the foregoing, and emphasizing again the exceptional circumstances of this case, the Tribunal concludes that the following claims are admissible: the Applicant's claim for separation payments; his claim for the \$25,000 for the FBI interviews; his claim for visa-related legal fees beyond the \$25,000; his claim for reimbursement of fees associated with the travel of his children to visit him outside the United States; his challenge to his placement on a two-year STA; and his claim regarding the lack of salary increases while working in Dubai.

132. The IFC's preliminary objection is upheld with respect to the Applicant's claims regarding the validity of the MOU, and the decision not to seek a mandamus writ. These claims are therefore held to be inadmissible.

## DECISION

For the reasons given above,

- (1) The Applicant's claim regarding the validity of the MOU is inadmissible;
- (2) The Applicant's claim regarding the IFC's decision not to seek a mandamus writ is inadmissible;
- (3) The other claims made by the Applicant and listed in paragraph 131 above are admissible; and
- (4) The IFC shall pay the Applicant attorney's fees in the amount of \$20,042.94 as costs 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., 13 November 2015