



World Bank Administrative Tribunal

2017

Decision No. 570

**González-Flavell (No. 2),
Applicant**

v.

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

(Preliminary Objection)

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

**González-Flavell (No. 2),
Applicant**

v.

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

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, and Mahnoush H. Arsanjani.
2. The Applicant's second Application was received on 19 May 2017. The Applicant was represented by Stephen Schott of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges: a) the "decision to continue her on [Short Term Disability (STD)] at 70% of her salary"; b) the "refusal to follow lawful procedure required by her medical certification that she is ready and able to return to her position in the Bank"; c) the Bank's "collusion with the Disability Administrator, the Reed Group, to unlawfully require [the] Applicant to undergo an Independent Medical Evaluation, (IME), for Long Term Disability (LTD) despite her Return to Work Medical Certification"; and d) the Bank's decision to "place [the] Applicant on Administrative Leave, but to pay her salary at STD equivalent of 70% as though she continued to be on STD status and to deny her the full benefits due and payable according to her family entitlements."
4. On 11 July 2017, the Bank submitted a preliminary objection contesting the admissibility of the Application under Article II of the Tribunal's Statute. This judgment addresses the Bank's preliminary objection.

FACTUAL BACKGROUND

5. The historical context of this case is contained in *González-Flavell*, Decision No. 553 [2017].
6. On 25 June 2015, the Applicant entered the Bank's disability insurance program and began receiving STD benefits.
7. On 1 July 2015, the Applicant was issued a Notice of Redundancy. Once the Applicant's managers became aware that she was placed on STD, the Notice of Redundancy was suspended until the Applicant's health permitted her to return to work or engage in a job search.
8. On 28 October 2015, the Applicant submitted an Application to the Tribunal challenging, *inter alia*, the decision to declare her position redundant. In *González-Flavell*, the Tribunal found that the Bank committed certain procedural irregularities in the context of the decision to declare the Applicant's position redundant. The Tribunal nevertheless held that its finding was made "without prejudice to any decision that the Bank may make concerning the Notice of Redundancy." *See id.*, para. 169.
9. On 19 January 2017, the Reed Group sent the Applicant an email message informing her that an IME was being scheduled as part of the review of eligibility for LTD benefits which is conducted within six months of the exhaustion of the maximum two-year STD period. The Reed Group agent stated, "[y]es you mentioned you may be returning to work. No confirmation of that return has been received. The IME, to evaluate your eligibility for LTD, may just support your ability to return to work."
10. On the same day, another representative from the Reed Group responded by email message to a voice message from the Applicant. Informing the Applicant that the upcoming IME would be rescheduled with a different provider as per her request, the Applicant was told that "[p]er World Bank process, in the absence of a return to work release your claim will proceed toward Long

Term Disability review.” The Applicant was also informed that future communications would be limited to email only “in order to avoid any confusion over the next steps for claim management.”

11. On the same day, the Applicant’s doctor completed a Return to Work form noting that the Applicant was medically fit to return to work on 1 June 2017.

12. On 25 January 2017, the Reed Group sent the Applicant an email message acknowledging receipt of the Return to Work form. The Applicant was informed that her current STD benefits were approved until 19 March 2017 and, in order for the benefits to continue until the return to work date, an “updated attending physician’s statement” was required for review of the extension of STD benefits until 31 May 2017. The Applicant was informed that “for release to full duty with no accommodations on 6/1/2017,” she should have her “doctor submit a new form that is supported by an assessment closer to [her] release to work date.” Finally, the Reed Group informed the Applicant that “[a]n IME will be requested in March. The IME will be to determine your eligibility for LTD or your ability to return to work.”

13. On 27 January 2017, the Applicant sent a copy of the Return to Work form to the Director General of her unit.

14. On 14 February 2017, the Director General responded to the Applicant informing her that “[based] on the return to work form you have provided me with,” the redundancy process will resume on 1 July 2017.

15. On 14 March 2017, the Applicant submitted a Revocation of Authorization for Release of Personal Medical Records to the Reed Group. Referring to the “authorization for release of personal medical records for sick leave or workers’ compensation sick leave,” which the Applicant signed in June 2015, the Applicant explicitly stated that “[f]or the avoidance of doubt, I hereby revoke the authorization quoted above, called ‘authorization for release of personal medical records.’” The Applicant’s letter noted that:

In the event any information is needed by Reed Group for the continued monitoring and managing of my disability I will authorize the release of such information after receiving a written request from Reed Group for the same.

This revocation, made with immediate effect, prevented the Reed Group from accessing the Applicant's medical records and verifying her fitness for duty.

16. On 15 March 2017, the Applicant sent a message to a Senior Human Resources (HR) Specialist and two of the Bank's Senior Occupational Health Specialists challenging the Reed Group's management of her case. Referencing the instructions that future communication be in writing, the Applicant sought the Senior HR Specialist's intervention to request the Reed Group to obtain a new nurse case manager "who I can have a frank and open discussion about my return to work with."

17. On 16 March 2017, the Reed Group contacted the Applicant to inform her that, pending their receipt of an Authorization for Release of Personal Medical Records, the scheduled IME was suspended.

18. On 16 March 2017, the Return to Work form was amended by the Applicant's doctor to indicate that she was fit to return to work on 19 March 2017.

19. On 23 March 2017, the Applicant wrote to the Senior HR Specialist reminding him of her request for assistance "concerning the disability program and Reed's management of it [...]." Setting the background, the Applicant informed the Senior HR Specialist that she had informed the Reed Group in December 2016 that her doctor had indicated she could likely return to work in the New Year. According to the Applicant, "Reed immediately commenced down a confused road of trying to assess me for LTD, despite verbally assuring me in December that in my situation I would need no further IMEs in order to return to the Bank in accordance with my doctor's early indication." The Applicant further stated that the Reed Group failed to respond to her requests for clarification and guidelines on the process of her return to work. The Applicant noted that earlier in the year, on 14 February 2017, the Director General of her unit had indicated that the Return to Work form she submitted was sufficient. The Applicant wrote that she has since tried to provide a

copy of the updated form to the Director General who has not indicated whether the Applicant could return to work or “made any mention of the reactivation of [her] redundancy.” The Applicant stated that instead the Director General “states that she is awaiting a determination from Reed Group.” The Applicant further complained that the Reed Group has refused to share the guidelines on how a staff member’s return to work is managed. The Applicant also posed the following question: “[n]ow that I am no longer on STD (STD expired March 19) will I receive my full salary from March 19 even though we are all awaiting a decision from Reed about my return? Their delay is now costly.”

20. On the same day, the Reed Group contacted the Applicant acknowledging receipt of the amended Return to Work form. The Reed Group informed the Applicant that “[i]n order for us to review and update your claim we do need you to return a signed copy of the attached authorization for release of medical information form. Upon receipt of this we can resume management of your claim.”

21. On 27 March 2017, the Senior HR Specialist responded to the Applicant’s email message. Setting out the current status of the Applicant’s case, the Senior HR Specialist informed her that “[a] central part of case management is the ability of Reed Group to access medical information pertaining to a claim. This ability requires the claimant (in this case, yourself) to execute a medical release which enables Reed Group to assess the ability of a claimant to return to work, coordinate medical examinations, coordinate with WBG Health Services Department (HSD) on any necessary return to work accommodations, etc.” The Applicant was reminded that her written revocation of the release of her medical records “stopped the management of [her] case, disqualifying [her] from receiving additional disability benefits or enabling [her] to return to work (as any medical evidence in support of either [...] cannot be evaluated by medical professionals as a result of the revocation).”

22. The Applicant was expressly informed that “until the release of medical records items is resolved, any [Return to Work] form cannot be evaluated.” In addition, the Senior HR Specialist stated that “[i]n order to effectuate any return to work, the disability program requires supporting medical evidence.” The Applicant was asked to provide the Reed Group with a signed medical

records release form and a copy of the Return to Work form with supporting medical evidence. The Senior HR Specialist emphasized that the referenced items needed to be submitted directly to the Reed Group, adding that “[b]ecause these items contain medical information, neither myself nor my team has any need to see the data contained in the forms. This is the precise reason we have delegated this responsibility to the professionals at Reed Group.”

23. On 29 March 2017, the Reed Group contacted the Applicant stating that “[b]ecause of the revocation of the original release of information, we require a new signed release of information to be received from you.” The Applicant was reminded that “[i]n order for us to review any documentation received since the revocation of release of information and, if appropriate, close your claim, we must have the signed form.”

24. On 10 April 2017, the Bank informed the Tribunal, in connection with the Applicant’s first Application, that the Applicant’s STD benefits ended on 19 March 2017. However, the Bank stated that due to the Applicant’s refusal to participate in an IME, the Applicant was placed on Administrative Leave and continued receiving payment at 70% of her salary as though she remained on STD status. The Bank also stated that, since the Applicant’s health status had not yet been established by the Reed Group, the Notice of Redundancy remained suspended. In its letter the Bank noted that the Applicant

refused to attend the February 15 IME appointment indicating that it was earlier than four (4) months before the end of her STD. The Reed Group again agreed to reschedule the appointment to a later time. However, on March 14, 2017 [the] Applicant revoked the release of medical records that she had previously given to the Reed Group [...] eliminating the Reed Group’s ability to receive and evaluate any medical records relating to [the] Applicant’s case.

25. The Bank added that “[t]o date, [the] Applicant has not submitted the required Release of Personal Medical Information form [...] to the Reed Group, nor has she undergone an IME.”

26. On 19 May 2017, the Applicant submitted this Application to the Tribunal challenging the decision to place her on administrative leave at 70% of her salary (as if she were still on STD) and the decision to “unlawfully require the Applicant to undergo an Independent Medical Evaluation

(IME) for Long Term Disability (LTD) despite the return to work medical certification” received from her doctor. The Applicant seeks: a) payment of full salary from and after her submission of her medical certification as fit to return to work on 19 March 2017; and b) a cease and desist order to the Bank and the Reed Group to withdraw its continuation of STD and confirm that the Applicant is validly returned to the Bank on the basis of the Return to Work form of 16 March 2017. The Applicant asserts that “[the] Reed Group has no right to ask [her] for further authorization to obtain her medical and other personal information since [she] is no longer under the disability program.” The Applicant further requests an order that the Bank and the Reed Group provide her with her entire medical records held by the Reed Group. The Applicant seeks \$23,409.25 in legal fees and costs.

27. On 25 May 2017, the Applicant received an email message from an HR Specialist about the current status of her employment with the Bank. The HR Specialist reminded the Applicant of the efforts by the Reed Group to obtain the Authorization for Release of Personal Medical Records. The Applicant was further reminded of “Section 4.03 of the Disability Insurance Program – Claims Procedure” which provides that “if the staff member unreasonably refuses to provide additional medical or other documentation to the Disability Administrator or to undergo an independent medical examination, the Disability Administrator may suspend the benefits or deny the claim.”

28. The HR Specialist informed the Applicant that “[d]espite the foregoing, the Bank decided, and communicated to the Administrative Tribunal, that it would continue paying your STD benefits as if you had been in compliance with all rules and procedures.” The Applicant was told that the Bank had not changed her employment status to “Administrative Leave” as initially considered to keep the suspension of her Notice of Redundancy intact. The Applicant was further informed that for her to return to work to be processed,

the Reed Group needs to determine that you are able to perform the material duties of your regular job safely. Such determination will be made upon assessment of your current health status. In order for the Reed Group to assess your health, they need an Authorization for Release of Personal Medical Records signed by you. When the REED Group receives your Authorization for Release of Personal Medical Records, they will assess your health and determine whether (a) you qualify for Long-Term Disability (LTD), or (b) you should return to work safely.

Unfortunately, if you do not provide the required Authorization for Release of Personal Medical Records, the REED Group cannot assess your health, your STD will expire on June 1, and your eligibility for LTD or Return to Work cannot be determined.

29. The HR Specialist ended the email with the following:

In an effort to give you additional time to comply with the REED Group's requirements, and given that your STD status cannot be further extended, the Bank will place you on Leave Without Pay (LWOP) for a period of 16 calendar days starting on June 2 and ending on June 19, 2017, pursuant to SR 6.06, Section 7.03.

If the REED Group does not receive the form by 5 p.m. on June 19, 2017, the Notice of Redundancy dated July 1, 2015 will take effect and your six months' job search period (employment status: Administrative Leave) will begin on June 20, 2017.

30. On 31 May 2017, the Applicant sent the Reed Group the signed Authorization for Release of Personal Medical Records and the Reed Group proceeded to review her medical records for the requisite health assessment.

31. On 7 June 2017, the Applicant was informed that she had been considered fit to return to work effective 2 June 2017. The following steps were taken: The Notice of Redundancy which was suspended was reinstated and, pursuant to the Notice, the Applicant was placed on Administrative Leave with 100% pay to enable her to conduct job searches. The Applicant will remain on Administrative Leave for six months, until 1 December 2017. After 1 December 2017, the Applicant's employment with the Bank will terminate unless she finds another position within the Bank Group.

32. On 11 July 2017, the Bank submitted a Preliminary Objection on the grounds that the Applicant failed to exhaust internal remedies.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank's Preliminary Objection

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

33. The Bank contends that the Applicant is challenging a decision by the Reed Group contained in its email message dated 16 March 2017. In that message, the Reed Group communicated its refusal to automatically process the Applicant's Return to Work form on the ground that she refused to undergo an IME, and had revoked the Authorization for Release of Personal Medical Records which was needed to determine the status of the Applicant's health. To the Bank, the Applicant was required to first challenge the Reed Group's decision before the Administrative Review Panel pursuant to Staff Rule 6.22, paragraph 4.02.

34. The Bank asserts that the record shows the Applicant never appealed the Reed Group's decision before the Administrative Review Panel, nor did the Bank agree for the Applicant to submit her claim directly to the Tribunal. The Bank argues that the Applicant failed to exhaust internal remedies and the Application should be deemed irreceivable before the Tribunal.

The Applicant's Response

The Tribunal has jurisdiction over the Application

35. The Applicant asserts that the Reed Group did not make a decision nor did it notify her of any decision. In the Applicant's view, there was no decision to appeal pursuant to Staff Rule 6.22, paragraph 4.02. The Applicant maintains that there was no remedy existing within the Bank to address the Reed Group's refusal to acknowledge and act on the Return to Work form and its withholding of confirmation or a decision on STD. The Applicant asserts that what she is challenging is a failure to act on the part of the Bank and not a formal decision by the Reed Group. The Applicant further argues that she should have been accepted back to work on 19 March 2017

when “the Reed Group released [her] from STD back to the Bank and out of the disability program, a decision of which the Reed Group failed to notify the Applicant.” The Applicant contends that “[a]t that point, once she supplied a duly signed Return to Work form, [she] was no longer under the disability program and must have been released back to work and the Respondent should have assisted the Applicant on her return.”

36. According to the Applicant, the Bank’s statement that her return to work could not be assessed because of the revocation of the Authorization for Release of Personal Medical Records is misleading. The Applicant contends that the authorization was addressed to the Reed Group, and not to the Bank, so the Bank’s “argument that it was unable to proceed because it was unable to rely on an authorization which is not addressed to Respondent is unsound.” The Applicant further adds that the Bank “should not be able to deflect its obligations onto its agents/independent contractor.” To the Applicant, “the Reed Group does not have the power to keep the Applicant in the disability program when she had filed no claim and had no disability to support a claim.” Thus, the Applicant challenges “the Respondent’s decision to refuse to return the Applicant to her functions [...].”

37. To the Applicant, the Bank’s suggestion that she should have appealed against the Reed Group’s 16 March 2017 email message through the “Disability Insurance Program – Appeals Procedure” “is an inadequate explanation for the denial of [her] rights and does not present even a credible objection on jurisdictional grounds of failing to exhaust available remedies prior to Tribunal submission.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

38. Article II (2)(i) 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[.]

39. The relevant Staff Rules which are applicable in this case are:

Staff Rule 6.22

04. Administration

4.01 The Bank Group selects and contracts a Disability Administrator via a rigorous procurement process. The Disability Administrator is authorized by the Bank Group to independently adjudicate claims for Disability Benefits in accordance with the Procedure, “Disability Insurance Program – Claims Procedure.” All benefits payable under this program are funded exclusively by the Bank Group upon approval by the Disability Administrator.

4.02 The Bank Group maintains, in accordance with the Procedure, “Disability Insurance Program – Appeals Procedure,” an Administrative Review Panel to consider appeals submitted by staff who opt to challenge a decision of the Disability Administrator. The Administrative Review Panel is composed [...] of the Bank Group’s Manager, Compensation and Benefits, the Bank Group’s Director, Health Services Department, and a representative of the Staff Association appointed by the Executive Committee of the World Bank Group’s Staff Association, or their designees.

09. Return to Work

9.01 The Bank Group seeks to facilitate the staff member’s return to work prior to the completion of 24 months of STD, when the Disability Administrator determines, following receipt of a release to work form, that the staff member is able to perform the material duties of his/her regular job. If said staff member does not return to work upon receipt of the decision of the Disability Administrator, s/he is required to request Annual Leave or Leave Without Pay to cover his/her absences until s/he returns to work.

10. Appeals

10.01 A claimant who decides to appeal the denial of a claim for Disability Benefits or a decision taken in connection with the administration of a claim, within 90 days of receiving notice of the final decision from the Disability Administrator, requests administrative review of the decision from an Administrative Review Panel in accordance with the Procedure, “Disability Insurance Program – Appeals Procedure.”

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

40. The critical issue before the Tribunal is whether the Applicant was first required to exhaust internal remedies by submitting an appeal to the Administrative Review Panel pursuant to Staff Rule 6.22, paragraph 4.02. The first decision which the Applicant challenges is the decision to “unlawfully require the Applicant to undergo an [IME] for [LTD] despite the return to work medical certification” provided by her doctor. According to the Applicant, this was a decision made by the Bank, and not the Reed Group which she contends “released [her] from STD back to the Bank and out of the disability program.” To the Applicant, the Reed Group was an agent of the Bank and the Reed Group “does not have the power to keep [her] in the disability program when she had filed no claim and had no disability to support a claim.”

41. The Tribunal observes that this case addresses a matter of procedure, not the question of agency. The issue at the core of this case is what procedure is to be adopted when a staff member seeks to challenge a decision not to process a Return to Work form. To address this issue, the questions of who made the impugned decision and what do the Staff Rules say must be answered. The Applicant argues that the Reed Group, the Bank’s Disability Administrator, did not make the challenged decision, nor did it communicate a formal decision to her. However, it is evident from the record that the decision maker the Applicant is challenging is the Reed Group, as the Applicant herself recognized in her 15 and 23 March 2017 correspondence with the Senior HR Specialist. On 15 March 2017, the Applicant noted that “it is Reed’s obligation to manage my disability leave and return.” Similarly, on 23 March 2017, the Applicant recognized the Reed Group’s role stating, “[n]ow that I am no longer on STD (STD expired March 19) will I receive my full salary from March 19 even though we are all awaiting a decision from Reed about my return? Their delay is now costly.” Indeed, the Applicant correctly attributed responsibility for processing her return to work to the Reed Group, though her subsequent pleadings before the Tribunal claim otherwise.

42. Staff Rule 6.22, paragraph 9.01 expressly states that it is the Disability Administrator who “determines, following receipt of a release to work form, that the staff member is able to perform the material duties of his/her regular job.” This paragraph is explicit that the decision lies with the Disability Administrator and not the Bank, whose role in this regard is to facilitate the staff member’s return to work after the determination has been made by the Reed Group.

43. The words of Staff Rule 6.22, paragraph 9.01 must be given their plain and literal meaning as any other interpretation circumvents the procedures clearly established in the Staff Rules. It is logical that it is the Reed Group that makes the determination following receipt of a Return to Work form since it was the Reed Group that approved the Applicant's placement on STD and entry into the disability program in 2015. It is reasonable to expect, as the Staff Rules provide, that it is the same Administrator who determines whether the Applicant can return to work following her time on STD. Therefore, the Applicant's assertions that it was the Bank that failed to process her Return to Work form, and that the "Reed Group released [her] from STD back to the Bank and out of the disability program" are incorrect. Contrary to the Applicant's assertions, her participation in the disability program did not automatically end once the Reed Group received a Return to Work form from the Applicant's doctor. As provided for in the Staff Rules, the Reed Group assesses whether the Applicant is indeed fit to return to work, or whether, following conclusion of the STD period, the Applicant is eligible for LTD benefits.

44. Having found that the decision concerning the Applicant's return to work was a decision made by the Reed Group, it is apparent that the procedure in Staff Rule 6.22, paragraph 10.01 on appeals applies in this case. Opting to challenge this decision, the Applicant was required to request administrative review of the Reed Group's decision within 90 days of her receipt of the 16 March 2017 email from the Reed Group. She did not do so. The Applicant asserts that she could not submit a request for administrative review without knowing the determination date or the "decision that was to properly have been made according to her valid Return to Work form." However, the 16 March 2017 email message from the Reed Group was clear that her Return to Work form would not be processed without her authorization to release information on her medical records. Subsequent correspondence, such as the 27 March 2017 email message from the Senior HR Specialist, referred the Applicant back to the Reed Group's inability to process her return to work without the required authorization for release of personal medical records.

45. The Tribunal notes the Applicant's argument that the revocation of her authorization to release her personal medical records was time specific and was not addressed to the Bank. Such contentions are unavailing as the revocation was addressed to the appropriate decision maker – the Reed Group. Furthermore, even if, as the Applicant claims, she was only revoking the

authorization she made in June 2015, she nevertheless failed to clarify this amid multiple email messages requesting she provide the necessary authorization to resume assessment of her claims, notably the claim that she was fit to return to work. The Applicant instead maintained her erroneous position that “[the] Reed Group [had] no right to ask [her] for further authorization to obtain her medical and other personal information since [she was] no longer under the disability program.” The Disability Administrator is empowered by the Staff Rules to require the Applicant to provide additional documentation, provided such a request is “reasonably pertinent” to the issue at hand. *See, Courtney (No. 4)*, Decision No. 202 [1998], para. 15. The Tribunal finds that the request for an authorization for release of medical records was reasonable as this authorization would have enabled the Reed Group to assess the Applicant’s claim that she was fit to return to work.

46. Finally, the Tribunal observes that the Application includes grievances about the manner in which the Reed Group administered her tenure on STD. These complaints include the assertion that the Reed Group sent her medical information to their medical examiners in January 2017 without obtaining the Applicant’s consent. These issues, as with the Applicant’s claim on her return to work, should have been brought before the Disability Administrative Review Panel and not, in the first instance, to the Tribunal.

47. The Tribunal has long emphasized the importance of exhausting internal remedies (*see, e.g., Berg*, Decision No. 51 [1987], para. 30), and has also held that “[t]he Staff Rules allow a Review Panel to accept for consideration claims concerning the general characteristics of the process of administration of the Bank’s [Workers’ Compensation] and Disability Programs.” *Lansky (No. 1 and No. 2)*, Decision No. 425 [2009], para. 36. In light of the above, the Tribunal finds that the Applicant’s challenge of the decisions surrounding her return to work is inadmissible as she has failed to exhaust the requisite internal remedies and her claims are now time-barred.

48. Having dismissed the Applicant’s primary claims, the Tribunal observes that the issues raised, and remedies sought, in the remainder of the Application are either moot or devoid of all merit. There is no basis for the Tribunal to award the Applicant payment of full salary from and after her submission of her medical certification as fit to return to work on 19 March 2017. A cease and desist order to the Bank and the Reed Group to withdraw its continuation of the STD and

confirm that the Applicant is already validly returned to the Bank on the basis of the Return to Work form of 16 March 2017 is equally unnecessary as the Applicant has already returned to work effective 2 June 2017. The evidence shows that any delays in this respect were caused by the Applicant's inflexibility and refusal to provide a new and signed Authorization for Release of Personal Medical Records even when she was expressly informed that this authorization was needed to review her return to work claim. Furthermore, an order that the Bank and the Reed Group provide the Applicant with her entire medical records held by the Reed Group is unnecessary as the record shows that, on 16 March 2017, the Reed Group reminded the Applicant that she was sent her medical records on 6 February 2017 by encrypted email. The Applicant was informed that the Reed Group was "happy to send them again via US Mail, Certified Delivery to ensure you receive them once we receive your release of information."

49. The Applicant challenges the manner in which the Bank handled her employment status pending the resolution of her return to work claim. The Tribunal finds this challenge to be manifestly unfounded and wholly lacking in merit. The record shows that any confusion about how to treat the Applicant's employment status following the receipt of her Return to Work form stemmed solely from the Applicant's own actions. Having revoked the Authorization for Release of Personal Medical Records, the Applicant was informed on several occasions that a new release authorization was needed for her return to work claim to be processed. Pending that, the Bank continued to pay the Applicant her salary as though she were on STD even though she neither provided the medical assessment to justify receipt of STD benefits beyond 19 March 2017, nor did she provide the documentation requested to process her return to work and thus, justify her receipt of 100% of her salary. On 31 May 2017, after almost two months of delay, the Applicant sent the Authorization for Release of Personal Medical Records to the Reed Group. This occurred only after the Applicant was informed that she would be placed on Leave Without Pay and the Notice of Redundancy would recommence if she persisted in withholding the information necessary to address her return to work claim. The Tribunal finds that the Applicant cannot on one hand decry the state of limbo which she created through her own actions, and on the other petition to receive full pay for the period where she received benefits to which she was not entitled.

DECISION

The Application is dismissed.

/S/ Mónica Pinto
Mónica Pinto
Vice-President

/S/Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 25 October 2017