



World Bank Administrative Tribunal

2017

Decision No. 571

**Katie Moss,
Applicant**

v.

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

(Preliminary Objection)

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

**Katie Moss,
Applicant**

v.

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

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Stephen M. Schwebel (President), Ahmed El-Kosheri, Abdul G. Koroma, and Marielle Cohen-Branche.
2. The Application was received on 24 October 2016. The Applicant represented herself. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the following: (i) denial of her request for Compensatory Leave, (ii) failure to follow proper procedures regarding her forced reassignment, (iii) that her new job description of Office Manager is not in line with the Bank's guidelines, and (iv) irregularities in her FY2015 mid-year performance review, which also constitute retaliation.
4. The Bank has raised a preliminary objection to the admissibility of this Application. This judgment addresses that preliminary objection.

FACTUAL BACKGROUND

5. The Applicant started working at the Bank in 1995. She joined the Global Facility for Disaster Reduction and Recovery (GFDRR) in September 2013 and is a Senior Program Assistant.
6. The Applicant assisted with organizing the World Reconstruction Conference 2, which was held from 10 to 12 September 2014. She states that she worked very hard and long hours to prepare for this event. She adds that, although "when the event was over, everyone from this team was off to recuperate the following week," she remained at work, "processing all items for close out."

7. On 15 September 2014, a Task Team Leader (TTL) in GFDRR, requested the Applicant and other Administrative and Client Support (ACS) staff to write up their duties.

8. On 17 September 2014, the TTL met with the Applicant and other ACS staff and required them to write up their job description/activities within the next two days. At this meeting, the Applicant states that she was told by the TTL that she would be in charge of keeping the offices, conference rooms, and coffee area clean, and that she would be responsible for ensuring that “all staff dress properly and go to VP meetings and town halls on time [...]” She would also be responsible for ensuring “that all meeting set-ups are done etc.” The Applicant states that other colleagues at the meeting protested the proposed additional tasks and suggested that her title be changed to Office Manager and that she be provided with an assistant due to the extra workload. According to the Applicant, the TTL agreed with both suggestions and she also accepted them, although she felt she had no choice.

9. After the World Reconstruction Conference 2, on 17 September 2014, the Applicant requested Compensatory Leave for the following day. She claims that she requested leave because she had been working intensely the week of the conference as well as the weeks before. On the same day, the Manager of GFDRR rejected her request.

10. By email dated 21 September 2014 to the TTL, the Applicant acknowledged the TTL’s proposal to streamline certain roles in the unit, including her role in office management. The Applicant states that she “categorized all our activities in one chart for ease of overview and color coded it. [She] also tried [her] hand at organizing it, as per the new role.” The Applicant also had follow-up questions regarding career streams and the effect of the new role on her title.

11. On 24 September 2014, the Manager of GFDRR sent an email to the Applicant criticizing her for staying overnight at the office and stating that she was lacking follow-up to ensure quality delivery, for example, regarding audio and video connections for meetings. Regarding her recent request for Compensatory Leave, which had been denied, he asked her to discuss such leaves with her immediate supervisor further in advance.

12. The Applicant replied to the Manager by email on 25 September 2014, explaining why she had to stay overnight, the reasons for the telecommunications issues in meetings, and why she requested Compensatory Leave late on 17 September 2014 for the following day.

13. By email dated 22 October 2014, the Manager informed the unit of the Applicant's new role as Office Manager and set out her roles and responsibilities, in the context of the unit's organizational matrix.

14. By email dated 18 January 2015, the TTL informed the Applicant that he did not think they needed to have a meeting about her mid-year performance review because he felt that he "had plenty of exchange and feedback on [her] RA [i.e. Results Agreement]." Instead, he directed the Applicant to meet with the Manager and informed her that he would provide his views to the Manager in advance.

15. Further to a request from the Manager to his team in late January, the Applicant scheduled her mid-year performance review for 27 March 2015. The Manager asked the Applicant to reschedule the review for a later date, which she did.

16. On 30 March 2015, the Applicant had her mid-year performance review discussion with the Manager. According to the Bank, the Applicant received written feedback concerning her performance during the first half of FY2015. According to the Applicant, the Manager did not discuss her work until she initiated a conversation about her position and the possibility of an extension, at which point the Manager informed the Applicant that the TTL had given her a bad review. The Manager subsequently sent the TTL's review to the Applicant via email.

17. The Manager also sent an email to the Applicant on 30 March 2015, summarizing his mid-year review of her performance. He noted her responsibilities, her contributions, and areas for improvement.

18. On 31 March 2015, the Applicant had a mid-year performance review discussion with the TTL, at her request. They discussed the contents of his review regarding her performance, and he

asked her to draft her mid-year performance review that reflected her understanding of their mid-year performance review discussion. She did so and sent it to him later that evening.

19. By email dated 1 April 2015, the TTL suggested to the Manager that the text of the Applicant's mid-year performance review be modified, taking into account his discussion with the Applicant and modifying her suggested text. The Manager advised the TTL that the system "is already shut."

20. On 22 May 2015, the Manager sent the Applicant the new text of her mid-year performance review, which closely mirrored the text sent by the TTL. However, the Applicant took issue with a comment that she needed to "anticipate-solve potential bottlenecks that may affect the effective functioning of the Management team," as it was her position that this was not her responsibility as the Office Manager.

21. In June 2015, the Applicant received an email from Human Resources informing her that her contract had been extended.

22. On 28 July 2015, the Applicant submitted a Request for Review to Peer Review Services (PRS) challenging the procedure and substance of her FY2015 mid-year performance review and her reassigned roles and responsibilities.

23. By memorandum dated 5 August 2015, the Acting Executive Secretary to PRS informed the Applicant that PRS did not have jurisdiction to review her claim regarding the reassignment decision because her Request for Review with respect to this decision was filed more than 120 days after 22 October 2014, the date on which ACS staff, including the Applicant, were sent an organizational matrix of their new roles and responsibilities. PRS accepted jurisdiction over the Applicant's claim regarding her FY2015 mid-year performance review.

24. On 13 May 2016, the PRS Panel provided its report to the Senior Vice President, Operations. The PRS Panel concluded that "management acted consistently with [the Applicant's] contract of employment and terms of appointment in assessing her performance as set forth in her

mid-year review” and recommended that the Applicant’s requests for relief be denied. The Applicant states that she received the notice of the denial on 25 May 2016.

25. On 14 September 2016, the Applicant requested an extension of time to file her Application. The Tribunal granted her request and gave her until 24 October 2016 to file her Application.

26. The Applicant filed her Application with the Tribunal on 24 October 2016. She challenges the following: (i) denial of her request for Compensatory Leave, (ii) failure to follow proper procedures regarding her forced reassignment, (iii) that her new job description of Office Manager is not in line with the Bank’s guidelines, and (iv) irregularities in her FY2015 mid-year performance review, which also constitute retaliation.

27. The Applicant seeks the following relief: (i) compensation for loss of income since going on disability, (ii) compensation for a two-year contract extension or to extend her Short Term Disability (STD) with 20% online work and full pay in a different unit, (iii) payment for any relevant neck or arm/shoulder surgery in the future and the cost of home care, if necessary, until she recovers fully, (iv) compensation “for the torment and suffering and increased medical expenses and relocation to [a] warmer climate,” and (v) an order to reopen and correct her overall performance evaluation.

28. On 7 December 2016, the Bank filed a preliminary objection to the admissibility of this Application.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank’s Contentions

29. The Bank contends that the Tribunal lacks jurisdiction over most of the Applicant’s claims because the Applicant did not exhaust all prior remedies available within the Bank Group. Nor has the Bank agreed to the submission of the complaints directly to the Tribunal.

30. The Bank states that the Applicant did not include the following issues in her Request for Review to PRS of 28 July 2015: (i) the denial of her request for Compensatory Leave, and (ii) the assignment of tasks that allegedly contravened her role as the Office Manager. Therefore, the Bank argues that these claims are inadmissible as the Applicant failed to request review of them by PRS.

31. The Bank argues that the requirement to exhaust internal remedies before coming to the Tribunal is not satisfied by an applicant meeting or discussing his or her case with representatives from Human Resources, managers, the Ombudsman, or other staff. Therefore, the Applicant's discussions with various units in the Bank and other staff members do not satisfy the requirement to exhaust internal remedies.

32. The deadline for filing a request for review to PRS is 120 days from the date of receiving notice of the disputed employment matter. The Bank, therefore, argues that all decisions made prior to 30 March 2015 are untimely for the purposes of PRS, based on the Applicant filing her Request for Review on 28 July 2015. Thus, the Bank asserts that PRS was correct in declining jurisdiction over the Applicant's challenge regarding her reassignment, about which the Applicant was on notice by 22 October 2014.

33. Finally, the Bank argues that there are no exceptional circumstances that would warrant a waiver. In response to the Applicant's claim that she was concerned about the renewal of her contract, if she were to file formal complaints about the refusal to grant her Compensatory Leave and her reassignment, the Bank notes that the Applicant's contract was renewed for two years in August 2015, after she submitted her Request for Review. Thus, according to the Bank, the Applicant's concerns about any negative consequences from filing a complaint were unfounded.

34. The Bank also rejects the Applicant's medical explanation as constituting exceptional circumstances, arguing that the Applicant's leave record shows that she took three days of sick leave between September 2014 and February 2015. The Bank states that the Applicant was not continuously sick for an extended period during the time when she should have filed her Request for Review. According to the Bank, the Applicant was placed on STD leave on 21 April 2015,

after the deadline had passed for the Applicant to file a request for review regarding the denial of Compensatory Leave and the reassignment.

35. The Bank contends that the only claim that is properly within the Tribunal's jurisdiction is the Applicant's claim regarding her FY2015 mid-year performance review.

The Applicant's Response

36. The Applicant claims that she exhausted all remedies available within three weeks following the mid-year performance review process on 31 March 2015, when she alleges she became aware of the true motives behind her reassignment. She did so by reaching out to her unit's Human Resources Business Partner, her Director, the Office of Ethics and Business Conduct, the Executive Assistant to the Vice-President of the Climate Change Group, the Special Assistant to the President of the World Bank Group, and the Staff Association. She also claims that since there were no specific guidelines about the change process at the individual level, it was only during her mid-year performance review that she was alerted that her "[m]anagers were deliberately not being honest." Prior to that, she claims that she was not able "to differentiate/protect [herself] from a predatory and phony job reassignment."

37. The Applicant also invokes exceptional circumstances. She cites, as an exceptional circumstance, that she was in a tenuous position to file a formal complaint by January 2015, regarding the denial of Compensatory Leave, and by 22 February 2015, regarding the reassignment. She states that "the timing was too close to hear from the Manager as to whether my position was retained in the GFDRR Strategic Staffing Plan; renewal of my term contract and completion/performance of Manager's side of the job reassignment." The Applicant asserts that her contract was extended on 8 June 2015, prior to filing her Request for Review, and not in August 2015 as the Bank contends.

38. The second exceptional circumstance claimed by the Applicant is that her workload increased by 50%, such that she did not have time to file a complaint.

39. The third exceptional circumstance relied upon by the Applicant is her medical condition. She states that a couple of weeks after her mid-year performance review, she had an issue with her neck and, on 24 April 2015, she was diagnosed with severe anxiety and subsequently, with severe depression. In October 2015, she was diagnosed with a neck injury. The Applicant was on medical leave due to her injuries and then on STD. She claims that she was very ill when she filed her Request for Review to PRS and, due to her medical condition, she opted for PRS to review her claim based on the written submissions rather than a hearing.

40. The Applicant acknowledges that she took only a few sick days between September 2014 and February 2015, but explains that she “was forced to work because of the work overload” even though her right hand and right shoulder were injured. She claims that her managers placed her “under severe strain and pressure and also created a negative work environment,” which contributed to her inability to obtain medical treatment and exacerbated her injuries.

41. The Applicant further explains that she was “still very ill, mentally and physically and medicated [...]” so her Request for Review may not have been focused. She claims that items may appear to have been raised for the first time before PRS, but she “was addressing/answering questions [PRS] did not seem to have answers to when making a decision.”

42. The Applicant argues that she has not raised new claims directly to the Tribunal, rather, “these issues came out during the questions raised by peer review members.” Specifically, the issue of her request for Compensatory Leave arose in response to PRS’s inquiry as to whether the Applicant had received any written complaint or warning about her performance. She also claims that PRS should have recognized that her reassignment did not follow Staff Rules. She claims that the issue of her reassignment was mentioned in her Request for Review as well as in her response to PRS of 23 February 2016.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

43. The parties agree that the Applicant's claim concerning her FY2015 mid-year performance review is properly within the Tribunal's jurisdiction. The Tribunal will examine the Applicant's other claims to determine whether they are admissible.

CLAIM 1: DENIAL OF REQUEST FOR COMPENSATORY LEAVE

44. Article II, paragraph 2 of the Tribunal's Statute provides:

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.

45. Staff Rule 9.03, paragraph 7.02 states:

A staff member seeking review of a disputed matter is required to submit the matter first to Peer Review Services prior to appealing to the World Bank Administrative Tribunal, unless the matter comes under one of the exceptions listed in paragraphs 6.03 or 6.04 of this Rule.

46. The Tribunal has expressed the importance of the requirement of exhaustion of internal remedies, which "ensures that the management of the Bank shall be afforded an opportunity to

redress any alleged violation by its own action.” *Ampah*, Decision No. 522 [2015], para. 55. 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; *Alrayes*, Decision No. 520 [2015], para. 55.

47. In her Request for Review, the Applicant identified the employment matters in dispute as being the procedures followed and the substance of her mid-year performance review and her “misguided reassignment.” In the section of her Request for Review setting out the facts related to her reassignment, the Applicant made a passing reference to the denial of her request for Compensatory Leave by stating: “Immediately after the very intense World Reconstruction Conference II event (Sept. 10-12, 2014), everyone in Track III deservedly took off to recuperate, but I had no respite.” When PRS considered the Applicant’s various claims, it did not treat the denial of Compensatory Leave as a claim.

48. The Tribunal considers that this single statement, regarding other staff but not the Applicant taking time off after the World Reconstruction Conference 2, does not constitute a disputed employment matter for which the Applicant sought PRS’s review. Therefore, the Tribunal declines to consider this claim on the basis that the Applicant has not exhausted all other remedies, by failing to request a review of this decision by PRS.

49. Moreover, Staff Rule 9.03, paragraph 8.01 states:

A staff member who wishes to request peer review must submit a Request for Review with the Peer Review Secretariat within 120 calendar days of receiving notice of the disputed employment matter.

50. Staff Rule 9.03, paragraph 8.02 states:

A staff member receives 'notice' of a disputed employment matter when he or she receives written notice or ought reasonably to have been aware that the disputed employment matter occurred.

51. In this case, the Applicant was informed on 17 September 2014 that her request for Compensatory Leave was denied. Therefore, she had until 15 January 2015 to file her claim with PRS, but did not file her Request for Review until 28 July 2015.

52. Even assuming that this claim had been included in the Applicant's Request for Review, the Tribunal finds that the Applicant brought the claim to PRS over six months after the deadline, therefore failing to exhaust all internal remedies.

CLAIM 2: FORCED REASSIGNMENT

53. The Applicant was reassigned to the role of Office Manager, as communicated by the Manager in a unit-wide email on 22 October 2014. The Applicant challenged the reassignment in her Request for Review to PRS on 28 July 2015.

54. In its memorandum dated 5 August 2015, PRS refused jurisdiction over this claim, stating:

In this case, the record shows that management made the decision to reassign the department's ACS staff, including your roles and responsibilities, in September or October 2014. The record shows that management communicated this decision in writing on October 22, 2014 by circulating to ACS staff an organizational matrix of their new roles and responsibilities. Accordingly, you had 120 calendar days from October 22, 2014 to file your Request for Review seeking review of the reassignment decision. Your deadline to do so was February 19, 2015. You subsequently filed your Request for Review on July 28, 2015, more than 120 calendar days after receiving notice of your claim. Therefore, your claim regarding the reassignment decision is untimely.

55. In *Ampah*, para. 57, the Tribunal stated 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 also 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 finds that PRS correctly dismissed the Applicant's claim regarding her reassignment because her Request for Review in respect of this claim was time-barred. This failure to observe the deadline to submit a request for review to PRS constitutes a failure to exhaust internal remedies.

CLAIM 3: JOB DESCRIPTION OF OFFICE MANAGER NOT IN LINE WITH BANK'S GUIDELINES

57. The Applicant's third claim is that the "new job description of Office Manager forced on [her is] not in line with Bank guidelines."

58. The Bank contends that this claim was not part of the Applicant's Request for Review and, therefore, she failed to exhaust all internal remedies. In addition, the Bank argues that all decisions made prior to 30 March 2015 are untimely for the purposes of PRS, based on the Applicant filing her Request for Review on 28 July 2015.

59. On its face, a plain reading of the Applicant's Request for Review does not reflect that she asked PRS to review the job description of Office Manager in light of the Bank's guidelines. Allowing for a generous reading of the Request for Review, the Applicant's challenge of her reassignment could encompass the claim that the job description of Office Manager was not in line with the Bank's guidelines. For example, regarding the reassignment, the Applicant stated in her Request for Review:

Thus my job responsibilities were switched without prior discussion with us who were affected, no consensus from the entire GFDRR Management team and neither HR or anyone else in the Dept. or VPU were notified. Manager and TTL switched my job responsibilities without any prior discussion, or any PIP etc., if warranted [...]. Additionally, I was doing work that was not in my Results Agreement [...]. Given the manner, it was handled, I felt I had no choice but to accept, but I do question the manner it was conducted as this has had a severe backlash on my health.

60. However, the Tribunal considers that even if the Applicant's complaint regarding the job description of Office Manager were to be construed as part of her overall challenge against the reassignment, as discussed above, PRS declined jurisdiction over the claim regarding the reassignment because it was submitted after the deadline. Therefore, the Tribunal declines jurisdiction over this claim regarding a decision communicated on 22 October 2014, on the basis that the Applicant failed to exhaust all internal remedies in a timely manner.

EXCEPTIONAL CIRCUMSTANCES

61. The Tribunal has considered this standard in a number of cases, although 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. *See BC*, Decision No. 427 [2010], para. 25; *Ampah*, para. 69. In *Yousufzi*, Decision No. 151 [1996], para. 28, the Tribunal stated:

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.

62. In *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30, the Tribunal stated the standard of proof which must be met to establish exceptional circumstances, as follows:

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" [...].

63. Turning to the nature of the excuse invoked, the Applicant cites several actions and events as justifications for the delay in filing.

64. The Applicant argues that she exhausted all remedies by reaching out to various staff in the Bank within three weeks following her mid-year performance review. However, the Tribunal

has frequently held that the reference to “all other remedies within the Bank Group” in Article II(2) of the Statute denotes formal remedies; this requirement is not satisfied by meetings with Human Resources Officers, Country Directors and other staff, or participating in mediation. *See Lysy*, Decision No. 211 [1999], para. 46; *Dey*, Decision No. 279 [2002], para. 20; *Islam*, para. 19; *Motabar*, Decision No. 346 [2006], para. 12; *Ampah*, para. 63.

65. The Applicant also claims that she discovered the true motives behind her reassignment during her mid-year performance review, which led her to challenge the reassignment. However, the Tribunal has affirmed that the subsequent discovery of circumstances surrounding the decision is not the relevant date; the relevant date is the date of the disputed decision. *See DU*, Decision No. 539 [2016], para. 21; *EC*, Decision No. 561 [2017], para. 47. In this case, the Applicant was on notice about her reassignment on 22 October 2014, but did not file her Request for Review to PRS until 28 July 2015, over five months past the deadline.

66. The Applicant also cites, as an exceptional circumstance, that she did not want to file a formal complaint in January or February 2015, regarding the denial of Compensatory Leave and the reassignment, respectively, because she was concerned about the renewal of her contract and the security of her position. The Tribunal recalls that a similar argument was rejected in *Ampah*, where the applicant “chose not to follow-up with certain formal or informal avenues for redress as he felt that this would not achieve anything and/or could have negative consequences while he remained with the IFC.” *Ampah*, para. 74.

67. The record supports the Applicant’s claim that her contract was extended on 8 June 2015, prior to her filing the Request for Review, not in August 2015 as the Bank claims. Nevertheless, there is nothing in the record that suggests that the Applicant would have been adversely affected by filing a request for review to PRS. As in *Ampah*, the Tribunal finds that the Applicant “has not directed the Tribunal to any subsequent events or communications which would suggest that the pursuit of internal remedies, at any point, would have had negative consequences for” her. *Ampah*, para. 78.

68. In *Levin*, Decision No. 237 [2000], para. 23, the Tribunal held that “it would altogether undermine the required time limits if a staff member were allowed to ignore them merely by invoking his doubts about the efficacy of the Bank’s grievance system or about the outcome of his claim.” *See also Caryk*, Decision No. 214 [1999], para. 31; *Madhusudan*, Decision No. 215 [1999], para. 40.

69. In *Dey*, para. 19, the applicant delayed filing his appeal in the hope that another assignment would materialize, and the Tribunal held “that the Applicant’s deliberate choice to follow a certain course of action – i.e. wait and see if another assignment would materialize while the time for the preparation of his Appeal was running out – constitutes a casual treatment of the requirement of exhaustion of internal remedies.” The Tribunal finds that the Applicant’s reluctance to file formal complaints in January and February 2015 because she did not want to risk her position is not an excuse for a late filing to PRS.

70. The Applicant also claims that her increased workload prevented her from filing a complaint. The Tribunal holds that this does not constitute “exceptional circumstances,” as understood by the Tribunal in its jurisprudence.

71. The third exceptional circumstance relied upon by the Applicant is her medical condition. In *DG*, Decision No. 528 [2016], para. 56, the Tribunal stated that it has “recognized in the past that health issues may constitute exceptional circumstances justifying assumption of jurisdiction over an application that has not been filed in a timely manner if they are of a serious nature and are supported by reliable contemporaneous proof.”

72. The deadlines for submitting Requests for Review regarding the Applicant’s claims about the denial of Compensatory Leave and her reassignment were in January and February 2015. Therefore, the relevant period for determining whether the Applicant’s medical condition prevented her from filing her Requests for Review in time is September/October 2014 to January/February 2015.

73. In *Dey*, para. 15, the Tribunal stated that “[a]lthough the Tribunal pays the utmost attention to the presentation of exceptional circumstances, especially when they are based on reasons of health, it cannot accept unsubstantiated claims by an applicant to the effect that he or she was unable to pursue claims for such reasons.”

74. In *ED (No. 3)*, Decision No. 236 [2000], para. 27, the Tribunal 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 with which the Applicant was well familiar.

75. In *BI (No. 5)*, Decision No. 564 [2017], para. 23, the Tribunal found that the applicant “failed to provide any corroborating evidence of the said depression. The record does not contain any medical report or any other corroborating documents showing that she suffered depression during the relevant period that prevented her from timely filing an Application or even to simply request an extension of time to file an Application.” Rather, during the relevant period, the applicant was in communication with Bank officials and the Staff Association, which would suggest that she was in a position to approach the Tribunal at least to request an extension of time to file her application. *See BI (No. 5)*, paras. 24-25.

76. The Applicant states that between September 2014 and February 2015, her right hand and right shoulder were injured, but she was forced to work by her managers. The Tribunal notes that the Applicant’s leave record from September 2014 to July 2015 reflects that she took three days of sick leave during the relevant period, i.e. one day of sick leave on 4 September 2014 and two days of sick leave on 2 and 3 February 2015. The Applicant was placed on STD on 21 April 2015, and this was subsequently extended until 5 February 2017.

77. The record does not contain any contemporaneous medical documentation for the period between September 2014 and February 2015 that would indicate that the Applicant suffered from a medical condition to such an extent that she was unable to file a request for review to PRS.

Rather, the record includes medical reports from November and December 2013, indicating that the Applicant has a history of scoliosis and back pain. The Tribunal finds that these medical reports predate the relevant period of September 2014 to February 2015. Therefore, they do not satisfy the requisite standard of proof for exceptional circumstances that would excuse a late filing to PRS since the record does not reflect that, between September 2014 and February 2015, the Applicant's mental and physical state was such that she would not have been able to file a request for review.

78. The next set of medical reports in the record relate to the diagnosis of scoliosis neck pain on 21 April 2015 and relate to the Applicant's placement on STD. She has also been in treatment since 15 September 2015 for medical conditions, which prevented her from returning to work. Subsequent medical reports in the record date from 2016 and relate to arm and shoulder pain. The Tribunal notes that these medical conditions and reports postdate the relevant period during which the Applicant should have filed a request for review to PRS regarding the denial of Compensatory Leave and reassignment.

79. The Tribunal finds that the Applicant's medical condition does not constitute exceptional circumstances that would justify a late filing.

Concluding Remarks

80. The Tribunal upholds the Bank's preliminary objection with respect to the Applicant's claims regarding: (i) denial of her request for Compensatory Leave, (ii) failure to follow proper procedures regarding her forced reassignment, and (iii) that her new job description of Office Manager is not in line with the Bank's guidelines.

81. The Tribunal finds that the Applicant's claim regarding irregularities in her FY2015 mid-year performance review was filed in a timely manner.

DECISION

- (1) The preliminary objection filed by the Bank is upheld with respect to the three claims listed in paragraph 80 above;
- (2) The Applicant's claim regarding irregularities in her FY2015 mid-year performance review is admissible; and
- (3) All other claims are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 25 October 2017