



World Bank Administrative Tribunal

2024

Decision No. 711

**Charlene Atkinson (No. 2),
Applicant**

v.

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

(Preliminary Objection)

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

**Charlene Atkinson (No. 2),
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Janice Bellace (President), Seward Cooper (Vice-President), Lynne Charbonneau (Vice-President), Ann Power-Forde, Martha Halfeld Furtado de Mendonça Schmidt, Thomas Laker, and Raul C. Pangalangan.

2. The Application was received on 17 June 2024. The Applicant was represented by Monika Ona Bileris, Attorney-at-Law. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency.

3. The Applicant challenges (i) “the [2023] decision of [...] EBC [Ethics and Business Conduct Department] to close [her] complaint” and (ii) “the decision of [the] [HRVP] [Vice-President, Human Resources] to deny her due process rights and access to information.”

4. On 23 July 2024, the Bank filed preliminary objections challenging the admissibility of the Applicant’s EBC claim on the grounds of *res judicata* and her HRVP claim on the grounds of failure to provide sufficient information to state an actual claim and failure to exhaust internal remedies. This judgment addresses the Bank’s preliminary objections.

FACTUAL BACKGROUND

5. The Applicant joined the Bank as a Short-Term Consultant (STC) in January 2015. On 14 December 2015, she was appointed as an Operations Officer, Grade Level GF, in the policy unit of the Corporate Secretariat Vice Presidential Unit (SECPO) on a two-year term contract, to 13 December 2017. In the fall of 2017, the Applicant received a one-year contract extension, to 31 December 2018, after which she left the Bank’s employment.

6. The Applicant is a Jamaican national and describes herself as “a black/Afro-Caribbean descendant female, who identifies as LGBTQ.”

7. According to the Applicant, she was the subject of several instances of sexual harassment by a colleague, Ms. Y, Operations Analyst (SECPO), between 2017 and 2018.

8. On 27 January 2018, the Applicant sent an email to her Director (the Director) informing her that Ms. Y had, on several occasions, touched her hair and breasts. The Applicant referenced a staff meeting in the summer of 2017 when, according to the Applicant, Ms. Y grabbed her head and violated her in front of everyone and that her Manager, Mr. A, “saw it happening and did nothing.” She also referred to a Christmas party in December 2017 when, according to the Applicant, “in front of others” Ms. Y moved toward her to touch her breasts and the Applicant ran off.

9. The Director reported the Applicant’s complaint to EBC (the 2018 sexual harassment claim) and, on 8 February 2018, EBC opened an initial review into the matter. During its review, EBC interviewed Ms. Y who denied the allegations made against her. The Applicant declined to be interviewed by EBC and claimed that she had not intended the matter to reach EBC.

10. On 22 February 2018, EBC closed its review of the 2018 sexual harassment claim on the basis of insufficient evidence to substantiate the allegations. It notified the Applicant of its decision on the same day.

11. In its Case Closing Memo, EBC noted that, when the Director asked the Applicant if she wanted her to address the issue of Ms. Y touching her hair and breasts, the Applicant told her to “ignore it.” The Case Closing Memo stated that EBC had contacted the Applicant for an interview but that she declined to be interviewed because she did not intend for the issue to be escalated to EBC. The EBC Case Closing Memo noted that, without the Applicant’s cooperation, EBC had closed the case due to insufficient evidence. The Memo also noted that EBC had spoken to Ms. Y and had stressed the importance of a harassment-free workplace.

12. On 12 June 2018, the Applicant was informed that her contract would expire on 31 December 2018, and she received written confirmation the following day.
13. On 21 June 2018, according to the Applicant, while she was at work in the World Bank Group (WBG) headquarters, she “had a mental breakdown” and “blacked out.”
14. On 22 June 2018, the Applicant went on Short-Term Disability (STD).
15. The Applicant’s term appointment ended on 31 December 2018, after which she returned to live in Jamaica and continued to receive STD benefits (70% of her annual salary) until 1 November 2019.

The First Application

16. On 20 August 2019, the Applicant filed her first case with the Tribunal. In that application, the Applicant challenged, inter alia,

(i) “the improper termination of her contract as a retaliatory measure”; (ii) [...]; (iii) [...]; and (iv) “abuse of power and authority [...] by failing to address the Applicant’s many complaints of ongoing harassment [...] and failing to protect her from such behaviors.”

17. On 16 November 2020, the Tribunal issued its judgment in *Atkinson (Merits)*, Decision No. 641 [2020]. The Tribunal dismissed the application in its entirety finding, inter alia, that there was no impropriety with respect to the non-renewal of the Applicant’s contract. The Tribunal considered the Applicant’s challenge to EBC’s decision to close its review of her 2018 sexual harassment claim due to insufficient evidence because the Applicant had declined to be interviewed. Having considered whether exceptional circumstances existed to justify the Applicant’s failure to bring her claim in this regard before the Tribunal in a timely manner, including the Applicant’s belief that engaging with EBC was futile, the Tribunal found no such exceptional circumstances and held that the application had been filed out of time.

Events Preceding the Second Application

18. Almost two years after the Tribunal had delivered its judgment on the Applicant's first application and almost four years after she had left the Bank, the Applicant, on 2 September 2022, made a complaint through EBC's ethics helpline. The heading to her email stated, "Former employee - Reporting sexual harassment and assault." In her email, the Applicant stated:

Based on traumatic events I experienced while working at the World Bank in SECPO, including sexual harassment and assault, I've been battling serious health issues and addressing anxiety, depression and PTSD. Some symptoms I experienced include avoidance and I've only recently been well enough to talk about it with EBC.

19. The Applicant agreed to be interviewed by EBC and, on 16 September 2022, EBC interviewed her and initiated a preliminary inquiry into the matter. EBC noted in its Case Closing Memo that the Applicant had reported "allegations of sexual harassment against Ms. [Y] [...]" during [the Applicant's] tenure as an operations officer in SECPO." EBC further noted that the Applicant alleged that Ms. Y had made unwelcome compliments and comments to the Applicant about her physical appearance and that Ms. Y had made unwelcome and inappropriate physical contact of a sexual nature with the Applicant.

20. Specifically, the Applicant shared with EBC that "she was coming forward now as the World Bank Administrative Tribunal [...] faulted her for not cooperating with EBC's investigation."

21. EBC interviewed Ms. Y and six people identified by the Applicant as either being aware of her experiences with Ms. Y or having experienced inappropriate behavior from Ms. Y. Regarding the incident at a staff meeting where Ms. Y had, allegedly, stuck her hand in the Applicant's hair, none of the witnesses recalled such an event. As to the incident at a Christmas party, where Ms. Y had allegedly chased the Applicant around the food table after making inappropriate comments to her, none of the witnesses recalled such an event. EBC concluded it was unlikely that the incident occurred "[g]iven how noticeable such an incident would be if it occurred and the lack of corroboration from any of the witnesses." EBC noted that one witness, Ms. G, described Ms. Y as

being like “a mother figure in the team” who would bring food for the team, would make jokes, and had a friendly relationship with most of the team. Mr. A, the Applicant’s Manager, confirmed to EBC that he had “never received any concerns” about inappropriate behavior with respect to Ms. Y and was in disbelief when he heard the allegation.

22. On 6 June 2023, EBC closed the case at the investigation phase due to insufficient evidence to substantiate the allegations against Ms. Y. The conclusion section of EBC’s Case Closing Memo states the following:

EBC found that none of [the Applicant’s] witnesses could corroborate incidents she alleged happened in public, either at the Christmas party or staff meeting. Many of her witnesses said they never heard of [incidents] she claimed she told them about. Even [another SECPO colleague] could not corroborate her narrative about why she had a mental breakdown on her last day in the office.

Ms. [Y] denied all the allegations, expressing surprise at them because she believed she got along well with [the Applicant]. She described her interactions with [the Applicant] as professional.

Based on its evaluation of the totality of the evidence gathered, EBC did not find sufficient evidence to substantiate [the Applicant’s] allegations. Consequently, EBC did not find sufficient evidence of sexual harassment, or of any violation of Staff Rules.

23. On 12 June 2023, EBC notified the Applicant that it had closed its investigation. EBC stated in part:

We are writing to update you on the allegation of sexual harassment that you reported against Ms. [Y].

We note that this is EBC’s second review of allegations of sexual harassment made by you against Ms. [Y]. The first allegation which was reported to EBC by [the Director] was reviewed by EBC in 2018. This matter was closed at preliminary inquiry due to your non-participation in EBC’s review then. We also note the World Bank Administrative Tribunal’s decision on your sexual harassment claim in Decision 641.

EBC has re-reviewed your concerns of sexual harassment against [Ms. Y] given (i) the WBG’s zero tolerance of sexual harassment, (ii) EBC’s commitment to treating allegations of sexual harassment with utmost importance and, (iii) your claim of

having additional facts regarding the allegations you reported to [the Director] in 2018.

Following a thorough investigation of the alleged misconduct, EBC did not find sufficient evidence to substantiate a violation of staff rules and are therefore closing our review.

We are aware that our decision to close the case may be disappointing, and we acknowledge that [it] must have been difficult to speak with us about this issue. Please do not hesitate to reach out to us if you have any questions.

Thank you again for bringing your complaint to EBC.

24. On 13 December 2023, the Bank's Claims Administrator wrote to the Applicant regarding a previously filed workers' compensation claim by the Applicant, stating:

On 8/1/2018, [the Claims Administrator] received notice of your Workers' Compensation claim. A thorough review and investigation of this claim for Workers' Compensation benefits has been completed. We regret to inform you that we are unable to approve your claim as it does not fall within the Workers' Compensation guidelines. Based upon our review, we found that your illness/injury did not arise as a direct result of your employment.

Our investigation included a review of the following information:

- Per your conversation with [...] on 08/20/2018 you advised that you were pursuing a disability claim and not a work comp claim.

The Second Application

25. After being granted several extensions of time to file an application, on 17 June 2024, the Applicant filed this second Application challenging (i) "the [2023] decision of [...] EBC to close [her] complaint" and (ii) "the decision of [the] [HRVP] to deny her due process rights and access to information."

26. The Applicant requests that (i) "the decision to close the supposed investigation be rescinded and that an actual investigation be conducted, or payment in lieu"; (ii) "the Bank be ordered to review and improve its policies on harassment, nullifying discrimination and sexual assault in the workplace, create new policies where necessary and to adopt recommendations

provided in numerous internal and external reports”; and (iii) “WBG staff and management be ordered to have mandatory staff training performed by external experts” on various workplace misconduct issues such as unconscious bias, harassment, sexual harassment, racism, and bullying in the workplace, including best practices for investigations and victim-centered care.

27. The Applicant also seeks (i) “back payment of salary, benefits and other remuneration from June 1, 2020, the date of the failure to reintegrate her back into the workforce”; (ii) pay and other benefits, in the amount of the difference in remuneration to maintain 100% for the entire period while on STD”; (iii) payment of loss of future earnings and pension, to be calculated to the expected age of retirement, 67”; (iv) “payment of USD \$5,000,000 in moral damages for the pain and suffering she endured at the hands of her colleagues, who were allowed by the Organization to continue the campaign of abuse and harassment unfettered”; (v) “medical costs for having to deal with Post Traumatic Stress Disorder (PTSD), insomnia, anxiety and depression and other mental health conditions; physical injuries and significantly reduced quality of life and life expectancy due to new health conditions, chronic pains, and exacerbation of pre-existing condition, which has been aggravated due to the harassment and abuse she has suffered”; (vi) “interest of 5% on all monetary compensation ordered dating back to January 2016, the date of the beginning of incidents giving rise to her claims”; and (vii) “such other relief as the Tribunal deems just and equitable.”

28. The Applicant requests legal fees and costs in the amount of \$22,400.00.

29. The Bank filed preliminary objections with the Tribunal on 23 July 2024.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank’s Contentions

30. The Bank contends that the present Application is an attempt by the Applicant to relitigate her 2018 sexual harassment claim that was already addressed and dismissed due to untimeliness in *Atkinson (Merits)* [2020]. The Bank asserts that the Applicant is now going for her second “bite

at the apple” by using her present challenge to EBC’s 2023 decision to close its review of her 2022 sexual harassment complaint against Ms. Y as a surrogate claim to further litigate her 2018 sexual harassment claim – the substance of which the Bank submits is the same as the 2022 claim.

31. The Bank’s position is that the Application should be dismissed on the principle of *res judicata* because the present Application satisfies the two conditions that must be met for the application of *res judicata*, namely, that (i) the parties are the same in both cases and (ii) the substance of the claim is essentially the same in both applications.

32. The Bank further contends:

In this case, by asking EBC to again investigate the 2018 Sexual Harassment Claim, [the] Applicant attempts to “create” a decision that she can take to the Tribunal. However, this tactic is not permissible to resurrect an already-barred claim. The Tribunal has further ruled that staff “cannot . . . toll the time limit by requesting an administrative review of alleged ‘administrative decisions’ which do not constitute separate administrative decisions, but which are simply re-confirmations of the original administrative decisions[.]” [(See *Al-Muthaffar*, Decision No. 502 [2014], para. 36).]

33. Finally, the Bank asserts that the Applicant’s 2022 sexual harassment claim should be viewed in light of the Tribunal’s statutory rule of finality. Citing Article XI of the Tribunal’s Statute, which provides that Tribunal “[j]udgments shall be final and without appeal,” the Bank contends that

[t]he Tribunal “end[ed] the matter” vis-à-vis [the] Applicant’s 2018 Sexual Harassment Claim when it issued its judgment with respect to [the] Applicant’s First [a]pplication [*Atkinson (Merits)* [2020]]. Its judgment constituted the “last step” in the adjudication of this Claim (*van Gent (No. 2)*, Decision No. 13 [1983], para. 21).

34. As to the Applicant’s claims in relation to “the decision of [the] [HRVP] to deny her due process rights and access to information,” the Bank contends that it is unclear what decision(s) on the part of the HRVP the Applicant is, in fact, challenging. The Bank submits that this Application contains a series of extremely vague, and at times nearly unintelligible, claims that only loosely, if

at all, seem to make sense. The Bank further contends that any such claim is inadmissible for failure to exhaust internal remedies.

35. The Bank states that, under Staff Rule 9.03, paragraph 7.01, Peer Review Services (PRS) may review any Request for Review “in which a Requesting Staff Member alleges that a managerial action, inaction, or decision was not consistent with his/her contract of employment or terms of appointment,” with certain exceptions set out in Staff Rule 9.03, paragraph 7.04 – none of which the Bank contends are applicable in this instance. The Bank contends:

Notwithstanding the vague, and at times unintelligible, nature of [the] Applicant’s claims in relation to “the decision of the [HRVP] to deny the Applicant her due process rights and access to information,” it is nevertheless apparent that they are not [within] any of the exceptions to the rule that claims must be presented to PRS before the Tribunal. The claim is not related to ending employment, and does not relate to an EBC investigation. Thus, in order for [the] Applicant to properly satisfy the requirement in Article II of the Tribunal’s Statute that all available remedies must be exhausted and also done so in a timely manner, [the] Applicant must have filed a Request for Review with respect to these claims within 120 calendar days of “receiving notice of the disputed employment matter.”

36. The Bank asserts that, “[n]otably, [the] Applicant has *not* filed a Request for Review with PRS in relation to these claims, let alone any Request for Review with PRS ever.” (Emphasis in original.) Thus, the Bank asserts that the Applicant has failed to exhaust internal remedies for her claims in relation to “the decision of [the] [HRVP] to deny the Applicant her due process rights and access to information.”

The Applicant’s Response

37. The Applicant contends that her Application should not be dismissed on the principle of *res judicata* because EBC re-opened the Applicant’s case and because her claims were not previously adjudicated. While the Applicant admits that the parties are the same in both cases, she asserts that

[she] made clear to EBC, she regained her memory of the events that occurred (i.e., the workplace attacks and sexual assault upon her person), recalling additional relevant details following a form of amnesia caused by Post-Traumatic Stress

Disorder (PTSD) she developed due to the trauma and stress she experienced while at the WBG, which exacerbated her Sickle Cell Disease, from which she experiences episodic and chronic pain. With the return of her memory following intensive counseling, psychiatric intervention, medication, and medical care, she was able to provide new information that would enable EBC to re-review the incidents complained of, this time with facts she was unable to provide previously and which were not already addressed and which, if [known], could have altered [...] EBC's original decision.

38. The Applicant contends that the principle of *res judicata* does not apply to the present case. The Applicant points out that the EBC case was not the subject of her 2019 application as, in that case, she was contesting the non-renewal of her contract. While the issue of her case with EBC was discussed in the context of the non-renewal, she submits that she was not contesting any decision made by EBC. The Applicant further submits that the Tribunal "did not make a decision on the merits" with regard to her 2018 sexual harassment claim to EBC, and thus, "[a]s no judicial body has adjudicated the substance of the case, it cannot be argued that *re[s] judicata* applies."

39. As to the Bank's contention that the Applicant is attempting to "create" a decision she can take to the Tribunal by asking EBC to, again, investigate her 2018 sexual harassment claim, the Applicant asserts that EBC re-opened the case on its own accord and, as such, is subject to the Staff Rules that guarantee a path to appeal following the closure of a case. The Applicant avers that denying the Applicant her right to appeal would harm the rights afforded to her under her contract of employment for events complained of when she was a staff member, thus leaving her without a remedy, and would allow EBC, HRVP, and the WBG to evade review of its decisions.

40. Responding to the Bank's contention that "anything other than a dismissal of [the] Applicant's present Application and its featured claims would arguably wreak havoc on the Tribunal's statutory principle of finality," the Applicant contends that, "[w]ithout having adjudicated the substance of the Applicant's claim, the Tribunal has not brought finality to this matter."

41. By way of reply to the Bank's submission that the Applicant's challenge to the decision by the HRVP to deny her access to her own files is vague, the Applicant states:

To be clear, the Applicant is not making a separate claim regarding an “[HRVP] Decision.” She is appealing the decision by [...] EBC to close her case. As part of this claim, the Applicant is arguing that [HRVP] erred with regard to a number of the actions taken as part of the decision-making process, including the interference with her file.

42. Specifically, the Applicant contends that the “[HRVP] decision” is not a separate decision she is appealing but makes up part of her claim about how her case was mishandled. The Applicant also claims that her “[HRVP] argument is admissible because [she] exhausted her internal remedies.” The Applicant submits that, because her “claim regarding the [HRVP]” is directly tied to her Worker’s Compensation and STD claims, and because her EBC case is likewise directly related to the facts and circumstances before the Bank’s Administrative Review Panel (ARP) – both scenarios which involve her highly sensitive private medical records – she “was ineligible to bring her case to PRS as exempted by Staff Rule 9.03, para. 7.0[4] (b) and (c).” Thus, the Applicant contends that her claims fall within an exception.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE DOCTRINE OF *RES JUDICATA* APPLIES TO THE APPLICANT’S CHALLENGE TO EBC’S DECISION TO CLOSE ITS INVESTIGATION INTO HER SEXUAL HARASSMENT CLAIM

43. The Tribunal will examine whether the doctrine of *res judicata* applies to bar the Applicant’s challenge to EBC’s 2023 decision to close its investigation into her 2022 sexual harassment claim against Ms. Y in this second Application before the Tribunal.

44. The Tribunal’s Statute prescribes at Article XI, paragraph 1, “Judgments shall be final and without appeal.”

45. For the purposes of this Tribunal, “[t]he two conditions that must be met for the application of *res judicata* are ‘that the parties are the same in both cases and that the substance of the claim is essentially the same in both applications.’” See *EO (No. 2) (Preliminary Objection)*, Decision No. 622 [2019], para. 50, citing *González Flavell (No. 4) (Preliminary Objection)*, Decision No. 597 [2018], para. 40, and *B (No. 2)*, Decision No. 336 [2005], para. 39.

46. The Tribunal recalls that the Bank's position is that the Application should be dismissed on the principle of *res judicata* as the present Application satisfies both conditions the Tribunal cited in *EO (No. 2) (Preliminary Objection)* [2019], para. 50, for the application of that principle. Not only are the parties to this Application the same, but the present Application, in the Bank's view, is an attempt by the Applicant to relitigate the substance of her 2018 sexual harassment claim which was already addressed and dismissed due to untimeliness in *Atkinson (Merits)* [2020]. Additionally, in the Bank's view, the Applicant's 2022 sexual harassment claim should be viewed in light of the Tribunal's statutory rule of finality as provided for in Article XI of the Tribunal's Statute.

47. The Applicant disagrees that the doctrine of *res judicata* applies because EBC re-opened her case and because her claims were not previously adjudicated. As such, the Applicant contends that EBC's 2023 decision is subject to the Staff Rules that guarantee a path to appeal following the closure of a case. As to the Bank's contention that anything other than a dismissal of the present Application would wreak havoc on the Tribunal's statutory principle of finality, the Applicant contends that, "[w]ithout having adjudicated the substance of the Applicant's claim, the Tribunal has not brought finality to this matter."

48. The Tribunal has repeatedly held in its jurisprudence that "previously adjudicated claims that an applicant attempts to submit again in another application are 'irreceivable under the principle of *res judicata*.'" See *Pal (No. 2)*, Decision No. 406 [2009], para. 34, citing *Madabushi*, Order No. 2002-10 [2002], para. 4.

49. The Tribunal observes that, in the present case, both the Applicant and the Bank are the same parties that appeared in *Atkinson (Merits)* [2020]. As such, the Tribunal is satisfied that the first limb of the test for *res judicata* has been satisfied.

50. As to the second limb, the Tribunal must assess whether, as stipulated in *EO (No. 2) (Preliminary Objection)* [2019], para. 50, the substance of the Applicant's claim is, essentially, the same in both applications. It need hardly be stated that a decision taken by EBC in February 2018

and a decision taken by EBC in June 2023 cannot be regarded as “the same decision” – not least because they are separated by a period of over five years. However, in assessing whether the second limb of the *res judicata* principle applies, the Tribunal must review the Applicant’s complaints in her 2019 application and in her 2024 Application, insofar as they relate to EBC’s inquiry into her allegations of sexual harassment, in order to establish whether, substantially, her claim in each application is, essentially, the same. If it is, and the Applicant’s 2019 application was determined to be time barred by the Tribunal, then it is not open to the Applicant to resubmit that time-barred complaint under the guise of the present Application.

51. The Tribunal observes that EBC’s Case Closing Memos detailing its inquiries into the Applicant’s 2018 sexual harassment claim (EBC Case. No. 2018-3405) and the Applicant’s 2022 sexual harassment claim (EBC Case No. EBC-INV-20187) both list Ms. Y as the “subject” of its investigation.

52. The Tribunal further observes that the Applicant detailed a number of allegations of sexual harassment by Ms. Y in her 2019 application to the Tribunal (at para. 40) and that she replicates these same allegations, almost word for word, in her 2024 Application (at para. 2). In both applications, for example, the Applicant claimed that, “[f]rom the time [she] began working at the World Bank [...], she began getting touched by her colleague, [Ms. Y],” who was, “[a]t first, [...] overly friendly and comfortable invading the Applicant’s physical person, and then her hair.” The Applicant claimed that she and Ms. Y “worked well together” and that the Applicant “spoke with her frankly about the issue, but things escalated” with Ms. Y, allegedly, saying that she “couldn’t help it.” The Applicant further claimed that, when she explained how uncomfortable this made her and told Ms. Y that “grabbing her hair made her feel like an object to be petted, [Ms. Y] completely disregarded [her] concerns.”

53. The Tribunal notes that almost identical allegations are made in paragraph 44 of the Applicant’s 2019 application challenging EBC’s 2018 decision to close its inquiry and paragraphs 7 and 8 of her current Application challenging EBC’s 2023 decision to close its investigation. Such identical allegations include, for example, claims that the Applicant went to work daily in fear, that

Ms. Y touched her numerous times on her breasts, and that Ms. Y later tried to touch the Applicant on her lower body.

54. In addition, the Tribunal observes that further alleged sexual harassment incidents detailed in the Applicant's 2019 application are replicated almost word for word in the Applicant's 2024 Application. These alleged incidents include Ms. Y walking into the Applicant's office and commenting on the Applicant's weight loss and pronounced features, Ms. Y allegedly "molesting" the Applicant's hair in a staff meeting in front of the Applicant's Manager, Mr. A, and Ms. Y commenting on the fit of a new pants suit and fondling the Applicant's jacket accessory in a meeting while whispering in the Applicant's ear.

55. The Tribunal also takes note of EBC's Case Closing Memos following its 2018 and 2023 investigations in the Applicant's sexual harassment claims. In EBC Case No. 2018-3405, the memo refers to the Applicant's allegations that Ms. Y "touched her hair and breasts." In EBC Case No. EBC-INV-20187, EBC noted the Applicant's allegations that Ms. Y made unwelcome compliments and comments about the Applicant's physical appearance and made unwelcome and inappropriate physical contact of a sexual nature.

56. The Tribunal observes that, in EBC's 12 June 2023 email to the Applicant informing her that it had closed its investigation, it is stated:

We are writing to update you on the allegation of sexual harassment that you reported against [Ms. Y].

We note that this is EBC's second review of allegations of sexual harassment made by you against [Ms. Y]. The first allegation which was reported to EBC by [the Director] was reviewed by EBC in 2018. This matter was closed at preliminary inquiry due to your non-participation in EBC's review then. We also note the World Bank Administrative Tribunal's decision on your sexual harassment claim in Decision 641.

[...]

Following a thorough investigation of the alleged misconduct, EBC did not find sufficient evidence to substantiate a violation of staff rules and are therefore closing our review.

57. In view of the foregoing, the Tribunal is satisfied that the Applicant's complaints which came before EBC both in 2018 and in 2022 in relation to alleged sexual harassment were, substantially, the same. In both instances, EBC closed the investigation due to the fact that the allegations had not been substantiated, albeit that in 2018 the decision on the failure to substantiate was reached after EBC had interviewed Ms. Y and in the light of the Applicant's non-participation.

58. The Tribunal recalls that, in its judgment in *Atkinson (Merits)* [2020], it dismissed the Applicant's 2018 harassment and sexual harassment claim for being out of time. In that judgment, at paragraph 127, the Tribunal observed that "EBC also opened an initial review into the Applicant's allegations of sexual harassment but closed the case due to insufficient evidence, as the Applicant declined to be interviewed." The Tribunal found that the Applicant was notified that EBC had closed the case, but found that the Applicant did not file her case with the Tribunal until it was too late.

59. In determining whether exceptional circumstances existed to justify the delay on the Applicant's part in bringing her claim in a timely fashion, the Tribunal, in *Atkinson (Merits)* [2020] considered the Applicant's contention that she had declined to engage with EBC in January 2018 because she had considered the effort to be futile. With regard to that contention, the Tribunal recalled its judgment in *Levin*, Decision No. 237 [2000], para. 23, wherein it stated that

[i]t 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 Caryk*, Decision No. 214 [1999], para. 31, and *Madhusudan*, Decision No. 215 [1999], para. 40.)

The Tribunal found that no exceptional circumstances existed and that the Applicant's first application to the Tribunal concerning EBC's closure of its file on the 2018 sexual harassment allegations was time barred.

60. The Tribunal recalls that Article XI, paragraph 1, of the Tribunal's Statute provides that "Judgments shall be final and without appeal." In *van Gent (No. 2)* [1983], para. 21, the Tribunal held:

Article XI lays down the general principle of the finality of all judgments of the Tribunal. It explicitly stipulates that judgments shall be “final and without appeal.” No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal’s judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

61. The Tribunal has also stated, “Once the Tribunal has spoken, that must end the matter; no one must be allowed to look back to search for grounds for further litigation.” *Mpoy-Kamulayi* (No. 7), Decision No. 477 [2013], para. 27.

62. The Tribunal is satisfied that, once it had spoken on the inadmissibility of the Applicant’s 2018 complaints concerning alleged sexual harassment in its judgment in *Atkinson (Merits)* [2020], that was the end of the matter. While the Tribunal may, exceptionally, revise a judgment in the very specific circumstances stipulated in Article XIII of the Tribunal’s Statute, it observes that such an application has not been made by the Applicant in the instant case.

63. The Tribunal notes the Applicant’s contention that, when she went back to EBC in 2022, she did not intentionally “create” a decision she could appeal, but that EBC re-opened her case of its own accord and reviewed it based on new information provided and that, as such, it opened itself up to an appeal of its final decision on the matter.

64. The Tribunal is not persuaded. The record shows that, when the Applicant made her 2022 complaint of sexual harassment to EBC, she expressly informed EBC of the fact that she was “coming forward now as the World Bank Administrative Tribunal [...] faulted her for not cooperating with EBC’s investigation.” The Tribunal finds that in so doing the Applicant was, indeed, attempting to relitigate her earlier claim in respect of EBC’s closure of her complaint which had been dismissed as untimely by the Tribunal by creating an ostensibly “new” decision from EBC such as would start time tolling once again. The Tribunal considers that it would be altogether improper to permit an applicant who had failed to meet the required time limits for filing a particular complaint to backtrack on such failure by reporting the same complaint for a second

time in order to create a “new” decision and a new time limit. Such an approach, if tolerated, would most certainly wreak havoc with the rule of finality and is, therefore, impermissible.

65. Reviewing the record – including the Applicant’s two Tribunal applications (2019 and 2024) containing nearly identical sexual harassment allegations against Ms. Y, the two EBC closing memos (2018 and 2023) containing the same sexual harassment allegations against Ms. Y, and EBC’s 12 June 2023 email to the Applicant (noting the Tribunal’s judgment on the Applicant’s sexual harassment claim) – it is clear that the Applicant is attempting to re-assert the same claim that was dismissed due to untimeliness in *Atkinson (Merits)* [2020]. The Tribunal therefore concludes that the second limb of the principle of *res judicata* is also satisfied here.

66. Since the Applicant’s 2024 Application to the Tribunal involves both the same parties and the same set of facts pertaining to allegations of sexual harassment that came before the Tribunal in 2020, the Tribunal is satisfied that the Applicant is attempting to re-submit a claim that the Tribunal has already adjudicated upon and has determined to be time barred. Consequently, the Tribunal finds that this Application is inadmissible under the principle of *res judicata*. Accordingly, the Tribunal will not entertain the Applicant’s attempt to have her claim re-examined.

67. While the Applicant has not requested a revision of the Tribunal’s 2020 judgment under Article XIII of the Tribunal’s Statute, the Tribunal confirms, for the sake of completeness, that it is satisfied that no “new fact” and certainly none as would shake the very foundations of the Tribunal’s persuasion has been put forward by the Applicant either to EBC or in this Application. Despite the Applicant’s claim that her memory returned prior to her 2022 sexual harassment complaint to EBC, the Tribunal observes that the comparisons set above between the Applicant’s 2019 application and her 2024 Application demonstrate that no such novel information or “new fact” was forthcoming.

68. Based on the foregoing, the Tribunal finds that the doctrine of *res judicata* applies to bar the Applicant’s challenge to EBC’s 2023 decision to close its investigation into her sexual harassment claim.

THE APPLICANT'S HRVP CLAIM

69. The Bank contends that the Applicant's claims in relation to "the decision of [the] [HRVP] to deny the Applicant her due process rights and access to information" are inadmissible as the Applicant failed to timely exhaust internal remedies.

70. In view of the Applicant's clarification that she is not making a separate claim regarding an "[HRVP] decision," the Tribunal finds that it is not necessary to decide whether the Applicant exhausted internal remedies with respect to the "[HRVP] decision."

DECISION

The Application is dismissed.

/S/Janice Bellace
Janice Bellace
President

/S/ Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 18 October 2024