



**World Bank Administrative Tribunal**

**2020**

**Decision No. 628**

**Charlene Atkinson,  
Applicant**

**v.**

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

**(Preliminary Objection)**

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

**Charlene Atkinson,  
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 Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 20 August 2019. The Applicant was represented by Monika Ona Bileris, Attorney-at-Law. The Bank was represented by Edward Chukwuemeke Okeke, Interim Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant informed the Tribunal in writing that she had decided not to seek anonymity in this case.

3. The Applicant is challenging (i) “the improper termination of her contract as a retaliatory measure”; (ii) the denial of her due process rights as a result of not being provided “the real reasons” for her termination; (iii) the decision “not to renew her contract for a 3-5 year term”; 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.”

4. The Bank filed preliminary objections on 10 September 2019. 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, Level GF in the Corporate Secretariat Vice Presidential Unit on a two-year term contract. The Applicant is a Jamaican national and describes herself as “a black/Afro-Caribbean descendant female, who identifies as LGBTQ.”

*Non-Renewal of Contract*

6. The Applicant's appointment was to last from 14 December 2015 to 13 December 2017. The Applicant claims that her Manager told her during her annual performance conversation on 25 September 2017 that her contract would be renewed for one additional year. The Applicant further claims that, sometime between June and September 2017, her Manager promised her that her contract would be renewed, and that "[t]hey agreed to 3 years to start" for the renewal.

7. The Applicant's contract was subsequently extended to 31 December 2018, but she was told by management that her contract would not be renewed beyond that date due to budget constraints. The Applicant's Manager informed her in an email that he would re-visit the topic of whether there were available funds to renew her contract for one more year during the mid-year conversation, but the Applicant claims that the Manager did not re-visit this topic. The Applicant also claims that management indicated to her that she might get a longer contract if her performance continued to be positive and if she took on assignments at the GG Level.

8. The Applicant contends that her mental health was affected due to her belief that management was seeking to fire her under false pretenses. She claims that she wanted to resign, as she did not want to move her son's school in the middle of the academic year. She contends that she told the Manager that she had a legitimate expectation of a "3-5 year" renewal, and he told her that he would do his best to honor that promise. The Applicant claims that the Manager offered her an extension for 18 months, but that she did not want to remain in the position.

9. On 29 September 2017, the Applicant's Manager told her by email that the "current budget environment linked to the ongoing Business Review process" allowed him to renew the Applicant's contract until December 2018.

10. The Applicant told the then-Director of the unit in an email on 3 October 2017 about the Manager's assurances that her contract would be extended for longer than one year, as well as the Manager's email of 29 September 2017 in which he informed the Applicant that her contract could only be renewed for one year.

11. The Manager told the Applicant by email on 10 November 2017 that, “[a]fter consulting with management, given our current budget situation and our ongoing business review process unfortunately at this point in time we can just provide you with a one-year extension of your contract.”

12. On 10 November 2017, the Applicant requested mediation, as she preferred a new appointment beyond December 2018. However, on 8 January 2018, the Applicant notified Mediation Services that she did not intend to continue the mediation.

13. On 13 June 2018, the Applicant was informed that her contract would expire on 31 December 2018. The Applicant informed the new Director of the unit about her contract issues on 20 June 2018, but she claims that she did not get the assistance she asked for. The Applicant subsequently contacted Ombuds Services and the Staff Association to discuss her concerns.

14. The Applicant went on sick leave on 22 June 2018. She subsequently went on Short-Term Disability (STD) through December 2018.

15. The Applicant’s term appointment ended on 31 December 2018.

#### *Alleged Incidents of Discrimination and Harassment*

16. The Applicant alleges that she suffered multiple instances of discrimination and harassment during her appointment.

17. The Applicant claims that a co-worker (Ms. X) verbally attacked her and physically threatened her in her office on 24 October 2017. According to the Applicant, Ms. X entered her office and asked her questions in a “combative” manner. The Applicant states that Ms. X moved closer to her, started pointing in her face, and physically positioned herself close to the Applicant’s desk, while leaning across the desk at times. The Applicant further states that Ms. X continued to verbally abuse her, including about whether she should have been hired, and at one point stretched her hands out toward the Applicant. The Applicant claims that she felt trapped, and that she pushed

her chair back and hit herself on the table behind her, which resulted in “long standing chronic back pains.” The Applicant states that Ms. X left her office after the Applicant said that she would call the Manager.

18. The Applicant reported this incident to the Office of Ethics and Business Conduct (EBC) on 24 October 2017.

19. On 26 October 2017, the Applicant informed the Vice President and Corporate Secretary of the Bank about the 24 October 2017 incident.

20. The Applicant also alleges that she was discriminated against because of her ethnicity. She claims that a white male British consultant was given favorable treatment as compared to her and other staff in the unit. She also alleges that there was a meeting in which she was singled out due to her ethnicity. She claims that staff members made inappropriate comments about her with regard to her ethnicity, her LGBTQ status, and her family situation as a single mother.

21. On 2 November 2017, the Applicant contacted Ombuds Services by email regarding her treatment in the unit. She told an Ombudsman that there was “clear bias” in her unit, and she would often not be given work or be at her desk with nothing to do. In this email, the Applicant also discussed other staff members, specifically with regard to certain staff members getting special privileges over others. The Applicant specified that a Ugandan national and an African American consultant in her unit were both told to leave and did not get new contracts with the unit.

22. EBC conducted an initial review and, on 20 November 2017, closed the case relating to the 24 October 2017 incident. According to the EBC Case Closure Memo, the Applicant’s Manager had asked Ms. X to apologize to the Applicant following the 24 October 2017 incident and made it clear to Ms. X that any comments about the Applicant’s hiring were not appropriate. The Case Closure Memo also noted that the Applicant’s work program was to be communicated to her directly by the Manager, that she had been assigned a more “stable” work program, and that the Manager had removed the Work Program Agreement duties from Ms. X’s remit. EBC closed

the case based on the managerial actions taken by the Manager. The Applicant was notified that EBC closed the case on 20 November 2017.

23. On 21 November 2017, the Applicant followed up with Ombuds Services by email. In the email, she stated that her Manager had informed her of the changes he would put in place to address her concerns. She also stated that she had received a more defined work program, and that her Manager had now been speaking up on her behalf if Ms. X tried to intervene with the Applicant's work program. She further stated that she had advocates both inside and outside her unit. The Ombudsman replied to the Applicant on 22 November 2017 and stated, "I have been able to have some conversations. [...] [Y]ou have done a great job speaking up and getting help and I am very happy to hear that things are much better!"

24. On 27 January 2018, the Applicant sent an email to the Director, in which she complained about an incident of alleged sexual harassment that she suffered at the hands of another co-worker (Ms. Y). The Applicant states that Ms. Y repeatedly touched her hair and her breasts on multiple occasions. She referred specifically to an incident at a workplace holiday celebration in December 2017 in which Ms. Y allegedly asked if there were any cameras around before moving closer to the Applicant to touch her breasts. The Applicant also referred to an incident at a staff meeting during which Ms. Y touched her hair. The Applicant stated in the email that the Manager did nothing to address the situation at the meeting.

25. The Director reported the Applicant's complaint to EBC. EBC conducted an initial review on 8 February 2018. The Applicant declined to be interviewed by EBC and claimed that she had not intended the matter to reach EBC. During its review, EBC interviewed Ms. Y.

26. On 22 February 2018, EBC closed its review of sexual harassment and hostile work environment, due to insufficient evidence to substantiate the allegations. The EBC Case Closure Memo stated that the Applicant alleged that a staff member from another unit had made lewd sexual jokes and "blatant racist and sexist statements." The Memo noted that she also claimed that her Manager had done nothing to stop the jokes at a particular staff meeting and that a Senior Finance Officer in the unit had shouted at her on another occasion.

27. In the Case Closure Memo, EBC found that the Director intervened to stop the jokes at the relevant staff meeting. EBC also found 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. With regard to the lewd jokes and comments made by a staff member in another unit, the Director told EBC the name of the staff member she believed was responsible. EBC told the Director to mention the issue to that staff member's manager. The Case Closure Memo stated that EBC had contacted the Applicant for an interview, but she declined to be interviewed because she did not intend for the issue to be escalated to EBC. The EBC Case Closure Memo noted that, without the Applicant's collaboration, EBC had closed the case due to insufficient evidence. The Memo also noted that EBC had spoken to Ms. Y as a witness and had stressed the importance of a harassment-free workplace.

28. The Applicant was notified that EBC had closed the case on 22 February 2018.

29. The Applicant filed a police report with the Washington, D.C. Metropolitan Police Department on 10 April 2019. Details from the report beyond the fact that it dealt with an allegation of sexual harassment have not been provided in the record.

#### *The Present Application*

30. The Applicant filed her Application on 20 August 2019. The Applicant is challenging (i) "the improper termination of her contract as a retaliatory measure"; (ii) the denial of her due process rights as a result of not being provided "the real reasons" for her termination; (iii) the decision "not to renew her contract for a 3-5 year term"; 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."

31. The Applicant seeks (i) the rescission of the non-renewal of her contract; (ii) a new contract of five years or payment in lieu of such; (iii) rescission of the decision not to extend her contract; (iv) a new contract of two years in this regard; (v) an order to the Bank to improve its policies on harassment and develop new policies where necessary; (vi) mandatory training for Bank staff and

management on how to address bias in the workplace; (vii) a letter of apology from the Bank and “each individual who perpetrated the actions against the Applicant,” as well as a proposal to the Board of Executive Directors and Board of Governors on addressing discrimination in the Bank; (viii) back payment of salary and benefits from 1 January 2019; (ix) compensation of five years’ salary and benefits in lieu of the “3-5 year” contract she was not given; (x) compensation in the amount of the difference in remuneration to maintain 100% salary when she was on STD; (xi) compensation in the amount of the difference in remuneration to maintain 100% salary if assessed for Long-Term Disability; (xii) compensation for loss of future earnings and pension to be calculated at the expected age of retirement, which is 67; (xiii) \$1,000,000.00 in moral damages for pain and suffering; (xiv) payment for medical costs; (xv) interest of 5% on all monetary compensation dated back to her date of separation from service; and (xvi) legal fees and costs in the amount of \$19,709.41.

32. The Bank filed preliminary objections with the Tribunal on 10 September 2019.

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

### *The Bank’s Main Contentions*

33. The Bank contends that the Applicant failed to exhaust internal remedies, as she did not seek review by Peer Review Services (PRS) for her non-renewal claim. The Bank claims that there is no exception to the requirement to exhaust this claim before PRS. In this regard, the Bank states that “[a] failure to grant a new appointment is not a termination decision which could be challenged directly before the Tribunal according to [Staff Rule] 9.03, para. [7].03.” The Bank contends that in contrast to a non-confirmation of a contract or a termination due to redundancy, which constitute decisions that terminate contracts, a term contract automatically ends at the end of the contract period “*without* requiring an additional decision.” (Emphasis in original.) The Bank claims that, even if the Tribunal allowed such direct submissions, the Applicant has failed to make a *prima facie* case for her claim that would allow the Tribunal to assess whether a direct submission to it would be justified in fact.



34. The Bank contends that the Applicant has not exhausted internal remedies with regard to her allegations regarding discrimination and harassment, with the exception of her claim relating to the 24 October 2017 incident. Specifically, the Bank contends that she sought assistance from EBC for the 24 October 2017 incident only. According to the Bank, for the other claims, including the alleged sexual harassment by Ms. Y, the Applicant's Director, not the Applicant, submitted the associated request to EBC. The Bank states that, furthermore, the Applicant declined to participate in the EBC investigation, and she did not separately engage PRS for any of her discrimination and harassment complaints. The Bank further contends that none of the other steps taken by the Applicant, such as attempting mediation and talking to her supervisor, the Staff Association, and Ombuds Services, fulfills the requirement to exhaust internal remedies under Article II(2) of the Tribunal's Statute.

35. The Bank alleges that the Applicant's claims relating to the 24 October 2017 incident and the later incident of alleged sexual harassment have not been filed in a timely manner. The Bank claims that EBC closed the case relating to the 24 October 2017 incident on 20 November 2017 and the case about the alleged incident of sexual harassment on 22 February 2018. According to the Bank, the deadlines for the Applicant to bring those claims before the Tribunal would have been 20 March 2018 and 22 June 2018, respectively. The Bank states that, as the Applicant submitted a request to the Tribunal for an extension of time to file her Application on 26 September 2018, her claims were not filed in a timely manner. The Bank maintains that the Applicant did not provide evidence to prove that any exceptional circumstances existed, which would have excused the Applicant from the requirement to exhaust internal remedies and file her claims in a timely manner. The Bank states that the Applicant was "actively engaged in various email communications with different Bank personnel regarding her situation" between June and December 2018. According to the Bank, the Applicant should thus have been able to go to PRS and request an extension of time to file her claims.

### *The Applicant's Response*

36. The Applicant contends that the non-renewal of her contract was a constructive termination that allowed her to bypass PRS and bring her claim directly to the Tribunal. She specifically claims

that the non-renewal of her contract was due to retaliation against her for having complained about discrimination and harassment. She further contends that the Tribunal has allowed for direct submissions of claims where the applicant has cited failures of due process and references to assurances of confirmation of appointment. The Applicant claims that she was denied due process as she was not provided reasons for the non-renewal of her contract, and she was given verbal and written assurances that her contract would be renewed for a “3-5 year” term.

37. With regard to the requirement of exhaustion of remedies for her discrimination and harassment claims, the Applicant claims that she exhausted remedies when she brought her concerns to Mediation Services, Ombuds Services, EBC, her supervisor, other Bank officials, and the Staff Association. She further contends that she attempted several times to get the Staff Association to help her file a claim before PRS, but that she was “intimidated by the harassing and abusive actions taken against her within her unit, and by fear of reprisal for bringing a claim.” She claims that the deterioration of her physical and mental health “from the stress that the abuse and terms of her contract renewal were causing her” prevented her from filing her claims with PRS and should be considered exceptional circumstances excusing her from the requirement to exhaust internal remedies.

38. The Applicant contends that there were exceptional circumstances that prevented her from filing her claims before the Tribunal in a timely manner. The Applicant claims that, for over a year, she complained to various individuals at the Bank about the abuse she had suffered, but the Bank failed to resolve the situation in a meaningful way. She contends that the Bank has not explained how she could have filed a case before PRS or the Tribunal “when her claims were not ripe and still pending before the various entities and individuals to whom she brought her complaints.” The Applicant further states that exceptional circumstances exist in her case because the abuse and suffering she experienced were exceptional. The Applicant also contends that she went on disability leave and was “unable to do much more than take care of her health throughout that time,” but that she did seek extensions to file her claims during that time, which shows that she was “keen to assert her rights.”

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

*Whether the Applicant exhausted internal remedies for the non-renewal claim*

39. The Tribunal has consistently emphasized the importance of the statutory requirement of the exhaustion of internal remedies. *See., e.g., O*, Decision No. 323 [2004], para. 27.

40. However, the Tribunal's Statute does not address cases in which internal remedies have to be exhausted and the forum before which such exhaustion must be pursued. These matters are governed by the Staff Rules of the Bank and the findings of the Tribunal. The relevant Staff Rule here is Staff Rule 9.03, paragraph 7.03, which states:

A Staff Member seeking review of a decision to terminate his/her employment may elect to bypass the peer review process and file an application concerning the matter directly with the World Bank Administrative Tribunal pursuant to Staff Rule 9.05, "The World Bank Administrative Tribunal."

41. The Bank contends that the Applicant should have brought this claim to PRS before filing it with the Tribunal. According to the Bank, there is no exception to the requirement to exhaust internal remedies for a non-renewal claim, even under Staff Rule 9.03, paragraph 7.03. The Bank states that a non-renewal of a contract does not constitute a termination decision under the Staff Rule, in contrast to a non-confirmation of a contract or a termination due to redundancy, since a term contract automatically ends at the end of the contract period and does not require an additional decision to terminate it.

42. The Applicant states that the non-renewal of her contract was a constructive termination that allowed her to bypass PRS and bring her claim directly to the Tribunal. She specifically claims that the non-renewal of her contract was due to retaliation against her for having complained about discrimination and harassment. She further contends that the Tribunal has allowed for direct submissions of non-confirmation claims where the applicant has cited failures of due process and references to assurances of confirmation of appointment, as well as direct submissions of non-renewal claims where the applicant has cited retaliation, harassment, and discrimination.

43. The Tribunal notes that Staff Rule 9.03, paragraph 7.03, does not define employment disputes involving “a decision to terminate [...] employment” nor does it provide examples or a list of termination decisions for which a staff member can bypass PRS. The Bank refers to Staff Rule 7.01 on “Ending Employment,” but like Staff Rule 9.03 this Rule also does not define employment disputes involving “a decision to terminate [...] employment,” nor does the Rule provide a list of termination decisions for the purposes of bypassing PRS.

44. The question then is whether a decision not to extend or renew a term appointment can be considered as a “decision to terminate [...] employment” for the purposes of Staff Rule 9.03. The Tribunal notes that the ordinary meaning of the term “terminate” is “to end” or “to make something end.” Thus, a decision not to renew or extend a term appointment terminates a staff member’s employment because it brings an end to that appointment. The Tribunal notes that the Bank in its standard letter of appointment uses the term “terminate” for term appointments. In its standard letter of appointment for term contracts, the Bank includes a statement informing the staff member that his or her appointment will terminate at the end of a term appointment unless it is renewed or a new appointment is made. As an example, in *DA*, Decision No. 523 [2015], para. 98, the Tribunal quoted the Bank’s standard language in the term contract:

Your appointment will *terminate* on February 7, 2015, unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer you a new appointment, but it may do so if agreed to in writing at the time of the expiration of your appointment. (Emphasis added.)

45. Moreover, six months before the end of a term appointment, Human Resources (HR) sends an automated notification to the manager of the staff member as a reminder that the appointment will end. The language of termination is used in this reminder email as well. Specifically, the reminder email tells the manager that, if he or she will not renew the appointment, then he or she must confirm that intention in MyHR Self-Service Action under “Termination–End of Appointment.” For example, in one of the automated HR reminder emails about this Applicant’s term appointment, HR stated:

Managers should, wherever possible, provide a minimum of six months advance notice, in writing, whether the term appointment will be extended or not. [...]

- i. If a manager fails to either extend or terminate the appointment THE FINAL SALARY PAYMENT FOR THE STAFF MEMBER WILL BE WITHHELD pending such action.

46. In sum, the Bank itself uses the word terminate or termination in the context of term contracts. The Tribunal notes in this regard that the plain meaning of the word termination is end of a relationship. Staff Rule 9.03, paragraph 7.03, specifically references a termination of employment, rather than a termination of a contract. The Tribunal accepts that there is a difference between a fixed-term contract and an open-ended contract. *See Bhadra*, Decision No. 583 [2018], para. 64. The Tribunal notes, however, that the non-renewal of an appointment has the effect of the termination of an employment relationship. Furthermore, the Bank has used the word termination to refer to a termination of a term appointment through non-renewal. In the specific context of Staff Rule 9.03, paragraph 7.03, the Tribunal has applied the word “terminate” in this Staff Rule to non-renewal of term appointments as well.

47. In affirming this principle of choice on the part of an applicant, the Tribunal recalls that the provisions of Staff Rule 9.03, paragraph 7.03, give a staff member an option: “A Staff Member seeking review of a decision to terminate his/her employment may elect to bypass the peer review process and file an application concerning the matter directly with the World Bank Administrative Tribunal.” The Tribunal observes that Staff Rule 9.03, paragraph 7.03, makes no distinction between decisions in respect of termination of employment contracts. Without any exceptions it refers to decisions that terminate employment relationships. In the Tribunal’s view, Staff Rule 9.03, paragraph 7.03, confers on staff members a choice that cannot be confined exclusively to those who hold open-ended contracts; rather, it also applies to non-renewal of term contracts or other types of time-bound contracts.

48. In addition, the Tribunal observes that the phrase “a decision to terminate [...] employment” is perhaps ambiguous. Accordingly, the Bank as a drafter and adopter of the Staff Rule cannot benefit from such an ambiguity. The benefit of the doubt should be given to staff members. In *Cissé*, Decision No. 242 [2001], para. 31, the Tribunal stated:

[T]he Applicant’s activities were on the borderline of what is permissible under paragraph 5.02. But precisely in such a situation, particularly given the multiple

ambiguities of the Staff Rule and the significant disciplinary consequences, the Applicant should be given the benefit of the doubt.

49. Moreover, the Tribunal's prior jurisprudence confirms this interpretation of the Staff Rule. In *DU (Preliminary Objection)*, Decision No. 539 [2016], para. 12, the Bank claimed that the applicant had not exhausted internal remedies because he did not bring his non-renewal claim to PRS in a timely manner. In para. 14 of that judgment, the Tribunal found, however, that "applicants who challenge the managerial decision to not renew their contract may first file a Request for Review with PRS or submit an application directly to the Tribunal." Additionally, in *Al-Muthaffar*, Decision No. 502 [2014], the Bank objected that the non-renewal claim was not filed before PRS in a timely manner. The Tribunal stated in that judgment in para. 47:

Under [Staff Rule 9.03, paragraph 7.03], the Applicant would have had the option to file an application with the Tribunal directly challenging the termination of her employment within 120 days after the notification of such termination which as seen above was 1 July 2013. However, she chose instead to file a request for review with PRS challenging both the non-extension of her contract and her non-selection to the new position for which she had applied.

50. The Tribunal notes that the Bank has relied on *Baartz*, Decision No. 198 [1998] in its pleadings to support its claim that the Applicant was required to take her claim to PRS before bringing it to the Tribunal. However, that judgment was issued before the creation of PRS in 2009 and dealt with the Appeals Committee, which was the predecessor to PRS and which had different requirements from the current PRS system. The Tribunal notes that the Appeals Committee had general jurisdiction encompassing all forms of termination, but the new Staff Rule modified that and gave an option to an applicant with respect to PRS. The Bank in its internal announcement of 28 May 2009 regarding revisions of Staff Rule 9.03 stated, "Significant changes effected by the new Rule include: [...] Termination decisions may be challenged through peer review or brought directly to the World Bank Administrative Tribunal." Thus, the Bank's reliance on *Baartz* fails to take into account the changes made in 2009.

51. The Tribunal has accepted non-renewal claims without prior recourse to PRS throughout its jurisprudence. *See, e.g., DJ (Preliminary Objection)*, Decision No. 536 [2016]; *Bhadra*; *FB*

(*Merits*), Decision No. 613 [2019]. In all of these cases, the respective applicants did not file their non-renewal or non-extension claims before PRS.

52. The Tribunal notes that, with the exception of *DU*, in the above-cited cases and similar cases in the Tribunal's jurisprudence, the Bank did not file a preliminary objection to the non-renewal claim in which it contended that the non-renewal claim was improperly before the Tribunal because the respective applicants had not brought the claim to PRS first. In *Bhadra*, the Bank did not file a preliminary objection at all. In *FB (Merits)*, the Bank filed a preliminary objection, but the objection did not address the non-renewal claim. In *DJ (Preliminary Objection)*, the Bank filed an objection and said the following in the Respondent's Preliminary Objection: "The only conceivable claim contained in the Application that is timely as alleged, and that is excused from the exhaustion of administrative remedies requirement is the claim for 'non-renewal of contract.'" In the same pleading, the Bank stated in its conclusion, "Respondent respectfully requests that the Tribunal dismiss all claims made by Applicant except for those challenging Respondent's decision to allow his STC contract to expire by its agreed-upon terms on June 30, 2015."

53. The Tribunal thus observes that since 2009 the Bank has not consistently objected to non-renewal claims on the basis of Staff Rule 9.03, paragraph 7.03. The Tribunal notes that this inconsistency may have encouraged staff members to believe, not unreasonably, that the Bank accepted that, under this Staff Rule, staff may opt to bypass PRS and bring non-renewal claims directly to the Tribunal.

54. The Tribunal further observes that the option to bypass PRS and permit direct submission to the Tribunal in termination cases was introduced by Bank policy in 2009. Among the purposes of the change was to expedite the resolution of certain cases before the Tribunal, specifically "cases that are best reviewed in a judicial setting," such as "applications concerning decisions terminating the appointment of a member of staff." The Tribunal observes that termination decisions effectively mean that a staff member is separated from the Bank. The background materials relating to this 2009 reform suggest that the Bank considers claims relating to termination as serious claims that warrant a quicker process of judicial review. While the Bank claims that non-

renewal does not constitute a termination decision, at least for the purposes of this reform of expedited judicial review, there is no such distinction in the materials related to the 2009 change. The Tribunal notes that the non-renewal of an appointment effectively means that the staff member is separated from the Bank, as in cases of redundancy or non-confirmation. Thus, allowing non-renewal claims to bypass PRS would be consistent with the purpose of the 2009 reform.

55. The Tribunal confirms its prior jurisprudence in interpreting Staff Rule 9.03, paragraph 7.03, that permits applicants the option to submit non-renewal claims directly to the Tribunal without bringing them before PRS first. However, if staff members elect to go through PRS first, they must exhaust the PRS process through compliance with its rules. The Tribunal notes that accepting direct submissions for non-renewal claims has been its own practice in the past. Without undermining the Bank's entitlement to conduct the defense of claims as it considers appropriate, the Tribunal recalls that a fundamental aspect of the rule of law is the principle of legal certainty. Staff members are entitled to know where they stand when it comes to claims in respect of the non-renewal of their contracts. Consistent with the principle of legal certainty, the Tribunal therefore holds that it has jurisdiction over the Applicant's non-renewal claim.

#### *Concluding remarks*

56. The Tribunal dismisses the Bank's preliminary objection relating to the Applicant's non-renewal claim. As such, the Tribunal will review the non-renewal claim on the merits.

57. The Tribunal notes that the Applicant has also filed claims before it relating to allegations of discrimination and harassment, including two separate incidents of harassment that were reported to EBC, as part of her Application. The Bank filed preliminary objections to those claims as well.

58. The Tribunal further notes that the Applicant has asserted that there were exceptional circumstances that prevented her from exhausting internal remedies for those claims or filing them before the Tribunal in a timely manner. The Applicant has specifically claimed that the exceptional circumstances relate to her status on STD and her medical condition. The Applicant offered, on



her own initiative, in her pleadings to provide medical records to the Tribunal that would show the medical concerns that may have prevented her from exhausting internal remedies or filing her claims before the Tribunal in a timely manner.

59. On 4 May 2020, the Tribunal ordered the Applicant to produce any medical records or documentation that may prove the existence of exceptional circumstances. On 11 May 2020, the Applicant submitted some of her medical records for the Tribunal's *in camera* review. On the same date, she requested a 30-day extension of time from the Tribunal to submit the remainder of her medical records, because she had been in the hospital only a few days before the Tribunal's 4 May 2020 order. In her letter of 11 May 2020, the Applicant made the following plea in support of a 30-day extension:

Applicant was in the Emergency Room at her local hospital on 2 May 2020, right before the Tribunal's order for documents was issued, and has been unable to work with her attorney to prepare a more fulsome submission. [...] She is currently on medications which make it difficult for her to concentrate, focus, and read, and more time would allow her to search her files for the requested information. Also, Applicant's doctor is willing and able to supply further documentation that would support Applicant's claim, but requires more time, given the issues of confidentiality involved.

60. Given the circumstances, on 13 May 2020, the President of the Tribunal granted the Applicant's request for a 30-day extension to submit further medical records. In view of this extension, the Tribunal decided to adjudicate the jurisdictional aspects of her non-renewal claim during its May 2020 session, while joining the preliminary objection and merits phases of her discrimination and harassment claims, to be heard by the Tribunal during its next session. Therefore, the Tribunal decides that during its next session it will adjudicate the Bank's preliminary objections to the Applicant's allegations of harassment and discrimination, as well as the Applicant's non-renewal claim and any of her discrimination and harassment claims that it finds jurisdiction over, on the merits. The parties will be instructed accordingly about the filing of the next round of pleadings.

DECISION

- (1) The Bank's preliminary objection to the Applicant's non-renewal claim is dismissed;  
and
- (2) The Bank shall pay the Applicant's legal fees and costs in the amount of \$10,000.00  
for the preliminary objection phase of the proceedings.

/S/ Andrew Burgess

Andrew Burgess

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., \* 30 May 2020

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\* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.