



World Bank Administrative Tribunal

2018

Decision No. 594

**Valerie Ann D'Costa,
Applicant**

v.

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

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

**Valerie Ann D’Costa,
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 Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Abdul G. Koroma, Marielle Cohen-Branche, and Janice Bellace.
2. The Application was received on 14 March 2018. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant is contesting (i) the Bank’s refusal to pay her an Expiration Payment; (ii) the Bank’s failure to provide accurate information regarding the Applicant’s ending employment benefits; and (iii) the Bank’s failure to respond to her numerous requests and calls for clarification regarding her ending employment benefits.

FACTUAL BACKGROUND

4. The Applicant joined the Bank on 11 December 2006 as a Program Manager, Level GH, in the Global Information and Communication Technology Department, on a Coterminous appointment for a period of two years. Her appointment was subsequently extended multiple times until 6 January 2017.
5. On 16 January 2013, the Bank announced that Coterminous appointments would be ended by 13 October 2013. The Bank stated that “current staff members on coterminous appointments (under Staff Rule 4.01, para. 2.02) will continue to be employed at the Bank Group as either term or open-ended staff according to their existing appointment type.”

6. On 11 June 2013, Human Resources (HR) Service Center informed the Applicant that:

Our records indicate that you are currently designated as a coterminous staff, meaning that your position is 100 percent funded from sources other than the Bank Group's administrative budget. Effective July 1, 2013, the coterminous designation will be removed from your appointment type and you will maintain your term [...] designation per your current appointment type.

When the coterminous designation is removed, you will become eligible for severance and expiration payment as provided in the Staff Rules. Note that this change is prospective only and does not create a right to severance or expiration payment for prior time served in coterminous appointment (unless a severance was part of an existing agreement).

7. On 8 July 2016, the Applicant received written notice from the Bank informing her that her appointment would not be further extended and that it would end on 6 January 2017. The Applicant claims that her Director offered to look for other job opportunities for her within the Bank, but the Applicant told him that she would take some time to consider her options. The Applicant states that, in weighing her options, she first had "to gain a full understanding of her financial situation."

8. On 19 August 2016, the Applicant contacted HR Operations to get clarification regarding the benefits for which she was eligible and the steps she needed to take prior to her departure from the Bank.

9. On 22 August 2016, the Applicant met with an HR Operations Analyst. The Applicant states that she took contemporaneous handwritten notes of the meeting. According to these notes, the HR Operations Analyst told her that she would receive the following benefits:

- (i) 9 months of salary as an Expiration Payment in the amount of nearly \$176,000.00;
- (ii) Unused leave payment at the rate of around \$100.00 per day;
- (iii) \$5,000.00 as removal allowance;
- (iv) A one-way business class ticket anywhere, up to the maximum amount of what a one-way ticket to her home country of Singapore would cost; and
- (v) \$12,000.00 as relocation allowance.

The Applicant claims that the HR Operations Analyst informed her that additional information would be given to her in the Ending Employment Memo that she would receive in December 2016.

10. In October 2016, the Applicant claims that she met with her Financial Advisor to develop a Spending Plan for 2017, which would incorporate in the calculations the \$176,000.00 mentioned by the HR Operations Analyst. The Applicant states that she made several important life decisions on the assumption that the \$176,000.00 would be sufficient to cover her living expenses during 2017. She notes that she decided not to seek an extension of her appointment with another Bank unit but to take a brief sabbatical to spend more time with her ailing father in Singapore. She therefore postponed her job search and decided to apply and pay for a U.S. Green Card on her own.

11. In the same month, the Applicant contends that she looked at the Termination Benefits Calculator on the HR self-service portal, and found an item called “separation grant,” which did not compute a figure and stayed at zero.

12. On 13 October 2016, the Applicant submitted a request for assistance through the HR self-service portal noting that the “separation grant [is] not being calculated, only the annual leave and resettlements amounts [are] showing.”

13. On 8 November 2016, the HR Operations team replied to the Applicant’s inquiry and informed her that she was not eligible for a separation grant due to her appointment start date. The HR Operations team explained that a separation grant is paid to staff members who joined the Bank Group prior to 14 April 1998 in a fixed term/regular position.

14. On 7 December 2016, the Applicant received an Ending Employment Memo from an HR Analyst with information relevant to staff members who are leaving the Bank Group.

15. On 9 December 2016, the Applicant received an amended Ending Employment Memo from HR. According to the Bank, the revision was made “to reflect Applicant’s decision regarding her pension benefits, as well as her eligibility for Retiree Medical Insurance Plan (RMIP).”

16. On 12 December 2016, the Applicant met with the HR Analyst to discuss her Ending Employment Memos. In that meeting, the Applicant showed the notes of her meeting with the HR Operations Analyst. According to the Applicant, the HR Analyst corrected the notes in the following terms:

- (i) Unused leave payment at the rate of \$934.00 (not \$100.00); and
- (ii) Removal grant would be either \$8,000.00 or \$10,000.00 (not \$12,000.00).

The Applicant adds that the HR Analyst did not correct the information regarding the Expiration Payment.

17. By email dated 13 December 2016 to the HR Analyst, the Applicant noted:

Many thanks for our productive meeting yesterday. I forgot to ask you about the 9 months payment that I will be receiving as I exit the Bank (I know it is not called a Separation payment, is it a termination payment?) I also don't see it referenced anywhere in the memo you sent me, which you will be revising. Could you let me know details of that including how much I will be receiving and when?

18. By email dated 14 December 2016, the HR Analyst replied, "Regarding your question on the payment for those 9 months, HR Operations does not handle that piece, please contact the Case Management team for further information."

19. On the same date, the HR Analyst sent the Ending Employment Memo to the Applicant with an application form to request retiree life insurance. Later that day, the Applicant wrote to the HR Analyst requesting further explanation of "these retiree benefits" and the contact details of the HR Case Management team. The Applicant did not receive a response to her request.

20. On 6 January 2017, the Applicant's appointment with the Bank ended.

21. In April 2017, the Bank's Pension Administration unit informed the Applicant that the payment of \$164,000.00 she had received in February 2017 constituted the 50% payout of her pension cash balance component. The Applicant claims this was the moment at which she realized that the Expiration Payment had not been made.

22. On 18 April 2017, the Applicant called the HR Analyst seeking clarification on whether all ending employment payments had been made to her.

23. After the call ended, the Applicant emailed her Financial Advisor summarizing her discussion with the HR Analyst. In that email, the Applicant stated:

I had a shocking discussion with World Bank HR and they told me I am now ineligible for the 9 months' salary payout. That would have amounted to \$176,000[.00]. I told them to put it in writing and that I would appeal it this week. I am shocked and angry.

The \$164,000[.00] I did receive was my 50% lump sum payment from World [B]ank pension. I'll keep you informed of how it goes. If needed I will sue the Bank for the funds.

24. By email dated 19 April 2017, the HR Analyst informed the Applicant that:

We spoke yesterday afternoon regarding your ending of employment (annual leave has been paid and confirmed by you). As explained over the phone, you are not eligible for expiration payment since your term appointment has been for less than 5 years. Your employment history shows you were hired under a Co-Terminous (donor funded) appointment since January 2007[.]

[...]

Your appointment changed to "term" on July 1, 2013, and this is the date that starts counting towards the Expiration [P]ayment. As you can see from the [S]taff [R]ule you need to have a minimum of 5 years under "term contract" and you have 3.5 years approx[imately].

The HR Analyst referred to the text of Staff Rule 7.02, paragraph 7.03, to stress that "as per Staff Rule[,] Co-term[inous] appointment service does not count toward Expiration Payment."

25. On the same date, the Applicant replied to the HR Analyst's email stating:

As part of the exit process I was informed by you and by another HR Operations officer I spoke to in August that I was eligible for a total 9 months of salary, based on ten years of service. That is why I contacted you yesterday, because I had been expecting a sum of just under \$180,000[.00] and it hadn't yet arrived.

I cannot understand why this would be miscommunicated. I want to understand the rules that apply to me. I will need to speak to the HR manager in charge to understand why this happened, why I received a different message before I left, and what the recourse offered by the Bank is now. I made financial commitments based on these communications and was absolutely shocked to hear a different message from you yesterday. I reserve my right to seek legal counsel on this.

When can I speak to the manager?

26. The Applicant did not receive a response to her email.

27. On 3 May 2017, the Applicant filed a Request for Review with Peer Review Services (PRS) challenging the decision not to pay her an Expiration Payment. On 18 July 2017, the Applicant supplemented her Request for Review.

28. On 2 November 2017, the PRS Panel issued its report in Request for Review No. 384 finding that “the Bank made the non-payment decision on a reasonable and observable basis.” The Panel also found insufficient evidence to support a finding of bad faith and concluded that management had followed the appropriate Staff Rules and procedures. Nonetheless, the Panel determined that “management did not follow a proper process under Principle of Staff Employment 2.1 in the manner in which it communicated with [the Applicant] information regarding her eligibility for Expiration Payment.” The Panel therefore recommended that the Bank compensate the Applicant in the amount of two weeks of her former net monthly salary.

29. On 14 November 2017, the Applicant received the decision of the HR Vice President accepting the PRS Panel’s recommendation.

30. On 14 March 2018, the Applicant filed this Application before the Tribunal. The Applicant is contesting (i) the Bank’s refusal to pay her an Expiration Payment; (ii) the Bank’s failure to provide accurate information regarding the Applicant’s ending employment benefits; and (iii) the Bank’s failure to respond to her numerous requests and calls for clarification regarding her ending employment benefits.

31. The Applicant seeks the following relief: (i) “[p]ayment of the nine months of salary” that HR informed her she would receive at the end of her employment with the Bank; (ii) “compensation for interest losses resulting from being unable to invest the amount she withdrew from her pension cash balance account, and her resulting lost pension benefits”; (iii) “[s]uch additional compensation the Tribunal deems just and appropriate for the pain and suffering caused by the mistreatment and misinformation she received from HR officials”; and (iv) legal fees and costs in the amount of \$11,030.77.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The Bank, through HR, failed in its obligation to treat the Applicant fairly by misleading her regarding her entitlement to an Expiration Payment

32. The Applicant contends that the Bank has breached its obligation to treat her fairly, as prescribed in Principles 2.1 and 9.1 of the Principles of Staff Employment, by providing her, through HR, with misleading information regarding her eligibility for an Expiration Payment. The Applicant claims that, when she met the HR Operations Analyst on 22 August 2016 to inquire about her ending employment benefits, he gave her wrong information “not just about whether or not she was entitled to an expiration payment, but also about the rate at which annual leave would be paid out and about the resettlement allowances.” She also claims that, in subsequent meetings and communications with HR regarding her ending employment benefits, HR continued to mislead her about her eligibility for an Expiration Payment.

33. The Applicant states that she took contemporaneous notes of the meeting of 22 August 2016. According to these notes, the HR Operations Analyst told her that she would receive, among other benefits, an Expiration Payment amounting to \$176,000.00 at the end of her employment with the Bank. She states that she showed her notes to the HR Operations Analyst to confirm the accuracy of her notations, and he allegedly confirmed their accuracy.

34. The Applicant argues that several factors demonstrate the credibility of her handwritten notes: (i) the PRS Panel's conclusion that the handwritten notes were credible because of their specificity "in terms of the amount of each of the benefits"; (ii) the fact that the handwritten notes were considered by the Applicant's Financial Advisor in the preparation of the Spending Plan; and (iii) the HR Analyst's failure to correct the reference to the Expiration Payment when the Applicant showed her the handwritten notes in their meeting of 12 December 2016.

35. The Applicant also contends that the Bank has not produced any HR communication in which it expressly informed the Applicant prior to April 2017 that she was not entitled to the Expiration Payment. She states that the Ending Employment Memos did not expressly exclude the Expiration Payment from the ending employment benefits to which she was entitled at the end of her employment with the Bank. The Applicant contends that neither the Termination Benefits Calculator nor the Separation Matrix in the HR self-service portal expressly stated that she was not eligible for an Expiration Payment.

36. The Applicant also claims that the Bank failed in its obligation to treat her fairly by not responding to her numerous requests for clarification regarding the Expiration Payment. The Applicant relies on the Tribunal's finding in *DC*, Decision No. 530 [2016], to claim that the principle of fair treatment is also violated when HR fails to respond to staff requests for information.

37. The Applicant contends that, in December 2016, HR, wrongly assuming that she had reached a Mutually Agreed Separation, referred her to a "Case Management team" to which she could direct her inquiries regarding the "9-month payment." The Applicant argues that, as she did not know to which team HR referred, she requested to be given the contact details in a follow-up email. The Applicant alleges that HR ignored her request. The Applicant also contends that, after she found out in April 2017 that she was not eligible for an Expiration Payment, HR ignored her requests for further clarification and to speak with an HR Manager.

38. The Applicant asserts that she is not asking for an Expiration Payment, to which she is not entitled, but she rather seeks appropriate compensatory damages for the "mistreatment" she

received from HR. She contends that the Bank should be held accountable for its “gross negligence in its advisory function” and for failing to ensure that it provides “clear and consistent guidance” through HR.

The Bank’s Response

The Bank’s decision not to pay the Applicant an Expiration Payment was not an abuse of discretion; the Applicant was not and is not eligible for an Expiration Payment under the Staff Rules

39. The Bank asserts that the Applicant’s claim for an Expiration Payment is baseless. The Bank states that the Applicant is not eligible for an Expiration Payment pursuant to Staff Rule 7.02, paragraph 7.01, which provides that only staff with “five or more continuous years of service” are eligible for an Expiration Payment. Having only served three and a half years under a Term appointment, the Applicant has failed to meet the five years of continuous service required by Staff Rule 7.02. The Bank explains that under Staff Rule 7.02, paragraph 7.03, service under a Coterminous appointment, which the Applicant held from 2006 to 2013, is not counted for purposes of the Expiration Payment.

40. The Bank claims that the Applicant is mistaken in claiming a benefit, for which she is not eligible, on the basis of the “alleged miscommunication from some HR Analysts.” According to the Bank, the record does not contain any correspondence from HR advising the Applicant that she was entitled to an Expiration Payment. The Bank stresses that every benefit to which the Applicant was entitled was listed in the Ending Employment Memos and none of them expressly stated that she would receive an Expiration Payment. The Bank also states that nothing in the HR self-service portal indicated that the Applicant was eligible for that benefit.

41. The Bank maintains that the Ending Employment Memos clearly stated that they “may not be complete, pertinent or accurate” and were subject to amendment. They also contained a disclaimer stating that, in case of “conflict between this summary information and the Staff Rules, the Staff Rules will govern.”

42. The Bank further claims that the handwritten notes submitted by the Applicant in support of her allegations “are of no probative value as neither their accuracy nor their contemporaneity is ascertainable.”

43. The Bank asserts that its obligation to treat staff fairly does not mean that it should pay staff benefits to which they are not entitled. In the Bank’s view, to sustain the Applicant’s claim for an Expiration Payment would present a “moral hazard” because “[a] staff member should not be able to claim ineligible benefits simply based on alleged or purported oral communication from HR personnel.” The Bank avers that it is conceivable that HR was mistaken about the alleged information given to the Applicant but rejects the argument that “an honest mistake” makes a compensable claim. The Bank also rejects the Applicant’s characterization of HR actions as “gross negligence.”

44. Finally, the Bank asserts that the Applicant’s reliance on *DC* is misplaced because, unlike the applicant in *DC*, who was eligible for a separation payment, the Applicant in the present case is not eligible for the Expiration Payment. The Bank concludes that any “subjective” belief on the Applicant’s part that she is eligible for an Expiration Payment “is not credible” because there was no Bank document providing for it or any “assurance” from HR that she would receive it.

The Applicant’s Contention No. 2

The Applicant relied to her detriment on the assurances given by HR that she would receive an Expiration Payment equivalent to nine months of her salary

45. The Applicant relies on the principle of promissory estoppel to claim that she had a legitimate expectation that she would receive an Expiration Payment equivalent to nine months of her salary by virtue of the promise made by the HR Operations Analyst on 22 August 2016. She claims that she took contemporaneous notes of the meeting in which she wrote down the benefits that the HR Operations Analyst promised her she would receive at the end of her employment with the Bank, including “[a]n Expiration Payment in the amount of nearly \$176,000.00 equivalent to 9 months of salary.” She claims that the absence of any HR communication expressly denying this information is further proof that a promise was made.

46. The Applicant contends that she reasonably relied on the assurance given by the HR Operations Analyst that she would receive an Expiration Payment and made to her detriment the following “major and irreparable decisions”: (i) she took a short sabbatical and delayed her job search believing the Expiration Payment would be sufficient to cover her living expenses; (ii) she withdrew 50 percent of the cash component of her pension with a view to invest it in the stock market; and (iii) she was “forced” to use her pension cash component to support herself after her employment with the Bank ended because the Expiration Payment was not made.

47. The Applicant contends that it was entirely reasonable for her to assume that the information received from HR regarding her Expiration Payment was accurate given that HR is the “correct source” recommended to staff for questions regarding employment benefits. She further contends that she did not and could not have found out by herself that coterminous service would affect her ending employment benefits. In this respect, she explains that the Separation Matrix prepared by HR and circulated to staff states, without distinction, that staff are eligible for Expiration Payment if they have “5 years of continuous service or more.”

48. Finally, the Applicant argues that HR had several opportunities prior to April 2017 to correct the information regarding her eligibility for an Expiration Payment but failed to do so. According to the Applicant, her reliance on the HR information was entirely justified. She could not have known that the HR Analysts were “apparently completely incapable.”

The Bank’s Response

There was no “unequivocal” promise that the Applicant would be eligible for an Expiration Payment; the Applicant cannot sustain a claim of detrimental reliance absent a valid promise

49. The Bank asserts that, for the Applicant to sustain a claim of promissory estoppel, she “would have to prove that [the Bank] made a valid promise to her which [it] should reasonably expect to induce action or forbearance of a definite and substantial character on the part of [the] Applicant, and that the promise did induce such action or forbearance, and that such promise is binding if injustice can be avoided only by enforcement of the promise.” The Bank submits that the Applicant has failed to show that a “clear” and “unambiguous” promise that she was eligible

for an Expiration Payment was made to her by HR, on which she “reasonably” and “foreseeably” relied to her detriment.

50. The Bank contends that it does not reflect well on the credibility of the Applicant to argue detrimental reliance. According to the Bank, even assuming that the HR Analysts misguided the Applicant regarding her eligibility for an Expiration Payment, it was unreasonable for the Applicant, given her GH level and years of experience at the Bank, “to rely solely on information allegedly provided by two low level HR analysts to make employment and financial decisions.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE BANK HAS AN OBLIGATION TO PAY THE APPLICANT AN EXPIRATION PAYMENT

Does an obligation to pay the Applicant an Expiration Payment derive from the Staff Rules and relevant Bank policies and procedures?

51. In her Application, the Applicant is challenging, among others, “the Bank’s refusal to pay her an Expiration Payment.” She claims that the Bank gave her assurances that she would be eligible for an Expiration Payment at the end of her employment with the Bank. She contends that when the Bank provides specific assurances to a staff member, on which the staff relies to his or her detriment, the “Bank has an obligation to the staff.” She submits later in the proceedings that she is not asking for an Expiration Payment to which she is not entitled. She states that she is seeking appropriate compensatory damages for the “mistreatment” she received from HR.

52. The Bank states that the Applicant is not eligible for an Expiration Payment pursuant to Staff Rule 7.02, paragraph 7.01, which provides that only staff with “five or more continuous years of service” are eligible for an Expiration Payment. Having only served three and a half years under a Term appointment, the Applicant has failed to meet the five years of continuous service required by Staff Rule 7.02. The Bank explains that under Staff Rule 7.02, paragraph 7.03, service under a Coterminous appointment, which the Applicant held from 2006 to 2013, is not counted for purposes of the Expiration Payment.

53. The Tribunal observes that, although the Applicant now admits that she is not entitled to an Expiration Payment, her claim remains that the Bank has an obligation towards her by virtue of the assurances given by HR that she would receive an Expiration Payment. Thus, the Tribunal will first examine whether the Bank is legally obligated to pay the Applicant an Expiration Payment.

54. Staff Rule 7.02, paragraph 7, Expiration Payment for Term Staff, states:

7.01 To address concerns that Term appointments provide less job security than Open Ended appointments, staff who have five or more continuous years of service in Term appointments, whose employment with the Bank Group ends due to expiration of their appointment on or after July 1, 2009, will be paid, upon termination of employment, an Expiration Payment equal to one month's net pay for each year of continuous service under Term appointments, up to a maximum of 9 years.

7.02 The Expiration Payment is a contingent benefit – it will not be paid if a Staff member converts to an Open Ended appointment, rejects an offered extension of appointment or ends employment for any reason other than expiration of their Term appointment.

7.03 Service under a Coterminous Term, Extended Term Consultant or Extended Term Temporary appointment will not be counted as service for purposes of the Expiration Payment.

55. The record shows that the Applicant joined the Bank on 11 December 2006 on a Coterminous appointment. On 11 June 2013, the Applicant was informed by the HR Service Center that effective 1 July 2013 “the coterminous designation will be removed from your appointment type and you will maintain your Term [...] designation per your current appointment type.” While stating that the Applicant would become eligible for severance and expiration payment as provided in the Staff Rules, this email also noted that “this change is prospective only and does not create right to severance or expiration payment for prior time served in coterminous appointment (unless a severance was part of an existing agreement).”

56. The Tribunal observes that the Applicant's service with the Bank for the purposes of Expiration Payment could only be counted from 1 July 2013, the date on which her Coterminous appointment was converted into a Term one. By the time of the expiration of her contract, in January 2017, the Applicant had accumulated three and a half years of continuous service in a

Term appointment. Pursuant to Staff Rule 7.02, paragraph 7.01, she was not eligible for an Expiration Payment.

57. The Tribunal will now examine whether the Bank's policies and procedures governing staff separation provide for a basis to pay the Applicant an Expiration Payment. The Applicant contends that the Ending Employment Memos communicated by HR did not expressly exclude the Expiration Payment from her ending employment benefits. According to the Bank, the record does not contain any correspondence from HR advising the Applicant that she was eligible for an Expiration Payment. The Bank stresses that every benefit for which the Applicant was eligible was communicated to her in the Ending Employment Memos and none of them expressly stated that she would receive an Expiration Payment. The Bank also states that nothing in the HR self-service portal indicated that the Applicant was eligible for that benefit.

58. The Bank's HR self-service portal makes available to staff members and managers alike information on issues regarding separation from the Bank. The "Leaving the Bank – Checkout Procedures" contains a checklist indicating that, following an "end of Appointment action," HR sends the staff the checkout procedures and a personalized ending employment memorandum. Accordingly, the Applicant received three Ending Employment Memos. On 7 December 2016, the Applicant received her first Ending Employment Memo from the HR Analyst. Two days later, the Applicant received an amended memo from another HR Analyst. She received a final Ending Employment Memo from the HR Analyst on 14 December 2016.

59. The Tribunal notes that the Ending Employment Memos, which summarized information relevant to the Applicant's separation from the Bank, do not expressly indicate or exclude the Applicant's eligibility for an Expiration Payment. They contain, however, an introductory note alerting the Applicant that they "may not be complete, pertinent or accurate" and "may require amendment or modification." The Ending Employment Memos communicated to the Applicant also contain a disclaimer stating that "[a]dditional details are available on the World Bank's Intranet at <http://benefits>, and in Staff Rule 7.02." The disclaimer further states that, in case of "conflict between this summary information and the Staff Rules, the Staff Rules will govern."

60. The HR self-service portal also makes available the “Leaving the Bank – Understanding Separations from Bank Service” (the HR Separation Guidance). This Guidance

is intended to help managers and staff understand the Bank’s separation policies. It also provides decision support to managers on ending employment policies and practices. These materials explain the intent and underlying principles of the rules and policies, so that managers are better able to exercise their judgment in a manner that is business driven and fair under the circumstances and so that staff are better able to understand the application of the policies.

The HR Separation Guidance refers staff to the relevant Staff Rules governing separation from the Bank and advises them to consult the “Summary Matrix on Separation Options” (the Separation Matrix).

61. The Applicant alleges that the Separation Matrix she consulted at the time of her separation from the Bank did not expressly state that her service under a Coterminous appointment would not be counted for the purposes of an Expiration Payment. The Tribunal notes, however, that the Summary Matrix currently available on the HR self-service portal does not lend support to the Applicant’s allegation. The Separation Matrix refers to Staff Rule 7.02 to state that “if 5 or more years of continuous service, staff is eligible for expiration payment [...]” It also stresses that “service under a Coterminous Term appointment is not counted as service for purposes of the expiration payment.”

62. The Tribunal is, therefore, satisfied that under the Staff Rules, and the Bank’s policies and procedures, the Bank has no obligation to pay the Applicant an Expiration Payment.

Does an obligation to pay the Applicant an Expiration Payment derive from the alleged HR promise made to the Applicant that she would receive an Expiration Payment?

63. Having found that the Applicant is not entitled to an Expiration Payment under the relevant Staff Rules, and the Bank’s policies and procedures, the Tribunal will now examine whether an obligation to pay the Applicant an Expiration Payment derives from the principle of promissory estoppel, as argued by the Applicant.

64. The Applicant claims that the “Bank should be estopped from arguing that [the Expiration Payment] is not due to her.” She states that the Bank, through HR, gave her assurances that she would receive an Expiration Payment equivalent to nine months of her salary, on which she relied to her detriment. On its part, the Bank asserts that, for the Applicant to sustain a claim of promissory estoppel, she “would have to prove that [the Bank] made a valid promise to her which [it] should reasonably expect to induce action or forbearance of a definite and substantial character on the part of [the] Applicant, and that the promise did induce such action or forbearance, and that such promise is binding if injustice can be avoided only by enforcement of the promise.” The Bank maintains that the Applicant has failed to show that a “clear” and “unambiguous” promise that she was eligible for an Expiration Payment was made to her by HR, on which she “reasonably” and “foreseeably” relied to her detriment.

65. In *Moss*, Decision No. 328 [2004], para. 45, the Tribunal stated:

What seems to be lacking in the Applicant’s case is the element of an unequivocally proved promise, a clear and irrefutable commitment or assurance to offer her a permanent position when one became available.

66. The Tribunal held in *Chavakula*, Decision No. 277 [2002], para. 15, that:

[E]vidence that a promise [...] was made [...] would in any event have to be proven unequivocally as was required in prior cases. (*See Bigman*, Decision No. 209 [1999], paras. 6-7; and *Brebion*, Decision No. 159 [1997], paras. 27, 35-38.)

67. In *Bigman*, paras. 6-7, the Tribunal observed:

The first question that the Tribunal must address is whether there was in fact a promise made by Mr. X relating to the Applicant’s appointment, and if so the nature of the promise. The record is abundantly clear that such a promise was in fact made [...].

[...] In the light of the above, it is well established that Mr. X made a promise to the Applicant with respect to the terms and conditions of the Applicant’s appointment, beyond and in addition to what was included in the letter of appointment. Mr. X’s authority to make a promise of regularization will be discussed further below.

68. The Tribunal also observed, in para. 20, that:

The Applicant accepted employment with the Bank in the light of specific conditions offered to him. This offer constituted a legally valid promise as it was made by an official with at least the apparent authority to do so and is, therefore, attributable to the Bank. The Applicant relied in good faith on this promise to accept the Bank's offer of employment and passed up other opportunities outside the Bank.

69. In the Tribunal's view, to sustain her claim of promissory estoppel the Applicant must show the elements of an unequivocally proved promise, a clear and unambiguous statement or assurance that she would be eligible for an Expiration Payment, unconditionally made by an authorized HR official. The Applicant must also show reliance in good faith on the statement or assurance provided by HR, to her detriment.

70. The main question for the Tribunal is therefore whether the Bank, through HR, has unequivocally made a legally valid promise to the Applicant that she would receive an Expiration Payment equivalent to nine months of her salary at the end of her employment with the Bank.

71. The Applicant states that the HR Operations Analyst she met on 22 August 2016 promised her that she would receive an Expiration Payment equivalent to nine months of her salary. She also states that she took contemporaneous notes of the meeting of 22 August 2016. She states that she showed her notes to the HR Operations Analyst to confirm the accuracy of her notations, and he allegedly confirmed their accuracy. She claims that the absence of any HR communication expressly denying this information is further proof that a promise was made.

72. In the present case, the Tribunal finds that the evidence presented by the Applicant in support of her claim of promissory estoppel cannot support the conclusion that an "unequivocally proved" promise was made by the Bank that it would pay the Applicant an Expiration Payment at the end of her employment with the Bank.

APPLICANT'S CLAIM OF UNFAIR TREATMENT

73. The Applicant's contention is that the Bank has breached its obligation of fair treatment, prescribed in Principles 2.1 and 9.1 of the Principles of Staff Employment, by having provided her with misleading information regarding her eligibility for an Expiration Payment. She also claims that the Bank failed to respond to her numerous requests for information in this regard. The Applicant seeks, therefore, appropriate compensatory damages. She states that the Bank should be held accountable for failing to ensure that it provides through HR "clear and consistent guidance" and for its "gross negligence in its advisory function."

74. The Bank asserts that its obligation to treat staff fairly does not mean that it should pay staff benefits to which they are not entitled. The Bank maintains that any "subjective" belief on the Applicant's part that she is eligible for an Expiration Payment "is not credible" because there was no Bank document providing for it or any "assurance" from HR that she would receive it. According to the Bank, it is conceivable that "HR is mistaken about the alleged information given" to the Applicant but rejects that "an honest mistake" makes a compensable claim. The Bank also rejects the Applicant's characterization of HR actions as "gross negligence."

75. Principle 2.1 of the Principles of Staff Employment provides:

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. They shall not differentiate in an unjustifiable manner between individuals or groups within the staff and shall encourage diversity in staffing consistent with the nature and objectives of the Organizations. They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.

76. Principle 9.1 of the Principles of Staff Employment further states:

Staff members have the right to fair treatment in matters relating to their employment. Where disputes arise, staff members shall have full opportunity to present their case without fear of reprisal [...].

77. The Tribunal has consistently held that staff have the right to fair treatment in matters relating to their employment. In *N*, Decision No. 356 [2006], para. 30, the Tribunal observed:

The Applicant specifically complains that the decisions [...] were failures of the Bank to perform its duties and constituted unfair treatment contrary to Principles 2.1 and 9.1 of the Principles of Staff Employment. The Tribunal is persuaded by the Applicant's argument that in considering a challenge to a decision taken by the Bank [...], the Tribunal is not [...] "micromanaging" the work of Bank departments or units. It is instead thereby simply reviewing a plausible complaint that a staff member's due process rights may have been compromised in that process.

The Applicant's claim that HR failed to provide accurate information

78. The Applicant submits that HR failed in its duty to provide her with clear and consistent guidance regarding her ending employment benefits. More specifically, the Applicant claims that the HR Operations Analyst gave her wrong information regarding her eligibility to an Expiration Payment. The Applicant states that she took contemporaneous notes of the meeting in which the HR Operations Analyst informed her that she was entitled to, *inter alia*, a payment equivalent to nine months of her salary. She contends that she showed her notes to the HR Operations Analyst to confirm the accuracy of her notations, and he confirmed their accuracy. The Applicant also contends that the Bank has not produced any HR communication denying her eligibility for an Expiration Payment.

79. The Bank asserts that there is no written HR communication that expressly states that the Applicant was entitled to an Expiration Payment. Regarding the handwritten notes, the Bank contends "[t]hese notes are of no probative value as neither their accuracy nor their contemporaneity is ascertainable."

80. The Tribunal held in *DC*, para. 37, that:

[T]he Bank's own intranet page invites staff members to contact Human Resources for more information should they have any questions on their benefits and entitlements. The Bank's response that the Applicant should have found the information himself online is, therefore, inconsonant with the Bank's own policies. The Tribunal further finds that the Applicant has made a convincing argument that the information on the intranet page was insufficient. The Applicant sought

information about how much he would also receive in severance payment, information which is not available on the MyHR intranet page. It was Human Resources which possessed the relevant information and calculations.

81. As the record shows, the Applicant met with the HR Operations Analyst on 22 August 2016 to inquire about her ending employment benefits and the estimated amounts she would receive. In response to the Tribunal's order for document production, the Bank submitted evidence that corroborates the contention that the Applicant called HR on 19 August 2016 to schedule an appointment for 22 August 2016. Once the meeting took place, the HR Operations Analyst registered in the Walk in Monitor Detail View that he had "met the staff today and explained [to] her on term expiration process, benefit values and timeliness."

82. The record further shows that the Applicant took contemporaneous notes of the content of the meeting. According to these notes, the HR Operations Analyst informed the Applicant that her ending employment benefits would be:

- (i) 9 months of salary as an Expiration Payment in the amount of nearly \$176,000.00;
- (ii) Unused leave payment at the rate of around \$100.00 per day;
- (iii) \$5,000.00 as removal allowance;
- (iv) One one-way business class ticket anywhere, up to the maximum of what a one-way ticket to her home country of Singapore would cost; and
- (v) \$12,000.00 as relocation allowance.

83. The Bank has not refuted the contention that on 12 December 2016, the HR Analyst read the Applicant's handwritten notes and corrected the information regarding the rates for unused leave payment and resettlement allowance, although she failed to correct the information about the Expiration Payment. The Tribunal observes that, as the content of the notes about the Expiration Payment was not denied by the HR Analyst in her interactions with the Applicant, the Applicant was led to believe that she was entitled to that benefit upon the end of her employment with the Bank.

84. The record shows that there were other communications between HR and the Applicant in which this assumption was not contradicted. In October 2016, after consulting the separation grant

item of the Termination Benefits Calculator on the HR self-service portal, the Applicant contacted HR for clarification. On 8 November 2016, the HR Operations team informed the Applicant that she was not eligible for a separation grant but failed to explain whether the Applicant met the requirements for an Expiration Payment. On 14 December 2016, in response to the Applicant's inquiry, the HR Analyst informed the Applicant that HR Operations did not handle her "payment for those 9 months" and advised her to contact a Case Management team for further information.

85. The Tribunal observes that only on 18 April 2017 was the Applicant informed for the first time and without ambiguity that, pursuant to Staff Rule 7.02, she was not eligible for an Expiration Payment.

86. The Tribunal finds that, prior to April 2017, HR was not clear in its communications with the Applicant regarding her eligibility for an Expiration Payment. In the absence of an express confirmation or denial from HR, the Applicant assumed that the information she received on 22 August 2016 that she would receive an amount of \$176,000.00 was accurate.

87. The Tribunal takes note of the PRS Panel's finding that "staff members who consult with HR Operations concerning HR matters seek and expect reliable and accurate information." In the Tribunal's view, when staff leave the Bank, they need assistance in understanding the Bank's separation rules, policies, and procedures. While these are contained in the HR self-service portal and staff are encouraged to consult it while undergoing the separation process, questions will inevitably arise that can only be answered by the officers HR makes available for those purposes. Staff separating from the Bank have no reason to doubt the accuracy of the information provided by HR in this regard.

88. As concluded above, the Bank has no obligation to pay the Applicant an Expiration Payment. The Tribunal finds, nonetheless, that the Bank's failure to provide accurate information regarding this benefit amounts to unfair treatment of the Applicant under Principles 2.1 and 9.1 of the Principles of Staff Employment.

The Applicant's claim that HR failed to respond to her requests

89. The Applicant claims that the principle of fair treatment is also violated when HR fails to respond to staff requests for information. She contends that in December 2016 HR misinformed her that a "Case Management team" would respond to her queries regarding her Expiration Payment but subsequently ignored her request to put her in touch with such team. The Applicant also complains that, after she found out she was not eligible for an Expiration Payment, HR ignored her numerous requests for clarification and her request to speak with an HR Manager.

90. The record indicates that HR failed to respond to the Applicant's request to be put in touch with a Case Management team. While the HR Analyst stated before PRS that she referred the Applicant to a Case Management team because she was under the assumption that the Applicant had reached a Mutually Agreed Separation, the Tribunal notes that she could have taken the necessary steps to verify this information. Her lack of responsiveness only increased the Applicant's confusion regarding her entitlement to an Expiration Payment.

91. The record also indicates that on 18 April 2017 the Applicant called the HR Analyst seeking clarification on the payment of her ending employment benefits. By email dated 19 April 2017, the HR Analyst informed the Applicant for the first time that she was not eligible for an Expiration Payment. The Applicant protested against HR's "miscommunication" and requested to speak with an HR Manager. The Applicant never received a response to her email. During the Tribunal proceedings, the Bank failed to explain why HR ignored the Applicant's request for an explanation.

92. The Tribunal finds that the Bank's failure to respond to the Applicant's requests for clarification regarding her eligibility for an Expiration Payment amounts to unfair treatment under Principles 2.1 and 9.1 of the Principles of Staff Employment.

Whether HR's failure to provide accurate information and respond to the Applicant's requests caused her harm

93. In *DC*, para. 40, the Tribunal held:

[T]he Bank's failure to respond to the Applicant caused him harm, particularly as he was unable to address this matter, and therefore protect his interests, before his contract ended. The fact that the Applicant eventually received the Bank's response, over a year later in the course of litigation before the Tribunal, does not negate the harm the Applicant suffered from the Bank's failure to respond to him in a timely manner. In *Apkarian*, Decision No. 58 [1988], paras. 49-50, it was held that:

It does not follow, however, that staff members suffering interim, economic or other injury by virtue of the Respondent's ultimately corrected mistakes must be altogether without recourse. [...]

The Tribunal concludes that it is appropriate to direct the Respondent to recompense the Applicant for the intangible injury suffered by her. Such an award was made by the Tribunal under comparable circumstances in *Durrant-Bell* (Decision No. 24 [1985], para. 36).

94. The Applicant seeks appropriate compensatory damages for the "mistreatment" she received from HR. She contends that it was entirely reasonable for her to assume that the information she received from HR regarding her Expiration Payment was accurate, given that HR is the "correct source" recommended to staff for questions regarding employment benefits.

95. The Applicant claims that, on the basis of the information she received from HR, she made the following "major and irreparable" financial decisions: (i) she took a short sabbatical and delayed her job search believing the Expiration Payment would be sufficient to cover her living expenses; (ii) she withdrew 50 percent of the cash component of her pension with a view to invest it in the stock market; and (iii) she was "forced" to use her pension cash component to support herself after her employment with the Bank ended because the Expiration Payment was not made.

96. The Bank contends that it did not reflect well on the credibility of the Applicant to argue detrimental reliance for "a series of extremely important financial decisions" she made based on the information she received from HR. According to the Bank, even assuming the HR analysts

misguided the Applicant, it was unreasonable for the Applicant, given her GH level and years of experience at the Bank, “to rely solely on information allegedly provided by two low level HR analysts to make employment and financial decisions.”

97. The Tribunal observes that the HR self-service portal and, more specifically, the HR Separation Guidance advise staff to contact HR for questions regarding their separation from the Bank and the corresponding benefits to which they may be entitled. Following this advice, the Applicant met with the HR Operations Analyst, who informed her that she would receive an Expiration Payment equivalent to nine months of her salary. The Applicant subsequently met with the HR Analyst, who did not correct this information despite her several interactions with the Applicant.

98. The Tribunal further observes that the Applicant relied on the information provided by HR and decided to take a short sabbatical, delay her job search, and withdraw 50 percent of the cash component of her pension.

99. The Tribunal finds that the Bank’s failure to treat the Applicant fairly, in contravention of Principles 2.1 and 9.1 of the Principles of Staff Employment, warrants compensation.

100. In awarding compensation, the Tribunal takes into account that the Bank has paid the Applicant compensation in the amount of two weeks of her former net monthly salary, upon the recommendation of the PRS Panel.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of three months’ salary net of taxes, for the Bank’s non-observance of Principles 2.1 and 9.1 of the Principles of Staff Employment;
- (2) The Bank shall contribute to the Applicant’s legal fees and costs in the amount of \$6,000.00; and
- (3) All other claims are dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 October 2018