



World Bank Administrative Tribunal

2018

Decision No. 590

**DZ (No. 2),
Applicant**

v.

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

(Preliminary Objection)

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

**DZ (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 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 12 December 2017. The Applicant was represented by Stephen Schott of Schott Johnson, LLP. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the: (i) 7 November 2016 decision of the Vice President, Human Resources (HRVP) that she is ineligible for Retiree Medical Insurance Plan 1 (RMIP-1) benefits; (ii) 28 December 2016 changes to Staff Rule 6.12 that were retroactively made effective to September 2000; (iii) Bank's failure to inform staff of changes to the 1998 and 2000 versions of Staff Rule 6.12; and (iv) decisions of internal investigative units, the Office of Ethics and Business Conduct (EBC) and the Integrity Vice Presidency (INT), as well as key Internal Justice Services (IJS) oversight functions, the IJS Coordinator and the Managing Director and World Bank Group Chief Administrative Officer (MDCAO), to decline investigation, to review, or to take other steps necessary to address her allegations of manipulation, interference, and bias in Peer Review Services (PRS) Request for Review No. 338, and subsequent amendments to Staff Rule 6.12.
4. The Bank has raised a preliminary objection to the admissibility of this Application. This judgment addresses that preliminary objection.

FACTUAL BACKGROUND

5. The Applicant started working at the Bank in January 1994 as a long-term consultant (LTC), an appointment type classified as Non-Regular Staff (NRS). Such appointment types were eligible to enroll in the Bank's Medical Insurance Plan (MIP) according to the version of Staff Rule 6.12 of the Staff Manual that was then in force. Staff Rule 6.12, paragraph 1.02, provided:

Except where otherwise specified in the text, this Rule applies to staff members holding Regular, Fixed-Term, Part-Time, Secondment Staff, or Executive Director's Assistant appointments, to staff members holding Consultant or Temporary appointments of six months or more for full-time work, and to retired staff members.

6. According to Staff Rule 6.12, paragraph 1.03(a), a retired staff member was defined as

a former staff member who is eligible for an immediate pension under the Staff Retirement Plan where there is no break between termination of service and receipt of pension and in addition, in the case of Early Retirement, who has ten or more years of eligible service under the Staff Retirement Plan.

7. The Applicant has been enrolled in the MIP since her January 1994 hire date. Although the Applicant could enroll in the MIP, her contract type was ineligible to enroll in the Staff Retirement Plan (SRP).

8. In April 1998, the Bank introduced a Human Resources Policy Reform that made changes to the SRP as well as the MIP. Effective 15 April 1998, the Bank established the Net Pension Plan (Net Plan), which was open to staff members hired on or after that date. In addition, the Bank created a new retiree insurance plan with lower coverage titled the Retiree Medical Insurance Plan 2 (RMIP-2). Eligible staff who were employed at the Bank prior to 15 April 1998 were exempt from the new retiree insurance plan and would continue to receive the existing benefits of the RMIP now termed RMIP-1.

9. On 10 December 1999, the Applicant accepted an open-ended appointment and was enrolled as a participant in the Net Plan. Her letter of appointment dated 1 December 1999 stated:

“We will roll-over your current Medical Insurance Plan (MIP), life insurance, and accident insurance options.”

10. In 2002, after the Tribunal’s judgment in *Prescott*, Decision No. 253 [2001], the Applicant and several hundred staff members filed appeals to the former Appeals Committee, requesting, *inter alia*, participation and credit in the SRP and other related benefits for their period of service in nonregular appointments. The Appeals Committee dismissed these claims on the bases that they were time-barred and outside the Appeals Committee’s jurisdiction.

11. Subsequently, the Bank granted partial pension credit for the pre-15 April 1998 service of certain former NRS staff members enrolled in the Net Plan, including the Applicant. Consequently, the Applicant received 2.3 years of additional service credit in the Net Plan.

12. On 30 October 2015, the Applicant attended a meeting with the Human Resources (HR) team dedicated to assisting staff leaving the Bank. The Applicant was informed that she was ineligible for RMIP-1 benefits and would receive RMIP-2 benefits upon her retirement from the Bank.

13. On 29 February 2016, the Applicant submitted a request for review with PRS challenging the Bank’s determination of her ineligibility to receive RMIP-1 benefits upon her retirement.

14. On 16 September 2016, the PRS Panel issued its decision on jurisdiction and accepted jurisdiction over the Applicant’s request on the condition that she obtained a written confirmation from HR on her ineligibility for RMIP-1 benefits.

15. On 22 September 2016, the Applicant sent an email she received the same day from HR to PRS. The email from HR stated: “Based on your service records and the RMIP eligibility policy in place you would be eligible for participation in RMIP2.”

16. On 6 October 2016, the PRS hearing was held.

17. On 25 October 2016, the Applicant contacted the PRS Secretariat to inquire about the outcome of the hearing. According to the Applicant, she was informed verbally and in writing that the Panel's report was completed and approved by all three PRS panelists as of that date. The Applicant asserts that she was informed that the report "could be transmitted to the HRVP, first on 26 October, then on 27 October, and then on 28 October." The Applicant states that she later learned that the report was being revised.

18. On 1 November 2016, the Panel's report was issued and transmitted to the HRVP.

19. On 7 November 2016, the Applicant received the final report and a letter from the HRVP denying her claims and reconfirming HR's decision that the Applicant was ineligible for RMIP-1 benefits upon retirement.

20. On 11 January 2017, the Applicant met with two investigators from EBC.

21. On 26 January 2017, the Applicant sent an email to the Chair of the Staff Association and the Staff Association's Senior Counsel. The Applicant inquired about changes to Staff Rule 6.12 stating: "From my quick glance, it has been revised to change exactly the points I raised at PRS, and on which the Panel also pressed HR." The Applicant added:

I did not do a thorough review, but a key asterisk and a footnote have been added to the table on RMIP eligibility that was specifically discussed in the October meeting.

Did HR consult with the SA on the changes? Shouldn't they? I would think staff should also be clearly notified if the Staff Rules are going to be changed, especially in a way that potentially reduces the benefits of many staff.

If you recall, we used to have all Staff Rule changes notified to all staff via an "FYI" desk to desk mailing, to ensure transparency. I would assume in a paperless world, we at the minimum get a detailed kiosk announcement, if not an email notifying staff?

Thanks and please advise, I am still not sure if there is a process in place to change Staff Rules, but maybe they reached out to you?

22. On the same day, the Staff Association's Senior Counsel responded to the Applicant stating:

[...] I do not believe I (we) were informed of this change. My suspicion is that they realized the language did not say what they thought it said or wanted it to say, and that they hadn't realized it until you brought your case. They certainly should have run it by us before making the change but might have realized it would be a red flag in light of the issues raised in your case. This would be something that you could raise at the Tribunal, if you brought your case there. We will raise it with them as a matter of process, as there is a general agreement and understanding that they are supposed to consult with us on rules changes, but other than a slap on the wrist, there's not a lot we can do if they "forget" in a given case.

23. On 3 February 2017, an EBC Senior Investigator sent the Applicant an email. He referenced the meetings the Applicant held with himself and another investigator on 11 January 2017, and a one-on-one meeting she had with the manager of the unit. The Applicant was informed that, having reviewed the oral information and follow-up documentary material she provided, EBC determined that the issues she presented did not fall within its ambit as its "jurisdiction extends to allegations of misconduct related to Staff Rule 3.0[0]." The EBC Senior Investigator acknowledged that the Applicant held a different view.

24. The EBC Senior Investigator informed the Applicant that she could present her issues before the World Bank Administrative Tribunal. Noting the Applicant's concerns about the financial impact associated with initiating a case before the Tribunal, the EBC Senior Investigator stated that he was aware, "in other unconnected cases, that the [Staff Association] has, on occasion, assisted staff financially with the costs in connection with their WBAT matters."

25. On 23 February 2017, the Applicant requested an extension of time to file an application before the Tribunal. The Applicant noted that her claim concerning PRS Request for Review No. 338 was being "reviewed by other parts of the World Bank Internal Justice System (EBC/INT)," and that she was awaiting feedback from the Vice President of EBC (EBCVP) "regarding EBC['s] review of its jurisdiction and preliminary investigation."

26. On 23 February 2017, an extension of time was granted until the close of business on 8 May 2017.
27. On 16 March 2017, the Applicant met with the EBCVP.
28. On the same day, the Applicant sent the EBCVP an email thanking him for meeting with her. The Applicant reiterated her disappointment that EBC found none of the matters she raised about: “(1) the integrity of the PRS process[;] (2) HR’s unilateral reduction of retiree medical benefits (for potentially hundreds of staff)[;] or (3) HR’s changes to Staff Rules without due process to staff [...] to be within its mandate.” The Applicant raised the concern that HR had surreptitiously made changes to Staff Rule 6.12 that reflect the arguments it made during the PRS process.
29. On 20 March 2017, the Applicant met with staff members of the Integrity Vice Presidency’s Strategy & Core Services (INTSC).
30. On 27 March 2017, the Applicant sent the EBCVP a follow-up email.
31. On the same day, a Senior Investigator from INTSC contacted the Applicant stating:

From our March 20, 2017 meeting and your March 21, 2017 follow up email, we understand that you allege that the Peer Review Services (PRS) process addressing your complaint about non-transparent changes to retiree medical benefits under Staff Rule 6.12 was likely interfered with and was biased. We also understand that after having received an adverse decision from PRS, you raised these concerns with various units in the Internal Justice Services (IJS). You shared with us that you do not believe that the IJS appropriately addressed your concerns, and that [the] Office of Ethics and Business Conduct (EBC) declined to investigate them, and instead advised you to appeal your case to the Administrative Tribunal (WBAT). The Staff Association (SA) similarly advised you to appeal to the WBAT.

You explained to us that you do not want to appeal to the WBAT, as you deem it to be a burdensome and costly process. You also note that from your point of view the IJS is not willing to defend staff rules that would benefit many staff members, and that now “INT is the ‘end of the line’” to address these issues.

32. The INTSC Senior Investigator reiterated to the Applicant a message conveyed during their 20 March 2017 meeting, namely that INTSC investigates forms of misconduct relating to fraud and corruption under Staff Rule 8.01. The Applicant was told:

Based on our conversation, your email and the attendant documents you provided and which we reviewed, your allegations about a flawed and improper PRS process and alleged non-transparent changes to a staff rule do not fall within INT's mandate to investigate under Staff Rule 8.01. However, the WBAT is tasked with reviewing allegations of "non-observance of the [staff member's] contract of employment or terms of appointment," which can include reviewing both the process and the decision arising from a staff member's use of the PRS.

33. In April 2017, the Applicant contacted the Coordinator of the IJS.

34. On 10 April 2017, the Applicant requested a second extension of time to file an application with the Tribunal.

35. On the same day, the Tribunal granted the Applicant an extension until the close of business on 10 July 2017.

36. On 20 April 2017, the IJS Coordinator sent the Applicant an email message relaying her conversation with the office of the MDCAO about the Applicant's concerns. The IJS Coordinator informed the Applicant that "[t]he concerns you raised were discussed and it has been concluded that the only internal forum available to you to address your concerns is the Administrative Tribunal."

37. On 25 April 2017, the Applicant contacted the IJS Coordinator to inquire who reviewed the issues she raised and whether the MDCAO himself received the materials she provided. The Applicant reiterated her concerns to the IJS Coordinator and inquired whether the MDCAO was informed of those concerns.

38. On the same day, the IJS Coordinator responded to the Applicant noting that the discussion she had about the Applicant's concerns was with the "MDCAO's Office," and the response was that the Applicant should "seek recourse for these concerns through the proper administrative

channel [which] is the Administrative Tribunal.” The IJS Coordinator reiterated this advice to the Applicant on 28 April 2017.

39. On 4 May 2017, the Applicant sent the EBCVP an email message noting that she had met with two EBC investigators on 7 April 2017 as per his suggestion. The Applicant expressed disappointment that the investigators did not follow up on her allegations concerning Staff Rule 6.12. The Applicant reiterated her concerns as follows:

- (1) my PRS #338 Report shows likely interference by HR, violating SR9.03 Peer Review Services. Since PRS Secretariat and others would have had to agree to let this happen, I believe this impacts the integrity of all PRS appeals and the IJS
- (2) per PRS #338, HR has unilaterally reduced retiree medical benefits (RMIP 1) for former LTC/LTTs, ignoring multiple staff rules
- (3) HR (and LEG?) made changes to SR6.12 in prior years (1998 and 2000), in a manner that obscured key changes from affected staff
- (4) SR6.12 was changed again in December 2016, with retroactive effectiveness to September 2000, also without informing or consulting staff. At least one change came directly from the weak position of HR when pressed by Panelists in my October 2016 PRS hearing. As a result, HR (and LEG?) apparently disregarded our staff rules and ethical practices once again, to justify the retroactive cut of LTC/LTT benefits.

40. On 24 May 2017, the Applicant sent an email to the MDCAO. In her message the Applicant raised the allegation that HR interfered in her PRS appeal and that HR made a retroactive and unannounced change to Staff Rule 6.12 on 28 December 2016 with changes retroactive to September 2000. She stated:

Throughout my discussions with just about all of the IJS offices, several acknowledged that I have documented serious issues. But they have shied away from doing anything about it. Instead, I have been actively encouraged by all to file a tribunal case, raise the matters more broadly with bank stakeholders, etc. But as a long serving staff, dedicated to the mission of the Bank, I want to ensure that you are at least aware of the issues, in case you are able to address them in your role as MDCAO.

41. On 3 June 2017, the Applicant received an email from the Director of Strategy and Operations in the MDCAO’s office. The Director thanked the Applicant for sharing her experience with PRS and acknowledged her disappointment regarding the resolution of her claims with PRS.

The Applicant was informed that “[she] may consider resorting to the World Bank Administrative Tribunal and seek review of the merits of [her] claims.”

42. On the same day, the Applicant responded to the Director stating:

The merits of my claim are one issue. For the record the staff rule for PRS does enable PRS to assign a different VP or MD when there is a conflict of interest with HR. I had requested that from PRS to no avail. The much greater concern I have is the lack of integrity demonstrated in the process of my PRS Appeal. This failure reflects negatively on the entire IJS and I will continue to pursue those concerns. If MDCAO is at all concerned in his oversight role, I stand ready to help address the issues in a constructive manner. It is much too important for all staff, many of whom would be rightly afraid to speak up, to just let this kind of thing go on.

43. On 7 June 2017, the Director responded to the Applicant noting her concerns. He added: “If you feel this response did not address these concerns to your satisfaction, allow me to suggest to contact the PRS Secretariat.”

44. On 6 July 2017, the Applicant requested a third extension of time to file an application.

45. On 10 July 2017, the Tribunal granted the Applicant an extension until 8 September 2017.

46. On 14 August 2017, the Applicant requested a fourth extension of time to file an application.

47. On 16 August 2017, the Tribunal granted the Applicant an extension until 9 October 2017.

48. On 28 September 2017, the Applicant requested a fifth extension of time to file an application before the Tribunal. She noted that her claims were in mediation.

49. On 4 October 2017, the Applicant was granted an extension of time until the close of business on 6 November 2017.

50. On 27 October 2017, the Applicant requested a sixth extension of time to file an application before the Tribunal.

51. On 2 November 2017, the Tribunal granted the Applicant an extension of time until 6 December 2017. The Applicant was informed that no further extensions of time would be granted.

52. On 6 December 2017, the Applicant submitted this Application to the Tribunal. She seeks the following relief: (i) receipt of retiree medical insurance benefits from the “RMIP-1 continuation option of the MIP” she enrolled in when she joined the Bank in 1994; (ii) an order that all similarly situated former NRS who have or will earn a pension in the SRP be notified of their eligibility for the RMIP-1 benefit; and (iii) compensation in the amount of 12 months’ net salary “for the extraordinary failure of the IJS to provide even the minimum level of fairness in its PRS appeal.”

53. The Applicant contends that raising these matters before the Tribunal has “placed major burdens and pressures on [her] personally, professionally and financially for more than two years.” The Applicant asserts that she seeks the abovementioned compensation “to incentivize the proper working of offices in Conflict Resolution and Internal Justice Services, including their management to fulfill obligations towards staff with integrity and courage, ensuring a basic level of fairness for staff serving the World Bank Group.” The Applicant requests any other remedies that the Tribunal deems appropriate to “ensure that all staff can rely on a fair and unbiased internal justice system, including transparent and timely consultation with staff regarding any proposed changes to the Staff Rules of the Bank.”

54. On 20 February 2018, the Bank filed a preliminary objection to the admissibility of this Application.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank's Contentions

55. The Bank contends that the Tribunal lacks jurisdiction because (i) the Application disregards the statutory limitation and the principle of *res judicata*; (ii) the Applicant fails to demonstrate a plausible incident of non-observance of the terms of her appointment; (iii) the Applicant is contesting a policy that has been uniformly and equitably applied to her; (iv) the amendments to Staff Rule 6.12 on 28 December 2016 did not change or otherwise violate the Applicant's terms of employment; and (v) the Applicant's complaints about the PRS proceedings are beyond the scope of the Tribunal's review.

56. According to the Bank, the Applicant seeks to refresh stale claims that she failed to address before the Tribunal in a timely manner. The Bank maintains that the Applicant's claims concern benefits that former NRS staff were ineligible to receive. The Bank recalls that, in 2002, the Applicant filed an Application before the Appeals Committee, which issued a decision against the Applicant and hundreds of similarly situated NRS on jurisdictional grounds. The Appeals Committee determined that it did not have jurisdiction over the claims regarding "misclassification and their request for past pension credits and related benefits." According to the Bank, the Applicant knew at that time that she was not eligible for RMIP-1 benefits. The Bank asserts that the Applicant chose not to litigate her case before the Tribunal and abandoned her NRS claims. To the Bank, the Applicant is seeking to resurrect these claims with her first case before the Tribunal (*DZ*, Decision No. 589 [2018]) and now the present case. The Bank avers that "[t]his willful disregard for the statute of limitations prejudices [the] Respondent and hinders its ability to design, adopt and implement policy."

57. The Bank argues that the Application is out of time. According to the Bank, the Applicant's claim that she was only informed of her eligibility for RMIP-2 and not RMIP-1 benefits on 30 October 2015 is not credible. The Bank refers to the Applicant's 2002 Appeals Committee statement which, to the Bank, suggests that the Applicant was well aware of her status under the Bank's policies. Furthermore, the Bank maintains that the body of case law on which the Applicant

relied in 2002 “crystalized the fact that NRS were not eligible to accrue credits towards the RMIP prior to April 15, 1998.” The Bank argues that there are no exceptional circumstances to justify the Applicant’s failure to comply with the applicable time limits and twenty years is too long to wait. To the Bank, the fact that the Applicant’s claims relate to benefits she now wishes to have in retirement is of no import to ascertaining the timeliness of this case.

58. The Bank further argues that there have been no changes to the eligibility requirements for RMIP-1 and RMIP-2 since 1998 to refresh the statutory limit on these claims. The Bank avers that the “clarifying amendments” it made in 2016 to Staff Rule 6.12, after the Applicant challenged the eligibility determination before PRS, were not new decisions that expelled her from receiving RMIP-1 benefits. The Bank maintains that it made minor amendments following the Applicant’s PRS case to avoid any future confusion.

59. With respect to its contention that the Applicant failed to demonstrate a plausible incident of non-observance of her terms of appointment, the Bank contends that the Tribunal should declare the Application inadmissible given that the Applicant’s allegations are derived from: “(i) the strict and uniform application of a longstanding policy, (ii) the reasonable administrative exercise in clarifying the applicable Staff Rule, and (iii) the routine functioning of the IJS[.]” To the Bank, “the circumstances do not warrant any further review” and the Tribunal “has an interest and duty to reject frivolous cases to preserve the system’s integrity and ensure an efficient administration of justice.”

60. According to the Bank, the Applicant contests the RMIP policy itself as approved by the Board of Executive Directors and promulgated in Staff Rule 6.12 limiting RMIP-1 eligibility to those who were participants in the SRP on or before 14 April 1998. The Bank argues that there is no inherent unfairness in policies that treat differently situated staff differently. The Bank further argues that the amendments to Staff Rule 6.12 it made on 28 December 2016 did not change or otherwise violate the Applicant’s terms of employment. According to the Bank, as of the PRS hearing, 118 retirees with past pension credit for periods of NRS employment had enrolled in RMIP-2 without questioning whether they could somehow “finagle” eligibility for RMIP-1 instead of RMIP-2 benefits.

61. The Bank argues that the policy was believed to be clear and unambiguous and the Applicant was the first former NRS to advance “her own alternate interpretation.” The Bank does not deny that the Applicant’s challenge before PRS precipitated the amendments to Staff Rule 6.12, which it admits it took to “ensure that no other former NRS would suffer the same disillusionment and disappointment that [the] Applicant experienced when the PRS Panel informed her that the interpretation she proffered was incorrect and inconsistent with the Bank’s long-established practice.”

62. The Bank argues that it is fully aware of its duty to consult with staff on “material changes in provisions” relating to conditions of employment and Staff Rules. The Bank avers that the Tribunal could easily ascertain the materiality of the amendments by reviewing the relevant provisions side by side and alongside the other documents outlining RMIP eligibility and find that the changes in December 2016 were immaterial.

63. Finally, the Bank argues that the Applicant’s complaints about the PRS proceedings are beyond the scope of the Tribunal’s review. To the Bank, “[w]hile PRS is ‘bound to follow basic requirements of fairness,’ the particular decisions undertaken during the adjudicatory process are not subject to review by the Tribunal.” The Bank maintains that “[w]here applicants challenge procedural decisions and actions taken by PRS, the Tribunal declines jurisdiction as it avoids micromanaging and second-guessing the way in which PRS conducts its business.” The Bank argues that in any event, PRS treated the Applicant and her claims with “utmost fairness, consideration and patience.”

64. The Bank further argues that EBC, INT, and the IJS fairly and impartially considered the Applicant’s concerns. According to the Bank, the “Applicant’s suggestion that all of IJS, including its partners in EBC and INT, is engaged in a conspiracy against her to protect the financial interests of the Bank is not only implausible but incomprehensible.” The Bank maintains that EBC and INT transparently adhered to their standard operating procedures, consistent with the Staff Rules and applicable policies. The Bank argues that it should not be made to “defend the routine administration of the investigative bodies’ processes simply because [the] Applicant cannot accept the decisions of INT, EBC and IJS, generally.”

The Applicant's Response to the Bank's Contentions

65. The Applicant contends that the preliminary objection is baseless as the Bank “is seeking to tie the issue of medical coverage to her separate Application concerning pension benefits rights[.]” The Applicant notes that her first Application began one and a half years prior to the present matter and “includes zero mention of retiree medical insurance benefits.” To the Applicant, these cases are “independent of each other, are based on separate staff rules and essential benefits in her employment contract[,] and appropriately went through entirely separate internal administrative review procedures of the Bank.”

66. Regarding the Bank's contention on the timeliness of her Application, the Applicant maintains that the issue of eligibility for RMIP-1 benefits arose only in 2015 when she learned of the Bank's interpretation of Staff Rule 6.12 on the medical insurance plan. According to the Applicant, she could not have known, prior to her inquiry on that date about her medical plan rights in retirement, whether she would be entitled to participate in RMIP-1 or RMIP-2. The Applicant asserts that the Staff Rule did not distinguish between specific participation in the Gross or Net Plans of the SRP and that the Bank's Medical Insurance Plan was always dealt with independently of the pension plan and on an equal basis with other staff.

67. With respect to the Bank's contention that the Application is barred by *res judicata*, the Applicant asserts that, whatever her claims were in 2002, they did not include the MIP and there was no judgment issued at that time. The Applicant notes specifically that there was no judgment on her rights to continuation of her medical insurance plan into retirement. The Applicant further notes that the Bank undercuts its own *res judicata* argument by admitting that any challenge to the Appeals Committee decision on its jurisdiction was rendered moot by the Bank's decision to award past pension credit to NRS staff. To the Applicant, the decision to grant past pension credits rendered moot an appeal of the Appeals Committee's decision on the issue of jurisdiction.

68. The Applicant asserts that, contrary to the Bank's contentions, she is challenging the implementation of a policy, not the medical insurance policy itself. The Applicant argues that the Bank's framing of the argument as a challenge to a policy is unavailing for the reason that she

claims a contractual right and obligation to participate in the Bank's medical plan, "an essential condition of employment to share the same benefits through and into retirement." To the Applicant, her rights in the MIP and in the RMIP-1 arose prior to the institution of the new SRP Net Plan. She contends that Staff Rule 6.12 was never linked to the new Net Plan of the SRP. The Applicant argues that, even with the changes to Staff Rule 6.12 that were made in April 1998, she met the requirement of a "staff on board" since she was a staff member at the time the April 1998 reforms were made.

69. According to the Applicant, the Bank is arguing the merits of the case at the preliminary objection phase. The Applicant notes the Bank's contention that her belief that she is entitled to RMIP-1 benefits is not plausible. According to the Applicant, whether or not her claims are untenable is an issue for the Tribunal to determine on the merits. The Applicant asserts that the Bank must respond to the substance of the matters raised in her contract that included the rights to continue the same medical insurance plan into retirement on the same basis as her peers. The Applicant contends that the Bank should address its alleged violation of her contract terms regarding the issues she has raised about interference in the PRS process and the surreptitious changes to staff rules. To the Applicant, the fact that 118 retirees had accepted to be enrolled in RMIP-2 does not prove anything in her case. She maintains that their "reasons for doing so, and what they understood their rights to have been [are] totally irrelevant to the Applicant's claim of her rights."

70. The Applicant notes the Bank's admission that it introduced amendments to Staff Rule 6.12 following her PRS case. According to the Applicant, this admission confirms her assertion that the Bank "quickly tried to change the relevant, governing, SR6.12, disregarding the requirement for consultations in its Principles of Employment and Staff Rules, to retroactively legitimize a change in staff benefits which it was already implementing." The Applicant maintains that the merits of her claims on this course of action by the Bank clearly fall within the Tribunal's jurisdiction.

71. Finally, the Applicant contends that the Bank seeks to deny her right to have her complaint fairly and properly reviewed. She argues that a part of her Application includes the problems she faced accessing the IJS and this should be subject to review by the Tribunal.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

72. Article II of the Statute of the Tribunal provides the following regarding the Tribunal's jurisdiction:

1. The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of the alleged non-observance including the provisions of the Staff Retirement Plan.

2. No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

- (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
- (ii) the application is filed within one hundred and twenty days after the latest of the following:
 - (a) the occurrence of the event giving rise to the application;
 - (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted [...].

73. The Applicant's case can be divided into three primary claims. The first claim raises the question of whether medical insurance benefits she had when she was enrolled in the Bank's medical insurance plan in 1994 are to continue into retirement as RMIP-1 benefits, or whether she is affected by the 1998 Human Resources Policy Reform that created a distinction between "staff on board" prior to and after 14 April 1998. The Applicant's second claim concerns her assertion that the Bank's 2016 amendments of Staff Rule 6.12 were material changes to the staff rule which were implemented to incorporate its interpretation of that rule following the PRS case. The

Applicant's third claim raises allegations of interference, bias, and lack of transparency, and potential misconduct related to PRS Request for Review No. 338 and the Bank's subsequent amendments of Staff Rule 6.12 without prior consultation with staff. The Applicant challenges the decision of certain IJS units refusing to investigate or otherwise take action concerning her claim of potential misconduct.

74. The Bank has challenged the admissibility of this case on five grounds – namely that (i) the RMIP benefits claim is out of time; (ii) the RMIP benefits claim is barred by the principle of *res judicata*; (iii) the RMIP policy has been uniformly and equitably applied to the Applicant; (iv) the amendments to Staff Rule 6.12 on 28 December 2016 did not change or violate the Applicant's terms of employment; and (v) the PRS-related claims are beyond the scope of the Tribunal's review.

75. The Tribunal observes that, while the Application has been submitted within the requisite time frame following the exhaustion of internal remedies in accordance with Article II(2)(ii)(b) of the Tribunal's Statute, the legal question is whether the Applicant's RMIP-1 benefits claim itself is timely.

Whether the Applicant's RMIP-1 benefits claim is timely

76. It is the Bank's contention that the RMIP benefits claim is out of time because it is not believable that the Applicant was only informed of her eligibility for RMIP-2 and not RMIP-1 benefits on 30 October 2015. According to the Bank, the Applicant was aware of her ineligibility to receive RMIP-1 benefits at the time she submitted her appeal to the Appeals Committee requesting past pension benefits in 2002. To the Bank, the Applicant failed to raise this matter in a timely manner after the Appeals Committee's decision denying jurisdiction in 2002.

77. The Applicant, on the other hand, maintains that the issue of eligibility for RMIP-1 benefits only arose in 2015 when she made inquiries of the Bank's interpretation of Staff Rule 6.12 on the medical insurance plan. She maintains that she could not have known, prior to her inquiry on that date about her medical plan benefits in retirement, whether she would be entitled to RMIP-1 or

RMIP-2 benefits since she had been given past pension credit. She further maintains that Staff Rule 6.12 and the Bank's medical insurance plan did not define eligibility for RMIP-1 benefits based on whether that staff member was enrolled in the Gross Plan or the Net Plan of the SRP. According to the Applicant, "the Bank grandfathered eligible staff in the MIP with the same level of retiree continuation coverage as before, ensuring they would remain eligible if they eventually earned a retirement pension from the Bank." She states that this continuation of the MIP into retirement as RMIP-1 was "assured without regard to the different components (Net or Gross) within the Staff Retirement Plan."

78. Following the Tribunal's decision in *Prescott*, the Applicant together with many other similarly situated staff applied to the Appeals Committee in 2002 requesting "past pension credits, or the monetary equivalent, under the SRP for their whole period of service in non-Regular appointments." The staff, termed appellants, also requested "all other benefits they would have been entitled to if they were classified as Regular staff members." In her Statement of Appeal, the Applicant, referring to the *Prescott* decision, stated: "Based upon that decision [*Prescott*] and the facts and arguments set forth below I am hereby appealing the World Bank's refusal to treat me as a Regular Staff Member and to afford me the rights and benefits I would have received had I been properly classified and treated as a Regular Staff Member." Relying on *Prescott*, the Applicant requested "all other benefits attributable to such service (medical, etc.) to which I would have been granted or to which I would be entitled as a Regular Staff member if I had been properly treated as such during my service as a long term consultant, including not limited to Staff Rule 7.01 redundancy severance and Staff Rule 7.02 separation grant." The Appeals Committee decided that it was without jurisdiction over the claims regarding "misclassification" and the "request for past pension credits and related benefits during the period the Appellants held NRS appointments."

79. The Tribunal finds that, even though the Appeals Committee denied jurisdiction over the Applicant's claims, it was clear that the Applicant was aware, at that time (2002), that she was not entitled to benefits of staff who were on a regular service appointment pre-1998 with regard to the pension, including medical benefits upon retirement, and that was the reason for her appeal. Bearing in mind that the Tribunal made clear that the *Prescott* decision dealt with pension credit

and retiree medical benefit, the Applicant was aware that the retiree medical benefit was connected to the benefits staff enrolled in the SRP receive upon retirement.

80. The Tribunal further finds that there are other indications on the record that demonstrate that the Applicant knew or should have known that she would not be entitled to RMIP-1 benefits upon retirement. First, a document titled “Retiree Medical Insurance Plan: Plan Change Announcement” includes an introductory statement that explains that the Bank had introduced a new retirement plan effective 15 April 1998. According to the document, the current RMIP will be referred to as “Plan 1” and the new RMIP will be called “Plan 2.” For ease of reference, this document includes a chart “at a glance” regarding which staff member is entitled to what type of medical insurance benefit upon retirement. The chart makes a clear distinction between “staff on board at the Bank on April 14, 1998” and those who “joined the Bank on or after April 15, 1998.” There are two asterisks on the word “staff.” The word “staff” is explained in the footnote as “Staff with appointments of Regular, Fixed or EDA who are enrolled in the Staff Retirement Plan.” To the Tribunal this is the definition of “staff on board” on 14 April 1998 for the purposes of the RMIP benefits. The Applicant was aware that she did not hold a regular, fixed, or Executive Director’s Advisor (EDA) appointment prior to 14 April 1998. Furthermore, the Applicant was also aware that she was not enrolled in the Staff Retirement Plan on or prior to 14 April 1998.

81. Another document on the record that was available to staff is the July 1998 Guide to Medical Plan Decisions in Retirement (The Guide). The introduction to this booklet indicates that it applies to staff holding Regular, Fixed Term, or EDA appointments who are enrolled in the SRP and on board with the Bank on 14 April 1998. The booklet also includes a chart explaining the eligibility for RMIP-1 that includes the same two asterisks and explanation as noted in paragraph 80 above. On page six of The Guide it is indicated: “You are eligible for the Retiree MIP coverage described in this brochure if you were on board at the Bank on April 14, 1998, meet a minimum number of years of service and held an appointment of Regular, Fixed Term or EDA appointment and were enrolled in the Staff Retirement Plan (SRP).” Referring to the chart, it is further noted that “[s]hown above are the Retiree MIP options for which you are eligible depending on your age and pensionable service under the SRP on the date you separate from service with the Bank.”

82. Finally, a document entitled “Summary Plan Description” of benefits under the World Bank Medical Insurance Plan, issued in December 2006, includes information on the eligibility criteria that should have placed the Applicant on notice, prior to 2015, that she was ineligible for RMIP-1 benefits. Under the section “Eligibility and Enrollment,” there are descriptions of RMIP-1 and RMIP-2. Eligibility for RMIP-1 benefits is described as follows:

14.02 Retiree Plan 1

You are eligible for the Retiree Plan 1 if you were a participant of the Staff Retirement Plan on or before April 14, 1998 and upon retirement from the Bank Group you are:

- age 62 or older; or
- age 55 but less than 62 with 10 or more years of pensionable service; or
- age 50 but less than 55 and your pensionable service when added to your age equals 75 or more.

83. Eligibility for RMIP-2 benefits is described as follows:

14.04 Retiree Plan 2

You are eligible for Retiree Plan 2 if you became a participant of the Staff Retirement Plan on or after April 15, 1998 and, upon your last day of active service (or long-term disability coverage) in the World Bank Group, you:

- have at least five years of pensionable service with the Bank Group; and
- your pensionable service on your last day of active service, when added to your age, equals 60 or more.

84. The Tribunal finds that any of the dates mentioned above – April 1998, July 1998, and December 2006 – should have served as the starting time, the *dies a quo*, for any claim the Applicant may have had regarding retiree medical benefits. See *Njinkeu (Preliminary Objection)*, Decision No. 538 [2016], paras. 30–33. Given that these important documents were publicly available to staff and provided information on essential retiree medical benefits, the Tribunal is unpersuaded that the Applicant only discovered in 2015 when she went to inquire about her retiree benefits that she was not considered “staff on board” prior to 14 April 1998 for the purposes of the retiree medical benefits. Even though the Bank granted the Applicant *ex gratia* past pension credits back to 1996, those past pension credits did not change her status in the SRP nor did it entitle her to RMIP-1 benefits upon retirement. As held in *Walden*, Decision No. 167 [1997], para. 20, “[a]s a matter of principle, a staff member confronted with an adverse decision by the Bank should be careful to invoke administrative review within the prescribed time. If clarification of the Bank’s

decision is sought by the staff member, it should be done promptly, for the time limits on administrative review would be effectively negated if [the time limits] could be indefinitely suspended by a staff member's requests for further clarification of a decision whose purport is already quite clear.”

85. The Tribunal notes the Applicant's contention that, even with the changes the Bank made to Staff Rule 6.12 on RMIP benefits in April 1998, she met the requirement of a “staff on board” since she was a staff member at the time the April 1998 reforms were made. However, Staff Rule 6.12 should be interpreted together with internal documents issued regarding the retiree medical insurance plan. While Staff Rule 6.12 itself did not define “staff on board” until the Bank's amendments in 2016, the Bank is able to explain the meaning of the Staff Rules as they apply with regard to specific issues through internal documents issued to staff such as the documents referred to in paragraphs 80–83 above. Indeed, paragraph 1.01 of Rule 6.12 provides:

This Rule sets forth provisions governing participation in the Medical Insurance Plan (MIP). This Rule is effective September 1, 2000. Benefits and conditions of coverage under the MIP are set forth in a Certificate Booklet issued by the Insurance Administrator.

86. Hence, these internal documents have been recognized as relevant to explaining the medical insurance entitlements in Staff Rule 6.12. Indeed, the Retiree Medical Insurance Plan and Guide to Medical Plan Decisions in Retirement both issued in 1998 recognize and note that, in case of inconsistency between the brochures and Staff Rule 6.12, Staff Rule 6.12 prevails. However, the Applicant has not been able to show any inconsistency between the documents explaining the retiree medical insurance issued contemporaneously with the 1998 reforms and Staff Rule 6.12. An explanation of what constitutes “staff on board” in these documents issued as early as 1998 does not constitute inconsistency with Staff Rule 6.12, and Staff Rule 6.12 should have been read by the Applicant in conjunction with these documents.

87. Though the Applicant sought reconfirmation from HR of her ineligibility for RMIP-1 benefits in 2016 and submitted an appeal through the PRS process ultimately resulting in the HRVP's decision that she challenges in the present Application, the Tribunal recalls that, in *Kehyaian (No. 3)*, Decision No. 204 [1998], para. 23, it found that an applicant “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 decision.” See also *Vick*, Decision No. 295 [2003], para. 31; *Peprah*, Decision No. 275 [2002], para. 36; *Malik*, Decision No. 333 [2005], para. 32.

88. Under the Tribunal’s Statute and the Staff Rules, there is a time period within which a claim has to be pursued before the Tribunal or other internal bodies. Timely resolution of claims is an essential feature of the Bank’s internal justice system. A staff member has to pursue a claim within the time frame articulated by the Tribunal or other bodies, counting from the day staff members knew or should have known of the claim. By April 1998, by July 1998, or in 2002 when she pursued a claim before the Appeals Committee, the Applicant knew or should have known what medical benefits she was entitled to receive upon retirement and should have pursued her claim before the Tribunal if she was not satisfied. Even if the Applicant was uncertain as to whether she was entitled to RMIP-1 benefits after she was granted *ex gratia* past pension credit by the Bank in 2002, she should have noticed the inconsistency of her understanding with the “Summary Plan Description for the World Bank Medical Insurance Plan (MIP) for Active Staff” that was issued in 2006 and included information on the eligibility criteria contradicting her understanding. As was held in *Mitra*, Decision No. 230 [2000], para 11:

The Bank has also urged, as it did in *Caryk* and *Madhusudan*, that an applicant should not be permitted to make claims at any time during his employment, after such employment has ended or into the indefinite future, to avoid encouraging claims many years after the events to which they relate. The Tribunal finds this argument convincing. Such long-delayed resolution of staff claims could be seriously complicated by the absence of important witnesses or documents, and would in any event result in instability and unpredictability in the ongoing employment relationships between staff members and the Bank. These are among the reasons why this Tribunal has continuously insisted on the importance of the statutory limitations and why considerations such as those present in *Amora*, *Caryk* or *Madhusudan* should be applied only in cases where the statutory limitations have been observed or, failing this, where there exist exceptional circumstances.

89. The Tribunal therefore finds that the Applicant’s claim for RMIP-1 benefits is time-barred.

Whether the Bank's 2016 amendments of Staff Rule 6.12 amounted to material changes to the Staff Rule

90. As noted in paragraph 86 above, the internal documents elaborating upon the retiree medical insurance plan have been recognized as relevant to explaining the medical insurance entitlements in Rule 6.12. Having reviewed the record, the Tribunal finds credence in the Bank's statement that its amendments to Staff Rule 6.12 were immaterial. These amendments simply ensured conformity between Staff Rule 6.12 and the guidance and booklet that were distributed to staff by incorporating the text found in these materials to explain the meaning of "staff on board" in the rule itself. Such action ensures uniformity of the texts and prevents confusion over the interpretation of Staff Rule 6.12. The Tribunal finds that the Applicant's claim in this regard is without merit.

Whether the Applicant's challenge of the decisions not to investigate her claims of interference, manipulation, and bias are beyond the scope of the Tribunal's review

91. The Tribunal will now consider the Bank's objection to the admissibility of the Applicant's third claim. The Bank contends that the ordinary functioning of the IJS is not reviewable by the Tribunal. However, the Bank has not invoked any rule that would support its contention that the Tribunal is not permitted to review discretionary decisions made by units of the IJS to investigate an allegation of interference, manipulation, or bias.

92. The decisions not to investigate the Applicant's allegation of external interference in the PRS process and her claim that the amendments to Staff Rule 6.12 "disregarded our staff rules and ethical practices" were managerial decisions taken by EBC, INT, and the respective IJS units which the Tribunal is within its jurisdiction to assess for reasonableness, arbitrariness, or other improper motivations. As was held in *EO*, Decision No. 580 [2018], para. 98, "[t]he Tribunal remains the only judicial body to which an aggrieved staff member can file an application, and, under Article II, paragraph 1, of the Statute of the Tribunal, the Tribunal's role is to review decisions taken by the World Bank Group alleged to violate a staff member's contract of employment or terms of appointment [...]." To deny the Applicant recourse to the Tribunal to

assess whether the decisions not to investigate, or otherwise take action on, her claims would amount to a denial of access to a judicial body.

93. The Tribunal notes that the Bank further argues the reasonableness of the decisions that were made by the abovementioned units; however, these are arguments that address the merits of the claim and are not grounds to dismiss the claim at the jurisdiction phase. The Tribunal is within its powers to assess the reasonableness of decisions not to investigate the Applicant's claims as it has done in the past. *See e.g. DK*, Decision No. 552 [2017] (reviewing EBC's decision not to reinvestigate the applicant's allegations of sexual harassment against her former supervisor); *CW*, Decision No. 516 [2015] (reviewing allegations of bias and retaliation in EBC's investigations); *BJ*, Decision No. 443 [2010] (reviewing the jurisdictional findings of the Appeals Committee, in the course of examining the Tribunal's own jurisdiction over the applicant's claims about the International Finance Corporation's alleged interference in his divorce proceedings); and *AG*, Decision No. 397 [2009] (reviewing allegations of procedural irregularities by INT, including its refusal to investigate allegations of a leak of confidential information). The Tribunal reaffirms that it "does not review the manner in which PRS has dealt with a case before it." *Yoon No. 19*, Order No. 2012-3 [2012], para. 5. In *DK (Preliminary Objection)*, Decision No. 537 [2016], para. 76, the Tribunal stated that "it is not for the Tribunal to review challenges to procedural decisions made by PRS. However, as mentioned in *Yoon (No. 11)*, para. 16, the Tribunal may review such challenges if 'they [result] in violation of a staff member's rights.' The Tribunal otherwise will not review 'routine procedural arrangements' and decisions by PRS."

94. Finally, the Bank has also argued that the Applicant's claim does not amount to a decision reflecting non-observance of her contract or terms of employment. However, the Tribunal has noted in *Pal (No. 2)*, Decision No. 406 [2009], para. 29:

As the Tribunal held in *Naab*, Decision No. 160 [1997], para. 26, all that Article II requires is that the Applicant be a staff member of the Bank Group and that he present "any application" alleging non-observance of his contract of employment or terms of appointment. The question whether the Bank had an obligation under the Applicant's contract of employment and terms of appointment which it did not observe can be disposed of only after consideration of the substantive issues. (*See also Lysy*, Decision No. 211 [1999], para. 44 and *G (No. 2)*, Decision No. 355 [2006], paras. 31-33.)

95. The Tribunal therefore finds that it has jurisdiction to review the decisions not to investigate the Applicant's claims of manipulation, interference, bias, and potential misconduct.

DECISION

- (1) The Bank's preliminary objection on the Applicant's claims concerning RMIP-1 benefits and amendments of Staff Rule 6.12 is upheld;
- (2) The Bank's preliminary objection on the Applicant's challenge of decisions not to investigate her claims of manipulation, interference, bias, and potential misconduct is dismissed; and
- (3) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$4,000.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 October 2018