



**World Bank Administrative Tribunal**

**2022**

**Decision No. 676**

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

**v.**

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

**(Preliminary Objection)**

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

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

**v.**

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

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal’s Statute, and composed of Judges Marielle Cohen-Branche (Vice-President), Andrew Burgess, and Ann Power-Forde.
2. The Application was received on 12 October 2021. The Applicant was represented by Stephen C. Schott of Schott Law Associates, LLP. The Bank was represented by Edward Chukwuemeke Okeke, Lead Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant’s request for anonymity was granted on 23 May 2022.
3. The Applicant challenges his non-promotion, alleges that he was not fairly graded, and claims retaliation.
4. On 11 November 2021, the Bank submitted its preliminary objection. This judgment addresses the Bank’s preliminary objection.

**FACTUAL BACKGROUND**

5. The Applicant joined the World Bank Group (WBG) in 2003 as an Information Technology (IT) Assistant, Client Support, Resident Mission in China. In 2018, the Applicant became a Senior IT Assistant, Grade Level GD, in Information and Technology Solutions (ITS), Regional Client Services, based in Beijing, China.
6. According to the Applicant, since joining the Beijing office in 2003, he has been “responsible for the largest number of clients (more than 60) and has done so smoothly throughout the years.” According to the Applicant, he “has demonstrated successful achievement on all

aspects of IT work done for which a Chief Officer would be responsible.” The Applicant also states that “[t]hrough many years [he] has shown outstanding capability to handle double or even three (3) times the number of clients as his peers with higher grades, but his outstanding performance has never been recognized with the correct grade and he has been kept at the lowest level in the team.” He further states:

During the extremely challenging time of the pandemic in China, [the] Applicant showed a strong sense of responsibility and remarkable initiative; demonstrated high capability in both technical solutions and communications skill to coordinate with the management and respective production teams to assure the Beijing office would run smoothly and thus prevent potential risks in advance.

These perspectives of the Applicant regarding his capabilities and achievements are reflected in the “Staff’s Comments” sections of the Applicant’s Fiscal Year 2020 (FY20) Staff Annual Review.

7. Also, in the Applicant’s FY20 Staff Annual Review, the Applicant’s “Supervisor’s Comments” note:

[The Applicant] has had good success in certain areas of his performance. Client feedback in the Beijing office is also very positive. We have seen thousands of BRAVO Points being awarded for significant contribution.

[...]

Relationships, teamwork and trust remain strained and the cooperation is not at the level we expect. Regarding daily work, I have feedback indicating that [the Applicant] can do the same as others on the team by trying to do his best as much as he can, thus taking some workload from others. We have worked together to try to leave the past behind us with input from [the] Regional Cluster Manager to ensure that no targeting behavior is taking place. I recommend that [the Applicant] finds a way to move forward and cooperate more effectively, keeping those particular work relationships in mind.

8. Further, in the Applicant’s FY20 Staff Annual Review, the “Supervisor’s Manager’s Comments” state:

While technically [the Applicant] is solid and is appreciated by his clients and peers, he continues to have unresolvable issues with his Team Lead for Beijing and Supervisor, in spite of repeated interventions by Manager, [Senior] Manager and Director.

[...]

Given the ongoing issues that [the Applicant] continues to have with his Team Lead [...] and [Supervisor], ITS Management has facilitated a one[-]year DA [Development Assignment] for [the Applicant] with ITSCU [ITS Unified Communications].

9. The Applicant began a one-year Development Assignment as a Senior IT Assistant in ITSCU on 1 October 2020.

10. On 13 October 2020, the Applicant emailed his Supervisor to inquire whether he would be promoted in the FY20 performance evaluation cycle. The Supervisor's Manager was copied on the Applicant's 13 October 2020 email.

11. On 16 October 2020, the Supervisor's Manager responded to the Applicant's email, stating:

As regards promotion please note that all Promotion/Progression decisions are made by ITS Management based on [the] following criteria:

- a. Competency levels (deliver results for clients; collaborate within teams & across boundaries; lead and innovate; create, apply, and share knowledge; and make smart decisions);
- b. Performance track record;
- c. Business needs for the positions on the next grade level;
- d. Modeling WBG Core Values (Impact, Integrity, Respect, Teamwork, and Innovation).

We completed the Management Review meetings in July 2020 for FY20 where ITS promotions and performance were discussed and finalized. We do not think that there was a case to be made for your promotion this year based on the criteria mentioned above. However, we will be happy to discuss your career aspirations when we meet next.

12. On 2 November 2020, the Applicant filed a Request for Review with Peer Review Services (PRS). He stated the "Disputed Employment Matter(s)" as "Non-promotion in FY20," and further stated in his Request for Review, "The supervisor and manager refuse to promote [the Applicant]

to the deserved grade, [the Applicant's] performance was not fairly evaluated in the past years due to distorted information from the malicious supervisor." In addition, the Applicant claimed "[r]etaliation from the supervisor and unfair performance evaluation."

13. On 22 June 2021, the PRS Executive Secretary issued an Office Memorandum to the Applicant and the Supervisor's Manager regarding "Request for Review No. 533 [the Applicant] Peer Review Panel's Decision to Dismiss the Request for Review." The PRS Panel dismissed the Applicant's Request for Review in its entirety, stating that it did not have jurisdiction under Staff Rule 9.03. In particular, the PRS Memorandum stated:

The Panel noted that in Sections 2 and 8 of the Request for Review, Additional Documents of January 27, 2021, and Section 1 of the Final Reply of March 13, 2021, [the Applicant] stated that he deserves a position at Level GF. The Panel also noted that in Sections 2 and 4 of the Manager's Response and Section 2 of the Final Response, [the Supervisor's Manager] stated that there was no business need for the creation of a GF Level position in the Beijing Country Office. The Panel also noted that in Section 2 of the Manager's Response, [the Supervisor's Manager] stated that as there was no available position "the staff member cannot legitimately assert the claim that he was not selected for a position."

[...]

The Panel noted that it does not have the mandate under Staff Rule 9.03 to review claims that *de facto* constitute or call for a direct evaluation of a WBG policy.

The Panel noted that the HR [Human Resources] Guidance on promotions and the ITS MT [Management Team] Guidance on promotions clearly state that all promotions in the ITSVPU [ITS Vice Presidential Unit] could be done only at the next grade level, from Level GD to Level GE. The Panel noted that there is no WBG policy or HR guideline on promotions that allows a staff member to be promoted two grade levels up, including from Level GD to Level GF. The Panel noted that if a staff member wishes to secure a positions [*sic*] two grade levels up, the only available option to staff is to go through a competitive selection process, not through a promotion process.

The Panel noted that when a challenged managerial decision, action, or inaction is consistent with a policy framework effective at the time when the disputed decision, action, or inaction was made, its review of the disputed decision, action, or inaction would consist in a *de facto* review of the policy itself, which it does not have the mandate to do under Staff Rule 9.03.

The PRS Memorandum further stated, “If [the Applicant] is dissatisfied with the outcome of the Peer Review process, the next step would be recourse to the Tribunal, which has its own rules and procedures for the filing of claims.”

14. On 12 October 2021, the Applicant filed this Application with the Tribunal.

15. This is the Applicant’s second application with the Tribunal. In his first application before the Tribunal, the Applicant challenged his FY18 performance rating of 2. In *FH*, Decision No. 624 [2020], para. 55, the Tribunal stated that it was “not convinced that the rating of 2 had a reasonable and observable basis.” Further, the Tribunal concluded that

the Applicant’s due process was violated during the performance management process because his performance rating was decided before he was given the opportunity to have a performance discussion, and he was not provided a timely opportunity to comment on his perceived deficiencies before his performance rating was decided. [*Id.*, para. 70.]

Accordingly, the Tribunal ordered, inter alia, that the Applicant’s FY18 performance rating be rescinded.

16. In this current Application, the Applicant states that he

seeks a Tribunal decision that the Non-Promotion decision: 1. was unfair and an abuse of discretion by his Managers *despite [the] Applicant’s strong performance* and the fact that [the] Applicant’s performance was not in the past fairly evaluated by his supervisors; 2. That [the] Applicant was not fairly graded [vis-à-vis] other staff in his peer group and the refusal to grade him at the appropriate level violated his rights to fair consideration in employment matters. [Emphasis in original.]

The Applicant further states, “[The] Applicant believes this was a retaliatory act by his [Supervisor] as the denial of promotion ignored [the] Applicant’s strong performance which was superior to higher level staff performing the same or similar functions.”

17. The Applicant seeks the following:

- Salary increase reflecting the higher-Grade level to be paid for a period to be determined, but not less than from and after his 2019 APR [Annual Performance Review] a period of about 2 years.

The Applicant further seeks the following from the Tribunal:

- Order that [the Bank] – HR audit his position to determine his proper grade, that [the] Applicant contends should be Level F.
- Recommendation of promotion to the next Grade Level, i.e. Level E, and salary for two years at that grade level.

18. Additionally, the Applicant “requests moral damages for unfair treatment, particularly the failure to consider his right to be graded on the basis of his responsibilities and performance and his claim that the failure to do so is proof of retaliation as may be equitably assessed by the Tribunal.” At this stage, the Applicant claims legal fees and costs in the amount of \$2,293.75.

19. On 11 November 2021, the Bank filed its preliminary objection and requested that the Tribunal summarily dismiss the Application pursuant to Rule 7(11) of the Tribunal’s Rules.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Bank’s Main Contentions*

20. The Bank submits that the Application is inadmissible and should be summarily dismissed. According to the Bank, “the Tribunal has to be satisfied that [the] Applicant has presented a plausible claim of [the Bank’s] violation of his rights under the Principles of Staff Employment and the Staff Rules,” and the Applicant has failed to do so. In this respect, the Bank cites *Briscoe*, Decision No. 118 [1992], para. 30:

Article II, para. 1, of the Statute of the Tribunal empowers the Tribunal to pass judgment “upon any application by which a member of the staff of the Bank Group alleges nonobservance of the contract of employment or terms of appointment of such staff member.” The Tribunal, along with other international administrative tribunals, has consistently held that a claim of non-observance of a staff member’s contract or terms of appointment must be directed not against the organization’s promulgation of some general rule or policy but rather against an application of that

rule or policy – be it reflected in an action or omission – that directly affects the employment rights of a staff member in an adverse manner.

The Bank notes that the Applicant is a staff member at Grade Level GD who claims he should be promoted to Grade Level GF. The Bank submits that “[t]here is no right to promotion from grade level GD to GF based on performance.”

21. In the Bank’s view, the Applicant is not challenging his performance evaluations but, rather, is contending that he should be promoted on the basis of his performance. More specifically, to the Bank, the Applicant’s grievance is that he should be promoted on the basis of “his competencies and accomplishments” as outlined in his performance evaluations. The Bank submits that “[t]here is no such right to promotion as alleged by [the] Applicant,” and the Bank contends that the Applicant has failed to meet the Tribunal’s Article II jurisdictional requirements.

22. The Bank invokes Staff Rule 5.05, paragraph 3.01, which states:

Promotions occur as a result of:

- a. job review or evaluation under Staff Rule 6.05, “Job Evaluation”;
- b. decision to promote a Staff to a higher grade during an annual review conducted under Staff Rule 5.03, “Performance Management Process,” Section 3; or
- c. decision to reassign a Staff selected for a position at a higher grade through a competitive selection process.

The Bank submits that the Applicant did not request either a job review or an evaluation pursuant to Staff Rule 6.05 and was not promoted during the annual performance review conducted under Staff Rule 5.03. Further, the Bank asserts that the Applicant did not apply for a higher-grade position through a competitive selection process as envisioned in Staff Rule 5.05, paragraph 3.01(c), even though he was free to do so. Accordingly, the Bank submits that the Applicant has not alleged any right under the Staff Rules which it has violated.

23. Finally, the Bank submits, “Even if the Tribunal were to find that a claim of non-promotion is generally admissible *ratione materiae*, this particular Application is devoid of merits and should therefore be summarily dismissed.” To the Bank, “[i]t is not a violation of [the] Applicant’s



contract of employment or terms of appointment for him not to be promoted from GD to GF.” Further, the Bank asserts that the “Applicant’s claim for promotion from GD to GF outside of the parameters of Staff Rule 5.05 is definitely without merits.”

### *The Applicant’s Response*

24. The Applicant asserts that his “contract of employment implicitly requires that [the Bank] treat [him] with fairness and in accordance with the Principles of Staff Employment and the description of the higher level of competencies and responsibility contained in its position descriptions.” He contends that it is HR and management’s responsibility to assure he is properly matched to his position description.

25. The Applicant contends that the Bank is “blam[ing] [him] for not seeking a job review or evaluation under Staff Rule 6.05 despite [the] Applicant consulting with HR and not getting any assistance in the matter.” The Applicant states that he was “left with no choice but to appeal his case to PRS Review which recommended that he take his case directly to the Tribunal.”

26. In the Applicant’s view, “[h]e has sought promotion to reflect his contributions to the IT department.” The Applicant submits that his work and his contributions have not been recognized by management, and he is asking that the Bank “acknowledge this contribution by rewarding him with a promotion and a salary that corresponds with the description of his position and actual duties; and the level of responsibility on which he is operating.” The Applicant submits that the Tribunal should disregard the Bank’s preliminary objection and order it to answer his Application.

### THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

27. In his Application, the Applicant states that he

seeks a Tribunal decision that the Non-Promotion decision: 1. was unfair and an abuse of discretion by his Managers *despite [the] Applicant’s strong performance* and the fact that [the] Applicant’s performance was not in the past fairly evaluated by his supervisors; 2. That [the] Applicant was not fairly graded [vis-à-vis] other

staff in his peer group and the refusal to grade him at the appropriate level violated his rights to fair consideration in employment matters. [Emphasis in original.]

The Applicant further states, “[The] Applicant believes this was a retaliatory act by his [Supervisor] as the denial of promotion ignored [the] Applicant’s strong performance which was superior to higher level staff performing the same or similar functions.”

28. The Tribunal observes that the Bank requests that the Tribunal deem the Application irreceivable and summarily dismiss it pursuant to Rule 7(11) of the Tribunal’s Rules. In the Bank’s view, the “Applicant has not alleged any judicially cognizable claim for which the Tribunal could grant a relief.” In particular, the Bank avers that the Applicant is a staff member at Grade Level GD who claims he should be promoted to Grade Level GF, and the Bank submits that there is no right to promotion from Grade Level GD to Grade Level GF on the basis of performance. To the Bank, the Applicant asserts that he should be promoted on the basis of “his competencies and accomplishments” as outlined in his performance evaluations, and the Bank submits that there is no such right to promotion.

29. The Tribunal also observes that, on the contrary, in the Applicant’s view, “[h]e has sought promotion to reflect his contributions to the IT department,” and he submits that his work and contributions have not been recognized by management. The Applicant asks that the Bank “acknowledge this contribution by rewarding him with a promotion and a salary that corresponds with the description of his position and actual duties; and the level of responsibility on which he is operating.” The Applicant asserts that his “contract of employment implicitly requires that [the Bank] treat [him] with fairness and in accordance with the Principles of Staff Employment and the description of the higher level of competencies and responsibility contained in its position descriptions.”

30. Therefore, the key issue at this stage is whether the Tribunal has jurisdiction to review the Applicant’s claims, or whether the Application should be dismissed. The Bank’s central contention is that the Applicant has failed to state a claim alleging a violation of his rights as a staff member as required by Article II of the Tribunal’s Statute.

31. Article II(1) of the Tribunal's Statute provides:

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 alleged non-observance including the provisions of the Staff Retirement Plan.

32. In considering the Bank's preliminary objection, the Tribunal recalls *McNeill*, Decision No. 157 [1997], para. 26, in which it stated:

The Tribunal [...] considers that it is its duty, as it is the duty of every international tribunal, "to isolate the real issue in the case and to identify the object of the claim...; this is one of the attributes of its judicial functions" (*Nuclear Tests (Australia v. France)*, *Judgment of December 20, 1974, I.C.J. Reports 1974*, p. 262).

In view of the above, the Tribunal considers the "real issue" and "object of the claim" in this case to be the Applicant's challenge to his non-promotion from Grade Level GD in the FY20 performance evaluation cycle.

33. The Bank invokes Staff Rule 5.05, paragraph 3.01, and construes the Application such that, pursuant to this Staff Rule and the facts of the case, the Applicant has no right to promotion from Grade Level GD to Grade Level GF. Accordingly, in the Bank's view, the failure to promote the Applicant from Grade Level GD to Grade Level GF does not entail a violation of the Applicant's contract of employment or terms of appointment. Further, the Bank posits that the "Applicant's claim for promotion from GD to GF outside of the parameters of Staff Rule 5.05 is definitely without merits."

34. In the Tribunal's view, the issue the Applicant presents in his Application is in fact broader in scope than the Bank's narrow reading. In particular, the Tribunal observes that the Applicant does not invoke Staff Rule 5.05, paragraph 3.01, specifically but, rather, raises the issue of his non-promotion as a question of fairness and as a violation of Principle 2.1 of the Principles of Staff Employment. Additionally, the Tribunal notes that the Applicant claims that retaliation and bias are implicated in his non-promotion.

35. The Tribunal observes that the decision regarding the Applicant's non-promotion was communicated to the Applicant on 16 October 2020, via email from the Supervisor's Manager, which stated:

As regards promotion please note that all Promotion/Progression decisions are made by ITS Management based on [the] following criteria:

- a. Competency levels (deliver results for clients; collaborate within teams & across boundaries; lead and innovate; create, apply, and share knowledge; and make smart decisions);
- b. Performance track record;
- c. Business needs for the positions on the next grade level;
- d. Modeling WBG Core Values (Impact, Integrity, Respect, Teamwork, and Innovation).

We completed the Management Review meetings in July 2020 for FY20 where ITS promotions and performance were discussed and finalized. We do not think that there was a case to be made for your promotion this year based on the criteria mentioned above. However, we will be happy to discuss your career aspirations when we meet next.

36. Further, the Tribunal notes that it was this decision that the Applicant challenged before PRS. In his Request for Review of 2 November 2020, the Applicant stated the "Disputed Employment Matter(s)" as "Non-promotion in FY20." In its Office Memorandum regarding "Request for Review No. 533 [the Applicant] Peer Review Panel's Decision to Dismiss the Request for Review," however, it is evident that the Peer Review Panel framed the Applicant's claim as concerning the "decision not to promote him from Level GD to Level GF in Fiscal Year (FY) 2020 (Non-Promotion Decision)." As the Panel Report explained,

[t]he Panel noted that in Sections 2 and 8 of the Request for Review, Additional Documents of January 27, 2021, and Section 1 of the Final Reply of March 13, 2021, [the Applicant] stated that he deserves a position at Level GF.

The Tribunal notes that the Panel dismissed the Applicant's Request for Review on the basis that it did not have jurisdiction under Staff Rule 9.03, stating:

The Panel noted that the HR Guidance on promotions and the ITS MT Guidance on promotions clearly state that all promotions in the ITSVPU could be done only at the next grade level, from Level GD to Level GE. The Panel noted that there is no WBG policy or HR guideline on promotions that allows a staff member to be promoted two grade levels up, including from Level GD to Level GF. The Panel noted that if a staff member wishes to secure a positions [*sic*] two grade levels up, the only available option to staff is to go through a competitive selection process, not through a promotion process.

37. In the Bank’s view, and in line with the PRS Panel Report, “[t]here is no right to promotion from grade level GD to GF based on performance” and the Applicant has therefore “failed to present a plausible claim of ‘non-observance of the contract of employment or terms of appointment of such staff member.’”

38. The Tribunal disagrees with the Bank on the question of whether the Applicant has alleged a violation of his contract of employment or terms of appointment. The Applicant is challenging the fairness of the decision not to promote him from Grade Level GD, rather than claiming a right to promotion from Grade Level GD to Grade Level GF as the Bank contends. The Applicant asserts that his Grade Level – GD – does not reflect his actual duties and professional capabilities, and that he is owed a promotion to a higher grade as a result. Indeed, the Applicant posits that he ought to be at Grade Level GF and even goes as far as to state, “As a D level staff [the] Applicant has better professional capabilities than the location and regional leads who hold F and G grades.” At the core, however, is the Applicant’s challenge to the non-promotion decision as unfair and an abuse of managerial discretion. This is reflected in the remedy he seeks:

- Salary increase reflecting the higher-Grade level to be paid for a period to be determined, but not less than from and after his 2019 APR a period of about 2 years.

[...]

- Order that Respondent – HR audit his position to determine his proper grade, that [the] Applicant contends should be Level F.
- Recommendation of promotion to the next Grade Level, i.e. Level E, and salary for two years at that grade level.

39. As previously noted, the Applicant grounds his claim in a violation of Principle 2.1 of the Principles of Staff Employment, which states:

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.

The Applicant further invokes paragraph (d) of Principle 2.1 of the Principles of Staff Employment, which specifies that the Organizations shall

provide staff members security in their employment consistent with the terms of their appointments, their satisfactory performance and conduct, and the efficient administration of the Organizations;

and paragraph (e), which states that the Organizations shall

develop and maintain compensation and personnel management policies and practices designed to help create an environment conducive to the high standards of performance required by the Organizations in the interests of their member countries.

40. Moreover, the Tribunal notes that, pursuant to Principle 9.1 of the Principles of Staff Employment, “[s]taff members have the right to fair treatment in matters relating to their employment,” and the Tribunal “shall, as prescribed in its Statute, hear and pass judgment upon applications from staff members alleging non-observance of their contracts of employment or terms of appointment, including these Principles and all pertinent Staff Rules of the Organizations.”

41. Given that the Tribunal has recognized that the Principles of Staff Employment are to be viewed as forming part of the “contract of employment or terms of appointment” of staff members (*BB*, Decision No. 426 [2009], para. 52; *see also FB (Preliminary Objection)*, Decision No. 609 [2019], para. 39), the Tribunal finds that, contrary to the Bank’s position, the Applicant is quite clearly alleging a violation of his contract of employment or terms of appointment.

42. The Tribunal also notes that the Bank references *Briscoe* [1992], para. 30, in which the Tribunal stated:

Article II, para. 1, of the Statute of the Tribunal empowers the Tribunal to pass judgment “upon any application by which a member of the staff of the Bank Group alleges nonobservance of the contract of employment or terms of appointment of such staff member.” The Tribunal, along with other international administrative tribunals, has consistently held that a claim of non-observance of a staff member’s contract or terms of appointment must be directed not against the organization’s promulgation of some general rule or policy but rather against an application of that rule or policy – be it reflected in an action or an omission – that directly affects the employment rights of a staff member in an adverse manner.

43. The Tribunal observes that the Bank’s reliance on *Briscoe* [1992] appears to be misplaced. In *Briscoe* [1992], para. 31, the Tribunal found that “[t]he application here is in effect directed against a general rule regarding employment benefits, rather than an individualized application of that rule to the [a]pplicant himself. His application has not been directed at any specific decision by the Respondent denying him expatriate benefits.” In the instant case, the Tribunal finds that the Applicant in fact challenges a specific action or inaction by the Bank – the non-promotion decision by ITS Management communicated on 16 October 2020 – and alleges this decision violated his right to fair treatment as a staff member as enshrined foremost in Principle 2.1 of the Principles of Staff Employment.

44. Further, the Tribunal recalls that it has had multiple occasions to consider the scope of its subject-matter jurisdiction under Article II. In *Naab*, Decision No. 160 [1997], para. 26, for instance, the Tribunal stated:

All that Article II requires is that the [a]pplicant 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 [a]pplicant in this case is a staff member of the Bank and does in fact allege non-observance of his contract of employment. He alleges that the amended Staff Rule applied to him “establishes an arbitrary and unreasonable restriction on his employment at the Bank” and that it “alters an essential condition of his employment agreement.” The relief he is asking for, besides compensation, is that he should be grandfathered from the restriction introduced by the amended Staff Rule 4.01.

In *Naab* [1997], para. 27, the Tribunal “conclude[d] that the contentions of the parties can only be disposed of once they have exhausted their right to substantiate their opposing views on the different aspects of the substantive elements of the dispute.”

45. And, in *BB* [2009], para. 53, the Tribunal, quoting, *N*, Decision No. 356 [2006], para. 20, stated that

[t]he discussion whether there has been a breach of fairness and impartiality in this case pertains to the merits. For jurisdictional purposes, as the Tribunal held in *McKinney*, Decision No. 183 [1997], paras. 13, 16–17, it is enough that the [a]pplicant has “alleged” a plausible claim of contract violation and that it is tenable that “there are circumstances that warrant an examination of the merits of his allegations.” It was there held by the Tribunal that “[i]t would be premature and improper for the Tribunal, by declaring this application inadmissible on the ground of jurisdiction *ratione materiae*, to deprive the [a]pplicant of an opportunity to make his case.”

46. Further, in *FB (Preliminary Objection)* [2019], para. 42, the Tribunal found that

for it to review a claim on the merits it suffices that an applicant alleges a plausible claim of the non-observance of his or her contract of employment or terms of appointment, including all pertinent regulations and rules. In the present case, whether the [a]pplicant would ultimately succeed in her claim is a matter of merits not of jurisdiction. “Whether there is any factual support for this claim is not [...] a matter to be considered now, but only following a further exchange of pleadings on the merits.” *Nguyen*, Decision No. 190 [1998], para. 7.

47. Consistent with the above jurisprudence, the Tribunal finds that the Applicant has indeed presented an application alleging a plausible claim of the non-observance of his contract of employment or terms of appointment and that the circumstances warrant an examination of the merits of his allegations. The Applicant is a staff member who contends that the Bank has not promoted him even though, in his view, he is qualified for a higher grade and is already performing duties of a higher grade and is doing so successfully. He states that he “has been kept at the lowest grade level in the team” and submits that his “lack of promotion is unfair and unreasonable.” He alleges a violation of Principle 2.1 of the Principles of Staff Employment. Simply put, it is the Applicant’s contention that his non-promotion involves a violation of the Bank’s obligation to treat its staff fairly. Further, and significantly, the Applicant contends that his work and contributions



have not been acknowledged by management and he claims retaliation and bias have played a part in the failure to promote him. He states that

his managers are very much aware of his role in the IT office but because of their own biases and resentments including his first Tribunal case [*FH* [2020]], have chosen not to award him a level commensurate with his contributions to the WB [World Bank] work.

The Applicant's allegations of retaliation, if substantiated, would clearly constitute a violation of his contract of employment or terms of appointment, as retaliation is expressly prohibited in the Staff Rules and pursuant to the Tribunal's jurisprudence. *See, e.g., Bauman*, Decision No. 532 [2016], para. 95.

48. The Tribunal considers that a determination regarding a violation of the Applicant's rights is a matter for the merits. Pursuant to its jurisprudence and Statute, the Tribunal views it premature and improper to deprive the Applicant of the opportunity to make his case by declaring the Application inadmissible on the grounds of jurisdiction *ratione materiae*. At the present stage, the Tribunal is satisfied that the Applicant has presented a plausible claim of the Bank's violation of his rights and that the circumstances warrant an examination of the merits of the allegations.

49. In sum, the Tribunal is of the view that the Application is not as narrow as the Bank has sought to portray it. The issues before the Tribunal are not merely the application of Staff Rule 5.05, paragraph 3.01, but also include the Applicant's claim that he has been unfairly treated in violation of Principle 2.1 of the Principles of Staff Employment. A further issue is the Applicant's claim of retaliation. Based on the pleadings, the Tribunal finds that the Applicant has presented a plausible claim of violation of his contract of employment or terms of appointment, which the Bank must answer on merits. The Tribunal concludes that the Application meets the jurisdictional requirements of the Tribunal, and the Bank's requests that the Tribunal bar the Application on jurisdictional grounds or summarily dismiss it are thereby denied.

DECISION

- (1) The Bank's preliminary objection is dismissed; and
- (2) The Bank shall pay the Applicant's legal fees and costs in the amount of \$2,293.75 for the preliminary objection phase of the proceedings.

/S/ Marielle Cohen-Branche

Marielle Cohen-Branche

Vice-President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., \* 3 June 2022

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