



**World Bank Administrative Tribunal**

**2020**

**Decision No. 630**

**FL,  
Applicant**

**v.**

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

**(Preliminary Objection)**

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

**FL,  
Applicant**

**v.**

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 10 September 2019. The Applicant was represented by Marie Chopra of James & Hoffman, PC. The Bank was represented by Edward Chukwuemeke Okeke, Interim Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 5 May 2020.

3. The Applicant challenges her Fiscal Year 2018 (FY18) Annual Review, her performance rating, and the restriction placed on her access to World Bank Group premises.

4. On 30 September 2019, the Bank submitted a preliminary objection to the admissibility of the Applicant's access restriction claim. According to the Bank, the Applicant failed to exhaust internal remedies in a timely manner. This judgment addresses the preliminary objection.

**FACTUAL BACKGROUND**

5. The Applicant joined the Bank in August 2015 as a Level GG Senior Program Coordinator. During her tenure at the Bank, the Applicant's manager was the Practice Manager with the exception of the last six months when the Applicant undertook a developmental assignment (DAIS) in a different unit where she had a DAIS supervisor.

6. On 19 September 2018, the Applicant, her manager, and her DAIS supervisor met to discuss the Applicant's FY18 performance review. Prior to the meeting, the Applicant requested the presence of a World Bank Staff Association representative; however, the Applicant's manager preferred to have a meeting with only the Applicant and the DAIS supervisor. After providing the Applicant with feedback on her performance during the DAIS, the DAIS supervisor left the meeting, leaving the Applicant and her manager alone. The parties have provided different versions of the conversation which took place between the Applicant and her manager once the Applicant's DAIS supervisor left. Following the meeting, the Applicant sent the Staff Association representative an email titled "Just finished." In the email, the Applicant stated: "Was good and then [the DAIS supervisor] left. Then [...] [the Applicant's manager] became another person ..... I left in tears."

7. On 24 September 2018, the Applicant received the following email from a Human Resources Specialist, addressed to her personal email account:

I am writing to notify you that, based on incidents as reported by the World Bank Group (WBG) Corporate Security Office involving threatening language used by you against another WBG staff member, you have an access restriction to all WBG buildings with immediate effect.

Should you have any questions or concerns with regard to this matter, please contact myself or my manager, [Human Resources Development Corporate Operations (HRDCO)], copied on this email.

8. On 25 September 2018, the Applicant responded to the Human Resources Specialist stating:

I read this email with great concern and dismay. I have no idea what this is about. What incidents? Reported by whom? I've never threatened anyone! I've never used any language that can be remotely viewed as such. I would appreciate your providing me with an account of these allegations so that I may immediately address.

I'm on my way home to Jamaica but will be returning to meet with Staff Association about a pending Tribunal/[Peer Review Services] case. Kindly advise what this ban means and what due process [is] involved in addressing these accusations. When do I speak to Ethics about this?

9. The Applicant did not receive a response.

10. On 1 October 2018, the Applicant sent an email to the Manager, Human Resources Development Corporate Operations (HRDCO) with the Human Resources Specialist in copy. The Applicant reiterated her request for an account of the allegations that were made against her.

11. On 4 October 2018, the Human Resources Specialist responded to the Applicant's email stating:

To elaborate on my email of September 24, 2018, we received a report that you made threatening remarks against a staff member and the staff member's family.

In these circumstances, the Bank has full discretion to take necessary action to ensure the safety of its premises and its staff.

As such, your access restriction remains in place. If you need to enter the WBG for business purposes, please make sure to notify us ahead of time so that necessary arrangements can be made.

If you have further questions or concerns, please let myself or my manager, [HRDCO] (copied here), know.

12. On 18 October 2018, the Applicant sent an email to the Manager, HRDCO and copied certain members of the Staff Association. The Applicant stated that she had yet to receive a response from him to her email of 1 October 2018. The Applicant referred to the 4 October 2018 email from the Human Resources Specialist and stated:

As such, I am again, kindly requesting from you (not [the Human Resources Specialist]) any information on this allegation, as I remain at a complete loss and need to ensure that this serious and damaging allegation is fully addressed.

Again, I remain at a complete loss and am taking these allegations and the due process which have and [are] still being denied, very seriously.

13. On the same day, the Manager, HRDCO responded to the Applicant:

In September 2018, it was reported you threatened a staff member and her daughters. This was reported to WBG Security and as a precautionary measure, a bar to your entry onto WBG premises was put in place and you were informed in

writing of same. If you would like to comment or explain what happened, you may certainly write to me and/or WBG Security.

14. On 26 October 2018, the Applicant responded to the Manager, HRDCO stating that she remained “at a complete loss regarding these defamatory allegations.” The Applicant requested “an explanation” so that she would know “what exactly is going on and at the very least be able to respond.”

15. On 29 October 2018, the Manager, HRDCO responded to the Applicant informing her that her “reported threat occurred [on] Wednesday, September 19, 2018.” He suggested that the Applicant check her “calendar as to whom [she] spoke with on that day.”

16. On 2 November 2018, the Applicant responded to the Manager, HRDCO stating: “Based on the vague and obscure reference in your email, I have to assume that my former manager [...] has fabricated a false charge against me as a result of a difficult conversation with her on 19th September immediately following my meeting with her and [the DAIS supervisor] to discuss my End of Year 2018 performance.”

17. In the same email, the Applicant provided the Manager, HRDCO with her account of the conversation between herself and her manager. The Applicant then stated:

I trust that after reviewing my version of events—and perhaps talking to [the DAIS supervisor] who has been my supervisor for 6 months, who was there for the first part of the meeting, and who would I am certain give you her opinion of my good character—you will immediately withdraw the access restrictions of which I was notified by one of your staff, [the Human Resources Specialist]. I look forward to hearing from you promptly that this has been done.

18. Finally, the Applicant stated: “If you decide not to withdraw the restriction, perhaps you can tell me what other recourse I have? Should I make a report to the Ethics Office? Appeal to the Administrative Tribunal? Please let me know what next steps I can take to clear my name.”

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

20. On 11 December 2018, the Staff Association representative sent the Manager, HRDCO an email inquiring whether he had sent the Applicant a response to her email.

21. On 12 December 2018, the Manager, HRDCO responded to the Staff Association representative stating: “Thank you for bringing this to my attention. I am afraid that I have completely dropped the ball and my apologies to [the Applicant] (copied). Will review and respond.”

22. On 21 December 2018, the Manager, HRDCO sent an email to the Applicant. Through this message, he conveyed that his office “consulted further with the Corporate Security team which is of the opinion that your limited access restriction to the Bank’s premises should remain in place in the interest of preserving safety in the workplace and erring on the side of caution.” The Manager, HRDCO also stated that he spoke with the Applicant’s manager and “she has continued concern(s) for her safety.”

23. The Manager, HRDCO added:

Additionally, I note that in your initial response of September 25th, you flatly denied having been involved in any incident in which you used threatening language. In your latest email, however, your story is different referencing a particular altercation with your former manager that occurred on September 19th.

Please know that when the Bank receives a report involving threats of any kind, such matters are taken seriously and dealt with—firmly and swiftly. When a woman comes forward to report harassment and threatening behavior against herself and her children, such a report is believed until otherwise mitigated or resolved.

Given the above, and in the abundance of caution, your limited access restriction will remain in place. As mentioned previously, if you would like to access the Bank’s premises, you can notify our office so that the necessary arrangements can be made.

Further, the Internal Justice Services are at your disposal if you would like to challenge the above and below.

24. On 8 January 2019, the Applicant responded to the Manager, HRDCO’s email. The Applicant stated that there was nothing in her explanation of the 19 September 2018 conversation

with her manager that could be construed as a threat or could justify the continued access restriction. The Applicant also noted that in the Manager, HRDCO's email he had "expanded the allegations to be 'harassment and threatening behavior.'" She stated that she had not received a copy of her manager's written statement, so she was not able to adequately defend herself. The Applicant stated that she would be challenging the access restriction through the Internal Justice Services (IJS) and added:

On a final note:

You are attempting to imply that I "changed stories" which reveals to me some bias on the Bank's part. Again, as requested in my previous emails to you (Oct 18, Oct 26, Nov 2 and Nov 11), I would appreciate a copy of whatever report and update was conveyed to Corporate Security so that I can benefit from due process. Note that I only became certain that [the Applicant's manager] was the person behind this because of an email she sent (Nov 6) accusing me of threatening her. As I DID NOT threaten anyone, at any time, I couldn't have imagined how a difficult [Overall Performance Evaluation] discussion has led to this unless it's retaliation. Nevertheless, I will continue with my challenge of her biased treatment of me starting with [Administrative Review] and [Peer Review Services]. (Emphasis in original.)

25. On 31 January 2019, the Applicant filed Request for Review No. 458 with Peer Review Services (PRS). She challenged the decision to restrict her access to WBG premises.

26. On 4 March 2019, the Applicant received a letter from the PRS Executive Secretary. The Applicant was informed that PRS did not have the authority to review her request for review because it was filed more than 120 days after the 24 September 2018 notification that her access had been restricted.

27. On 10 September 2019, the Applicant submitted an Application to the Tribunal containing several claims including a challenge of the access restriction and PRS's denial of jurisdiction over this claim.

28. On 30 September 2019, the Bank submitted a preliminary objection challenging the admissibility of the access restriction claim.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

*The Bank's Contentions*

29. According to the Bank, the Applicant failed to exhaust internal remedies in a timely manner and did not present any exceptional circumstances supported by contemporaneous proof that could make the claim admissible.

30. The Bank contends that the *dies a quo* is 24 September 2018 when the Applicant received an email from the Human Resources Specialist informing her of the disputed decision, *i.e.*, the access restriction. The Bank states that the Applicant's PRS request for review was filed on 31 January 2019, more than 120 calendar days after becoming aware of management's decision to restrict her access to all WBG premises. The Bank avers that the Applicant did not seek, nor was she granted, an extension of the deadline to file her request for review and this request was properly dismissed by PRS. According to the Bank, there was no ambiguity in the 24 September 2018 email and there was "no doubt that this related to that emotional meeting in which [the] Applicant left in tears." To the Bank, it was clear that the access restriction was based on "threatening language" used against another staff member. Citing Article II(2)(i) of the Tribunal's Statute, which requires the exhaustion of internal remedies, the Bank asserts that the Applicant failed to exhaust all remedies because she "did not submit a Request for Review to PRS for the disputed decision until over a week after the deadline, and PRS properly dismissed it."

31. The Bank further contends that there are no exceptional circumstances to merit a waiver of the time limit. The Bank states that the Applicant's assertions that she suffered from post-traumatic stress disorder (PTSD) and a debilitating case of the flu are insufficient. To the Bank, the Applicant has not provided "contemporaneous proof" to support her assertions.

*The Applicant's Response*

32. The Applicant asserts that the *dies a quo* should be 21 December 2018 since she is challenging the new decision of the Manager, HRDCO not the Human Resources Specialist's



initial email. The Applicant contends that, in the event that the Tribunal finds 24 September 2018 to be the date on which the event giving rise to the claim occurred, then there are exceptional circumstances necessitating a waiver of the time limit. To the Applicant, the failure to meet this time limit should be excused because of “Human Resources’ deliberate refusal to provide [her] with sufficient information to understand the access bar[.]”

33. The Applicant requests the Tribunal to use the 21 December 2018 date as the appropriate date from which she had 120 days to appeal the access restriction. According to the Applicant, the 24 September 2018 email was incomprehensible. She rejects the Bank’s assertion that there was no doubt that the 24 September 2018 email referred to the Applicant’s 19 September 2018 meeting with her manager. The Applicant asserts that calculating the due date for her appeal cannot ignore the “deliberate obfuscation by Human Resources, designed apparently to ensure that she could not understand the charges against her.” She contends that the Bank provides no evidence of why it believes that the 24 September 2018 email from the Human Resources Specialist was so clear, “particularly given that [the Applicant] had not used threatening language to [her manager.]” In addition, the Applicant notes that the 24 September 2018 email stated that threats had been made on “more than one occasion,” while the meeting of 19 September 2018 would have constituted a single incident. The Applicant maintains that there was no way that she knew, as of 24 September 2018, that the charge levied against her concerned her 19 September 2018 meeting with her manager.

34. The Applicant also maintains that the 21 December 2018 email from the Manager, HRDCO conveyed a new decision and was not a mere explanation of the 24 September 2018 email. To the Applicant, this was “a new decision based on new facts and it made new allegations against her.” She asserts that the Manager, HRDCO “added new charges which had never been raised before[,] suggesting that [the Applicant’s manager] had accused [the Applicant] of ‘harassment’ as well as ‘threatening behavior.’” The Applicant also states that it was only in the 21 December 2018 email that the Applicant was first informed by the Manager, HRDCO, who had admitted to having “completely dropped the ball,” that “the Internal Justice Services are at your disposal[.]” The Applicant states that she submitted her PRS claim “just 41 days after [the Manager, HRDCO’s] December 21 ruling.”

35. The Applicant contends, in the alternative, that exceptional circumstances exist to permit the waiver of the time limit should the Tribunal use 24 September 2018 as the *dies a quo*. The Applicant notes that the Tribunal takes into account several factors “including, but not limited to, the extent of the delay and the nature of the excuse invoked by the [a]pplicant.” The Applicant contends that the extent of the delay was a “mere 9 days.” In addition, she states that she suffered from medical issues, notably PTSD and the flu, which she contends were aggravated by other factors, namely her FY18 Annual Review and performance rating. The Applicant asserts that the “combination of her serious medical issues, the shock of the [Manager, HRDCO’s] December 21 decision, and the further shock of receiving her Annual Review and performance rating together constitute compelling evidence of exceptional circumstances under the Tribunal’s jurisprudence.”

36. Finally, the Applicant asserts that the manner in which Human Resources “played with her, delaying any responses and then doling out little pieces of information in some kind of bizarre guessing game should certainly be counted as tolling any due date for an appeal.”

37. The Applicant seeks \$22,561.50 in legal fees and costs for the preliminary stage of the proceedings.

#### THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

38. The key issue for the Tribunal to address in this case is the date on which the Applicant had notice, or ought reasonably to have known, of the disputed employment matter triggering the time limit for the pursuit of internal remedies. *See Motabar*, Decision No. 346 [2006], para. 16, citing *Thomas*, Decision No. 232 [2000], paras. 29, 31. *See also Prescott*, Decision No. 234 [2000], para. 28. In *Alrayes (Preliminary Objection)*, Decision No. 520 [2015], para. 65, the Tribunal held that “the *dies a quo* is still the date when the staff member ought reasonably to have been aware that the claim was rejected by the Bank [...]. A challenge to that rejection must be filed with PRS within 120 days.”

39. In identifying the date the Applicant knew or reasonably should have known of the disputed employment matter, the Tribunal observes that the disputed employment matter concerns the

decision to maintain an access restriction on the Applicant's record pursuant to allegations that she made threats against another World Bank staff member. As was held in *Q*, Decision No. 370 [2007], para. 50, the Bank is not "precluded from entering and maintaining flags as a preliminary safeguard pending due process, nor must it condition its decisions and actions on the responses of a potentially aggrieved, aggressive or unstable current or former staff member who has been excluded." The Tribunal has recognized that "[m]aintaining security is a fundamental duty of the Bank to its staff, and to the integrity of the institution, and access to Bank premises is necessarily influenced by security considerations." *Id.*, para. 37.

40. However, the Bank must engage in a

good-faith effort to garner the staff member's informed response to the allegations made against him or her, for the purpose of providing an objective decision-maker with sufficient evidence to be able to determine the true nature of the facts and reach a well-founded decision as to whether the flags are to be maintained or removed pursuant to Bank rules and policy. (*Id.*, para. 50.)

41. Additionally, the Bank is "obliged to make expressly clear to the [a]pplicant the nature, duration and rationale of each flag placed in Bank records." *Id.*, para. 42. The staff member has a right to reply and must be "provided with sufficient information to exercise her right to defend herself." *See DK (No. 2)*, Decision No. 591 [2018], para. 97.

42. According to the Bank, the Human Resources Specialist's 24 September 2018 email contained the decision which the Applicant should have challenged, but she failed to do so in a timely manner. The Bank relies on the Tribunal's statements in *Al-Muthaffar*, Decision No. 502 [2014], para. 36, to contend that the Applicant should not be permitted to toll the time limit by requesting an "administrative review of alleged 'administrative decisions' which do not constitute separate administrative decisions but which are simply re-confirmations of the original administrative decisions." To the Bank, the 21 December 2018 email from the Manager, HRDCO was merely a re-confirmation of the initial access restriction conveyed on 24 September 2018.

43. The Tribunal finds the Bank's contention unavailing. Not only is *Al-Muthaffar* distinguishable from the present case due to materially different facts, the legal principles in *Al-*

*Muthaffar* are inapplicable as this case concerns the imposition of access restrictions where the staff member has the right of reply and should be provided the opportunity to challenge the access restriction prior to a decision on whether the restriction should be maintained or removed. Given that the Applicant had a right of reply, if she elected to exercise that right then “the *dies a quo* is [...] the date when the staff member ought reasonably to have been aware that the claim was rejected by the Bank [...]. A challenge to that rejection must be filed with PRS within 120 days.” *Alrayes (Preliminary Objection)*, para. 65.

44. The record shows that it was only on 29 October 2018, after the Applicant’s persistent requests for information, that she was finally provided with a piece of information which enabled her to deduce that the allegation concerned her Annual Review conversation with her manager. On this date, the Manager, HRDCO informed the Applicant, for the first time, when the alleged threats were made and told her to check her “calendar as to whom [she] spoke with on that day.” On 2 November 2018, once the Applicant had received the date of the alleged incident, she submitted a response to the allegation that she threatened her manager during the Annual Review meeting which resulted in the access restriction. The Applicant requested that the Manager, HRDCO “immediately withdraw the access restrictions” after “reviewing [her] version of [the] events.”

45. Having reviewed the Applicant’s comments, “consulted further with the Corporate Security team,” and discussed with the Applicant’s manager, the Manager, HRDCO decided that the Applicant’s “limited access restriction will remain in place.” This decision was conveyed to the Applicant on 21 December 2018.

46. There is no support in the record for the Bank’s contention that the email of 21 December 2018 merely re-confirmed the decision communicated in the 24 September 2018 email. The record shows that there was additional consultation between the HRDCO’s office and WBG Security following receipt of the Applicant’s response. This demonstrates that the 21 December 2018 decision by the Manager, HRDCO to keep the access restriction in place was not merely an explanation of the 24 September 2018 decision, but rather the result of an assessment of whether continuation of the access restriction was necessary. This finding is supported by the statement of

the Manager, HRDCO that he spoke with the Applicant's manager who claimed she had "continued concern(s) for her safety."

47. The Tribunal therefore finds that the *dies a quo* for the purposes of challenging the access restriction before PRS is 21 December 2018. It is on that date that the Applicant, having provided a response to the allegations, was notified that her claim, *i.e.*, her request for the access restriction to be lifted, was rejected. The Applicant had 120 days from 21 December 2018 to submit a request for review to PRS challenging this decision. She did so on 31 January 2019, well within the time limit. The Applicant's claim was submitted in a timely manner before PRS and is thus admissible before the Tribunal.

48. The Tribunal notes that, in her Application, the Applicant raised claims concerning the denial of due process regarding the access restriction. This includes her contention that she was provided insufficient notice of the allegation. These contentions were raised and addressed by the parties in this preliminary phase. As the claim on the access restriction will advance to the merits, the Tribunal will address all arguments concerning due process at that stage.

#### 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 \$10,000.00 for the preliminary objection phase of the proceedings.

/S/ Andrew Burgess

Andrew Burgess  
President

/S/Zakir Hafez

Zakir Hafez  
Executive Secretary

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

---

\* 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.