



World Bank Administrative Tribunal

2020

Decision No. 631

**FM,
Applicant**

v.

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

(Preliminary Objection)

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

**FM,
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 3 September 2019. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. 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 is challenging (i) the Bank's failure to provide her with medical support or information; (ii) the Bank's failure to provide the Applicant with a reasonable work accommodation to a non-tropical area; (iii) the non-confirmation of the Applicant's employment and the extension of her probationary period; (iv) the Bank's failure to implement its agreement to pay the Applicant in U.S. dollars (USD) in a timely manner; (v) the Bank's failure to make certain payments to the Applicant, including her salary, her Scarce Skills Premium (SSP), the Special Compensation Measure (SCM), benefits, and her resettlement costs at the time of the termination of her appointment; (vi) mismanagement of the Applicant's career; (vii) "[u]nfair and discriminatory treatment, resulting in constructive discharge"; and (viii) the denial of the Applicant's workers' compensation benefits.
4. The Bank filed preliminary objections to the Application on 16 October 2019. This judgment addresses the Bank's preliminary objections.

FACTUAL BACKGROUND

5. The Applicant is an Italian national who worked at the Bank from 2002 to 2006 on various short term consultant appointments. Before working at the Bank, the Applicant had established herself as a health and nutrition specialist in international development, having worked for several international agencies and international development organizations. She has degrees in International Relations, Emergency and Development, and Public Health, as well as certificates in Emergency Health, Epidemiology, and Bio-Statistics.

6. On 28 July 2015, the Bank posted the position of Health Specialist for a three-year term appointment in Freetown, Sierra Leone. On 1 October 2015, the Practice Manager of the Health, Nutrition, and Population (HNP) Global Practice offered the Applicant the position after she had undergone a competitive selection process. The Applicant replied by email the following day that she would be happy to accept, but that she needed more information regarding the employment conditions before proceeding.

7. The Applicant claims that the Practice Manager told her that the salary for the position would be approximately \$75,000.00.

8. On 24 November 2015, the Applicant received a letter from a Senior Human Resources Business Partner that stated that the Bank “intends to offer” her the Health Specialist position. The proposed salary was listed as Sierra Leonean leones (SLL) 164,600,000.00 per year. The Applicant claims that at the time this amount was equal to approximately \$40,000.00. The letter also stated that the Applicant was eligible for Localization Plus benefits plus 50% of her annual net salary as an SSP. The offer included a probationary period of one year.

9. During January 2016, the Applicant exchanged emails and telephone calls with Human Resources (HR). On 15 and 17 January 2016, the Applicant emailed HR Operations to inquire about the relocation process from Zambia, where she had been working, to Freetown, Sierra Leone, as well as about a retirement pension, residential security, and hazard or hardship allowances. She

stated in the email of 17 January 2016 that she was “worried because of the local recruitment status instead of international.”

10. On 25 January 2016, the Applicant received a Letter of Appointment (LOA) dated 22 January 2016 for a three-year term appointment as a Health Specialist, Level GF, with the HNP Global Practice, to be based in Freetown, Sierra Leone. The LOA stated that the Applicant’s appointment would be effective as of 17 March 2016 and would be subject to local recruitment. The LOA listed her initial salary as SLL 164,600,000.00 per year.

11. Also on 25 January 2016, the Applicant received a Memorandum of Indefinite Assignment (Assignment Memo) to Freetown, Sierra Leone. On 28 January 2016, HR sent the Applicant a revised Assignment Memo. The Assignment Memo specified that all allowances and benefits listed in the Memo would be paid to the Applicant in the currency of her salary. The Assignment Memo also listed certain benefits and allowances the Applicant would receive. These included relocation benefits, which were composed of a subsistence grant for a pre-assignment visit, a grant for the travel costs associated with the relocation travel, and either payment and handling of shipping costs for the shipping of household goods or an optional removal grant for the Applicant to make her own shipping arrangements. The Assignment Memo also stated that the Applicant was eligible to receive a lump sum relocation grant, a temporary living allowance, education benefits, home country travel benefits, and a rental allowance.

12. The Applicant continued to exchange emails with HR at the end of January 2016 with regard to the salary and benefits that were offered to her. By an email of 26 January 2016, she asked about information regarding her SSP, Localization Plus benefits, and Mobility Allowance. On 28 January 2016, HR informed the Applicant that the Assignment Memo addressed her Localization Plus benefits. On 29 January 2016, HR informed the Applicant by email that she was entitled to an SSP of SLL 82,300,000.00 per year, and that this would be communicated to her in a separate letter. The Applicant again inquired about a Mobility Allowance of \$15,900.00 on 31 January 2016. HR responded to the Applicant on 1 February 2016 and stated that the Mobility Allowance component was an erroneous repetition on HR’s part of the Applicant’s rental allowance. On 2 February 2016, HR emailed the Applicant and informed her that the Bank had

exceptionally decided to grant her an SSP equivalent to 100% of her annual salary, rather than 50%.

13. On 2 February 2016, the Applicant electronically signed the LOA.

14. On 8 February 2016, the Applicant received an addendum to her Assignment Memo (SSP Memorandum) that addressed the SSP. The SSP Memorandum stated that the SSP would be paid on a quarterly basis in an amount of SLL 41,150,000.00 per quarter. The SSP Memorandum also stated that, since the SSP was not part of the Applicant's net annual salary, it would not be included in any benefit calculations. The Applicant signed the SSP Memorandum on the same day.

15. On 28 February 2016, the Applicant left Zambia and arrived in Freetown, Sierra Leone, on 1 March 2016 for a pre-assignment visit that was paid for by the Bank.

16. On 17 March 2016, the Applicant joined her duty station in Freetown. The Bank paid for her travel and the shipment of her goods. The Bank's Country Office in Freetown had a policy of providing transportation services to all its staff for meetings until 30 June 2016.

17. The Applicant describes the conditions in Freetown and particularly in her residence in Freetown as follows. The Applicant emphasizes the difference between the official exchange rate published on reputable currency exchange websites and the actual exchange rates at commercial banks or with street dealers in Freetown. She claims that the actual exchange rate was much worse and only deteriorated over time, which led to her salary being less than she expected. The Applicant also claims that she faced difficulties opening a bank account and receiving her salary in Freetown for five months due to a freeze on opening new bank accounts in Sierra Leone. The Applicant contends that she faced economic hardship as a result, and she therefore had trouble finding a place to live that she could afford.

18. The Applicant eventually found an apartment, but she claims that the apartment had "structural problems," such as collapsing roofs, as well as constraints on access to the road. The Applicant states that she was unable to afford a car with her salary, and the Bank denied her

requests for the use of an official car. She states that she “was therefore forced to take taxis that were ‘heavily infested with mosquitoes’ to go to and from her numerous work meetings during the day which were always located far from the World Bank offices.”

19. In April 2016, the Applicant was authorized to travel to Washington, D.C., for a period of one month. While in Washington, D.C., the Applicant went to the Health and Safety Directorate (HSD) and met with a Field Health Specialist, who provided the Applicant with information about the medical services available at the Bank, as well as the overseas medical emergency information. The Applicant received hematological tests at the Health Clinic, and she also requested and received a travel pack with anti-malaria prophylaxis that was sufficient for a few weeks. The Applicant claims that she did not receive a detailed pre-assignment briefing from the HSD.

20. Throughout April and May 2016, the Applicant exchanged emails with a Resource Management Analyst about the question of whether her salary would be paid to her in USD or SLL. The Resource Management Analyst requested the Applicant’s banking information multiple times so that her salary could be deposited into her account in SLL. In an email of 26 April 2016, the Resource Management Analyst told HNP’s Practice Manager that “Payroll forwarded the payments to be made early this month (April 5, 2016) but rather staff refused to accept payment in Sierra Leone Leones.” The Applicant replied on the same day that she had not refused to accept payments, but rather she was contesting the amounts of the payments as well as pointing out that certain payments had not been included. A Senior HR Business Partner clarified to the Resource Management Analyst by email on 13 May 2016 that HR had approved the benefit payments to be made to the Applicant as a one-time exception in USD. She further clarified that salary, the rental allowance, and the SSP were to be paid in local currency, while all other benefit payments could be disbursed in USD.

21. The Applicant returned to Freetown on 17 May 2016. On 26 May 2016, she became ill. She underwent hematological tests in Freetown, and she states that she was diagnosed with malaria. She further claims that she was advised by her doctor to complete the travel pack of anti-malaria prophylaxis that she had received at the Bank. On 3 June 2016, she underwent further testing after completing the travel pack, and she was then told that she was malaria-free.

22. On 29 June 2016, the Bank provided legal clearance for the Applicant's benefits to be paid in USD on an exceptional basis. The Applicant continued to have trouble setting up a local bank account in Freetown through July 2016, due to local restrictions on opening new bank accounts.
23. On 30 August 2016, the Applicant left Sierra Leone and traveled to her home country of Italy on annual leave. On 9 September 2016, she claims to have fallen "violently ill." The Applicant was subsequently hospitalized in an intensive care unit and was diagnosed with malaria, hemorrhagic fever, and other medical complications, including Disseminated Intravascular Coagulation.
24. On 9 September 2016, the Applicant went on Short-Term Disability (STD) while she was still in Italy.
25. The Applicant was discharged from the hospital in Italy on 19 September 2016.
26. On 9 October 2016, the Applicant traveled on mission to Washington, D.C., to attend a work meeting. While there, she fell ill again. The Applicant subsequently sought medical assistance from the HSD where she was referred to a hematology specialist at George Washington University Hospital.
27. The Applicant's Bank-sponsored health insurance initially refused to cover her costs for the hospital stay in Washington, D.C., because the costs were incurred outside her duty country and she was locally recruited. However, on 24 October 2016, a Field Health Specialist at the HSD intervened to assist the Applicant. The Field Health Specialist told the Applicant to proceed to the emergency room at George Washington University Hospital and created a medical evacuation travel request for her, which allowed the insurer to guarantee coverage of the Applicant's full costs during her D.C. hospital stay.

28. While at George Washington University Hospital, the Applicant was diagnosed with and treated for malaria. After she was stabilized and cleared for travel, she traveled back to Italy via medical evacuation on 30 October 2016.
29. In November 2016, the Bank implemented the SCM for Sierra Leone. This was implemented due to the currency depreciation in Sierra Leone, and it allowed the Bank to pay staff members in Sierra Leone an additional percentage of their salary per month, until the rate of currency depreciation lessened.
30. On 21 November 2016, the Applicant filed a workers' compensation claim.
31. On 30 November 2016, the Bank's Disability Insurance Program Administrator, the Reed Group, told the Applicant that she was declared medically fit to return to work on 1 December 2016 on a reduced schedule of four hours a day and with telecommuting. The Applicant's physician stated that she was fit to return to work "in a suitable duty station in non-tropical areas."
32. On 20 December 2016, the Reed Group informed the Applicant that her medical recommendation for modified duty did not meet the business needs of the unit, and she would therefore remain on STD. The Applicant made further requests for a reasonable work accommodation, and one was denied on 15 February 2017.
33. On 2 February 2017, the Applicant filed a request for mediation with Mediation Services.
34. On 3 February 2017, the Reed Group informed the Applicant that her claim for workers' compensation benefits had been denied, "as it does not fall within the Workers' Compensation guidelines. Based upon our review we found that your illness did not arise as a direct result of your employment." The Applicant was told that she had ninety days from the receipt of that communication to request reconsideration.
35. The Bank claims that on 22 February 2017 the new Practice Manager of HNP held a mid-year performance discussion with her, during which he communicated his decision to extend her

probationary period for another six months. The Applicant requested to work from home or undertake mission travel, but the Practice Manager denied her requests.

36. On 24 February 2017, an HR Specialist, Compensation and Benefits emailed the Practice Manager, asking whether the Applicant's SSP should be suspended while she was on STD.

37. On 27 February 2017, the Practice Manager sent the Applicant an email confirming his decision to extend her probationary period for six months.

38. On 3 March 2017, the Practice Manager told the HR Specialist, Compensation and Benefits to continue paying the SSP to the Applicant until the end of her STD period.

39. On 8 March 2017, the Practice Manager told the Applicant by memorandum that her appointment would not be confirmed at the end of her first year, but rather that she would stay on probation for another six months until 18 September 2017. The Practice Manager further told the Applicant that, since she had performed only six months of work during her current probationary period, he was unable to make a confirmation decision with the available information. The Applicant signed this memorandum on 16 March 2017.

40. On 9 March 2017, the Applicant was informed by the Payroll team that a correction to the SCM calculation would be introduced in March due to her STD.

41. The Applicant claims that the Bank stopped paying the Applicant's SSP in March 2017.

42. In April 2017, the Bank accepted on an exceptional basis that the Applicant's salary would be paid to her in USD.

43. On 5 April 2017, Mediation Services closed the mediation, as the parties could not reach an agreement on the issues.

44. On 20 April 2017, a Senior Occupational Health Specialist with the HSD told the Applicant by email that return to work accommodations are at the discretion of the business needs of the unit, and as such there was no available job for the Applicant in HNP other than the posting in Sierra Leone. The Senior Occupational Health Specialist encouraged the Applicant to seek opportunity in a position that would meet her needs.

45. Throughout April and May 2017, the Applicant contested certain deductions in payments that she had received. An HR Analyst, Compensation and Benefits confirmed to the Applicant by email on 21 April 2017 that there was an inconsistency with the calculation for the Staff Retirement Plan contribution, but that the inconsistency was being investigated. The Applicant continued to raise issues regarding the amounts that she received.

46. On 2 May 2017, the Applicant submitted her request for reconsideration of the denial of her workers' compensation benefits to the Reed Group.

47. In the meantime, on 12 May 2017, a position in HNP of a Senior Health Specialist, Level GG was posted as an international appointment by the Bank. The Applicant applied for that position, as well as other positions at the Bank for health or nutrition specialists in Washington, D.C. She was not selected for any of the positions.

48. The Applicant claims that she filed a second mediation request on 22 May 2017. The Bank claims that this mediation was requested on 20 June 2017.

49. On 30 May 2017, the Reed Group upheld the denial of the Applicant's workers' compensation benefits for the time period of 9 September 2016 forward because the Applicant was considered a local resident of Sierra Leone and was not on mission travel at the time she was hired by the Bank. The Reed Group stated that the Applicant "would have been exposed to the organisms that caused [her] medical conditions whether [she was] a staff member of the World Bank or not."

50. On 30 June 2017, the Applicant filed a request for review with Peer Review Services (PRS), Request for Review No. 390. On 18 July 2017, PRS partially dismissed the Applicant's

claims regarding medical, disability, and workers' compensation benefits, as PRS did not have jurisdiction to review those claims. PRS accepted review of the Applicant's claim relating to the extension of her probationary period, as well as her claims regarding non-payment matters and career mismanagement, to the extent that those claims were timely.

51. On 28 August 2017, the Applicant requested administrative review of her workers' compensation claim.

52. On 6 September 2017, the second mediation was closed because the parties could not reach an agreement on the issues.

53. On 14 November 2017, PRS sent the Applicant a further decision in an Office Memorandum. The PRS Panel determined that the Applicant's claim regarding the extension of her probationary period was filed in a timely manner. The PRS Panel also determined that, with regard to her claims about the alleged non-payment matters and career mismanagement, the PRS Panel would consider allegations supporting those claims to the extent that they were timely. The PRS Panel further concluded that the Applicant's claim regarding her request for return to work accommodations was not filed in a timely manner.

54. On 18 January 2018, the PRS Panel issued the recommendations in Request for Review No. 390. The PRS Panel found that management acted consistently with the Applicant's contract of employment and terms of appointment when it made the decision to extend her probationary period and the decisions regarding the alleged non-payment matters. The PRS Panel did not find that the Bank had mismanaged the Applicant's career with regard to those decisions. Specifically, the PRS Panel found that the reasons management provided for the decision to extend the Applicant's probationary period were credible and objective, and that a proper process had been followed in making the decision. The PRS Panel further concluded that there was no basis for the Applicant's claims of non-payment of her salary and benefits. The PRS Panel recommended that the Applicant's requests for relief be denied.

55. On 25 January 2018, the Vice President of Human Development informed the Applicant that he had accepted the PRS Panel's recommendations.

56. On 14 February 2018, the Applicant informed the Practice Manager by email of her resignation effective 16 February 2018.

57. On 16 February 2018, the Practice Manager accepted her resignation effective on the same date and waived the applicable notice requirements.

58. On 1 June 2018, the Reed Group submitted a response to the Applicant's request for administrative review of her workers' compensation claim. In the response, the Reed Group stated, "Due to her already established residence in an African country (Zambia), where [m]alaria is prevalent, Reed Group has determined that [the Applicant's] disability/illness did not definitively arise out of and in the course of employment with World Bank and thus [the Applicant] is ineligible for benefits." The Reed Group further stated that it was unable to confirm that the Applicant's exposure to malaria occurred after she was stationed in Sierra Leone.

59. On 28 February 2019, the Workers' Compensation Administrative Review Panel (ARP) issued its decision on the Applicant's workers' compensation claim. ARP affirmed the denial of the Applicant's claim by the Reed Group. ARP found that the Applicant "failed to set forth facts which indicate either that the contraction of the disease was a direct result of her employment, or that she had an increased risk when compared to the general population of the area." According to ARP, since the Applicant's contract was subject to local recruitment, she should be treated in a manner consistent with other locally recruited staff and the local population. ARP noted that, since the condition at issue was common to the area, the Applicant needed to prove that her work-related activities exposed her to an "increased risk of infection as opposed to the general risk borne by other members of the general public living in Sierra Leone." ARP concluded that the Applicant failed to provide any evidence that her employment created an increased risk of exposure and, rather, the Applicant had pointed to multiple instances of potential exposure in her personal, non-working environment. ARP further found that the Applicant failed to meet her burden of proving the causal relationship between her employment and her illnesses.

60. The Applicant filed her Application with the Tribunal on 3 September 2019. She contests the following: (i) the Bank's failure to provide her with medical support or information; (ii) the Bank's failure to provide the Applicant with a reasonable work accommodation to a non-tropical area; (iii) the non-confirmation of the Applicant's employment and the extension of her probationary period; (iv) the Bank's failure to implement its agreement to pay the Applicant in USD in a timely manner; (v) the Bank's failure to make certain payments to the Applicant, including her salary, her SSP, the SCM, benefits, and her resettlement costs at the time of the termination of her appointment; (vi) mismanagement of the Applicant's career; (vii) "[u]nfair and discriminatory treatment, resulting in constructive discharge"; and (viii) the denial of the Applicant's workers' compensation benefits.

61. The Applicant requests the following remedies: (i) coverage under workers' compensation for the Applicant for all of her medical costs arising from her injuries incurred due to her work in Sierra Leone, both retroactively and prospectively; (ii) the difference between the salary and benefits for Internationally Recruited staff and the salary and benefits paid to the Applicant under her local recruitment contract; (iii) the difference between the Applicant's salary paid in SLL and what the salary would have been if paid in USD, using actual exchange rates between June 2016 and April 2017; (iv) the difference between the Applicant's SSP paid in SLL and what those amounts would have been if paid in USD, using actual exchange rates between June 2016 and March 2017; (v) the amount of the SSP that should have been paid to the Applicant between March 2017 and 14 February 2018, to be paid in USD; (vi) the amount of the SCM that should have been paid to the Applicant through the end of her employment on 14 February 2018, to be paid in USD; (vii) the increase in the lump sum benefit amount paid to the Applicant at the time of her termination, if her contributions to the pension plan had been calculated on a USD salary instead of an SLL salary; (viii) payment of 30% of the Applicant's salary between 9 September 2016 and 14 February 2018 that was deducted when she was on STD; (ix) payment of remaining monies owed to the Applicant, including but not limited to her rental allowance between April and June 2016; (x) payment of the cost of the Applicant's travel to Washington, D.C., in November 2017 for the hearing in PRS Request for Review No. 390; (xi) the costs associated with the Applicant's repatriation from Sierra Leone to Italy, including \$10,941.75 for the shipment of her household goods, \$1,712.00 for travel, and a Relocation Grant of \$5,000.00; (xii) payment of any remaining

denied or unpaid medical claims; (xiii) compensation for the Applicant's pain and suffering in an amount of no less than two years' salary; and (xiv) legal fees and costs in the total amount of \$58,906.68.

62. On 16 October 2019, the Bank filed preliminary objections with the Tribunal.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Main Contentions

63. The Bank contends that the Applicant's claims before PRS are all either time-barred or in observance of her LOA. The Bank states that Staff Rule 4.02, paragraph 2.01, provides for the Manager the ability to extend a staff member's probationary period, and the Applicant's LOA also included the possibility of the extension of the probationary period. The Bank claims that, in any case, the Applicant's challenge of the Bank's decision to extend her probationary period was time-barred, as she received notice of that extension on 22 February 2017. The Bank contends that the Applicant should have filed her Request for Review before PRS in this regard by 22 June 2017, but that she did not file the request until 30 June 2017. The Bank adds that mediation did not toll the deadline for the Applicant to file her claim before PRS because neither mediation addressed the issue of the extension of her probationary period.

64. The Bank contends that the Applicant's claim of career mismanagement is also time-barred, and it should be calculated from the date on which she received notice of her employment conditions, which would have been when she accepted her contract of employment or terms of appointment. The Bank states that the Applicant signed her LOA and Assignment Memo on 2 February 2016 and her SSP Memorandum on 8 February 2016. The Bank notes that the Applicant filed this claim before PRS on 30 June 2017, which is beyond the 120-day deadline. The Bank contends that, even if the Applicant could not have been aware of the conditions of her employment until she moved to Sierra Leone, that would still put the date of notice on 17 March 2016, when the Applicant joined her duty station in Freetown, and her claim before PRS was still filed after the deadline had passed.

65. The Bank contends that the Applicant's challenge to the alleged refusal of the Bank to provide her a reasonable work accommodation is also time-barred. According to the Bank, the Applicant received notice of the Practice Manager's decision not to grant her request for a work accommodation outside of a tropical area on 20 December 2016. The Bank claims that PRS took the two mediations into account when considering this claim but still found the claim untimely on 14 November 2017. The Bank states that from that date the Applicant should have filed the claim or a request for an extension of time before the Tribunal by 14 March 2018, but she filed a request for an extension of time with the Tribunal on 21 May 2018. The Bank states that, in any case, the Applicant, in her extension request, sought to appeal only the PRS report and not the PRS denial of consideration of the claim regarding a reasonable work accommodation.

66. The Bank contends that the Applicant's appeals from PRS decisions would not constitute interlocutory appeals because, when she was notified of the PRS dismissal of some of her claims on 18 July 2017 and 14 November 2017, she was notified of a decision. The Bank states that these decisions were decisions not to grant relief to the Applicant, and that they were different from intermediary procedural orders that would affect a pending outcome. According to the Bank, since those two decisions were final decisions of the specific claims that affected staff rights, they would have had to be appealed to the Tribunal within 120 days.

67. With regard to the Applicant's claim that the Bank failed to ensure her health and safety, the Bank contends that this claim too is time-barred. According to the Bank, the Applicant should have been reasonably aware of the Bank's alleged health and safety issues by 16 April 2016, as by that time she had sought out medical professionals at the Bank in Washington, D.C. The Bank contends that the Applicant therefore had until 16 August 2016 to file her claim before PRS, but she filed it on 30 June 2017. The Bank notes that, by Memorandum dated 18 July 2017, PRS determined that the Applicant's claim that the Bank had failed to ensure her health and safety was outside PRS jurisdiction, and the Applicant should have challenged this dismissal before the Tribunal within 120 days. The Bank notes that the Applicant filed a request for an extension of time before the Tribunal on 21 May 2018, which was after that 120-day limit.

68. The Bank claims that the Applicant's allegations relating to the non-payment of her salary and benefits are irreceivable decisions, since they were taken in observance of her contract of employment or terms of appointment. The Bank contends in this regard that the Applicant's LOA, Assignment Memo, and SSP Memorandum indicate that her salary, allowances, and benefits would be paid to her in SLL. The Bank notes that nothing in those documents creates an obligation for the Bank to convert the Applicant's salary into USD. The Bank contends that there is no breach of the Applicant's contract of employment or terms of appointment because the Bank specifically authorized the conversion of her salary and benefits to USD on an exceptional basis until April 2017, but this did not constitute an obligation to do so under her terms of employment.

69. The Bank contends that the Applicant's claim of constructive discharge is not properly before the Tribunal because she chose to resign from her position because she wanted a new job. The Bank states that this does not constitute a violation of the Applicant's terms of employment.

70. The Bank claims that the Applicant's challenge of the ARP decision falls outside the scope of the Tribunal's review, since it is not part of the Applicant's terms of appointment or contract of employment. The Bank contends that the Applicant's illness was outside the scope of employment, since there was no causal relationship between her illness and her employment. The Bank also claims that the Applicant has asked the Tribunal to change the workers' compensation standard to a presumption of compensability, in line with Washington, D.C., law on workers' compensation, but that the Bank is not subject to national or local law.

71. The Bank contends that the Applicant's challenge to the Bank's decision to pay her 70% of her salary while she was on STD from 9 September 2016 to 14 February 2018 is beyond the scope of the Tribunal's review, as it pertains to Bank policy. The Bank claims that the Applicant is challenging Staff Rule 6.22, paragraph 7.01 on "Disability Pay," and that the Tribunal has the jurisdiction to review whether there has been non-observance of her contract of employment or terms of appointment, but not to review policy matters.

72. The Bank contends that the Applicant has not successfully shown that there were exceptional circumstances preventing her from filing her claims in a timely manner. The Bank

states that the Applicant says that she was able to work after 1 December 2016, so she should have been able to request mediation or file a PRS request during that time. The Bank also claims that the Applicant was sending emails to HR and Payroll from September to November 2016, and so she could have taken actions to preserve her rights during that time.

The Applicant's Main Contentions

73. With regard to the Bank's contention that the Applicant should have appealed the dismissal by PRS of some of her claims within 120 days, the Applicant contends that staff members are not required to make interlocutory appeals during a PRS case. The Applicant notes that, during the course of a PRS case, PRS makes decisions on document production, witnesses, and jurisdictional matters, but that staff members do not have to appeal every one of these decisions independently to the Tribunal without waiting for the outcome of the case. The Applicant contends that such a requirement to file interlocutory appeals would "add layers of process to appeals [and] not only slow down the whole Internal Justice System ('IJS') and clog the Tribunal case load, but would also be hopelessly confusing for staff members."

74. The Applicant further contends that both PRS and the Bank, in attempting to remove mediation from tolling the deadline for appeals, calculated the mediation dates wrong and intruded into the confidential mediation discussions. The Applicant specifically claims that she requested the first mediation on 2 February 2017 and the second mediation on 22 May 2017 and not 20 June 2017 as the Bank contends. She contends that the first mediation was closed on 5 April 2017, but PRS chose an alternative date of 2 April 2017.

75. The Applicant claims that mediation tolls the deadline for filing appeals. In that regard, she stated that she gave "unsustainable terms of employment" as a reason for seeking mediation, which would seem broad enough to cover the extension of her probationary period. The Applicant contends that, in any case, the Bank's attempt to investigate the topics of discussion in a mediation constitutes an inappropriate intrusion into the confidential mediation process. She claims that, since mediation tolled the time period for her filing an appeal from the decision to extend her probationary period, this claim was filed before PRS in a timely manner.

76. Regarding her claim about the denial of a reasonable work accommodation, the Applicant notes that PRS did take the tolling of deadlines due to the first mediation into account but got the dates wrong. The Applicant claims that the correct dates for the first mediation were from 2 February 2017, not 3 February, to 5 April 2017, not 2 April. She also contends that PRS ignored the second mediation, which began on 22 May 2017. According to the Applicant, this led to PRS making an inaccurate calculation of the deadline for her to file a request for review, and she states that her claim was filed in a timely manner.

77. The Applicant contends that there were exceptional circumstances that excused the late filing of some of her claims. She states that, specifically in summer and fall of 2016, she was undergoing life-threatening medical crises and “fighting for her life.” The Applicant further contends that, at the time she signed her contract, she could not have realized that the currency depreciation at the time would reduce her earnings, that her SSP and SCM would be stopped when she went on STD later, and that being a local hire would result in the denial of appropriate medical coverage for her. The Applicant contends that, due to the exceptional circumstances of her case, the Tribunal should consider all her claims relating to the recruitment process and to the “unreasonable and unfair” terms of her employment contract.

78. The Applicant claims that the Tribunal has jurisdiction over the Applicant’s challenge to the decision of ARP. In this regard, the Applicant cites Staff Rule 6.11, paragraph 13.02, which states that a claimant may file an appeal to the Tribunal after receiving the final decision of ARP.

79. The Applicant further submits that the Bank’s contention that its actions regarding the payment of her salary and benefits were consistent with her LOA and SSP Memorandum is an argument on the merits, not on jurisdictional grounds. The Applicant states that, in any case, she is not claiming that the payment of her salary and benefits should have been in USD under the terms of her employment contract, but rather that there was a breach of a June 2016 promise to pay her salary and benefits in USD. The Applicant also claims that her SSP was discontinued without notice as of March 2017, despite a contrary commitment by management. She contends that both of these claims are within the jurisdiction of the Tribunal.

80. The Applicant contends that she has not challenged the Bank's disability program *per se*, but rather she is complaining that she should not have been on STD at all because she was available to work under a reasonable work accommodation. The Applicant further specifies that her claims relating to the SSP are not challenges to the policy, but rather her claims are that in April 2017 the Bank reneged on its June 2016 promise to pay her SSP in USD, and that the Bank cancelled her SSP when she went on STD.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Bank's alleged failure to provide the Applicant with medical support or information

81. The Applicant claims that the Bank failed to provide her with medical support or information about the availability of such support before and during her assignment in Sierra Leone. The Bank contends that this claim is time-barred because the Applicant should have been aware of the Bank's alleged health and safety issues by 16 April 2016 when she stopped at the Bank's Health Clinic and received medical tests and information about medical services at the Bank. According to the Bank, the Applicant had 120 days from that date to file a request for review with PRS but only did so on 30 June 2017. The Bank further contends that the claim is time-barred because PRS determined that the claim was outside PRS jurisdiction in a Memorandum dated 18 July 2017, and the Applicant did not file a request for an extension of time with the Tribunal until 21 May 2018.

82. The Applicant contends in response that she was not required to file an interlocutory appeal of the PRS determination that her claim was outside PRS jurisdiction. She further claims that her "brief" conversation on 16 April 2016 with a Field Health Specialist was inadequate, and that she could not have known until she fell ill in September and October 2016 that the Bank had not provided her with adequate protection or information. The Applicant also claims that there are exceptional circumstances that should excuse the late filing of this claim, as she was "fighting for her life in the summer and fall of 2016." In addition, the Applicant states that PRS did not dismiss this claim, as it dismissed her "medical, disability, and workers' compensation claims," which did not include her "generalized claims about the Bank's failure to safeguard her health and safety."

83. The parties' contentions relate to two preliminary issues: whether the Applicant exhausted internal remedies for her medical support or information claim and whether she filed the claim in a timely manner before the Tribunal.

Exhaustion of internal remedies

84. Article II(2) of the Tribunal's Statute provides the following:

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.

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

86. The Tribunal has also decided that "[e]xhaustion of internal remedies means formal remedies and includes timely recourse to the Appeals Committee [now PRS]." *Rittner*, Decision No. 335 [2005], para. 36. In this regard, the Tribunal has also held that "a staff member's failure to observe the time limits for submission of an internal complaint or appeal constitutes non-compliance with the statutory requirement of exhaustion of internal remedies (e.g., *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25-26)." *Malekpour*, Decision No. 320 [2004], para. 14.

87. The Tribunal will therefore determine whether the Applicant submitted her claim that she did not receive adequate medical support or information from the Bank to PRS in a timely manner. According to Staff Rule 9.03, paragraph 8.01, staff members have 120 days from when they received "notice of the disputed employment matter" to file a request for review with PRS. Staff Rule 9.03, paragraph 8.02, states that a staff member "receives 'notice' of a disputed employment matter when s/he receives written notice or ought reasonably to have been aware that the disputed

employment matter occurred.” This standard is consistent with the Tribunal’s jurisprudence. *See Motabar*, Decision No. 346 [2006], para. 13.

88. The Bank claims that the Applicant should have known of the alleged lack of adequate medical support or information from the Bank by 16 April 2016. The Applicant states, however, that she could not have known of the Bank’s alleged failure in this regard until she fell ill in September 2016.

89. The Applicant alleges first that she did not receive information or a briefing from the HSD prior to the beginning of her assignment on 17 March 2016. She further claims that she was exposed to health risks upon her arrival in Freetown, Sierra Leone, and that her job included regularly traveling to meetings in the field without the benefit of a Bank vehicle. She also states that, once she became ill in May 2016 and then again in September 2016, she did not know of the option to contact the HSD or receive support from them. She contends that she received some support from the HSD in October 2016 when she fell sick again in Washington, D.C.

90. Staff Rule 6.07 states in paragraphs 2.01–2.06 that staff members are eligible for the following health services from the HSD, if they are present at Bank headquarters at the time the health service is to be provided: treatment of minor illness, inoculation and preventive medication, health screenings “[t]o prevent severe chronic medical conditions,” and counseling on stress-related and psychological issues. Moreover, Staff Rule 6.07, paragraph 3.02, provides for a medical clearance to be conducted for “[h]eadquarters staff assigned to country offices, staff moving from one country office to another, and new international hires assigned to relocate to a country office.” Staff Rule 6.07, paragraph 4.01, allows for staff to be medically evacuated to the closest location where appropriate medical treatment can be provided, if appropriate treatment is not available to them locally. Staff Rule 6.07, paragraph 4.11, allows for coverage of all medical expenses of a staff member that he or she submits to his or her medical insurance plan for reimbursement in accordance with the provisions of the insurance plan.

91. The record shows that in April 2016 the Applicant traveled to Washington, D.C., where she met, on her own initiative, with a Field Health Specialist from the HSD for a few minutes. The Applicant also received medical tests and a travel pack with anti-malaria prophylaxis from the Bank's Health Clinic. On 12 May 2016, the Field Health Specialist followed up on their meeting in an email, in which she informed the Applicant of what to do in the case of a medical emergency and sent her relevant links to websites about the available health services. In the same email, the Field Health Specialist also acknowledged that the Applicant had not been provided a health briefing yet.

92. In addition, the Applicant describes multiple events and conditions that took place in Sierra Leone before October 2016, such as her being obliged to take taxis that were "heavily infested with mosquitoes" to travel to her numerous daily work meetings which were located far from the World Bank offices, and her illness in May 2016.

93. The Tribunal dealt with a "continuum" of complaints in *AH*, Decision No. 394 [2009]. In paras. 20–21 of that judgment, the Tribunal acknowledged that the applicant might not have had reason to conclude that there was a violation after every triggering event in the continuum. However, the Tribunal in that case still found that the applicant's claim was time-barred because it did not find it credible for the applicant not to have realized there was a potential violation until she was outside the requisite time period.

94. Here, the Applicant, on her own initiative, received some information and testing from the Bank in April 2016. However, she might not have known whether the information she received was adequate or complete. By April 2016, the Applicant had begun to be aware of the physical realities of her duty station, including that she would have to travel to meetings by taxi, rather than by Bank vehicle. The record shows that the Bank had a policy of providing transportation services, due to the Ebola outbreak in Sierra Leone, for meetings of the Country Office staff in Freetown, Sierra Leone, until 30 June 2016. The Applicant was informed in March 2016 that after 30 June 2016 the policy of the Bank would be to allow staff in Freetown to use Bank vehicles for Bank-related jobs during working hours only, unless there was an exceptional basis such as on medical grounds. The Applicant contends that, while she was not provided a Bank vehicle for her daily

work meetings and therefore relied on local taxis to travel to and from those meetings, she was allowed to take a Bank vehicle to go on field visits to hospitals and health centers both in Freetown and to regions outside Freetown.

95. The Applicant became ill first in May 2016 then in September and October 2016. She claims that during that time she did not know that she had the option to contact the Field Health Services Department for medical advice or assistance. She contends additionally that she did not know of the ability of the HSD to authorize medical evacuations to countries with adequate medical care. The Applicant claims that she did not receive medical support from the HSD until October 2016.

96. The Applicant did not receive a medical briefing before she left for her assignment in Sierra Leone in March 2016. The Applicant became aware that she could have received such a briefing only on 12 May 2016 by an email from a Field Health Specialist. However, the Applicant did not know or could not have known the content of such a medical briefing, its significance to the circumstances of the Applicant's assignment in Sierra Leone, and the risks that she faced in Sierra Leone in particular without the use of a Bank vehicle. In the circumstances of this case, the Tribunal accepts the Applicant's contention that 12 May 2016 could not be the *dies a quo*. The Applicant states that she did receive support from the HSD in October 2016. At that time, the Applicant should have known that the Bank had failed, as she claims, to provide her with adequate health information or support. However, the Applicant filed her PRS claim on 30 June 2017, which is more than eight months after October 2016 and clearly outside the 120-day time limit. Hence, the Tribunal finds that her claim to PRS was out of time. Since her claim was out of time before PRS, the Tribunal lacks jurisdiction over the claim because the Applicant failed to exhaust internal remedies in a timely manner.

Timeliness

97. The Bank has not only claimed that the Applicant did not file her Request for Review with PRS in the requisite time limit, but it also alleges that she did not file her claim or a request for an extension of time with the Tribunal in a timely manner either. Specifically, the Bank contends that

the Applicant should have filed her claim within 120 days of the date that PRS determined that the claim was outside PRS jurisdiction, which was 18 July 2017, but that she filed a request for an extension of time with the Tribunal only on 21 May 2018.

98. Article II(2) of the Tribunal’s Statute provides:

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

[...]

(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; or

(c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

99. In *DG*, Decision No. 528 [2016], para. 55, the Tribunal emphasized

the importance of the timely filing of applications and respect for time limits prescribed by Article II of the Statute “for a smooth functioning of both the Bank and the Tribunal.”

100. In *DZ (No. 2) (Preliminary Objection)*, Decision No. 590 [2018], para. 88, the Tribunal stated that

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.

101. The Applicant filed her Request for Review with PRS on 30 June 2017. In the Request for Review, she asserted the following: “I was not provided appropriate protection and safety in the performance of duties. I was subject to hazardous employment conditions that resulted in

disproportionate hardship and I contracted [a] life-threatening illness.” In a Memorandum dated 18 July 2017, PRS dismissed some of the Applicant’s claims due to lack of jurisdiction. With regard to her medical claims, PRS found that it

may not review Requests for Review concerning decisions about claims for disability insurance benefits or health insurance benefits provided to enrolled staff and dependents by the Medical Insurance Plan or the Medical Benefits Plan, and any other type of decisions for which specialized appeal procedures may be established or in relation to which it is specifically provided that peer review is not available.

PRS further described her medical claims as “claims regarding medical, disability, and workers’ compensation benefits.”

102. The Applicant contends that the PRS description of her claim did not apply to “generalized claims about the Bank’s failure to safeguard her health and safety,” and that it is thus not accurate to say that PRS dismissed her claim.

103. Under Staff Rule 9.03, paragraph 7.04(c), PRS does not review requests for review concerning “decisions about claims concerning workers’ compensation benefits, disability insurance benefits or health insurance benefits provided to enrolled Staff and dependents by the Medical Insurance Plan or the Medical Benefits Plan.”

104. The Applicant’s claim to PRS that she was insufficiently protected while in Sierra Leone and was caused hardship that led to her contracting a life-threatening illness implicates both workers’ compensation and health insurance benefits. The Applicant has made a similar claim with regard to workers’ compensation, namely, that the conditions in Sierra Leone and specifically the work she was required to do led to her becoming ill. In her Request for Review, the Applicant elaborated on her medical claim by stating both that there were hazardous conditions in Sierra Leone and that her health insurer refused to cover her medical expenses once she became ill. Both of these characterizations of her claim relate either to workers’ compensation or to her health insurance benefits. Therefore, the Tribunal finds that PRS did dismiss her claim relating to medical, disability, and workers’ compensation benefits.

105. The Applicant additionally contends that the PRS Memorandum of 18 July 2017 does not mark the date that her 120-day period to file a claim or extension of time with the Tribunal begins, as an appeal from that Memorandum would constitute an interlocutory appeal.

106. The question here is whether the Applicant should have filed the claim with the Tribunal within 120 days of the PRS decision to dismiss the claim on jurisdiction, rather than the date on which PRS completed consideration of all her claims.

107. The Tribunal considers that a decision by PRS to dismiss a claim for jurisdiction has a similar essence of exhaustion of the PRS process as a decision to dismiss a claim on the merits. According to Article II(2)(ii)(b) of the Tribunal's Statute, a staff member has 120 days to file a claim with the Tribunal after "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." The Applicant received notice that she would not be granted relief for her medical support and information claim when PRS dismissed that claim on 18 July 2017.

108. The Tribunal notes that Staff Rule 9.03, paragraph 7.02, states: "A Staff Member seeking a review of a disputed employment matter is required to submit the matter first to the Peer Review Services prior to appealing to the World Bank Administrative Tribunal, unless the matter comes under one of the exceptions listed in paragraphs 7.03 or 7.04 of this Rule." Those exceptions, however, do not apply here. Staff Rule 9.03, paragraph 2.01, defines a disputed employment matter as "[a] managerial action, inaction, or decision that is the subject of a Staff Member's Request for Review." Thus, under the PRS rules and practice, each separate claim has to be exhausted before coming to the Tribunal. The Tribunal follows a similar practice whereby each separate claim before the Tribunal must be filed in a timely manner within the requirements of Article II(2).

109. The Tribunal is mindful that it might be burdensome for staff members to file an appeal from jurisdictional decisions made by PRS, especially if they have multiple other claims before PRS that proceed to the merits phase. In such circumstances, staff members may seek guidance from the PRS Secretariat or the Tribunal Secretariat regarding the best course of action. For example, in a case where a staff member receives a jurisdictional dismissal of a claim but has other

pending claims before PRS, the staff member can request an extension of time from the Tribunal to file an application challenging those dismissed claims until the PRS process is complete. The Tribunal has granted such requests in the past.

110. Here, the Applicant did not seek any guidance from the PRS or the Tribunal Secretariats. She seems to have taken the position that these would be interlocutory appeals and thus the 120-day requirement would not apply. In sum, the record shows that in the present case the Applicant received notice that she would not be granted relief for her medical support and information claim when PRS dismissed that claim on 18 July 2017. She had 120 days from that date to file a request for an extension of time or her claim to the Tribunal. But she filed a request for an extension of time on 21 May 2018, which was significantly outside the 120-day period.

111. The Applicant alleges that there are exceptional circumstances that should excuse the late filing of this claim, as she was “fighting for her life in the summer and fall of 2016.”

112. The Tribunal observed in *Malekpour*, para. 22:

The burden is on the Applicant to show that “exceptional circumstances” exist which justify relief from or suspension of the exhaustion requirement in Article II(2) of the Statute of the Tribunal. (*Hristodoulakis*, Decision No. 296 [2003], para. 17.) [...] “[M]ere inconvenience,” the Tribunal has ruled, “is not sufficient” to constitute “exceptional circumstances.” (*Hristodoulakis*, *id.*)

113. The Tribunal has also stated that it takes a “strict approach” in determining what constitutes exceptional circumstances and that “[e]xceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent ‘contemporaneous proof.’” See *Brace (Preliminary Objection)*, Decision No. 621 [2019], para. 51; *BI (No. 5) (Preliminary Objection)*, Decision No. 564 [2017], para. 20, citing *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30.

114. The Applicant’s assertion of exceptional circumstances hinges on her illness in September and October 2016. However, the earliest she could have brought her claim to the Tribunal would have been after the PRS decision to dismiss her claim, which was taken on 18 July 2017. Therefore,

the Tribunal finds that the Applicant has not alleged exceptional circumstances that occurred within the requisite time period that may have excused the late filing of her claim.

Bank's alleged failure to provide the Applicant with a reasonable work accommodation

115. The Bank contends that the Applicant's claim that the Bank failed to provide her with a reasonable work accommodation was taken in observance of the Applicant's terms of appointment and is also time-barred. With regard to timeliness, the Bank claims that, since PRS found that it did not have jurisdiction over this claim on 14 November 2017, the Applicant should have filed an application or a request for an extension of time with the Tribunal within 120 days of that date but did not do so. The Applicant contends that she was not required to file an interlocutory appeal of the PRS determination that it did not have jurisdiction over her claim.

116. The Bank further contends that the Applicant's claim addresses a decision that was taken in observance of the Applicant's terms of appointment, as there was no obligation on its part to create a new position for the Applicant, select her for an available job, or provide her with a work accommodation in another country.

117. 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.

118. In *McKinney*, Decision No. 183 [1997], paras. 13–17, the Tribunal stated:

The Tribunal's jurisdiction in this case [under Article II(1) of the Tribunal's Statute] turns, therefore, upon whether the [a]pplicant has "alleged" a plausible claim of contract violation.

[...]

It is sufficient for the Tribunal to exercise jurisdiction that the [a]pplicant has tenably “alleged” that there are circumstances that warrant an examination of the merits of his allegations.

Whether the [a]pplicant can sustain his case is a matter to be determined at the next stage, at which the merits are addressed through the conventional exchange of pleadings. It 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.

See also BO, Decision No. 453 [2011], para. 49.

119. The Applicant contends that she was not provided a reasonable work accommodation in contravention of the Bank’s Guidelines on “Accommodations for People with Disabilities & Assistance to Severely Disabled Staff” and the Bank’s Disability Toolkit.

120. In *BO*, the applicant claimed that the Bank violated its own guidelines and procedures, one of which included a protocol detailing senior management involvement in managerial appointments. The Tribunal in *BO* accepted that claim on the merits and stated in para. 50 that “[the applicant] has alleged ‘a plausible claim of contract violation’ or ‘has tenably “alleged” that there are circumstances that warrant an examination of the merits of the allegations.’ Whether these claims are sustainable is not a jurisdictional question, but a matter for the merits.”

121. In the present case, the Bank’s contention is similarly a matter for the merits, rather than the preliminary objection phase.

122. The Tribunal will now address the Bank’s preliminary objection that this claim is time-barred.

123. On 14 November 2017, the PRS Executive Secretary sent the Applicant a Memorandum in which PRS decided to dismiss her claim regarding her request for return to work accommodations on the basis that it was not filed before PRS in a timely manner. The determination of timeliness relies on whether the PRS dismissal constituted a decision that the Applicant must have challenged before the Tribunal within 120 days.

124. As in the Applicant's medical support and information claim above, the PRS decision on 14 November 2017 provided notice to the Applicant that relief from the PRS would not be granted for her claim regarding a reasonable work accommodation. The Applicant thus had 120 days from 14 November 2017 to file a request for an extension of time or a challenge to the PRS dismissal of her claim with the Tribunal. She filed a request for an extension of time on 21 May 2018, which was outside of the 120-day period. The Tribunal finds that her claim was not filed in a timely manner.

Extension of the Applicant's probationary period

125. The Bank claims that the extension of the Applicant's probationary period is in observance of her LOA. The Bank also contends that this claim is time-barred.

126. The Bank contends that the possibility for an extension of the Applicant's probationary period is provided in Staff Rule 4.02, paragraph 2.01, which allows managers to extend staff members' probationary periods. Furthermore, the Applicant's LOA also indicated that the Applicant's appointment would be subject to a probationary period of one year, which could be extended for up to one additional year.

127. The Tribunal notes that the Bank's claim that the extension of the Applicant's probationary period is in observance of her LOA is a contention on the merits, rather than in the jurisdictional context. The Tribunal allows flexibility in determining whether a staff member has stated a plausible claim that it will choose to review. Here, the Applicant has challenged the extension of her probationary period in the context of non-confirmation. The Tribunal has reviewed non-confirmation decisions and the decision to extend a staff member's probationary period several times in its jurisprudence. *See, e.g., McNeill*, Decision No. 157 [1997]; *Schiesari*, Decision No. 314 [2004]. Therefore, the Tribunal finds that the Applicant has stated a plausible claim that necessitates review on the merits.

128. The Bank contends that, if the Tribunal accepts the Applicant's challenge to the extension of her probationary period, the claim remains time-barred. The Bank contends specifically that the

Applicant received notice of the extension of her probationary period on 22 February 2017 and thus had until 22 June 2017 to file a claim before PRS, but that she filed the claim only on 30 June 2017. The Bank states also that mediation did not toll this claim because neither mediation that the Applicant was involved in would have addressed the issue of the extension of her probationary period. The Applicant responds that the mediations did toll this claim because the first mediation covered “unsustainable terms of employment,” which she states seems to be a broad enough category to include the extension of her probationary period. The Applicant additionally contends that the Bank’s “attempt to investigate the likely topics of discussion in mediation intrudes inappropriately into the strictly confidential mediation process.”

129. In *DZ (No. 2) (Preliminary Objection)*, paras. 87–88, the Tribunal held:

[T]he 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.

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.

130. The parties disagree on the date that should be considered as the *dies a quo* for calculating whether the Applicant’s claim was filed in a timely manner. The record shows that, in an email of 27 February 2017, the Practice Manager confirmed to her that he would extend her probationary period for six months, “[p]er [their] midyear conversation.” In his Manager’s Response during the PRS proceedings, the Practice Manager stated that he and the Applicant agreed that he would extend the Applicant’s probationary period for six months during the Mid-Year Conversation on 22 February 2017.

131. PRS calculated the timeliness of the Applicant's claim regarding the extension of her probationary period from the date that she was first provided written notice of the extension, *i.e.*, 27 February 2017. PRS found that on 24 May 2017 the parties entered mediation, during which PRS inferred that the parties could have discussed the extension of the Applicant's probationary period. PRS concluded that mediation tolled the deadline for the Applicant to file her Request for Review, and that she filed the claim in a timely manner with PRS.

132. The Tribunal agrees that the date that the Applicant was provided written notice, 27 February 2017, is the *dies a quo*. From that date, the Applicant had 120 days to file her claim with PRS. She did so on 30 June 2017, which was after the 120-day period had elapsed.

133. The Tribunal will now determine whether mediation tolled her claim.

134. Staff Rule 9.03, paragraph 8.03, provides:

If a Staff Member requests mediation of the disputed employment matter with the Office of Mediation Services prior to the expiration of the 120 calendar day deadline for submitting a Request for Review, then following the termination of an unsuccessful mediation, the Staff Member has the greater of 30 calendar days or the remainder of the 120 calendar day period to submit a Request for Review.

135. The first mediation took place from 3 February 2017 to 5 April 2017. The Applicant claims that she requested the second mediation on 22 May 2017. PRS recognized the beginning of the second mediation as 24 May 2017. Both mediations were unsuccessful.

136. The Tribunal has recognized that mediation tolls staff members' claims, as long as they file those claims within the time limits set out in Staff Rule 9.03, paragraph 8.03. *See BJ*, Decision No. 443 [2010], para. 34. The Tribunal has additionally ruled that the negotiations conducted in a mediation are excluded from consideration by the Tribunal due to the confidential nature of mediations, in accordance with Staff Rule 9.01, paragraph 4.08. *See CE*, Decision No. 479 [2013], para. 50. Therefore, the Tribunal will not look into the issues discussed in either of the two mediations.

137. After the first mediation ended on 5 April 2017, the Applicant had the remainder of the 120-day period that started from 27 February 2017 to file her claim with PRS. At that point, her deadline would have been 27 June 2017. However, PRS found that she requested the second mediation on 24 May 2017. Therefore, on that date, her claim was once again tolled in order to allow for the mediation to take place. That mediation did not end until 6 September 2017, after which the Applicant would have had 30 days to file a claim with PRS. The Applicant filed the Request for Review on 30 June 2017. The Tribunal finds that PRS was reasonable in its conclusion that the Applicant's claim regarding the extension of her probationary period was filed before PRS in a timely manner. The Tribunal accepts jurisdiction over this claim.

Bank's alleged failure to make certain payments to the Applicant in a timely manner or in USD

138. The Bank claims that the Applicant's allegations relating to the non-payment of her salary or benefits, either at all or in USD, are irreceivable, as the Bank's decisions in this regard were taken in observance of the Applicant's contract of employment or terms of appointment. The Bank states that the Applicant accepted the terms of her LOA, Assignment Memo, and SSP Memorandum, and that nothing in any of those documents creates an obligation for the Bank to pay her salary in USD. The Applicant states that the Bank's contention in this regard is an argument on the merits, rather than one on jurisdiction. She further claims that her specific allegation does not relate to her contract but rather to the breach of a June 2016 promise that the Bank made to her to pay her salary and benefits in USD.

139. The Tribunal notes that the Applicant need only allege "a plausible claim of contract violation," according to *McKinney*, para. 13, in order to meet the standard in Article II(1) of the Tribunal's Statute. The Applicant has alleged that the Bank failed to make certain payments to her either at all or in USD in contravention of Staff Principles 2.1 and 9.1. She further alleges that the Bank breached its promise to pay her salary in USD.

140. According to Article II(1) of the Tribunal's Statute, "[t]he 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." Furthermore, the Tribunal

has recognized that the Principles of Staff Employment form part of the contract of employment or terms of appointment of staff members. *BB*, Decision No. 426 [2009], para. 52. The Tribunal finds that the Applicant's claim regarding the payments is properly before the Tribunal.

Alleged mismanagement of the Applicant's career

141. The Applicant alleges that the Bank mismanaged her career when it hired her under local, rather than international, recruitment and when it failed to communicate clearly with her regarding her salary and benefits and the economic reality of her duty station. The Bank states that this claim is time-barred, since the Applicant accepted her LOA on 2 February 2016 and her SSP Memorandum on 8 February 2016 but did not file the claim with PRS until 30 June 2017. The Bank contends that, even if the Applicant was not aware of the conditions of her employment until she moved to Sierra Leone, which was on 17 March 2016, the Applicant's claim remains time-barred. The Applicant claims that exceptional circumstances excused the late filing of this claim because she could not have realized at the time she signed her contract that there would be currency depreciation in Sierra Leone that would reduce her earnings, that her SSP and SCM payments would be stopped the following year, or that being a local hire would lead to the Bank denying her appropriate medical coverage.

142. The Tribunal has repeatedly held that timely exhaustion of internal remedies is necessary if an application is to be admissible. "The Applicant must formally and in a timely manner invoke and exhaust available internal remedies in order that the allegedly improper Bank decisions may be challenged in an application before the Tribunal." *Malekpour*, para. 20.

143. The Applicant relates her claim of mismanagement of career primarily to two periods: (i) when the Bank initially hired her under local recruitment and (ii) when the Bank allegedly failed to communicate with her clearly about the economic realities of her duty station, as well as her salary and benefits.

144. The Applicant signed her LOA on 2 February 2016. The Applicant's LOA stated that her appointment was subject to local recruitment. It also listed her salary in SLL. The Applicant also

received an Assignment Memo on 25 January 2016. The Assignment Memo specified the benefits and allowances that the Applicant would receive, including relocation benefits and a temporary living allowance. Furthermore, throughout January and February 2016, the Applicant exchanged emails with HR about the payments and benefits that she was to receive, including the SSP. On 8 February 2016, the Applicant received the SSP Memorandum, which was an addendum to her Assignment Memo that addressed the SSP and specified its amount and the frequency of its payment.

145. The Applicant arrived in Freetown, Sierra Leone, on 17 March 2016. She claims that “[s]oon after” her arrival she realized the economic realities of her duty station. She alleges that the exchange rate began to grow less favorable for her salary from April 2016, and that the SLL currency depreciated over time. She also notes her difficulty in finding an accommodation in Freetown, as she had to stay in hotels before being able to find an apartment.

146. While the Applicant should reasonably have been aware of the terms of her contract, especially the salary and benefits she was to receive, by February 2016 when she received her LOA and the Assignment Memo, the Tribunal notes that her career encompasses more than simply the terms of her contract. Rather, the mismanagement of a career by the Bank may not exist only in the terms of an appointment, and a staff member may or should realize mismanagement from actions taken at a later date.

147. The Applicant claims to have noticed the economic realities in Freetown “[s]oon after” her arrival, including the unfavorable exchange rate and her difficulty in finding an accommodation. She states that there was a mismatch between the terms of her contract and the economic realities in Sierra Leone, which led to a significant reduction in her salary.

148. The Tribunal has recognized in its jurisprudence that a claim of mismanagement of career may consist of a mismatch between a staff member’s skills and the position to which he or she has been assigned. *See Iqbal*, Decision No. 485 [2013], para. 61. In *Chhabra*, Decision No. 139 [1994], para. 57, the Tribunal recognized that a decision on mismanagement of career may be more than a single behavior or action by the Bank, stating that,

although no particular decision of the Respondent is to be quashed, the Respondent's behavior towards the Applicant from the Reorganization onwards, taken as a whole, constitutes mismanagement of the Applicant's career. It reveals errors of judgment which taken together amount to unreasonableness and arbitrariness. Such behavior falls short of the standards of treatment required of the Bank under the Principles of Staff Employment.

Therefore, a decision on mismanagement of career hinges on more than the terms of a contract, or any particular single action. It may require a contextual examination and an evaluation of whether there were actions, behaviors, or errors of judgment which taken as a whole amount to unreasonableness and arbitrariness on the part of the Bank and fall short of the standards of treatment under the Principles of Staff Employment.

149. When considering the timeliness of mismanagement of career claims, the Tribunal has previously excluded consideration of incidents that took place before the relevant time period for the applicant to have filed a request for review with PRS. *See CZ*, Decision No. 521 [2015], para. 53. In *CZ*, para. 54, the Tribunal stated it would look into the events in a fiscal year review period, “[g]iven the nature of a mismanagement of career claim.”

150. In the present case, PRS decided to consider the Applicant's allegations relating to the alleged mismanagement of her career to the extent that they were timely and arose within the 120-day time period before the Applicant filed her Request for Review, namely 30 June 2017. PRS found that that time period started on 2 March 2017, since that date was 120 days before 30 June 2017. The Tribunal finds, in the circumstances of this case, the conclusion reached by PRS to be reasonable.

151. The Applicant claims that there were exceptional circumstances that excused the late filing of her claims. Specifically, she claims that she could not have known that her earnings would be reduced due to currency depreciation, nor could she have known that her SSP and SCM payments would be stopped a year later. She further alleges that she also could not have known that her status as a local hire would lead to the Bank “denying her appropriate medical coverage during her September and October [2016] medical emergencies.”

152. The Tribunal has stated that it takes a “strict approach” in determining what constitutes exceptional circumstances and that “[e]xceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent ‘contemporaneous proof.’” *See Brace (Preliminary Objection)*, para. 51; *BI (No. 5) (Preliminary Objection)*, para. 20, citing *Nyambal (No. 2)*, para. 30.

153. The Applicant worked in Sierra Leone from March to August 2016. She has stated that during this time she noticed the currency depreciation, as well as her own difficulties in setting up a bank account or securing an accommodation. Therefore, rather than providing proof that she lacked knowledge of the economic conditions of Sierra Leone during the relevant time period, she has admitted that she had knowledge of those conditions. Furthermore, the SSP Memorandum specified that the Applicant would be paid the SSP for 12 months, starting from 17 March 2016, after which her eligibility for the SSP would be reviewed. The Applicant knew from the date that she received the SSP Memorandum, 8 February 2016, that it was not guaranteed to last longer than one year. Similarly, the SCM, which was implemented by the Bank in November 2016, was intended to be a temporary relief measure and was supposed to last “until the cessation [of] the trigger for currency depreciation.”

154. The Applicant also asserts that she did not know that her status as a local hire would cause the Bank to deny her medical coverage when she fell ill in September and October 2016. She states herself that the HSD had provided her some medical support in October 2016. Hence, as of that date the Applicant should have known that she was not provided adequate medical coverage for September or her earlier illnesses in Freetown in 2016. This does not constitute exceptional circumstances to excuse late filing for the claim of mismanagement of career.

155. The Tribunal finds that the Applicant has not adduced reliable and contemporaneous proof that there were exceptional circumstances that excuse the late filing of her claim. However, the Tribunal finds that, like PRS, it will consider the Applicant’s allegations relating to alleged mismanagement of career to the extent that they were filed in a timely period before PRS, *i.e.*, her allegations about alleged mismanagement of career that arose from 2 March 2017 to 30 June 2017.

Constructive discharge

156. The Applicant claims that the Bank's actions forced her to resign and effectively caused her constructive discharge. According to the Bank, the Applicant chose to resign from her position, and there was no violation of her terms of employment in this regard. The Applicant states that the Bank's response that she chose to resign from her position does not constitute a jurisdictional argument but rather one on the merits.

157. The Applicant has stated a claim challenging "[u]nfair and discriminatory treatment, resulting in constructive discharge." She claims specifically that she was constructively discharged because she was kept by the Bank on STD despite being willing to work, and she was not given a reasonable work accommodation by the Bank.

158. The Tribunal has reviewed claims concerning unfair treatment and discrimination, as well as whether a staff member should have received a particular disability benefit, before in its jurisprudence. *See, e.g., Courtney (No. 2)*, Decision No. 153 [1996]; *Lansky (No. 1 and No. 2)*, Decision No. 425 [2009]. The Tribunal finds that the Applicant has stated a plausible claim under Article II(1) of its Statute.

159. The Tribunal notes that the Bank did not file a preliminary objection regarding the timeliness of this claim. However, the Tribunal observes that PRS found that the Applicant's constructive discharge claim was filed before it in a timely manner. Furthermore, PRS examined the claim on the merits on 18 January 2018. The Applicant was informed of the decision of the Vice President of Human Development to accept the PRS Panel's recommendations on 25 January 2018. As the Applicant filed an extension of time with the Tribunal on 21 May 2018, her constructive discharge claim was filed in a timely manner.

Denial of workers' compensation benefits to the Applicant

160. The Applicant has challenged the 28 February 2019 decision of ARP, denying her workers' compensation benefits. The Bank states that the Tribunal should dismiss this claim because it is

outside the scope of the Applicant's employment, as there was no causal relationship between her employment and her illness. The Bank also claims that it is not appropriate to argue that the standard of review under the law of the District of Columbia should apply to the Bank. The Applicant responds that this constitutes an argument on the merits. She further contends that Staff Rule 6.11, paragraph 13.02, allows a claimant to file an appeal of an ARP decision to the Tribunal.

161. Review of decisions by ARP is governed by Staff Rule 6.11, paragraph 13.02, which provides:

If a claimant, after receiving the final decision of the Administrative Review Panel, who wishes to pursue his/her complaint further, the claimant may then file an appeal with the World Bank Administrative Tribunal in accordance with the provisions of Staff Rule 9.05, "The World Bank Administrative Tribunal."

162. The Tribunal finds that, in accordance with the above Staff Rule, the Applicant's challenge to the decision of ARP is properly before it. The Tribunal accepts jurisdiction over this claim.

Applicant's placement on STD and payment of 70% of her salary during STD

163. The Bank claims that the Applicant's challenge to the payment of 70% of her salary during her STD is outside the scope of the Tribunal's review as it relates to Bank policy. The Applicant contends that she is not challenging the Bank's disability program or policy but is alleging that she should not have been on STD at all, since she was fit to work but could not do so due to the Bank's refusal to provide her a reasonable work accommodation.

164. The Tribunal has previously recognized that it is not within its competence to reconsider Bank policies or

"to consider which alternative would have been best or more effective to attain the desired objectives of the reform"; it can only decide whether the solution adopted "can be applied lawfully to the Applicant in the light of his rights as a staff member."

Fischel, Decision No. 400 [2009], para. 46.

165. In *Oinas*, Decision No. 391 [2009], para. 27, the Tribunal stated:

The Tribunal is mindful of the limits of its powers. It is not a policy-making or a policy-reviewing institution. These functions fall within the discretionary ambit of the powers of the Bank and its governing institutions. *See Einthoven*, Decision No. 23 [1985], para. 43; *Chakra*, Decision No. 70 [1988], para. 25.

166. The Tribunal further stated in *Oinas*, para. 29, however:

As firmly established in its jurisprudence, the Tribunal's role is to examine whether there has been non-observance of the contract of employment or terms of appointment of the Applicant. *See Einthoven*, Decision No. 23 [1985], para. 40. The Tribunal stated that: "So long as the Bank's resolution and policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure, there is no violation of the contract of employment or of the terms of appointment of the staff member." *Id.*, para. 43.

167. Here, the Tribunal notes that the essence of the Applicant's claim is not a challenge to the Bank's policy of paying staff members 70% of their salary during STD. Rather, she is challenging the Bank's decision to place her on STD, rather than provide her a reasonable work accommodation.

168. The Tribunal has held that it will review the Bank's policy formulations in the context of whether they are arbitrary, discriminatory, improperly motivated, or reached without fair procedure as applied to an individual staff member. *See Oinas*, para. 29. The Applicant in the present case challenges the application of the STD policy to her in a way that violated her terms of appointment. Therefore, the Tribunal accepts jurisdiction over this claim.

Concluding remarks

169. The Tribunal upholds the Bank's preliminary objections for the claims relating to (i) the Bank's alleged failure to provide the Applicant with medical support or information and (ii) the Bank's alleged failure to provide the Applicant with a reasonable work accommodation.

170. The Tribunal accepts jurisdiction over the claims relating to (i) the extension of the Applicant's probationary period; (ii) the Bank's alleged failure to make certain payments to the Applicant, either at all or in USD; (iii) the alleged mismanagement of the Applicant's career to the extent that the Applicant's allegations relate to the period between 2 March 2017 and 30 June 2017; (iv) the Applicant's constructive discharge; (v) ARP's decision to deny the Applicant workers' compensation; and (vi) the placement of the Applicant on STD.

DECISION

- (1) The Tribunal upholds the Bank's preliminary objections with respect to the claims discussed in para. 169 above;
- (2) The Tribunal accepts jurisdiction with regard to the claims discussed in para. 170 above; and
- (3) The Bank shall pay the Applicant's legal fees and costs in the amount of \$20,000.00.

/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.