



World Bank Administrative Tribunal

2021

Decision No. 666

**GL,
Applicant**

v.

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

(Preliminary Objection)

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

**GL,
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 29 June 2021. The Applicant was represented by Nat N. Polito of the Law Offices of Nat N. Polito, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 19 October 2021.

3. The Applicant challenges (i) the decision not to progress him to Grade Level GG2 at the end of Fiscal Year (FY) 2018, (ii) his 2019 performance review, (iii) the decision of the Ethics and Business Conduct Department (EBC) to close its review into allegations of retaliation allegedly perpetrated against him, and (iv) the decision not to progress him to Grade Level GG2 at the end of FY 2019.

4. On 6 August 2021, the Bank submitted preliminary objections to the Application on the basis of untimeliness and failure to exhaust internal remedies. This judgment addresses the Bank's preliminary objections.

FACTUAL BACKGROUND

5. The Applicant is a Senior Information Technology (IT) Officer, Grade Level GG1, in the Engineering I – Information and Technology Solutions, Systems, and Infrastructure Management (ITSSM) unit in the Chennai, India, office of the World Bank Group (WBG). The Applicant joined

the Bank on 18 July 2001 as an IT Analyst, Grade Level GE. On 1 November 2014, he commenced his current role as a Senior IT Officer in ITSSM.

6. In January 2018, according to the Applicant, he participated in a town hall meeting for WBG staff in Chennai. He described his participation in the meeting as follows:

In January of 2018, an open Town Hall meeting was convened in Chennai for the benefit of staff in Chennai to interact with the Chief Information Officer (“CIO”); it was an open forum to raise the concerns of WBG [staff] in Chennai. Approximately, 300 persons attended the meeting.

[The Vice President and WBG Chief Information Officer], and other Directors and Managers, attended the Town Hall meeting. I was given a list of questions that Chennai [staff] had prepared to read at the meeting. [...] At the time, I had no reason to believe that speaking about these issues was somehow forbidden or that voicing the concerns of the WBG [staff] in Chennai would be used against me but there is no doubt that the Senior Management Team (“SMT”) in attendance took great issue with my participation at the Town Hall meeting.

7. The Applicant states that in June 2018 he was proposed for progression to Grade Level GG2. Additionally, he received a Salary Review Increase (SRI) rating of 4 for FY 2018.

8. In September 2018, according to the Applicant, his Director, to whom he directly reported at the time, informed him “that he was not progressed [to Grade Level GG2] in FY 2018 because of the comments he made during the January [2018] Town Hall.” The Applicant states that “[the Director] also said that [the Applicant] should continue working and wait until 2019 for another opportunity to be progressed.”

9. On 1 October 2018, the Vice President and WBG Chief Information Officer announced by email to all Information and Technology Solutions (ITS) staff that 51 staff members received promotions and 37 staff members received progressions in their grades for FY 2018. The Vice President and WBG Chief Information Officer provided a list of the staff members who received promotions or progressions, and the Applicant was not on the list.

10. Almost one year later, on 27 September 2019, the Applicant's Manager completed the Applicant's FY 2019 performance review. The Applicant did not sign his FY 2019 Overall Performance Evaluation (OPE). The Applicant received an SRI rating of 3.5 for FY 2019.

11. On 11 November 2019, the Vice President and WBG Chief Information Officer announced to all ITS staff by email that 22 staff members received promotions and 16 staff members received progressions in their grades at the end of FY 2019. The Vice President and WBG Chief Information Officer provided a list of the staff members who received promotions or progressions, and the Applicant was not on the list.

12. On 14 November 2019, the Applicant emailed the Director to ask why he had not been progressed to Grade Level GG2.

13. On 17 November 2019, the Director replied to the Applicant's email, stating, "As part of the OPE process, all staff are considered for progressions/promotions. You were, and will be given the same consideration. That is the only assurance I have provided and can provide."

14. On 3 February 2020, the Applicant filed Request for Review No. 523 with Peer Review Services (PRS) requesting a review of the Bank's decision not to progress him to Grade Level GG2 at the end of FY 2019.

15. On 12 February 2020, the Applicant emailed EBC's Ethics Helpline alleging "victimization, retaliation, systematic bias[,] and discrimination." With regard to his retaliation allegation, the Applicant wrote:

My progression in FY18–19 was withheld because I voiced the concerns of the staff in a townhall. I was specifically informed by [the Director] [...] that the reason was the townhall when the [Vice President and WBG Chief Information Officer] [...] visited Chennai. Staff had written questions anonymously that were passed to me to be read out. My only crime was reading them out verbatim. I was alleged to be behind the same. [...] My profile along with my [colleague's] was passed for progression from G1 to G2 and [the Director] clearly stated that this was the only issue. There were no performance issues, and that he asked me to be careful in the future and that [I] would be considered. But this year too it was not considered. A

separate PRS request has been also made in this regard. Now that [the Director] is part of the [management team], I feel he was either hesitant or under the directive to ignore my work.

16. On 14 February 2020, a Senior Counsel and an Investigative Analyst in EBC replied to the Applicant's email and scheduled an intake discussion with him on 18 February 2020.

17. On 21 May 2020, the Senior Counsel in EBC wrote to the Applicant informing him of EBC's decision to close the matter at the preliminary inquiry phase, stating:

We just wanted to follow up [on] our conversation from earlier today. As we discussed, we have concluded our review of the allegation you brought to our attention. After interviewing several witnesses and reviewing related correspondence, we have determined that there is insufficient evidence to substantiate your allegation that you were not progressed in retaliation for asking questions at a 2018 townhall. [...] As we mentioned previously, we did not review the remaining concerns you noted below. Those issues should be raised with management, PRS and/or mediation. Please also note that you may appeal EBC's decision to the World Bank Administrative Tribunal within 120 days from the date of this email.

18. On 21 August 2020, the Applicant emailed the Tribunal requesting an extension to file his Application, stating:

This is to kindly request an extension period to appeal to your revered office the EBC's decision regarding a case of retaliation and discrimination. A PRS case that is very much related to the above is currently in the pre-hearing meeting and I am afraid it will cross the 120-day limit before any decision is made by them.

Appreciate if you could please consider the same and grant me the extension to file for an appeal after the PRS decision. Please let me know if you need any further clarifications.

19. On 25 August 2020, the Tribunal granted the Applicant's request for extension, stating:

I refer to your communication of 21 August 2020 in which you request an extension of time to submit an application in view of current efforts to seek assistance through the Bank's Office of Peer Review Services.

The President of the Tribunal has decided:

- (a) to grant your request for an extension of time to file an application;
- (b) that you shall notify the Tribunal of the outcome of the Peer Review Services decision within one (1) month of the date on which you are notified of such outcome and advise whether you wish to proceed with [bringing] an application before the Tribunal; and
- (c) the President will thereafter set the time limits for the submission of pleadings in your case.

Please note that the extension of time is without prejudice to the position of the Bank with respect to any defenses or objections of whatever nature.

- 20. On 11 November 2020, the Applicant emailed the Senior Counsel and the Investigative Analyst in EBC to inform them that “additional information regarding the recent case that you concluded” had been “brought to [his] notice.”
- 21. On 23 November 2020, the Senior Counsel in EBC responded to the Applicant, scheduling a call for 2 December 2020.
- 22. On 7 December 2020, the Applicant emailed the Senior Counsel and the Investigative Analyst in EBC “a brief note” summarizing the “additional information” he provided to EBC during their 2 December 2020 call. He stated that the points he raised were “based on the previous context [of] bias, discrimination[,] and retaliation.”
- 23. On 8 December 2020, the Senior Counsel in EBC emailed the Applicant to inform him that EBC was closing the matter at intake, stating:

We have reviewed and considered what you reported during our interview and the [7 December 2020] email below. Based on our review of the issues presented and the basis underlying your concerns, we have determined that this matter is more appropriately addressed by PRS. [...]

Please also note that pursuant to Staff Rule 3.00 Annex A, “(EBC) investigators may not conduct preliminary inquiries on allegations unless sufficient detail or supporting evidence has been provided such that the matter can be pursued responsibly.”

Accordingly, EBC is not assigning this matter to investigators to undertake a preliminary inquiry. We are closing this matter at intake. [Emphasis in original.]

24. On 7 April 2021, the PRS Panel issued the “Peer Review Panel’s Report in Request for Review [No. 523].” Under the “Introduction” section of the report, the PRS Panel stated:

[The Applicant] [...] filed a Request for Review No. 523 (RFR) with the Peer Review Services (PRS) requesting a review of the WBG’s decision not to progress him to [Grade] Level GG2 (Non-Progression Decision) at the end of Fiscal Year (FY) 2019. [The Applicant] further alleged that the Non-Progression Decision was motivated by discrimination, retaliation, and bias towards him.

25. Under the “Overall Conclusion, Lessons Learned, and Recommendations of the Panel” section of the report, the PRS Panel stated:

Upon considering the totality of the evidence, the Panel found that the Non-Progression Decision had a reasonable and observable basis; followed a fair and proper process; and was made in good faith without any retaliation, discrimination, or bias. The Panel determined, based on the documentary evidence in the RFR and testimony of witnesses, that the Non-Progression Decision did not violate [the Applicant’s] contract of employment and terms of appointment. The Panel, therefore, recommends dismissal of RFR No. 523 in its entirety and does not recommend that any relief be granted to [the Applicant].

[...]

The Panel recommends that management provide clear criteria and a specific process for progression in writing to staff members in advance of the announcements of the progression decisions. The Panel underscores the importance of managing the expectations of staff members for progression and promotion by communicating with them in clear terms about how progression and promotion decisions are to be made for each FY.

26. On 15 April 2021, the Managing Director and WBG Chief Administrative Officer notified the Applicant in writing that he “accepted the Peer Review Services recommendation.” The letter added, “If you are dissatisfied with this decision, the next step [...] would be recourse to the Administrative Tribunal, which has its own rules and procedures for the filing of claims.”

27. On 29 June 2021, the Applicant submitted this Application to the Tribunal contesting the following:

- The Bank’s decision on 1 October 2018 not to progress the Applicant to Grade Level GG2 at the end of FY 2018 (2018 Non-Progression Decision);
- The 27 September 2019 performance management decision regarding the determination of the Applicant’s FY 2019 OPE and SRI rating of 3.5 (2019 Performance Management Decision);
- The 21 May 2020 EBC “decision to close the investigation without a finding of retaliation” (EBC Decision); and
- The Bank’s acceptance of the 7 April 2021 PRS Panel’s recommendation concerning Request for Review No. 523 that found that there was a reasonable and observable basis for the Bank’s decision not to progress the Applicant to Grade Level GG2 at the end of FY 2019 (2019 Non-Progression Decision).

28. The Applicant requests the following specific performance: “[P]rogression to a [Grade] Level GG2 and reassignment to another unit other than ITS.”

29. The Applicant requests the following compensation:

The Applicant seeks damages for lost career opportunity, reputational damage, inconvenience, emotional distress, and physical/mental stress, assessed as three (3) years of salary, and such other and further relief as this Tribunal deems just and appropriate under the circumstances.

30. The Applicant “seeks reasonable attorney’s fees and costs” in the amount of \$22,775.00.

31. On 6 August 2021, the Bank filed preliminary objections requesting that the Tribunal “limit [the] proceeding to only the 2019 Non-Progression Decision” and dismiss all of the other claims in the Application in full “on the basis that each of those claims is inadmissible due to [the] Applicant’s failure to timely exhaust internal remedies and because they are time-barred.”

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Contentions

32. The Bank requests that the Tribunal confine this proceeding to cover only the Applicant's appeal of the 2019 Non-Progression Decision and dismiss each of the Applicant's remaining claims as inadmissible, including the (i) 2018 Non-Progression Decision, (ii) 2019 Performance Management Decision, and (iii) EBC Decision.

33. First, the Bank contends that the 2018 Non-Progression Decision is inadmissible because (i) the Applicant failed to exhaust internal remedies and (ii) it is time-barred. With regard to the non-exhaustion of internal remedies, the Bank asserts that the Applicant never challenged the Bank's 2018 Non-Progression Decision before PRS, in contravention of Staff Rule 9.03, paragraph 7.02, which states, "A Staff Member seeking a review of a disputed employment matter is required to submit the matter first to the [PRS] prior to appealing to the World Bank Administrative Tribunal." The Bank asserts that the Applicant "did not include the 2018 [Non-Progression Decision] in his Request for Review" and instead "confined his claims to the 2019 Non-Progression Decision." The Bank further asserts that the PRS Panel understood the Request for Review "to be limited to the 2019 Non-Progression Decision, as it considered only that claim, as explained in para. 1 of the PRS Panel's Recommendation."

34. With regard to the time limit, the Bank contends that the 2018 Non-Progression Decision could not have been reviewed by PRS in any case, even if the Applicant had specifically included the claim in his Request for Review, because it would have been untimely. The Bank asserts that the Applicant received formal notice of the 2018 Non-Progression Decision on 1 October 2018, thereby giving him 120 days until 29 January 2019 to file a timely Request for Review before PRS. The Bank asserts that the Applicant instead submitted his Request for Review "on 3 February 2020 – well beyond the 120-day time limit prescribed in Staff Rule 9.03." Finally, with respect to the 2018 Non-Progression Decision, the Bank contends that "the record does not support, nor has [the] Applicant raised any exceptional circumstances that would justify [his] non-exhaustion of the internal remedies."

35. Second, the Bank contends that the 2019 Performance Management Decision, which includes the Applicant's FY 2019 OPE and SRI rating of 3.5, is inadmissible because the Applicant failed to exhaust internal remedies. Specifically, the Bank contends that the Applicant did not seek Administrative Review and Performance Management Review within 60 calendar days of receiving notice pursuant to Staff Rule 9.06, paragraphs 3.01 and 3.02. The Bank asserts that the Applicant received formal notice of his OPE and SRI rating for FY 2019 on 27 September 2019, thereby giving him until 26 November 2019 to file a timely request for Administrative Review. Further, the Bank asserts that the Applicant did not file a request for Administrative Review, and therefore failed to exhaust internal remedies. Additionally, the Bank contends that the Applicant "falls far short of his burden to present exceptional circumstances" to justify a waiver of the statutory requirement to exhaust internal remedies.

36. Third, the Bank contends that the Applicant's claim challenging the EBC Decision is time-barred. The Bank asserts that the Applicant's "alleged case [of] retaliation, bias, and discrimination" was closed on 21 May 2020 by EBC due to insufficient evidence and that the Applicant was informed on the same day. The Bank further asserts that on 25 August 2020 the Tribunal granted the Applicant's request for an extension to file his Application regarding the EBC Decision with the condition that the Applicant "shall notify the Tribunal of the outcome of the Peer Review Services decision within one (1) month of the date [...] [the Applicant is] notified of such outcome." The Bank contends that the Applicant was notified of the Managing Director and WBG Chief Administrative Officer's acceptance of the PRS Panel's recommendation on 15 April 2021 and failed to notify the Tribunal within one month, by 15 May 2021, of the notification and of his intention to bring the Application, thus failing to meet the terms of the Tribunal's conditional grant for an extension to file his EBC claim. Moreover, the Bank submits that the Applicant has not provided any evidence of exceptional circumstances.

The Applicant's Response

37. The Applicant contends that he "preserved his claims regarding the 2018 Non-Progression [Decision] by filing a claim with EBC." The Applicant asserts that there are "overwhelming facts" to suggest that he should have been progressed in 2018, including the Applicant's explanation

“that he received an [SRI] rating of 4 in 2018 and he had more functions and responsibilities than [a colleague] who was progressed [from Grade Level GG1 to Grade Level GG2] in 2018,” a Senior Human Resources (HR) Business Partner’s PRS hearing testimony that “he could not recall any progression requests that were denied,” and the Applicant’s “understanding” that (i) “because there is no cost implication associated with a progression, it is very rare that a progression that is recommended by a department level Director would be denied” and (ii) “such a progression” is “approved nearly 99% of the time.” The Applicant further asserts that it is “unclear whether the EBC investigation took these facts into consideration” and that “at a minimum” EBC’s dismissal of his 2018 Non-Progression Decision should be reviewed and “not summarily dismissed at the preliminary objection phase.”

38. The Applicant contends that the facts relating to the 2018 Non-Progression Decision and 2019 Performance Management Decision “are already part of the record and are tied” to the 2019 Non-Progression Decision that was considered by the PRS Panel. The Applicant asserts that the aforementioned “[Non-Progression] in 2018 and 2019 performance rating are causally related and inextricably linked to the 2019 [Non-Progression]” and that “the Tribunal may and should review these facts in considering the 2019 [Non-Progression Decision].” Further, the Applicant asserts that the “thrust” of his claim is that “he was proposed for progression in 2018 but not considered in 2019. What changed between 2018 and 2019? In order to make this determination, the Tribunal should compare the 2018 and 2019 [Non-Progression Decisions].”

39. The Applicant contends that “the failure to timely file a PRS claim in response to the [2018 Non-Progression Decision] and [2019 Performance Management Decision] was understandable and did not result in any harm to the Bank or a change in the Bank’s position.” The Applicant asserts that his failure to file the aforementioned claims was “understandable” in part because (i) “until 2019, [the Applicant’s] functions and staff had not yet been removed” and (ii) “pursuing a claim with PRS or the Tribunal would have likely done more harm than good as [the Applicant] reasonably believed that filing a claim against [the Director] would result in retaliation and irreparable damage to his career.” The Applicant avers that “the delay in filing for relief did not result in the loss of documents, evidence[,] or witnesses and there is no surprise to the Bank regarding the claim.”

40. The Applicant contends that “he has not waived his challenge to the EBC investigation.” The Applicant asserts that, on 25 August 2020, the Tribunal granted him an extension to file his Application, stating that he “shall” notify the Tribunal of the outcome of the PRS process within one month of the date on which he was notified of such outcome and advise whether he wished to bring an application before the Tribunal, and that the President of the Tribunal would thereafter set the time limits for the submission of the pleadings in his case. The Applicant asserts that he was advised of management’s decision to accept the PRS Panel’s recommendation and “timely” filed his Application with the Tribunal on 29 June 2021. The Applicant further asserts:

Of course, [the Applicant] should have advised the Tribunal of the PRS decision on or before May 15, 2021, but such an oversight does not mean that he has somehow waived his right to challenge the EBC investigation or that the Tribunal lacks jurisdiction to review the EBC investigation. There is no doubt that if [the Applicant] had advised the Tribunal of the PRS outcome, the Tribunal would **not** have required that [the Applicant] file his Application sooner than June 29, 2021. Accordingly, there is no prejudice and no basis for the onerous remedy of precluding [the Applicant] from challenging the EBC investigation. [Emphasis in original.]

41. The Applicant also contends that the Tribunal’s letter of 25 August 2020 did not create a statute of limitations. The Applicant explains as follows:

The Bank urges the Tribunal to “enforce” its correspondence dated August 25, 2020 by barring his challenge to the EBC investigation, but this ignores the language of the correspondence. While the letter states that [the Applicant] “shall notify the Tribunal of the outcome of the Peer Review [Services] decision within one (1) month of the date on which you are notified of such outcome...”, it does not state that the failure to so notify the Tribunal will forever bar [the Applicant] from his right to challenge the results of the EBC investigation, that the Tribunal may not have jurisdiction to hear the challenge if [the Applicant] failed to so notify or any other similar warning. At a minimum, if the failure to notify would result in [the Applicant] being forever barred from pursuing his challenge to the EBC investigation, the letter should have so indicated or warned.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICANT FILED HIS APPLICATION IN A TIMELY MANNER AND EXHAUSTED
INTERNAL REMEDIES

42. Article II(2) of the Tribunal's Statute sets out the requirements for admissibility of applications to the Tribunal. It states:

2. No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:
 - (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
 - (ii) the application is filed within one hundred and twenty days after the latest of the following:
 - (a) the occurrence of the event giving rise to the application;
 - (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; 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.

43. In its jurisprudence, the Tribunal has emphasized the importance of the time limits prescribed by Article II(2)(ii). In *Agerschou*, Decision No. 114 [1992], para. 42, the Tribunal explained that the prescribed time limits are "important for a smooth functioning of both the Bank and the Tribunal." *See also Tanner*, Decision No. 478 [2013], para. 45. The Tribunal has also observed that the "long-delayed resolution of staff claims could be seriously complicated by the absence of important witnesses or documents, and would in any event result in instability and unpredictability in the ongoing employment relationships between staff members and the Bank." *Mitra*, Decision No. 230 [2000], para. 11.

44. Throughout its jurisprudence, the Tribunal has also underscored the importance of the requirement of exhaustion of internal remedies, which “ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action.” *Ampah (Preliminary Objection)*, Decision No. 522 [2015], para. 55, quoting *Klaus Berg*, Decision No. 51 [1987], para. 30. Furthermore, the Tribunal has stressed in numerous decisions that a failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. *See, e.g., Alrayes (Preliminary Objection)*, Decision No. 520 [2015], para. 55; *Peprah*, Decision No. 275 [2002], para. 24; *Sharpson*, Decision No. 251 [2001], paras. 25–26.

45. In view of the above jurisprudence, the Tribunal will address the admissibility of the following claims raised in this Application: (i) the 2019 Non-Progression Decision; (ii) the 2018 Non-Progression Decision; (iii) the 2019 Performance Management Decision; and (iv) the EBC Decision.

2019 Non-Progression Decision

46. The record is clear that, in his Request for Review filed with PRS on 3 February 2020, the Applicant raised his claim of the 2019 non-progression in a timely manner. The parties are in agreement that the 2019 Non-Progression Decision is properly within the Tribunal’s jurisdiction. Therefore, this claim can proceed to the merits.

2018 Non-Progression Decision

47. With regard to the 2018 Non-Progression Decision, the Tribunal observes the Applicant’s assertion that this claim is already part of the record and is tied to the 2019 Non-Progression Decision that was considered by the PRS Panel. However, the record demonstrates that the Applicant never explicitly challenged the 2018 Non-Progression Decision before PRS, and the PRS Panel Report of 7 April 2021 also makes it clear that the PRS Panel did not consider the 2018 Non-Progression Decision. Therefore, the Applicant failed to exhaust internal remedies.

48. The Tribunal agrees with the Bank that in any event the Applicant's 2018 Non-Progression Decision could not have been reviewed by PRS because it was untimely. The Tribunal notes that the Applicant received notice of the 2018 Non-Progression Decision on 1 October 2018 via the Vice President and WBG Chief Information Officer's email to ITS staff. If the Applicant had wanted to challenge that decision, he should have submitted a timely claim to PRS by 29 January 2019 pursuant to Staff Rule 9.03. He failed to do so. Instead, the Applicant filed his Request for Review with PRS on 3 February 2020 – more than one year after the deadline of 29 January 2019, and well beyond the 120-day time limit.

2019 Performance Management Decision

49. The 2019 Performance Management Decision involves the Applicant's 2019 OPE and the 2019 SRI rating of 3.5. Under Staff Rule 9.06, this 2019 Performance Management Decision cannot be reviewed by PRS. Such claims must go through Administrative Review and Performance Management Review processes.

50. Staff Rule 9.06, paragraph 3.01, states:

Administrative Review is the first step for requesting review of a Performance Management Decision and must be exhausted before seeking Performance Management Review. Administrative Review is conducted by the World Bank Group Human Resources Vice President, or an official designated by the World Bank Group Human Resources Vice President, who considers whether management acted within its discretion, satisfied its obligations to the staff member, and followed proper procedures in connection with the Performance Management Decision under review. Peer Review Services (PRS) does not review Performance Management Decisions. Staff members must seek Administrative Review and Performance Management Review of a Performance Management Decision prior to submitting an Application to the World Bank Administrative Tribunal (WBAT).

51. Under Staff Rule 9.06, applicable at the relevant period, the Applicant was required to go through the process of Administrative Review for the claim of the 2019 Performance Management Decision within 60 days of receiving notice, which he received on 27 September 2019. The record shows that the Applicant had until 26 November 2019 to file a timely request for Administrative Review to challenge the 2019 Performance Management Decision. He did not file such request for

Administrative Review and thus failed to exhaust internal remedies as required under Article II of the Tribunal's Statute.

Whether the failure to timely exhaust internal remedies for the 2018 Non-Progression Decision and the 2019 Performance Management Decision should be excused under the doctrine of exceptional circumstances

52. Article II(2) provides an exception to the late filing of an application and failure to timely exhaust internal remedies on the basis of "exceptional circumstances."

53. The Applicant has the burden to show that "exceptional circumstances" exist. *Hristodoulakis*, Decision No. 296 [2003], para. 17. In *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30, the Tribunal articulated its approach to cases where "exceptional circumstances" are at issue, stating:

The jurisprudence of the Tribunal is well-established regarding the treatment of exceptional circumstances. In all such cases the Tribunal has followed a strict approach so as to prevent the undermining of statutory limitations. Exceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent "contemporaneous proof."

54. In determining whether exceptional circumstances exist, the Tribunal takes into account several factors, including "the extent of the delay and the nature of the excuse invoked by the [a]pplicant." *Yousufzi*, Decision No. 151 [1996], para. 28. In *Malekpour*, Decision No. 320 [2004], para. 22, the Tribunal stated that the circumstances invoked by an applicant must have imposed "real and serious impediments" to fulfilling the statutory requirements in Article II(2) of the Tribunal's Statute, and not be a "[m]ere inconvenience." *See also Hristodoulakis* [2003], para. 17.

55. In the present case, the Applicant does not explicitly allege exceptional circumstances, but rather asserts that his failure to timely file a PRS claim in response to the 2018 Non-Progression Decision and the failure to exhaust internal remedies regarding the 2019 Performance Management Decision were "understandable" because they did not result in any harm to the Bank or change in

the Bank's position. The Applicant contends that these inactions on his part were "understandable" for the following reasons:

Before the 2019 non-progression decision, [the Applicant] was caught between a rock and a hard place. Even though he was disappointed that he was not progressed in 2018 and that such [a] decision lacked a good faith basis, his leadership role was undisturbed. No one questioned his managerial and technical roles. Likewise, until 2019, his functions and staff had not yet been removed. On the other hand, pursuing a claim with PRS or the Tribunal would have likely done more harm than good as [the Applicant] reasonably believed that filing a claim against [the Director] would result in retaliation and irreparable damage to his career. Thus, there was no incentive to pursue a claim before the 2019 non-progression as he reasonably believed that if he just kept performing at a 4-level [SRI rating] he would be progressed.

56. The Tribunal notes that the Applicant not only admits that he failed to timely exhaust internal remedies with respect to the 2018 Non-Progression Decision and 2019 Performance Management Decision but also admits that these inactions were deliberate as he believed that filing a claim might have "done more harm than good."

57. The Tribunal stated in *Levin*, Decision No. 237 [2000], para. 23, that

[i]t would altogether undermine the required time limits if a staff member were allowed to ignore them merely by invoking his doubts about the efficacy of the Bank's grievance system or about the outcome of his claim. (*See Caryk*, Decision No. 214 [1999], para. 31, and *Madhusudan*, Decision No. 215 [1999], para. 40.)

58. The Tribunal cannot accept the Applicant's position because, as stated in *Levin* [2000], para. 23, it would altogether "undermine the required time limits" if staff members were allowed to ignore them merely by invoking their doubts about the efficacy of the Bank's grievance system or the outcome of their claims. Nor can the Tribunal excuse the Applicant's failure to exhaust internal remedies on the basis of the Applicant's assertion that it did not harm the Bank. The Bank is not required to show any specific harm here. Timely exhaustion of internal remedies is a statutory requirement which may be excused only under exceptional circumstances. The Tribunal finds that no such exceptional circumstances exist in the circumstances of the present case. Thus, the Tribunal finds that the claims relating to the 2018 Non-Progression Decision and the 2019 Performance Management Decision cannot proceed to the merits.

EBC Decision

59. The facts relating to the issue of the 21 May 2020 EBC Decision are as follows.

60. On 12 February 2020, the Applicant emailed EBC's Ethics Helpline alleging "victimization, retaliation, systematic bias[,] and discrimination."

61. On 21 May 2020, EBC closed the matter at the preliminary inquiry phase, stating:

After interviewing several witnesses and reviewing related correspondence, we have determined that there is insufficient evidence to substantiate your allegation that you were not progressed in retaliation for asking questions at a 2018 townhall. Please also note that you may appeal EBC's decision to the World Bank Administrative Tribunal within 120 days from the date of this email.

62. Within 120 days of receiving this notice, on 21 August 2020, the Applicant emailed the Tribunal requesting an extension to file his Application, stating:

This is to kindly request an extension period to appeal to your revered office the EBC's decision regarding a case of retaliation and discrimination. A PRS case that is very much related to the above is currently in the pre-hearing meeting and I am afraid it will cross the 120-day limit before any decision is made by them.

Appreciate if you could please consider the same and grant me the extension to file for an appeal after the PRS decision. Please let me know if you need any further clarifications.

63. On 25 August 2020, the Tribunal responded to the Applicant's request for extension, stating:

I refer to your communication of 21 August 2020 in which you request an extension of time to submit an application in view of current efforts to seek assistance through the Bank's Office of Peer Review Services.

The President of the Tribunal has decided:

- (a) to grant your request for an extension of time to file an application;

(b) that you shall notify the Tribunal of the outcome of the Peer Review Services decision within one (1) month of the date on which you are notified of such outcome and advise whether you wish to proceed with [bringing] an application before the Tribunal; and

(c) the President will thereafter set the time limits for the submission of pleadings in your case.

Please note that the extension of time is without prejudice to the position of the Bank with respect to any defenses or objections of whatever nature.

64. On 7 April 2021, PRS completed its review of the Applicant's Request for Review No. 523 filed on 3 February 2020. The PRS Panel recommended the dismissal of the Request for Review in its entirety and also recommended that no relief be granted to the Applicant.

65. On 15 April 2021, the Bank notified the Applicant by letter that it "accepted the Peer Review Services recommendation." The letter added, "If you are dissatisfied with this decision the next step [...] would be recourse to the Administrative Tribunal, which has its own rules and procedures for the filing of claims."

66. Accordingly, the PRS process was completed on 15 April 2021. Within one month of this date, the following steps were envisaged pursuant to the Tribunal's letter of 25 August 2020. First, the Applicant was expected to "notify the Tribunal of the outcome of the Peer Review Services decision [...] and advise whether [he wished] to proceed with [bringing] an application before the Tribunal." Second, upon receipt of such notification, the President of the Tribunal was expected to "set the time limits for the submission of pleadings in [the Applicant's] case."

67. The Applicant did not follow the instructions provided in the 25 August 2020 letter, and thus no timeline was set by the Tribunal for the filing of his Application. Though it is clear that the 25 August 2020 letter did grant the Applicant's request for an extension of time to file an application challenging the EBC Decision, linking it with the completion of the PRS process, it is similarly clear that the extension had parameters.

68. Despite the non-notification, within 120 days of the completion of the PRS process, which was completed on 15 April 2021, the Applicant filed his Application on 29 June 2021 raising four claims, including the claim relating to the EBC Decision.

69. The Bank contends that the Tribunal cannot review the EBC Decision. The Bank states:

[The] Applicant failed to notify the Tribunal of “the outcome of the Peer Review Services decision within one (1) month of the date (...) [the Applicant was] notified of such outcome (...).” Therefore, as the extension relating to the EBC Decision was pre-conditioned on [the] Applicant following the Tribunal’s order and advising the Tribunal of the outcome of the PRS Panel Recommendation, and with [the] Applicant having failed to do so, the EBC Decision is not properly before the Tribunal.

On April 15, 2021, [the Managing Director and WBG Chief Administrative Officer] accepted the PRS Panel’s recommendation concerning the PRS Request for Review and notified [the] Applicant of the outcome of the PRS process. Therefore, [the] Applicant had until May 15, 2021 to notify the Tribunal of the PRS Panel’s recommendation and his intention to bring the Application. [The] Applicant failed to inform the Tribunal and decided to submit his Application 75 days after the deadline established by [the] Tribunal to grant the extension and 404 days after EBC notified [the] Applicant of its decision to close the case.

Consequently, [the] Applicant’s claim against EBC’s Decision is not timely and is therefore inadmissible.

70. In response, the Applicant first states that the Tribunal’s letter of 25 August 2020 did not create a statute of limitations. The Applicant asserts that, while the letter states that the Applicant “shall notify the Tribunal of the outcome of the Peer Review Services decision within one (1) month of the date on which [he was] notified of such outcome,” it does not state that the failure to so notify the Tribunal will forever bar the Applicant from his right to challenge the results of the EBC investigation or that the Tribunal may not have jurisdiction to hear the challenge if the Applicant failed to so notify. To the Applicant, at a minimum, if the failure to notify would result in the Applicant being forever barred from pursuing his challenge to the EBC investigation, the letter should have so indicated or warned.

71. The Applicant rejects the Bank’s implied position that the Applicant had only 30 days to file his challenge to the EBC Decision and contends, rather, that the 30 days relates to the time in

which the Applicant had to advise the Tribunal of the outcome of the PRS proceedings. In the Applicant's view, the Tribunal's correspondence does not alter the right to challenge the EBC Decision and in fact expressly states that once advised the Tribunal will set time limits for the submission of the Application. According to the Applicant, while he acknowledges he should have notified the Tribunal of the PRS outcome, he did not reasonably believe and there is no basis to conclude that the failure to so notify the Tribunal would mean that he was barred from challenging the EBC Decision or that the Tribunal did not have jurisdiction to review the EBC Decision.

72. The Applicant further contends that, pursuant to Article II of the Tribunal's Statute, once EBC issues a decision, the staff member has 120 days to challenge the EBC findings by filing an application with the Tribunal. To the Applicant, the Tribunal has authority to grant extensions of time beyond the 120 days and did so here. Moreover, the Applicant maintains that the Bank does not claim that it has been prejudiced by the extension. The Applicant further states that there is no doubt that, if he had notified the Tribunal of the PRS outcome, the Tribunal would not have required that he file his Application sooner than 29 June 2021. Accordingly, in the Applicant's view, there is no prejudice and no basis for precluding the Applicant from challenging the EBC Decision.

73. The record shows that on 21 August 2020 the Applicant requested an extension of time to file his claim challenging the EBC Decision and informed the Tribunal that he had a pending related claim at PRS. The Tribunal notes that it granted the Applicant's request for extension on 25 August 2020 on the condition that the Applicant "shall" notify the Tribunal of the outcome of the PRS process within one month of the date that he was notified of such outcome and advise whether he wished to proceed with bringing an application before the Tribunal, and thereafter the President of the Tribunal would set the time limits for the submission of pleadings in the case.

74. The record shows that the Applicant was notified on 15 April 2021 that the Bank had accepted the PRS Panel's recommendations. In order for him to satisfy the Tribunal's requirements for the conditional grant of an extension regarding his EBC claim, he was required to notify the Tribunal by 15 May 2021 – that is, within 30 days of the outcome of the PRS process – about that outcome and his intention to submit an application. The record shows that the Applicant failed to

do so. That being so, the Tribunal considers that his claim reverted to the default limitation period, namely 120 days from the EBC Decision. Further, the record shows that he gave no reasons and did not allege any exceptional circumstances for his failure to notify the Tribunal within 30 days of the PRS process. Therefore, the Applicant failed to satisfy the terms of the Tribunal's conditional grant of an extension, rendering the claim time-barred because the default deadline for filing the EBC claim then applied, namely 18 September 2020. Accordingly, the Tribunal does not accept jurisdiction over the Applicant's claim regarding the 21 May 2020 EBC Decision.

DECISION

- (1) The Bank's preliminary objection to the 2018 Non-Progression Decision claim is upheld;
- (2) The Bank's preliminary objection to the 2019 Performance Management Decision claim is upheld;
- (3) The Bank's preliminary objection to the 21 May 2020 EBC Decision claim is upheld;
- (4) The Tribunal will address the 2019 Non-Progression Decision claim on the merits; and
- (5) The Tribunal reserves, until its determination on the merits, the question of legal fees and costs.

/S/ Andrew Burgess

Andrew Burgess

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 8 November 2021

* 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.