



World Bank Administrative Tribunal

2022

Decision No. 678

**GP,
Applicant**

v.

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

(Preliminary Objection)

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

**GP,
Applicant**

v.

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

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Marielle Cohen-Branche (Vice-President), Andrew Burgess, and Ann Power-Forde.
2. The Application was received on 29 October 2021. The Applicant was represented by Alex Haines of Outer Temple Chambers. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 23 May 2022.
3. The Applicant challenges the Bank's denial of her request for a Mobility Premium.
4. On 17 December 2021, the Bank submitted preliminary objections. This judgment addresses the Bank's preliminary objections.

FACTUAL BACKGROUND

5. The Applicant joined the Bank in 2007 and held Short-Term and Extended-Term Consultant appointments until 2013 when she was offered a Term appointment as a Grade Level GE Operations Analyst in the Oil, Gas and Mining Department. The Applicant currently serves as a Senior Operations Officer at Grade Level GG. She is a British and Irish national based in the U.S. on a G-4 visa.
6. On 30 June 2013, the Applicant received a Letter of Appointment (LOA) from the Bank for the formal offer of a three-year Term appointment as an Operations Analyst. The Applicant's LOA stated, inter alia:

The position to which you are being appointed is currently subject to local recruitment. Therefore, you are not eligible for (i) relocation benefits on appointment; (ii) resettlement benefits on termination; or (iii) a mobility premium, either now or in the future should you be promoted or reassigned to a position subject to international recruitment in the U.S.

[...]

Your appointment is subject to the conditions of employment, including the Staff Rules, presently in effect and as they may be amended from time to time.

The Applicant signed an acceptance of the terms and conditions of the LOA on 2 July 2013.

7. In September 2016, the Applicant was promoted, through a competitive process, to Operations Officer, Grade Level GF, a position subject to international recruitment.

8. On 1 September 2016, the Applicant contacted Human Resources (HR) via email, stating, in pertinent part, “I am requesting International benefits as I am a G4 staff member and have been competitively promoted to an internationally-recruited GF position.” The Applicant followed up with HR via email on 12 September 2016, 19 September 2016, and 3 October 2016 indicating that she had not received a response to her 1 September 2016 request.

9. On 4 October 2016, the Applicant filed Request for Review No. 363 with Peer Review Services (PRS). The Applicant stated the following as the “Disputed Employment Matter(s)”:

Part 1 of my Request for Peer Review – Gender Discrimination:

My request for peer review is based on gender discrimination **Staff Rule 6.21, Section III 1.09 (b)**, which also falls under the new **Global Mobility Support Framework (GMSF)**, effective from January 1, 2016. This Staff Rule and the new GMSF discriminate against a class of predominantly female Bank staff, as it denies staff in this class from achieving Equal Pay for Equal Work.

[...]

Staff Rule 6.21, Section III 1.09 (b):

“A staff member appointed to a position at Level GE and below in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or

promoted to a position at Level GF and above in the U.S., unless a staff member receives a Young Professional appointment.”

In addition, my contract from 2013 contained the following provision (referred to below as “**the provision**”):

“The position to which you are being appointed is currently subject to local recruitment. Therefore, you are not eligible for (i) relocation benefits on appointment; (ii) resettlement benefits on termination; or (iii) a mobility premium, either now or in the future should you be promoted or reassigned to a position subject to international recruitment in the U.S.”

Gender Discrimination:

Staff Rule 6.21 Section III, 1.09 (b) and the provision in my contract are discriminatory as they apply only to grades GA to GE staff. *This group of staff is predominantly female (an average of 79% of GA to GE at HQ [headquarters] are women, based on HR data for the past 10 years).*

By shackling this group of mostly female staff to this policy for the rest of their careers, the Staff Rules are implementing indirect gender discrimination and occupational gender segregation.

If these staff are promoted to internationally-recruited GF+ [GF and above] positions in HQ, they are never entitled to international benefits.

[...]

– This violates the Bank Group’s **Principle of Staff Employment 2.1**

Part 2 of my Request for Peer Review – “Local Recruitment”:

[...]

I contend that although it stated in my GE contract that I was “locally recruited”, that this was not factually accurate and I should have been hired pursuant to international recruitment.

[Emphasis in original.]

10. On 21 October 2016, an HR representative responded to the Applicant’s 1 September 2016 email stating, in pertinent part: “Having checked your job records, I see that you were hired as a local staff at grade GE. As per the policy and as mentioned in you[r] Appointment letter, your

appointment type will remain local even if you are promoted or reassigned a GF+ international recruitment in the U.S.”

11. On 27 February 2017, a PRS hearing was held in respect of the Applicant’s Request for Review No. 363.

12. On 22 March 2017, the PRS Executive Secretary sent an Office Memorandum to the Vice President, Human Resources (HRDVP) attaching the PRS “Panel’s Report in Request for Review No. 363 [the Applicant],” in which it concluded that management acted consistently with the Applicant’s contract of employment or terms of appointment in making the ineligibility decision with respect to the Mobility Premium benefit. More specifically, the Panel’s Report stated:

The Panel noted that given the fact that [the Applicant] was initially recruited to a Level GE position and was subsequently promoted to an internationally recruited Level GF position, Staff Rule 6.21, para. 1.09(b) applies to her situation. In other words, pursuant to the Change in Position Exemption, [the Applicant] is ineligible to receive [the] Mobility Premium benefit even when she was promoted to the internationally recruited Level GF position in September 2016.

With that in mind, the Panel proceeded to examine [the Applicant’s] claim that the ineligibility decision constitutes an “unjustified differentiation,” “gender discrimination” or “indirect gender discrimination and occupational gender segregation.” In this regard, the Panel noted that according to the Bank’s jurisprudence, unjustified differentiation or discrimination “...takes place where staff members who are in basically similar situations are treated differently.” Based on this definition of discrimination, the Panel observed that gender discrimination occurs where male and female staff members, who are in basically similar situations, are treated differently.

Based on the above analysis, the Panel first determined the nature of the comparator group. The comparator group are those staff members appointed to a position subject to local recruitment (i.e. Level GA – GE) in the U.S. who are then reassigned or promoted to a position subject to international recruitment (i.e. Level GF and higher) in the U.S. The Panel noted that both male and female staff members make up this group. Because this provision of the Change in Position Exemption applies equally to all members of the group, both male and female staff members, the Panel could not conclude that female staff members in the comparator group are being treated less [favorably] than their male counterparts in that both genders are not entitled to the Mobility Premium benefit. In light of the above, the Panel concluded that the Change in Position Exemption does not constitute an “unjustified differentiation,” “gender discrimination” or an “indirect gender

discrimination” as the staff members who are in basically similar situations are not being treated differently.

13. On 28 March 2017, the HRDVP provided the Applicant with a copy of the PRS Panel’s Report and informed the Applicant that the Panel recommended that the Applicant’s requests for relief be denied. The HRDVP notified the Applicant that he accepted the PRS recommendation, stating:

I have reviewed the report and considered the Panel’s recommendation. Based on my review, I accept the Peer Review Services recommendation. My acceptance of this recommendation is based solely on the specific facts and circumstances in this case and may not be relied upon as precedent in other matters.

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.

14. The Applicant did not seek recourse with the Tribunal regarding the HRDVP’s acceptance of the PRS recommendation.

15. On or around 15 October 2020, the Applicant was promoted, through a competitive process, from a Grade Level GF to a Grade Level GG internationally recruited position.

16. On 24 February 2021, the Applicant contacted HR via email stating that she was selected for an internationally recruited position and further stating that she expected to receive a Mobility Premium payment for internationally recruited staff on 1 January 2021 but had not. The Applicant requested that the Mobility Premium payment be included in her next paycheck.

17. On 25 February 2021, an HR representative responded to the Applicant’s email stating, in pertinent part:

Please be informed that a staff member appointed to a position at Level GE and below in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or promoted to a position at Level GF and above in the U.S., unless a staff member receives a Young Professional appointment.

I am also copying [a colleague] from GM [Global Mobility] team to confirm.

18. On 18 March 2021, the Applicant followed up with HR via email and stated, “[I]f you have anything to add please let me know and if I do not hear from you I will assume that the final decision is that the international benefits are being denied to me.”

19. On the same day, the HR representative from Global Mobility responded to the Applicant via email as follows:

Please see the staff rule below:

A staff member appointed to a position at Level GE and below in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or promoted to a position at Level GF and above in the U.S., unless a staff member receives a Young Professional appointment.

Hope this clarifies.

20. On 22 April 2021, the Applicant filed another Request for Review, No. 546, with PRS. As the “Disputed Employment Matter(s),” the Applicant stated:

I was competitively promoted to an “Internationally Recruited” grade GG position on October 16, 2020 but have been denied my request for international benefits.

My request for peer review is based on indirect gender discrimination regarding the applicability of:

Staff Rule 6.21, Section III 1.09 (b)

[...]

In addition, when I was hired at grade GE my contract contained the following provision (referred to below as “**the provision**”):

“The position to which you are being appointed is currently subject to local recruitment. Therefore, you are not eligible for (i) relocation benefits on appointment; (ii) resettlement benefits on termination; or (iii) a mobility premium, either now or in the future should you be promoted or reassigned to a position subject to international recruitment in the U.S.”.

I was informed I will not be given international benefits connected to my current grade GG position on February 25, 2021. As a female staff member I am being

disproportionately [penalized] by **Staff Rule 6.21 Section III, 1.09 (b)** as I will not receive Mobility Premium worth \$93,005 (over 5 years) and separation benefits upon ending employment with the Bank.

Gender Discrimination:

Staff Rule 6.21 Section III, 1.09 (b) and **the provision** in my contract are discriminatory as they apply only to staff hired at grades GA to GE staff. *This group of staff is predominantly female (77% of GA to GE staff at HQ are women, based on HR data in Business Intelligence as of 31 March, 2021).*

By holding this group of mostly female staff to this policy for the rest of their careers, including after a promotion, the Staff Rules are implementing indirect gender discrimination and occupational gender segregation.

– This violates the Bank Group’s **Principle of Staff Employment 2.1**

– It also contravenes several Administrative Tribunal decisions

– The inclusion of **the provision** (above) in my contract is discriminatory to me as a member of a protected class (based on my sex). Upon gaining a promotion to my current GG position, which was advertised as “internationally recruited”, I should be eligible to be awarded International Benefits, including the mobility premium and resettlement benefits upon separation from the Bank.

[Emphasis in original.]

21. On 3 June 2021, the PRS Executive Secretary issued an Office Memorandum to the Applicant concerning “Request for Review No. 546 [the Applicant] Peer Review Chair’s Decision to Dismiss the Request for Review.” The Memorandum informed the Applicant that the Peer Review Chair had dismissed the Applicant’s Request for Review as irreceivable under the principle of *res judicata*, stating, in pertinent part:

The Peer Review Chair determined that your claim regarding the WBG’s [World Bank Group] decision that you are ineligible to receive Mobility Premium benefits has already been reviewed and decided by a Peer Review Panel in RFR [Request for Review] No. 363. Accordingly, the Peer Review Chair dismissed the RFR pursuant to Staff Rule 9.03, paragraphs 11.02 and 11.03 (b) (iii).

The Memorandum further stated, “The Tribunal has repeatedly held in its jurisprudence that previously adjudicated claims that an applicant attempts to submit again in another application are ‘irreceivable under the principle of *res judicata*.’”

22. On 29 October 2021, the Applicant filed this Application with the Tribunal.
23. In her Application, the Applicant states that she is contesting
- a. the non-payment of [Mobility Premium] from 31st December 2020 and every quarter thereafter that the non-payment re-occurs; and
 - b. the decision that she was not entitled to [Mobility Premium] first communicated to her by Human Resources [...] on 25th February 2021 [...]; and once again on 18th March 2021 by way of confirmation of the previously communicated decision.
24. In her Application, the Applicant states:
- The Applicant seeks the payment of [Mobility Premium] backdated to 31st December 2020, the date on which she ought to have first received it following her promotion to Level GG role; and payment of [Mobility Premium] going forward since that date, both of which can be achieved through:
- a. specific performance of the payment of her [Mobility Premium]; and
 - b. re[s]cission of the 25th February and 18th March 2021 decisions.
25. At this stage, the Applicant claims legal fees and costs in the amount of £4,710.00.
26. On 17 December 2021, the Bank filed its preliminary objections challenging the Application as inadmissible before the Tribunal.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Contention No. 1

The Applicant's claim is a reconfirmation of a previous administrative decision and is time-barred

27. The Bank contends that the Applicant is challenging the Bank's decision to deny her request for Mobility Premium benefits and, further, is alleging that Staff Rule 6.21, Section III,

paragraph 1.09(b), disproportionately disadvantages female staff members and thereby constitutes indirect discrimination. The Bank asserts that the subject matter and the substance of the Applicant's Request for Review No. 363 and Request for Review No. 546 are effectively the same, in that "both challenge the Bank's denial of [the] Applicant's request for [the] Mobility Premium benefit, and both claim that the same policy is a form of indirect discrimination." To the Bank, "[i]t is precisely because the decisions i) relate to the same subject; ii) provide consistent outcomes – i.e. denying [the] Applicant's eligibility for the [Mobility Premium] benefit; and iii) rely on the same Staff Rule that they are reconfirmations of the same administrative decision."

28. Accordingly, the Bank contends that the *dies a quo* for the Applicant's claim was 28 March 2017, the date the Applicant was informed of the HRDVP's acceptance of the PRS Panel's recommendation to dismiss the Applicant's claims raised in Request for Review No. 363. To the Bank, "[t]his is the date that [the] Applicant reasonably became aware of her non-eligibility." The Bank submits that the Applicant failed to file an application with the Tribunal within the timelines required by Article II(2) of the Tribunal's Statute. The Bank submits that the Application is therefore untimely and should be dismissed.

29. The Bank underscores that the Tribunal has found timely resolution of claims to be an essential feature of the Bank's internal justice system and that the Tribunal has emphasized the importance of the Statute's Article II time limits in its jurisprudence. Additionally, the Bank asserts that, pursuant to Tribunal precedent, staff members "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," citing *Al-Muthaffar (Preliminary Objection)*, Decision No. 502 [2014], para. 36.

30. In the Bank's view, the 25 February 2021 decision which the Applicant relies upon "is a further application of the Bank's policy and a reconfirmation of the Bank's previous decisions" and therefore "cannot be a basis for jurisdiction." The Bank contends:

There has been no relevant change to the Mobility Premium benefit, as it applies to [the] Applicant, since it was introduced in 1999. Moreover, there have been no changes to the fact that [the] Applicant has always been ineligible for Mobility

Premium benefits. There is no new decision that might be challenged. The confirmation of existing policy, in the form of additional communications with HR on February 25, 2021 and March 18, 2021 [...] affirming [the] Applicant's longstanding ineligibility for [the] Mobility Premium benefit, does not restart the clock for challenging a policy long accepted and consistently applied. Indeed, this type of claim resuscitation would expose the Bank to challenges indefinitely, in direct contravention of the statute of limitations and the goals it is designed to achieve.

31. The Bank notes that the Applicant's first appointment was to a Grade Level GE position in the U.S., and the Bank contends that such appointment rendered the Applicant ineligible to receive Mobility Premium payments upon reassignment or promotion to a position at Grade Level GF or above in the U.S. The Bank also avers that, since June 2013, the Applicant was on notice, per her signed LOA, that she would not be eligible to receive Mobility Premium payments "either now or in the future"; and the Bank highlights that the language in the Applicant's LOA "specifically mirrors the Staff Rule." The Bank stresses that the Applicant did not contest her ineligibility for Mobility Premium payments at the time of her appointment but did so in 2017 after her first promotion. The Bank emphasizes that the Applicant did not then appeal the HRDVP's 2017 decision accepting the PRS Panel's recommendation to the Tribunal but, rather, waited over four years to file the present Application. To the Bank, the Applicant abandoned her claim and waived her right to resuscitate it four years later.

32. The Bank is of the view that Staff Rule 6.21, Section III, paragraph 1.09(b), "clearly states that the exemption for eligibility for the [Mobility Premium] benefit applies equally to any Staff Member appointed to a level GE position in the U.S. if they are reassigned or promoted to a level *GF or above* in the U.S.," and, in the Bank's view, therefore includes the Applicant's second promotion to Grade Level GG. (Emphasis in original.) To the Bank, the language of Staff Rule 6.21, Section III, paragraph 1.09(b), "is clear, precise, and unambiguous." The Bank submits that the Applicant's contentions advocating a distinction between the application of Staff Rule 6.21 to her Grade Level GF promotion and her Grade Level GG promotion are, "at worst, a blatant contortion of the plain language of the Staff Rule to suit [the] Applicant's situation." The Bank asserts that the decision denying the Applicant's request for Mobility Premium benefits with respect to her first promotion is based on the same application of the same Staff Rule that was

applied with the Applicant's second request for Mobility Premium benefits following her second promotion.

33. The Bank also submits that, while the Tribunal may review PRS cases *de novo*, "in this case [...] [the] Applicant's claim is irreceivable and should be dismissed, as it would be [the] Applicant's second bite at the apple." To the Bank, the Applicant has not "allege[d] any abuse of discretion, breach of the staff rules or principles, or any other breach that would warrant a *de novo* review," and the "Applicant cannot resuscitate a stale claim now simply because she does not like the PRS Chair's decision."

34. The Bank asserts that "the record flatly contradicts" the Applicant's contention that in 2017 PRS considered her challenge to the Staff Rule on the basis of direct discrimination rather than indirect discrimination. The Bank submits that PRS did indeed review the Applicant's claim of indirect discrimination in 2017 and rejected it. The Bank further submits that the fact that the compensation connected to the Mobility Premium benefit at the GF Grade Level differs from the amount of compensation for the Mobility Premium benefit at the GG Grade Level "does not create a different expectation of eligibility for the [Mobility Premium] benefit." To the Bank, the Mobility Premium benefit is "a benefit – not an entitlement," and staff members are eligible for this benefit "based on their original appointment, not on the grade level after receiving a promotion."

35. Finally, the Bank states that it "also respectfully requests the Tribunal not to ignore the elephant in the room: *[the] Applicant seeks relief that can only be satisfied through a change in Bank policy,*" which the Bank contends "would be outside the scope of the Tribunal's authority." (Emphasis in original.)

The Applicant's Response

The Bank's decision of 25 February 2021 is distinct from the Bank's earlier decisions and is not a reconfirmation of a previous decision

36. The Applicant asserts that she is contesting the nonpayment of Mobility Premium payments from 31 December 2020. In the Applicant's view, such payments should flow from her

promotion to a Grade Level GG role on 15 October 2020, and she is contesting the Bank's decision that she was not entitled to such payments "on the basis that the rule upon which this decision was based indirectly discriminates against her, *in her Level GG role*, on grounds of her sex." (Emphasis in original.) The Applicant submits that this decision was communicated to her by HR on 25 February 2021.

37. The Applicant avers that the 25 February 2021 decision was not a reconfirmation of either the 21 October 2016 decision from HR to deny her request for Mobility Premium payments following her promotion to a Grade Level GF position or the 28 March 2017 HR decision to accept the PRS recommendation denying her request for Mobility Premium payments. Rather, in the Applicant's view, it was a new decision, given that her "employment in a Level GG role constituted a new set of circumstances that differed from the circumstances that persisted when she was employed in a Level GF role," and Staff Rule 6.21, Section III, paragraph 1.09(b), "was, therefore, being applied in a different set of circumstances." In the Applicant's view, PRS was wrong to reject her Request for Review as *res judicata* and her Application should not now be barred before the Tribunal.

38. The Applicant emphasizes that she is not seeking compensation for Mobility Premium payments in her Grade Level GF role and states that, when she emailed HR on 24 February 2021, she "sought [Mobility Premium] payment *in her new role at Level GG* following her 15th October 2020 promotion and backpay of [Mobility Premium] from **that** date." (Emphasis in original.) The Applicant specifies that she did not ask the Bank "to reconsider or clarify its previous decisions that she was *not* entitled to [Mobility Premium] payment *in her Level GF role*." (Emphasis in original.) To the Applicant, the Bank's 25 February 2021 decision determined that she "was not entitled to receive [Mobility Premium] *in her new role* by virtue of Staff Rule 6.21[,], Section III[,], 1.09 (b)," and "[t]his accords with an objective reading of the correspondence." (Emphasis in original.)

39. To the Applicant, the Bank's denial of her request for a Mobility Premium in her new Grade Level GG role "cannot logically have been a reconfirmation of any decision made prior to the Applicant commencing the Level GG role and the Applicant was, therefore, entitled to

challenge it by way of a Request [f]or Review to PRS”; and the Applicant contends she timely did so. Further, the Applicant asserts that the fact that the 21 October 2016, 28 March 2017, and 25 February 2021 decisions were all denials of her Mobility Premium requests “by reference to the same rule does not entail that the decisions are themselves the same.” To the Applicant, “the *nature of the decisions* **must** be different because a *different application* of the rule is being challenged in this *Application* than was challenged by the [Applicant] in her 4th October 2016 Request for Review.” (Emphasis in original.)

40. The Applicant submits that, in her Application before the Tribunal, she “is challenging the rule’s effect on her as an employee moving *from Level GF to Level GG*, as opposed to its effect on her as an employee moving from Level GE to Level GF.” (Emphasis in original.) In the Applicant’s view, “[t]hese are *distinct* effects of the *same* rule,” and the remedy she seeks reflects this. (Emphasis in original.) In this respect, the Applicant avers that the level of compensation she seeks as well as the basis upon which she seeks such compensation are distinct between the present Application and her previous requests to HR, which were the subject of the 21 October 2016 and 28 March 2017 decisions. In the Applicant’s view, the fact that the amount of Mobility Premium payment she seeks differs “supports the argument that a new set of circumstances persisted when the 25th February 2021 decision was made.”

41. With respect to her indirect discrimination claim regarding Staff Rule 6.21, Section III, paragraph 1.09(b), the Applicant avers that “she challenges its discriminatory effects **on her in her current position** following her promotion to Level GG.” (Emphasis in original.) Moreover, the Applicant submits that “on a close reading” Staff Rule 6.21, Section III, paragraph 1.09(b), “can be read as *not* applying to those at Level GG and above”; and the Applicant asserts that “such an argument could not arise were her *Application* simply a re-challenge of the 21st October 2016 and 28th March 2017 decisions.” (Emphasis in original.) To the Applicant, that the Staff Rule “**potentially** should not have been applied to a staff member moving from Level GF to GG” suggests that “it is not clear to staff members trying to determine how the rule applies to them.” (Emphasis in original.)

42. The Applicant further submits that, with respect to her Request for Review No. 363 and the related 28 March 2017 decision, she had only produced evidence of the effects of the Staff Rule on staff in Grade Level GE roles, and the Applicant asserts that PRS considered the relevant comparator group for her claim to be staff at Grade Level GE or below who were promoted to positions subject to international recruitment. The Applicant also contends that, with respect to her Request for Review No. 363, PRS viewed the Applicant's challenge of the Staff Rule as a claim of direct rather than indirect discrimination. She maintains that her Application entails a claim of indirect discrimination, which, in her view, "is clearly not an argument that was considered by PRS in response to the Applicant's 2016 Request for Review." The Applicant states that, with respect to the question of whether the staff rule was indirectly discriminatory against her, PRS never properly considered this question at all because it did not apply the correct legal test for indirect discrimination in 2017. The Applicant avers that, alternatively, this question has not been considered by PRS in the context of her new circumstances.

43. The Applicant also highlights that the HRDVP's 28 March 2017 communication to her regarding the PRS recommendation to deny the Applicant's request for Mobility Premium payments states, "My acceptance of this recommendation **is based solely on the specific facts and circumstances in this case** and may not be relied upon as precedent in other matters." (Emphasis by the Applicant.) Further, in the Applicant's view, the facts of her case can be distinguished from those in the Tribunal's jurisprudence which uphold the proposition that Bank staff members cannot request administrative review of reconfirmations, and she maintains that the 25 February 2021 decision is not a reconfirmation of the 21 October 2016 or 28 March 2017 decisions.

44. Additionally, the Applicant avers that the facts of her case and her claims do not challenge the Tribunal's established jurisprudence with respect to the need for strict observance of time limitations. The Applicant stresses that her claim is "appropriately limited," given that "contesting the new decision of 25th February 2021 does not enable her to contest the decisions of 21st October 2016 and 28th March 2017 or to recover compensation in respect of their effects on her remuneration."

45. Finally, the Applicant submits:

Employees are not to be held captive to rules of the Respondent on the basis that they have applied to them throughout their employment, if it is the case that those rules infringe their rights or entitlements as employees, so long as those employees follow the proper procedural steps to raise their challenge, as the Applicant has done.

The Applicant notes that she has no objection to the Tribunal “consider[ing] merits alongside admissibility, given that, on one view, both issues are concomitant.”

The Bank’s Contention No. 2

The Applicant has failed to exhaust internal remedies as required by the Tribunal’s Statute

46. The Bank asserts that the Application is inadmissible for failure to exhaust internal remedies pursuant to Article II(2)(i) of the Tribunal’s Statute, and stresses that it has not agreed to submit this case directly to the Tribunal. The Bank avers that PRS did not review the merits of the Applicant’s Request for Review No. 546 but, rather, declined jurisdiction pursuant to the principle of *res judicata*. In the Bank’s view,

[t]he crux of the standard established by the Tribunal is that when PRS (or other organs of the internal justice system) has declined jurisdiction, for whatever the reason – be it untimeliness or lack of subject matter jurisdiction, – the Tribunal has determined that the staff member has failed to exhaust internal remedies. In such circumstances, the Tribunal has determined that it lacks jurisdiction.

The Bank contends that, because PRS declined jurisdiction, the Applicant has failed to exhaust internal remedies and the Application should be dismissed.

The Applicant’s Response

The Applicant exhausted internal remedies prior to bringing her Application

47. The Applicant submits that, to the extent the Tribunal agrees that the 25 February 2021 decision was not a reconfirmation of a previous decision but rather was a new decision, the Bank’s further contention that the Applicant has failed to exhaust internal remedies disappears. More specifically, the Applicant asserts that she timely sought review before PRS, which dismissed her

Request for Review under the principle of *res judicata*. In the Applicant's view, "the PRS Panel Chair got it wrong and the Applicant should not be [penalized] for this – she *did* exhaust the remedies available to her at the relevant time, as she could go no further when PRS declined jurisdiction." (Emphasis in original.) The Applicant contends that she is "entitled to a *de novo* hearing before the Tribunal."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

48. In her Application, the Applicant states that she is contesting
- a. the non-payment of [Mobility Premium] from 31st December 2020 and every quarter thereafter that the non-payment re-occurs; and
 - b. the decision that she was not entitled to [Mobility Premium] first communicated to her by Human Resources [...] on 25th February 2021 [...]; and once again on 18th March 2021 by way of confirmation of the previously communicated decision.
49. The Bank contends that the Application is inadmissible because the Applicant's claim concerns a reconfirmation of a previous administrative decision and is time-barred. In the Bank's view, the *dies a quo* on the Applicant's claim was 28 March 2017, the date she was informed of the HRDVP's acceptance of the PRS Panel's recommendation to dismiss the Applicant's claims pertaining to Request for Review No. 363. The Bank submits that the Applicant failed to file an application with the Tribunal within 120 days of this date as required by Article II(2) of the Tribunal's Statute.
50. The Applicant submits that she is contesting the nonpayment of Mobility Premium payments from 31 December 2020. In her view, such payments stem from her promotion to a Grade Level GG role on 15 October 2020, and she is contesting the Bank's decision that she was not entitled to such payments "on the basis that the rule upon which this decision was based indirectly discriminates against her, *in her Level GG role*, on grounds of her sex." (Emphasis in original.)

51. To the Applicant, the relevant date is 25 February 2021, when HR communicated to her its decision that she was not eligible for Mobility Premium benefits. She asserts that this was a new decision and not a reconfirmation of either the 21 October 2016 decision from HR to deny her request for Mobility Premium payments following her promotion to a Grade Level GF position or the 28 March 2017 HRDVP's decision to accept the PRS Panel's recommendation denying her request for Mobility Premium payments in respect of Request for Review No. 363. In the Applicant's view, her Application is not time-barred.

52. Given the foregoing contentions, the dispositive issue at this stage is whether the Tribunal has jurisdiction to review the Application on the merits. At the outset, therefore, the Tribunal recalls Article II(2) of the Tribunal's Statute, which states:

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.

53. The Tribunal also observes that the parties invoke Staff Rule 6.21, which establishes the Bank's Mobility Premium policy. Pursuant to Staff Rule 6.21, Section I, paragraph 1.01, "the Bank Group provides expatriate staff members reasonable assistance to help them maintain their cultural, professional and personal links with their home countries." More specifically, Staff Rule 6.21, Section III, paragraph 1.01, states:

The Bank Group will pay a mobility premium to a staff member on Open-Ended or Term appointment in a position at Grade Level GF and above in a duty station in the United States on or after July 1, 1999, provided that the staff member is not a citizen or permanent resident of the U.S. at any time in the 12 months preceding appointment or at any time after appointment.

Pursuant to the Staff Rule, therefore, eligibility for the Mobility Premium is not universal but, rather, is limited to certain staff members.

54. In particular, the Tribunal notes that, under Staff Rule 6.21, Section III, paragraph 1.09(b), a “Change in Position” exemption exists as articulated as follows:

A staff member appointed to a position at Level GE and below in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or promoted to a position at Level GF and above in the U.S., unless a staff member receives a Young Professional appointment.

55. As previously stated, the Applicant challenges the Bank’s decision that she is not entitled to a Mobility Premium. She contends that her Application is timely in that, according to her, it was prompted by the 25 February 2021 communication from HR denying her request for Mobility Premium payments. The Bank’s main contention is that this communication from HR was a reconfirmation of a prior administrative decision – specifically, the HRDVP’s decision of 28 March 2017 to accept the PRS Panel’s recommendation.

56. The Tribunal considers, therefore, that resolution of the central issue in this case turns on whether the 25 February 2021 communication from HR to the Applicant constituted a reconfirmation of a previous administrative decision or was a separate administrative decision, for, pursuant to Tribunal precedent, 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. [*Kehyaian (No.3)*, Decision No. 204 [1998], para. 23. *See also Al-Muthaffar (Preliminary Objection)* [2014], para. 36.]

57. In order to make such a determination, the Tribunal will first examine the history of correspondence in the record between the Applicant and HR concerning the Applicant's requests for Mobility Premium payments.

58. On 1 September 2016, the Applicant contacted HR via email, stating, in pertinent part, "I am requesting International benefits as I am a G4 staff member and have been competitively promoted to an internationally-recruited GF position."

59. On 21 October 2016, an HR representative responded to the Applicant's 1 September 2016 email, stating, in pertinent part:

Having checked your job records, I see that you were hired as a local staff at grade GE. As per the policy and as mentioned in you[r] Appointment letter, your appointment type will remain local even if you are promoted or reassigned a GF+ international recruitment in the U.S.

60. In this regard, the Tribunal observes that the Applicant's LOA stated:

The position to which you are being appointed is currently subject to local recruitment. Therefore, you are not eligible for (i) relocation benefits on appointment; (ii) resettlement benefits on termination; or (iii) a mobility premium, either now or in the future should you be promoted or reassigned to a position subject to international recruitment in the U.S.

[...]

Your appointment is subject to the conditions of employment, including the Staff Rules, presently in effect and as they may be amended from time to time.

61. On 24 February 2021, after the Applicant's promotion from her Grade Level GF position to a Grade Level GG internationally recruited position, the Applicant again contacted HR via email stating, in pertinent part:

I was selected for an internationally-recruited position [...] and started my new position on 15 October, 2020. I therefore expected to receive Mobility Premium payment for internationally-recruited staff on 1 January, 2021.

I have not received the payment and am requesting it in my next pay check.

62. On 25 February 2021, an HR representative responded to the Applicant's email, stating, in pertinent part:

Please be informed that a staff member appointed to a position at Level GE and below in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or promoted to a position at Level GF and above in the U.S., unless a staff member receives a Young Professional appointment.

I am also copying [a colleague] from [Global Mobility] team to confirm.

63. On 18 March 2021, the HR representative from Global Mobility responded to the Applicant as follows:

Please see the staff rule below:

A staff member appointed to a position at Level GE and below in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or promoted to a position at Level GF and above in the U.S., unless a staff member receives a Young Professional appointment.

64. The Tribunal observes that the above correspondence indicates that the Applicant had notice of the rules on her ineligibility for a Mobility Premium as early as 30 June 2013 when she received her LOA. Nonetheless, the Applicant sought Mobility Premium payments on 1 September 2016 and was denied same on 21 October 2016 on the basis that she was ineligible.

65. Further, the Tribunal observes that, during the course of the above communications with HR and the Applicant's successive promotions within the Bank, the Applicant filed two Requests for Review with PRS – Request for Review No. 363, filed on 4 October 2016, and Request for Review No. 546, filed on 22 April 2021.

66. The Tribunal observes that, on 22 March 2017, the PRS Executive Secretary provided the HRDVP with the "Panel's Report in Request for Review No. 363 [the Applicant]" concluding that the Bank correctly determined that the Applicant was ineligible for the Mobility Premium benefit and recommending that her requests for relief be denied. The HRDVP accepted the Panel's recommendation and informed the Applicant accordingly on 28 March 2017. It is the Bank's

position that the 28 March 2017 acceptance by the HRDVP of the PRS Panel's recommendation with respect to Request for Review No. 363 constitutes the *dies a quo* and that the Applicant should have filed her Application with the Tribunal within 120 days of this date in order to be compliant with Article II(2) of the Tribunal's Statute. The Applicant contends, however, that she raised a distinct claim before PRS in her Request for Review No. 546 in that she challenged the denial of Mobility Premium payments in her Grade Level GG role and that this is the claim now before the Tribunal. To the Applicant, the PRS Chair "got it wrong" in dismissing Request for Review No. 546 as *res judicata*.

67. In view of the competing positions of the parties as described above, the Tribunal will examine the Applicant's two Requests for Review with PRS. In Request for Review No. 363, the Applicant contended that Staff Rule 6.21, Section III, paragraph 1.09(b), and the provision in her LOA denying her eligibility for a Mobility Premium

are discriminatory as they apply only to grades GA to GE staff. *This group of staff is predominantly female* [...]. [Emphasis in original.]

By shackling this group of mostly female staff to this policy for the rest of their careers, the Staff Rules are implementing indirect gender discrimination and occupational gender segregation.

She further contended:

The inclusion of **the provision** [...] in my contract is discriminatory and should be voided. As I have gain[ed] a competitive promotion to an "internationally-recruited" GF position, I should be eligible for International Benefits, including the mobility premium and resettlement benefits upon leaving the Bank. [Emphasis in original.]

68. The Tribunal also observes that, in Request for Review No. 363, the Applicant further stated:

The **provision** [...] in my contract and **Staff Rule 6.21** are discriminatory because they apply to one class of staff dominated by women, for the rest of their careers at the Bank, regardless of promotion to HQ-based GF+ positions in which they do work of equal value to their GF+ colleagues for significantly less pay. [Emphasis in original.]

To the Applicant, as stated in her Request for Review No. 363, the Bank’s “policy results in indirect discrimination against female staff members in Grades GA to GE”; and the Applicant contended, “*My case is based on my being an individual in this class of staff, directly affected by the policy.* The Bank knowingly included unfair and discriminatory terms of employment in my contract.” (Emphasis in original.)

69. In Request for Review No. 363, the Applicant sought revocation of the provision in her LOA denying her international benefits and further sought that Staff Rule 6.21, Section III, paragraph 1.09(b), “be eliminated from the Staff Rules in its entirety and that all G-4 Staff who are promoted to an Internationally-recruited GF+ position at HQ are entitled to International benefits.” Additionally, the Applicant sought

full international benefits in my current GF position in Washington: (i) mobility premium, as applied to staff hired after July, 1998, and prior to January 1, 2016; (ii) resettlement benefits on separation from the Bank; and (iii) all other international benefit entitlements for “internationally-recruited” staff. [Emphasis in original.]

70. In the Report of the Peer Review Panel in Request for Review No. 363, the PRS Panel concluded that the Bank was correct in determining that the Applicant was ineligible for the Mobility Premium. In particular, “the Panel focused its review on whether the Bank properly applied the Change in Position Exemption under Staff Rule 6.21, para. 1.09(b), to [the Applicant’s] individual circumstances in making the ineligibility decision.” The PRS Panel’s Report stated:

The Panel noted that given the fact that [the Applicant] was initially recruited to a Level GE position and was subsequently promoted to an internationally recruited Level GF position, Staff Rule 6.21, para. 1.09(b) applies to her situation. In other words, pursuant to the Change in Position Exemption, [the Applicant] is ineligible to receive [the] Mobility Premium benefit even when she was promoted to the internationally recruited Level GF position in September 2016.

With that in mind, the Panel proceeded to examine [the Applicant’s] claim that the ineligibility decision constitutes an “unjustified differentiation,” “gender discrimination” or “indirect gender discrimination and occupational gender segregation.” In this regard, the Panel noted that according to the Bank’s jurisprudence, unjustified differentiation or discrimination “...takes place where staff members who are in basically similar situations are treated differently.” Based on this definition of discrimination, the Panel observed that gender discrimination

occurs where male and female staff members, who are in basically similar situations, are treated differently.

Based on the above analysis, the Panel first determined the nature of the comparator group. The comparator group are those staff members appointed to a position subject to local recruitment (i.e. Level GA – GE) in the U.S. who are then reassigned or promoted to a position subject to international recruitment (i.e. Level GF and higher) in the U.S. The Panel noted that both male and female staff members make up this group. Because this provision of the Change in Position Exemption applies equally to all members of the group, both male and female staff members, the Panel could not conclude that female staff members in the comparator group are being treated less [favorably] than their male counterparts in that both genders are not entitled to the Mobility Premium benefit. In light of the above, the Panel concluded that the Change in Position Exemption does not constitute an “unjustified differentiation,” “gender discrimination” or an “indirect gender discrimination” as the staff members who are in basically similar situations are not being treated differently.

71. The Tribunal will next observe the Applicant’s second Request for Review, No. 546, filed with PRS on 22 April 2021. In this Request for Review, the Applicant stated that she was “competitively promoted to an ‘Internationally Recruited’ grade GG position on October 16, 2020 but [was] denied my request for international benefits.” She further stated, “My request for peer review is based on indirect gender discrimination regarding the applicability of [...] **Staff Rule 6.21, Section III 1.09(b).**” (Emphasis in original.)

72. The Tribunal observes that, in her Request for Review No. 546, the Applicant went on to advance her claims in similar terms, and at times identical language, as in Request for Review No. 363. Further, the Tribunal observes that, in Request for Review No. 546, the Applicant sought

full international benefits in my current grade GG position: (i) mobility premium, (ii) resettlement benefits on separation from the Bank; and (iii) all/any other international benefit entitlements for “internationally-recruited” staff. [Emphasis in original.]

The Applicant also sought

that **Staff Rule 6.21 Section III, 1.09 (b)** be eliminated from the Staff Rules in its entirety and that all G-4 Staff who are promoted to an Internationally-recruited GF+ position at HQ are entitled to International benefits. [Emphasis in original.]

73. On 3 June 2021, the Peer Review Chair dismissed the Applicant's Request for Review No. 546 "as irreceivable under the principle of *res judicata*," having determined that the Applicant's "claim regarding the WBG's decision that [she is] ineligible to receive Mobility Premium benefits has already been reviewed and decided by a Peer Review Panel in RFR No. 363."

74. The Tribunal considers that the substance of the Applicant's claim in each of her two Requests for Review is the same. The Applicant's claim is that she should not be bound by Staff Rule 6.21, Section III, paragraph 1.09(b), which deems her ineligible for a Mobility Premium because being so bound constitutes indirect gender discrimination against her. The Tribunal also observes that the substance of the Applicant's claim before the Tribunal is, similarly, that she ought to receive a Mobility Premium in connection with her current Grade Level GG internationally recruited position. She avers that the Staff Rule on which the denial of such a Mobility Premium to her is based "is indirectly discriminatory on grounds of sex." Accordingly, the Tribunal observes that this claim, too, is in substance the same as the Applicant's earlier claim raised in Request for Review No. 363 and again in Request for Review No. 546.

75. Further, the Tribunal observes that it is undisputed that the Applicant timely raised her grievance before PRS through her first Request for Review, No. 363. Pursuant to this Request for Review, a hearing was conducted on 27 February 2017 and the PRS Panel issued a substantive report addressing the Applicant's claims. In this regard, and at that time, the Applicant appropriately exhausted internal remedies in connection with her claim. To the extent that the Applicant disagreed with the HRDVP's 28 March 2017 acceptance of the PRS Panel's recommendation, she was entitled to seek recourse with the Tribunal subject to the requirements of Article II of the Tribunal's Statute. The HRDVP's 28 March 2017 letter accepting the PRS recommendation in fact informed the Applicant of such, stating, "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."

76. In this respect, the Tribunal notes the Applicant's contention that the PRS Panel did not properly consider her allegation of indirect gender discrimination raised in Request for Review No. 363 in that, according to the Applicant, PRS did not apply the correct legal test in its analysis of

her claim. While the Tribunal notes that the record indicates that the PRS Panel did review the Applicant's claim of indirect discrimination, the Tribunal also notes that it is this kind of objection to the Panel's review of an alleged violation of the Applicant's contract of employment or terms of appointment that the Applicant could have potentially brought to the Tribunal, having exhausted internal remedies through PRS. However, and crucially, the Applicant chose not to seek recourse with the Tribunal at that time. The Tribunal finds that this is now to the Applicant's detriment as the Applicant did not take timely action to safeguard her rights (*see GA (Preliminary Objection)*, Decision No. 655 [2021], para. 84), and the Tribunal finds that the Applicant cannot now seek to revive her claim by virtue of her most recent promotion to Grade Level GG.

77. In particular, the Tribunal finds unpersuasive the Applicant's contention that her promotion from Grade Level GF to Grade Level GG constitutes a new set of circumstances different from those concerning her promotion from Grade Level GE to Grade Level GF, which were the subject of Request for Review No. 363. As the Bank points out, eligibility for the Mobility Premium emanates from the staff member's original appointment, and the Tribunal finds that the language of Staff Rule 6.21, Section III, paragraph 1.09(b), is sufficiently clear on a plain reading. In the Applicant's case, she was offered and accepted an appointment to a Grade Level GE position which the Bank has repeatedly informed her is subject to the Change in Position exemption under Staff Rule 6.21, Section III, paragraph 1.09(b), in respect of any future promotions. If the Applicant had any further issues concerning the application or interpretation of Staff Rule 6.21, Section III, paragraph 1.09(b), she should have brought such claim to the Tribunal in a timely manner, as she was advised of recourse to the Tribunal in the HRDVP's letter of 28 March 2017.

78. In view of the above considerations, the Tribunal finds that the 25 February 2021 communication from HR explaining that "a staff member appointed to a position at Level GE and below in the U.S. does not become eligible for a mobility premium if the staff member is reassigned or promoted to a position at Level GF and above in the U.S." is not a new administrative decision. Rather, the Tribunal finds that the 25 February 2021 communication constitutes a reconfirmation of previous Bank decisions and of existing Bank policy as it applies to the Applicant and which the Applicant had been advised of on multiple previous occasions. First, the Applicant's LOA signed 2 July 2013 included reference to the Applicant's ineligibility for a

Mobility Premium. Second, HR advised the Applicant of the policy and its impact on her employment on 21 October 2016. Third, the PRS Panel's Report of 22 March 2017 addressed this issue more fully, upholding the Bank's ineligibility decision and recommending that the Applicant's requests be denied. That PRS Panel recommendation was accepted by the HRDVP on 28 March 2017. Accordingly, the Tribunal is of the view that the 25 February 2021 communication from HR served as a further confirmation of "circumstances and determinations which had been conveyed to the [a]pplicant at various times in the past." *Vick*, Decision No. 295 [2003], para. 31.

79. As the Tribunal has repeatedly emphasized in its jurisprudence, the prescribed time limits are "important for a smooth functioning of both the Bank and the Tribunal." *Agerschou*, Decision No. 114 [1992], para. 42. *See also GL (Preliminary Objection)*, Decision No. 666 [2021], para. 43; *FR (Preliminary Objection)*, Decision No. 639 [2020], para. 38. To put it more fully, as the Tribunal did in *Agerschou* [1992], para. 42:

If the possibility were given to the members of the staff, after having exhausted the internal remedies and having received final notice that their request is not granted, to ask time and again for a reconsideration of their cases and to argue that the subsequent confirmation by the Respondent of its previous decisions reopens the [120]-day time limit for applying to the Tribunal, a mockery would be made of the relevant prescriptions of the Statute and the Rules. These prescriptions are far too important for a smooth functioning of both the Bank and the Tribunal for the Tribunal to be able to concur in such a destructive view.

80. In the instant case, the Tribunal finds that the Applicant attempts to revive a stale claim in precisely the same vein that the Tribunal's judgment in *Agerschou* [1992] sought to proscribe. *See also [ED] (No.4)*, Decision No. 259 [2001], para. 9. The Tribunal finds that it is the HRDVP's 28 March 2017 acceptance of the PRS Panel's recommendation regarding Request for Review No. 363 which constitutes the *dies a quo*, and that the Applicant had 120 days from this date to file her Application with the Tribunal. The Applicant did not do so. Accordingly, the Tribunal concludes that, pursuant to Article II(2)(ii)(b) of the Tribunal's Statute, the Application is time-barred.

81. Further, the Tribunal notes that the Applicant has not indicated any exceptional circumstances with respect to Article II(2) of the Tribunal's Statute which would excuse her failure to timely challenge the original administrative decision.

82. Finally, the Tribunal finds that, as the Application is untimely, there is no need to consider the further preliminary objection of the Bank that the Applicant failed to exhaust internal remedies.

DECISION

The Application is dismissed.

/S/ Marielle Cohen-Branche

Marielle Cohen-Branche

Vice-President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

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

* 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.