



World Bank Administrative Tribunal

2023

Decision No. 687

**GX,
Applicant**

v.

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

(Preliminary Objection)

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

**GX,
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 Mahnoush H. Arsanjani (President), Marielle Cohen-Branche (Vice-President), Janice Bellace (Vice-President), Andrew Burgess, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.
2. The Application was received on 26 October 2022. The Applicant was represented by Alex Haines and Carin Hunt 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 1 May 2023.
3. The Applicant challenges the Bank's denial of her request for a mobility premium.
4. On 2 December 2022, the Bank submitted preliminary objections. This judgment addresses the Bank's preliminary objections.

FACTUAL BACKGROUND

5. The Applicant joined the Bank in February 2016 as a consultant. On 2 October 2017, she was appointed to a GE-level position in the Education Department for Latin America and the Caribbean Region based in Washington, D.C. The Applicant's Letter of Appointment (LOA) for the position, among other things, 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 and the relevant Procedures of the World Bank Group, presently in effect and as they may be amended from time to time.

6. On 16 February 2022, the Applicant was promoted to a GF-level Economist position through a competitive recruitment process, subject to international recruitment. The Applicant did not receive a new LOA for this position.

7. On 22 February 2022, the Applicant emailed the Human Resources (HR) Mobility Team to ask about her eligibility to receive a mobility premium in her GF-level position. After clarifying the details of the Applicant's promotion, the HR Mobility Team emailed the Applicant on 24 February 2022, informing her that "since [she was] being promoted within the same location NO mobility benefits will be applicable." (Emphasis in original.)

8. The Applicant responded to the HR Mobility Team the same day, writing:

I understand that the GF positions are international by default. Is this correct? I am a Colombian citizen and the only reason I am in the US is because I have a job with the World Bank. Can you please provide me with the reasons I am not eligible for this benefit? Several colleagues in my same position do receive them.

9. The HR Mobility Team replied to the Applicant the same day, explaining:

As per WB [World Bank] policy 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.

10. On 25 February 2022, the Applicant responded to the HR Mobility Team, writing:

Regarding the Mobility Premium, do you have more information on why is there a difference on the benefit between GE promoted to GF and STC/ETC [Short-Term

Consultants/Extended-Term Consultants] appointed to a GF position? I understand this is a policy that goes beyond your interpretation, but this seems to be punishing people being promoted inside the Bank, relative to current consultants that get an appointment at the same level.

11. The HR Mobility Team replied to the Applicant on 1 March 2022, restating the Bank policy, adding that “STC/ETC are considered as external staff and therefore eligible for Mobility Premium.” The HR Mobility Team recommended that the Applicant contact her HR Business Partner if she needed any further clarifications.

12. The same day, the Applicant forwarded the HR Mobility Team’s email to her HR Business Partner, requesting a time to chat and explore alternatives. The Applicant and the HR Business Partner then met on 2 March 2022.

13. On 7 April 2022, the Applicant emailed her HR Business Partner to follow up on the mobility premium issue. The Applicant wrote:

Could you kindly explain the rationale behind this exclusion or point me to resources or people who can have more information on the reasoning behind it? I understand it is not related to residency at the time of appointment, or migration status, otherwise YP [Young Professionals] and STC/ETC would not be eligible.

The Applicant also emailed the HR Mobility Team the same day to request the rationale behind the mobility premium policy.

14. The HR Business Partner replied to the Applicant on 8 April 2022, writing, “I cannot know for sure what the rationale was behind the scenes when this current staff rule was issued in 2016. Neither do I know who negotiated, discussed or drafted it at the time.”

15. The HR Mobility Team also replied to the Applicant on 8 April 2022, writing:

As explained below and sharing again the staff rule highlighted in yellow[:] [...] A staff member appointed to a Level GE and below in the US does NOT become eligible for a Mobility Premium upon reassignment or promotions at level GF and above in US. [Emphasis in original.] This applies to all existing staff who have started in DC in level GA [*sic*] [GE] and below and now promoted to GF and above

and there is not exception to the rule unless they become YPs. STCs and ETCs are considered as external staff regardless.

16. On 11 April 2022, the Applicant responded to the HR Mobility Team, writing:

I am aware of the policy, and my question is related to the rationale of it. I understand the staff rule is very clear on the exclusion, but given that 80% of the excluded people are women, I would like to have an explanation of the rationale of it.

17. On 26 April 2022, the Applicant emailed a Senior HR Business Partner regarding the mobility premium policy. Specifically, the Applicant asked:

1. Could you kindly explain the rationale behind this exclusion or point me to resources or people who can have more information on the reasoning behind it? [Emphasis in original.] Given that over 75% of the excluded group are women, I would like to have a justification or rationale of this exclusion.
2. Is HR aware of the significant effects this policy has on the affected groups income?
3. Do you have data on how many people have been affected by this policy at the HD level? And how many of them are women?
4. I want to better understand whether this is an issue HR is actively tackling and trying to resolve and if so what measures it is considering in what timeline.

18. On 2 May 2022, the Senior HR Business Partner replied, stating that she had copied the Applicant's HR Business Partner.

19. On 24 May 2022, the Applicant responded to the Senior HR Business Partner, stating that she had discussed the issue with her HR Business Partner and that her manager had suggested that she reach out to the Senior HR Business Partner for more information on the issue. The Senior HR Business Partner did not reply to this email.

20. On 8 June 2022, the Applicant filed a Request for Review with Peer Review Services (PRS), seeking review of the decision that she was ineligible to receive a mobility premium following her promotion to a GF-level position. On 30 June 2022, the Peer Review Chair dismissed

the Request for Review as untimely, determining that the relevant decision for the filing deadline was the Applicant's LOA, received on 2 October 2017. The Peer Review Chair further determined that the HR communications to the Applicant on 24 February, 1 March, and 8 April 2022 did not constitute separate administrative decisions but were instead "confirmations of the language in [the Applicant's] LOA of October 2, 2017."

21. On 26 October 2022, the Applicant filed this Application with the Tribunal. The Applicant states that her Application is brought

on the basis that the effect of Staff Rule 6.21 Section III 1.09(b), which bars those who have been internally promoted from Level GE (and below) positions to Level GF (and above) positions from receiving Mobility Premium [...] – a significant financial benefit – is indirectly discriminatory on grounds of sex. The rule disproportionately disadvantages female staff members at Level GF and above who are more likely than men to have been internally promoted rather than externally appointed. The Applicant is a member of the group [of] female staff who are put at a disadvantage by the rule. The Applicant challenges the [Bank's] enforcement of the disadvantageous effect of the rule against her.

22. The Applicant specifically contests:

- a. the non-payment of MP [mobility premium] from 31st March 2022 and every quarter thereafter that the non-payment re-occurs; and
- b. the decision that she was not entitled to MP first communicated to her by Human Resources [...] on 24th February [...]; 1st March [...]; and 8th April 2022.

23. The Applicant requests the following relief:

[T]he payment of MP backdated to 31st March 2022, the date on which she ought to have first received it following her promotion to Level GF role; and payment of MP going forward since that date, both which can be achieved through:

- (a) specific performance of the payment of her MP; and/or
- (b) rescission of the 24th February, 1st March and 8th April 2022 decision.

24. The Applicant claims legal fees and costs in the amount of £4,078.50 and states that the total fees charged in respect for work done for the jurisdictional phase of the proceedings.

25. On 2 December 2022, the Bank submitted preliminary objections and requested that the Application be dismissed.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Contention No. 1

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

26. The Bank contends that the Applicant's claim is time barred because it is a reconfirmation of a previous administrative decision. The Bank submits that, when the Applicant was appointed to a GE-level position on 2 October 2017, she received an LOA "which unambiguously stated that [the] Applicant would not be eligible for any Mobility Premium benefits 'either now or in the future' should she be promoted or reassigned to a position subject to international recruitment in the U.S." To the Bank, the "Applicant then was undeniably aware, as of the signing of her LOA, that she would remain ineligible for Mobility Premium benefits even if she was reassigned or promoted to a position at Level GF or above in the U.S." The Bank avers, then, that the *dies a quo* for the Applicant's claim began to run on 2 October 2017, when she received the LOA. The Bank submits that the Applicant thus had until 2 January 2018 to challenge her ineligibility for a mobility premium but failed to do so.

27. It is the Bank's position that the decision which the Applicant is challenging, namely the 24 February 2022 communication from the HR Mobility Team that she was not eligible for a mobility premium, "was not an actionable event that can give rise to jurisdiction of the Tribunal." Rather, the Bank contends, this communication was "simply a re-iteration of the Bank's policy and a reconfirmation of the Bank's previous determination of ineligibility conveyed to [the] Applicant through the LOA on October 2, 2017." The Bank submits that this type of additional communication does not "restart the clock" as "this type of claim resuscitation would expose the

Bank to challenge whenever it confirmed a pre-existing decision, which would be in [...] direct contravention of the statute of limitations and the goals it is designed to achieve.”

28. The Bank cites *GP (Preliminary Objection)*, Decision No. 678 [2022], to support its contention. The Bank contends that in *GP (Preliminary Objection)* [2022], a case “with highly comparable factual background to the present case,” the Tribunal held that the applicant had notice of her ineligibility for a mobility premium when she received her LOA and that additional communication from HR constituted a further confirmation of what had previously been communicated to the applicant. To the Bank, “[t]here is no altered interpretation as to the Tribunal’s definitive ruling that a[n] LOA constitutes an administrative decision conveyed to a staff member and any further reconfirmation of this decision does not reset the *dies a quo*.”

29. The Bank further contends that the Applicant is attempting “to create a scenario where the terms of her LOA are not applicable to her” and that her contentions “in this regard are, at best, inappropriate and, at worst, an unveiled attempt to [unilaterally] alter the terms of her contract of employment or terms of appointment.” The Bank suggests that, if the Tribunal were to agree with the Applicant, “a staff member’s LOA would become inconsequential as any staff member could, even years later, contest any disposition contained in their respective LOAs simply because they decided they don’t like it.” The Bank submits that the Applicant “bears the responsibility to keep track of any effect of the important documents she has signed, including her LOA.” In this respect, the Bank notes:

Generally, staff members are eligible for the Mobility Premium benefits based on their original appointment, and [the] Applicant’s claim that she could not know the future adverse effect of her ineligibility for the Mobility Premium benefits on her at the time she signed the LOA is not a valid excuse for failing to bring her claim in the prescribed time limit. Thus, there is no question the *dies a quo* on [the] Applicant’s claim began to run when she signed the LOA.

The Applicant's Response

The Application is timely

30. The Applicant contends that the 24 February 2022 decision was the relevant decision for the purpose of determining the time limits for her claim. The Applicant submits that her LOA “cannot properly be construed as a relevant decision for the purposes of assessing the admissibility of potential future applications to the Tribunal [...] and that a finding to this effect would be inconsistent with the Tribunal’s jurisprudence.” The Applicant moreover notes that she is not aware of any Tribunal judgment in which the Tribunal found that time started running from the date an applicant received their LOA “in respect of a challenge to the application of the Staff Rules referred to within that LOA.”

31. The Applicant next contends that the Bank’s reliance on *GP (Preliminary Objection)* [2022] in support of its contentions is misplaced. The Applicant notes that, while the Tribunal in that case found that the applicant had notice of her ineligibility for the mobility premium as early as when she received her LOA, the Tribunal did not determine that the LOA constituted a relevant decision for the purposes of assessing time limits. Rather, the Applicant states that the Tribunal determined in *GP (Preliminary Objection)* [2022] that

the *dies a quo* for the purposes of assessing time limits began with HR’s acceptance of the PRS Panel’s recommendation regarding the [a]pplicant’s request for review of that rule, that request for review having been made some three years after her LOA was received. [Emphasis in original.]

The Applicant thus contends “that time should not run for the Applicant in the instant case from her LOA – such a finding would be inconsistent with *GP*.”

32. The Applicant submits that,

[b]y accepting an appointment with [the Bank], staff members do not give up any and all rights to challenge the various Staff Rules in force at the time of their appointment and referred to in their LOA as they will apply throughout the duration of their appointment, *particularly* in circumstances where those rules will bind them through any further appointments to alternative positions within the [Bank]. [Emphasis in original.]

In this respect, the Applicant contends that she could not have challenged the mobility premium policy at the time she received her LOA as she would have been unable to show that she was adversely affected by the policy in her GE-level position. To the Applicant, it was only since her promotion to the GF-level position that she was adversely affected by the policy and thus able to bring the present claim.

The Bank's Contention No. 2

The Application is inadmissible because the Applicant did not exhaust internal remedies

33. The Bank's contention is twofold. First, the Bank contends that the Applicant failed to timely exhaust internal remedies as her Request for Review at PRS was dismissed as untimely. The Bank avers that "when PRS (or other organs of the internal justice system) declines jurisdiction, for whatever reason – be it untimeliness or lack of subject matter jurisdiction – the staff member has failed to exhaust internal remedies." In the Bank's view, the Applicant has not alleged any "abuse of discretion, breach of the staff rules or principles, or any other breach that would warrant a *de novo* review" by the Tribunal.

34. Second, the Bank contends that, as the Applicant's claim is one of discrimination, the Ethics and Business Conduct Department (EBC) was the proper venue to investigate her claim. The Bank notes that "[p]ursuant to Staff Rule 3.00 [...] EBC is the internal institutional venue tasked with investigating allegations of discrimination" and states that the Tribunal has held that EBC is the proper venue to investigate claims of retaliation and discrimination. The Bank submits that, because the Applicant "did not report the alleged discrimination claim to the competent internal institutional venue tasked with investigating matters of misconduct, [the] Applicant has failed to exhaust internal remedies."

The Applicant's Response

The Applicant exhausted internal remedies

35. The Applicant contends that she has exhausted internal remedies as, in her view, the PRS Panel Chair was incorrect in finding that the Request for Review was untimely. The Applicant

submits that her Application to the Tribunal was timely following the PRS Panel Chair's decision and that she is "entitled to have her Application considered on the merits should the Tribunal agree that the PRS decision on admissibility was wrong."

36. The Applicant next contests the Bank's contention that her failure to bring her claim to EBC constitutes a failure to exhaust internal remedies. The Applicant contends that "EBC cannot provide individual relief in the form of compensation and would not constitute a 'remedy' for the Applicant within the meaning of Article II(2)(i) of the Tribunal's Statute in the circumstances of her case." The Applicant distinguishes her case from those cited by the Bank as hers "is not a case of misconduct, but one of law." To the Applicant, "it is simply not within the EBC's remit to investigate whether a particular remuneration policy has a discriminatory effect on a particular group of staff."

The Bank's Contention No. 3

The Application should be dismissed because it contests a longstanding nondiscriminatory Bank policy

37. The Bank submits that it "has been the Tribunal's well-established jurisprudence that its role in the review of Bank policies is restricted." In the Bank's view, the Applicant is not claiming that the Bank applied its mobility premium policy in a discriminatory manner; rather, the Bank avers that the Applicant's claim is that "the policy itself is a form of indirect discrimination as it disproportionately disadvantages female staff members."

38. The Bank contends that the Tribunal has noted that policy-making functions fall within the discretionary powers of the Bank and that the Tribunal will not "override the Bank's considered judgment and [...] replace it with its own," (quoting *Von Stauffenberg*, Decision No. 38 [1987], para. 123). The Bank notes that it is the Tribunal's jurisprudence that "there is no violation of the contract of employment or the terms of appointment, '[s]o long as the Bank's resolution and policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure,'" (quoting *Einthoven*, Decision No. 23 [1985], para. 43).

39. The Bank submits that the “Tribunal’s power is limited when it comes to altering the terms and conditions of [the] Applicant’s contract of appointment,” which, to the Bank, are consistent with the “long-standing Staff Rules.” The Bank notes that “[t]his is not to say that the Tribunal does not have the authority to review policies of the Bank which may themselves be inherently discriminatory,” but it contends that such circumstances are not present in this case. To the Bank, the mobility premium policy “has been consistently applied since the Tribunal’s ruling on the issue of discrimination concerning the policy itself” in *CY*, Decision No. 519 [2015], in which, the Bank avers, the Tribunal “definitively concluded that this policy was never applied in an arbitrary or discriminatory manner to all staff members of the Bank.”

The Applicant’s Response

The Tribunal is competent to decide on the Application

40. The Applicant contends that the Tribunal is “clearly competent to determine whether the effect of the relevant rule has an indirectly discriminatory effect on a group of staff which includes the Applicant.” The Applicant submits that the Bank’s contentions on this issue are for the merits and have “no place in the [Bank’s] Preliminary Objections to the Tribunal’s jurisdiction.” The Applicant further avers that the Bank’s reliance on *CY* [2015] is misguided as that case considered whether the mobility premium policy’s exception for Young Professionals was directly discriminatory, a distinct claim from that raised by the Applicant.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICATION IS TIMELY

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

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

[...]

(ii) the application is filed within one hundred and twenty days after the latest of the following:

- (a) the occurrence of the event giving rise to the application;
- (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
- (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

42. 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* for the Applicant's claim began to run on 2 October 2017, when she received the LOA for her GE-level position. To the Bank, the "Applicant then was undeniably aware, as of the signing of her LOA, that she would remain ineligible for Mobility Premium benefits even if she was reassigned or promoted to a position at Level GF or above in the U.S."

43. In the Applicant's view, however, the *dies a quo* for her claim did not begin to run until 24 February 2022, the date on which the HR Mobility Team informed her that she was ineligible for a mobility premium despite her promotion to a competitively selected and internationally recruited GF-level position. The Applicant submits that she could not have challenged the mobility premium policy at the time she received her LOA as she would have been unable to show that she was adversely affected by the policy in her GE-level position. To the Applicant, it was only since her promotion to the GF-level position that she was adversely affected by the policy and thus able to bring the present claim.

44. The Tribunal notes that Staff Rule 6.21 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.

45. In particular, under Staff Rule 6.21, Section III, paragraph 1.09(b), a “Change in Position” exemption exists and is 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.

46. The Staff Rule was reflected in the Applicant’s 2 October 2017 LOA for her GE-level position, which stated:

The position to which you are being appointed is currently subject to local recruitment. Therefore, you are not eligible for [...] 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.

47. On 16 February 2022, the Applicant was promoted to a GF-level Economist position through a competitive recruitment process, subject to international recruitment. Shortly thereafter, the Applicant emailed the HR Mobility Team to ask about her eligibility to receive a mobility premium in her GF-level position. On 24 February 2022, the HR Mobility Team responded to the Applicant to inform her that she would not be eligible for a mobility premium.

48. The Tribunal notes that an applicant cannot “toll the time limit by requesting an administrative review of alleged ‘administrative decisions’ which do not constitute separate administrative decisions but which are simply re-confirmations of the original administrative decision.” *Kehyaian (No. 3)*, Decision No. 204 [1998], para. 23. *See also Al-Muthaffar (Preliminary Objection)*, Decision No. 502 [2014], para. 36.

49. The Bank relies on the Tribunal’s judgment in *GP (Preliminary Objection)* [2022] to support its contention. The Tribunal observes, however, that the issue in *GP (Preliminary Objection)* [2022] was distinct from the present Application. The Tribunal thus considers that its holding in *GP (Preliminary Objection)* [2022] is not dispositive of the timeliness issue presently before it.

50. In *CY* [2015], another case involving the Bank’s mobility premium policy, the Tribunal considered the limitations of its review of policy-related decisions. Specifically, the Tribunal noted at paragraph 34 that it

has consistently held, along with other international administrative tribunals, that “a claim of non-observance of a staff member’s contract or terms of appointment must be directed not against the organization’s promulgation of some general rule or policy but rather against an application of that rule or policy – be it reflected in an action or an omission – that directly affects the employment rights of a staff member in an adverse manner.” (*See Briscoe*, Decision No. 118 [1992], para. 30.)

51. The Tribunal finds these observations useful in its present consideration. The Applicant in this case challenges the application of the Bank’s mobility premium policy, specifically its “Change of Position” exemption, which resulted in her ineligibility for a mobility premium when she was promoted to a GF-level position. The Tribunal recalls that staff members cannot raise challenges “against the organization’s promulgation of some general rule or policy” but instead can raise challenges only “against an application of that rule or policy – be it reflected in an action or an omission – that directly affects the employment rights of a staff member in an adverse manner.” *Briscoe* [1992], para. 30. The Tribunal is not convinced that the Applicant’s present claim was ripe in October 2017 when she had notice that she would be prospectively ineligible for a mobility premium in the event that she were to be promoted or reassigned to an internationally recruited position.

52. Such a finding would be consistent with the Tribunal’s judgment in *Bhatia*, Decision No. 473 [2013], paras. 25–39. In that case, the applicant challenged the Bank’s policy of mandatory enrollment in Medicare Part B under the Retiree Medical Insurance Plan, but the Bank had contended that the application was untimely as, in its view, the applicant should have challenged

the policy within 120 days of enrolling in Medicare. *Id.*, para. 25. The Tribunal dismissed the Bank's objection, however, finding instead that time began to run on the applicant's claim on the date the policy was applied to him with detrimental effect. *Id.*, para. 29.

53. Here, the Tribunal considers that, prior to the Applicant's promotion, any application of the mobility premium's "Change of Position" exemption was only prospective and, as such, not yet ripe for challenge.

54. The Tribunal recalls that the Applicant's first Term appointment in October 2017 with the Bank was as a locally recruited, GE-level staff. The Applicant subsequently applied and competed for an internationally recruited, GF-level position, which she obtained in February 2022 but for which she did not receive a new LOA. If the Bank's position were correct, the Applicant would have been required to challenge the "Change of Position" exemption within 120 days after receiving her LOA in October 2017, although at that time she was a locally recruited GE-level staff.

55. No change of position event had occurred for the exemption to apply at that time. It would have been speculative and premature for the Applicant, upon receiving her LOA, to challenge the application of the mobility premium policy, the application of which would be contingent on her being promoted in the future to an internationally recruited, GF-level position. She might have left the Bank before getting a GF-level position or she might have never been promoted. The Tribunal notes the Applicant's claim that this exemption

has the effect that there are expatriate staff working at Level GF and above who are not currently entitled to the same level of compensation as their similarly situated expatriate colleague[s] also working in positions at Level GF and above, for reasons that are not objectively justifiable, and these staff members are more likely to be women. Thus, their respective levels of compensation are not equitable and Staff Rule 6.21 Section III 1.09(b), as the cause of this inequity, is in breach of the Principles of Staff Employment.

56. In the circumstances of the present case, the triggering event for the Applicant's claim was not the receipt of her LOA in October 2017 but rather her promotion to a GF-level position on 16 February 2022. The Tribunal thus concludes that the Applicant's claim became ripe on this date,

and the Applicant had 120 days to challenge her ineligibility, which she did by filing a Request for Review with PRS on 8 June 2022. Following the dismissal of her Request for Review on 30 June 2022, the Applicant then timely filed her Application with the Tribunal on 26 October 2022.

WHETHER THE APPLICANT EXHAUSTED INTERNAL REMEDIES

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

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

- (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal.

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

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

60. Further, as stated in *Al-Muthaffar (Preliminary Objection)* [2014], para. 49, “in its examination of whether an applicant has exhausted internal remedies in a timely manner [...], the Tribunal must of necessity examine whether an applicant brought his or her claim in a timely manner before PRS and the decision of PRS on such request for review.” The Tribunal will therefore review the jurisdictional findings of PRS in examining its own jurisdiction over the claim raised by the Applicant. *See BJ*, Decision No. 443 [2010], para. 29.

61. Staff Rule 9.03, paragraph 8.01, provides the following: “A Staff Member who wishes to request peer review must submit a Request for Review with the Peer Review Secretariat within 120 calendar days of receiving notice of the disputed employment matter.”

62. The Bank contends that PRS correctly dismissed the Applicant’s Request for Review as untimely. In the dismissal, the Peer Review Chair determined that the relevant decision for the filing deadline was the Applicant’s LOA, received on 2 October 2017, and that the HR communications to the Applicant on 24 February, 1 March, and 8 April 2022 did not constitute separate administrative decisions but were instead “confirmations of the language in [the Applicant’s] LOA.”

63. The Tribunal has already determined that the Applicant’s claim became ripe on 16 February 2022, the date on which she was promoted to an internationally recruited, GF-level position. The Applicant thus knew or should have known of the disputed employment matter at this time. On 8 June 2022, the Applicant filed her Request for Review with PRS. The Tribunal thus concludes that the Applicant timely sought recourse with PRS.

64. The Bank also contends that, because the Applicant’s claim is one of discrimination, EBC was the proper venue to investigate her claim. To the Bank, because the Applicant “did not report the alleged discrimination claim to the competent internal institutional venue tasked with investigating matters of misconduct, [the] Applicant has failed to exhaust internal remedies.”

65. Pursuant to Staff Rule 3.00, paragraph 6.01:

EBC reviews and assists in the resolution of allegations of misconduct. Misconduct does not require malice or guilty purpose, and it includes failure to observe the Principles of Staff Employment, Staff Rules, Code of Conduct, other Bank Group policies, and other duties of employment, including the following acts and omissions:

[...]

- e. Harassment; contributing to a hostile work environment; Sexual Harassment; or wrongful discrimination, including on the basis of age, race, color, sex, sexual orientation, gender identity, national origin, religion or creed.

66. The Bank relies on *Sekabaraga (Preliminary Objection)*, Decision No. 494 [2014], para. 42, in which the Tribunal stated, “[I]t appears to the Tribunal that there are good grounds for having EBC undertake a review of allegations of retaliation before such allegations are considered by PRS or by the Tribunal.” The Bank further cites the Tribunal’s judgment in *FZ (Preliminary Objection)*, Decision No. 653 [2021], para. 91, in which the Tribunal stated:

It is not within the purview of the Tribunal to conduct the kind of factual investigations necessary to substantiate or refute the [a]pplicant’s claims of systemic racism, and although EBC typically investigates allegations of individual misconduct, EBC is better structured to undertake review of the [a]pplicant’s allegation.

67. The Tribunal notes that, while the cases cited by the Bank reflect on the utility of EBC’s review of certain allegations prior to the Tribunal’s consideration of a claim, these cases impose no obligation for staff members to bring a complaint to EBC prior to filing an application with the Tribunal.

68. Further, the Tribunal considers that the present Application is factually distinct from those cases cited by the Bank. In this respect, the Tribunal notes the Applicant’s statement that she is challenging “the indirect discriminatory effect of a rule on [her] remuneration” and that thus her Application “is not a case of misconduct, but one of law.”

69. The Tribunal considers that the Applicant’s claim is analogous to that in *EL*, Decision No. 577 [2018]. At paragraph 69, the Tribunal clarified that

the [a]pplicant does not contend that her managers were racially biased towards her or that, as individuals, they discriminated against her on the basis of her gender and nationality in awarding her the 2.5% salary increase. This is not the crux of the [a]pplicant’s claims in this case. [...] Rather, it is the [a]pplicant’s assertion that there is, as reflected in the hiring, compensation, and salary policies and practices of the WBG [World Bank Group], systemic pay inequity on the basis of nationality and gender which falls short of the [Bank’s] obligation under Principle 6.1 of the Principles of Staff Employment to provide levels of compensation that are internally equitable.

70. The Tribunal observes that the applicant in *EL* [2018] did not bring her claims to EBC prior to availing herself of the Tribunal. In fact, the Tribunal has considered several claims of alleged gender discrimination where the applicants did not first go to EBC. *See, e.g., BO*, Decision No. 453 [2011], paras. 64–67; *Nunberg*, Decision No. 245 [2001], paras. 39–58.

71. In view of the above, the Tribunal finds that it was not necessary for the Applicant to bring her claim to EBC to exhaust all internal remedies, nor is it necessary to suspend the current proceedings so that EBC may review her claim. The Tribunal recalls the Applicant’s contentions that “EBC cannot provide individual relief in the form of compensation” and that “it is simply not within the EBC’s remit to investigate whether a particular remuneration policy has a discriminatory effect on a particular group of staff.” The fundamental claim of her Application is not an allegation of individual misconduct that should be investigated by EBC. Rather, her main claim is that the Bank’s mobility premium policy as reflected in Staff Rule 6.21, cited in her LOA, and applied to her upon her promotion has a discriminatory effect. The Bank’s preliminary objection with respect to exhaustion of internal remedies is therefore dismissed.

WHETHER THE TRIBUNAL IS COMPETENT TO CONSIDER THE APPLICANT’S CLAIM

72. In *Oinas*, Decision No. 391 [2009], para. 27, the Tribunal explained that it

is mindful of the limits of its powers. It is not a policy-making or a policy-reviewing institution. These functions fall within the discretionary ambit of the powers of the Bank and its governing institutions. *See Einthoven*, Decision No. 23 [1985], para. 43; *Chakra*, Decision No. 70 [1988], para. 25. It is also well-established that in respect of policy-making “it is not for the Tribunal to override the Bank’s considered judgment and to replace it with its own” (*von Stauffenberg*, Decision No. 38 [1987], para. 123), nor to “consider which alternative would have been best or more effective to attain the desired objectives of reform” (*Crevier*, Decision No. 205 [1999], para. 17).

73. The Tribunal recalls its observation in *Briscoe* [1992], para. 30, that

[t]he Tribunal, along with other international administrative tribunals, has consistently held that a claim of non-observance of a staff member’s contract or terms of appointment must be directed not against the organization’s promulgation of some general rule or policy but rather against an application of that rule or policy

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

74. The Tribunal further recalls its decision in *R*, Decision No. 368 [2007], para. 23, where it explained:

Under Article II(1) of the Tribunal’s Statute, the Applicant’s “contract of employment” and “terms of appointment” include the Principles of Staff Employment. In *N*, [Decision No. 356 [2006],] para. 19, the Tribunal stressed:

The cardinal rules governing staff rights and duties are those contained in the Principles of Staff Employment, which establish the constitutional foundations on which the Staff Rules and other regulatory elements are based. [...] [S]uch Principles form part of the “contract of employment or terms of appointment,” as was held in *de Merode*, Decision No. 1 [1981], the Tribunal’s first judgment.

One such cardinal rule is Principle 2.1 of the Principles of Staff Employment, which provides that the Bank “shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members.”

75. The Tribunal also explained in *Oinas* [2009], para. 29, that,

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

76. The Bank contends that the Applicant is not claiming that the Bank applied its mobility premium policy in a discriminatory manner but is instead claiming that “the policy itself is a form of indirect discrimination as it disproportionately disadvantages female staff members.” The Bank submits that the “Tribunal’s power is limited when it comes to altering the terms and conditions of [the] Applicant’s contract of appointment,” which, to the Bank, are consistent with the “long-standing Staff Rules.” The Bank notes that “[t]his is not to say that the Tribunal does not have the

authority to review policies of the Bank which may themselves be inherently discriminatory,” but it contends that such circumstances are not present in this case.

77. While it is true that the basis for the Applicant’s claim is that the mobility premium policy has a discriminatory effect on staff, she also claims that as a member of staff she was adversely affected by the application of that policy upon her promotion. This is precisely the type of claim the Tribunal contemplated when holding that it will review the Bank’s policy formulations in the context of whether they are arbitrary, discriminatory, improperly motivated, or reached without fair procedure as applied to an individual staff member. *See Oinas* [2009], para. 29.

78. The Tribunal recalls its holding in *McKinney*, Decision No. 183 [1997], paras. 13–17:

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

[...]

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

Whether the [a]pplicant can sustain his case is a matter to be determined at the next stage, at which the merits are addressed through the conventional exchange of pleadings. It would be premature and improper for the Tribunal, by declaring this application inadmissible on the ground of jurisdiction *ratione materiae*, to deprive the [a]pplicant of an opportunity to make his case.

79. Further, in *FB (Preliminary Objection)*, Decision No. 609 [2019], para. 42, the Tribunal found that

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

80. The Tribunal considers that, for the Applicant to meet the threshold for jurisdiction *ratione materiae*, she must have alleged a plausible claim of a violation of her rights as a staff member. The Applicant claims that the application of the Bank's mobility premium policy is discriminatory on the basis of gender. In this respect, the Tribunal notes the Applicant's submissions that, for GF-level staff on a G4 visa based at the Bank's headquarters,

women are disproportionately more likely than men to have entered the position by way of internal promotion from a Level GE position (or below), and men are more likely than women to enter a Level GF position (or above) by external appointment. This is perhaps unsurprising given that, of the staff at Level GE or below, 80% are women.

81. The Applicant further submits that, "of those staff members at Level GF or above, men are disproportionately in receipt of MP compared to women, such that women are at a disadvantage." The Applicant submitted data in support of her claim from "WBG Benefit Mobility Premium Staff Data" and "Mobility Premium Staff Data" showing the proportion of women and men holding G4 visas at Levels GF and above, Level GG, and Levels GH/GI, as well as the proportion of those affected by the "Change of Position" exemption.

82. Based on the data submitted by the Applicant, the Tribunal finds that the Applicant has alleged a plausible claim and concludes that it has subject matter jurisdiction. The Tribunal recalls in this respect that the question of "whether the [a]pplicant would ultimately succeed in her claim is a matter of merits not of jurisdiction." *FB (Preliminary Objection)* [2019], para. 42. The Tribunal further observes that the Bank's contention that the mobility premium policy is not inherently discriminatory is a question for the merits and will properly consider it at that stage of the proceedings.

83. In view of the above, the Bank's preliminary objections are dismissed and the Tribunal will consider the Applicant's claim on the merits.

DECISION

- (1) The Bank's preliminary objections are dismissed; and

- (2) The Bank shall pay the Applicant's legal fees and costs in the amount of £2,676.50 for the preliminary objection phase of the proceedings.

/S/Mahnoush H. Arsanjani
Mahnoush H. Arsanjani
President

/S/ Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 12 May 2023