



**World Bank Administrative Tribunal**

**2019**

**Decision No. 605**

**Sara González Flavell (No. 8),  
Applicant**

**v.**

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

**(Preliminary Objection)**

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

**Sara González Flavell (No. 8),  
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 Mónica Pinto (President), Abdul G. Koroma, and Janice Bellace.

2. The Applicant's eighth Application was received on 8 August 2018. The Applicant was represented by Edward Capewell and Mark Stephens of Howard Kennedy LLP. The Applicant also represented herself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges (i) the dismissal by Peer Review Services (PRS) of Request for Review No. 409; and (ii) the Bank's alleged failure to "afford the Applicant her right to an Overall Performance Evaluation [OPE] after she returned from Short Term Disability [STD] leave in 2017."

4. On 10 October 2018, the Bank filed preliminary objections contesting the admissibility of this Application on the basis of the principle of *res judicata*, and, in the alternative, under Article II(2)(i) of the Tribunal's Statute. This judgment addresses the Bank's preliminary objections.

**FACTUAL BACKGROUND**

5. The historical context of this case is contained in *González Flavell*, Decision No. 553 [2017]. In that case, the Applicant challenged (i) the decision to declare her position redundant; (ii) administrative decisions concerning her Fiscal Year (FY) 2015 OPE; and (iii) management's decision following the recommendations of the PRS Panel. In its judgment of 21 April 2017, the Tribunal found that the Bank committed certain procedural irregularities in connection with the

decision to declare the Applicant's position redundant. In relation to the claims concerning the Applicant's FY2015 OPE, the Tribunal found that there were no procedural flaws in the OPE process.

6. The Applicant joined the Bank in October 1988. She served in different positions within the Legal Vice Presidency until August 2012 when she joined the Independent Evaluation Group (IEG) as a Level GG Special Assistant to the Senior Vice President and Director General of IEG (Director General).

7. On 26 September 2014, the Applicant received her OPE for FY2014 with a "Fully Satisfactory" OPE rating.

8. On 1 October 2014, the Applicant requested a meeting with the Director General to perform an annual OPE discussion.

9. On 21 October 2014, the Applicant, the Director General, and a Human Resources (HR) Business Partner met to discuss the Applicant's OPE. The Applicant requested changes to the comments in the OPE.

10. On 4 February 2015, the Applicant signed her FY2014 OPE. The Applicant states that this was the last OPE the Applicant received until the end of her employment with the Bank on 1 December 2017.

11. On 25 June 2015, the Applicant entered the Bank's disability insurance program and began receiving STD benefits.

12. On 1 July 2015, the Applicant was issued a Notice of Redundancy. Once the Applicant's managers became aware that she was placed on STD, the Notice of Redundancy was suspended until the Applicant's health permitted her to return to work or engage in a job search.

13. On 2 October 2015, the Director General wrote to the Applicant regarding her OPE for FY2015. She stated that “as you are on STD your OPE will not be completed until you are better and can fully participate. At the same time, I wanted to convey that the management team has assessed your performance as fully satisfactory – and you will be assigned a 3 rating.”

14. On 19 January 2017, the Applicant’s doctor completed a Release to Work Form noting that the Applicant was medically fit to return to work on 1 June 2017.

15. On 30 March 2017, the Applicant wrote to a Senior HR Business Partner, copying the Director General, asking about her mid-year review for FY2017. She stated as follows:

As soon as I receive a green light [to return to work] I will be in touch and would like to arrange a meeting. We will need to discuss (a) MTR [mid-term review] – will I even need one for this year? I am hoping not. (b) OPE for this year – I know hiring managers can request this, when the time comes I will be asking for your advice on how to handle this given my recent/current STD and return (if ever approved), will I need to do an OPE on my return? I am counting on HR to be sensitive to a situation which is not easy for [the Director General] or me.

16. On 31 March 2017, the Senior HR Business Partner responded stating that a mid-year review for FY2017 would not be necessary because the Applicant was on STD. The Applicant states that there was no response to her other enquiries regarding the OPE process.

17. On 7 June 2017, the Applicant was informed that she had been considered fit to return to work effective 2 June 2017. The following steps were taken: The Notice of Redundancy which was suspended was reinstated and, pursuant to the Notice, the Applicant was placed on Administrative Leave with 100% pay to enable her to conduct job searches. The Applicant remained on Administrative Leave until her employment with the Bank ended on 1 December 2017.

18. On 13 June 2017, the Applicant wrote to the Director General reiterating her enquiries about the OPE process and how and when this would take place. However, the Director General did not respond to this email, and no arrangements were put in place for the OPE process to be conducted.

19. On 8 September 2017, the Applicant wrote to the Director General, reiterating her request to meet for an OPE discussion and raising other matters. She stated:

Despite my earlier emails [...] you have not responded to indicate the arrangements for my OPE. [...].

Can you please now meet with me to discuss my OPE, in particular the learning/training plan which I have often asked you to urgently assist me on given that I am vulnerable staff under a Notice of Redundancy? At this time the support of my manager is critical.

The Director General did not respond to this email. Instead, the Applicant received a reply from an HR Specialist, on 11 September 2017. The HR Specialist did not address the Applicant's questions about the OPE process.

20. In October 2017, the Applicant met with an HR Business Manager to request information about her Salary Review Increase (SRI) for FY2017. The Applicant states that, although the HR Business Manager informed her of her SRI, the Applicant could not establish on what basis the SRI had been determined or whether it was fair and accurate since she did not have an OPE for that year.

21. On 11 December 2017, the Applicant filed Request for Review No. 409 with PRS challenging (i) the "failure to hold an OPE this performance management cycle"; and (ii) the "failure to have a discussion concerning an earlier OPE." On 8 January 2018, PRS dismissed the Applicant's Request for Review, stating that it "no longer ha[d] jurisdiction over performance claims and [was] not the appropriate forum in the Bank Group for resolving such claims."

22. The Application was received on 8 August 2018. The Applicant challenges (i) the dismissal by PRS of Request for Review No. 409; and (ii) the Bank's alleged failure to "afford the Applicant her right to an Overall Performance Evaluation after she returned from Short Term Disability leave in 2017."

23. The Applicant seeks the following: (i) compensation in an amount of four months' salary for the wrongful dismissal of Request for Review No. 409; (ii) compensation in an amount of

four months' salary for "the wrongful conduct of which complaint was made therein"; (iii) "an order that a note be placed on her file specifically stating that no performance evaluation was conducted after the year 2013/2014 and that the same be taken into account when any reference is given to a future prospective employer"; and (iv) legal fees and costs in the amount of \$10,734.47.

24. On 10 October 2018, the Bank filed preliminary objections contesting the admissibility of this Application on the basis of the principle of *res judicata* and, in the alternative, under Article II(2)(i) of the Tribunal's Statute.

#### SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

##### *The Bank's Contentions*

25. The Bank contends that the Application should be dismissed on the basis of the principle of *res judicata*, or, in the alternative, because the Applicant has failed to exhaust internal remedies prior to filing this Application to the Tribunal.

26. The Bank claims that the Applicant's challenges to her OPEs for "any years after 2013/2014" are barred from the Tribunal's review on the basis of the principle of *res judicata*. The Bank submits that the Applicant's claims relating to her FY2015 OPE were fully adjudicated by the Tribunal in Decision No. 553. In that decision, the Tribunal concluded that the FY2015 OPE "was reasonable and did not find that Respondent had committed any wrongdoing in giving the Applicant a positive performance review." The Bank further submits that claims regarding the Applicant's OPE for FY2014 were also examined by the Tribunal in Decision No. 553.

27. The Bank asserts that the Applicant is "trying to expand the purported basis of her claim" in this Application when she claims that the "true gravamen" of her Application is the Bank's actions after she returned from STD in June 2017. The Bank states that the Applicant's claims before PRS, which gave rise to this Application, concerned only the Bank's failure to afford the Applicant an OPE for FY2015. The Bank explains that, from her return to work until the end of

her employment with the Bank, the Applicant was placed on Administrative Leave and as such was not assigned a work program that could have formed the basis for an OPE that year.

28. The Bank avers that Article XI of the Tribunal's Statute sets forth the general principle of finality of the Tribunal's judgments and clearly states that "judgments shall be final and without appeal." Relying on *van Gent (No. 2)*, Decision No. 13 [1983], the Bank states that the Applicant should not be allowed to bring her case back to the Tribunal "for a second round of litigation no matter how dissatisfied [she] may be with the pronouncement of the Tribunal or its considerations."

29. The Bank further claims that, under Article XIII of the Tribunal's Statute, the Applicant cannot seek a revision of her claims before the Tribunal because her claims regarding her FY2015 OPE were known to the Applicant since 2 October 2015, none of the facts surrounding the OPE were concealed from the Applicant, and the Applicant failed to submit a request for revision within the six months required by Article XIII. In addition, the Bank maintains that the Applicant has failed to present new facts that warrant a revision of her claims under Article XIII.

30. Alternatively, the Bank claims that the Application should be dismissed because the Applicant failed to exhaust internal remedies prior to submitting this Application to the Tribunal. The Bank states that, pursuant to Staff Rule 9.07, paragraph 3.02, staff members seeking formal reviews of performance management decisions must do so through the Performance Management Review process. The Bank asserts that the Applicant never requested an Administrative Review as mandated by the Staff Rules but rather sought review by PRS, which no longer has jurisdiction to review performance management related claims. The Bank denies that, by bringing her claims to PRS, the Applicant has exhausted the mandatory internal remedies prescribed under Article II(2)(i) of the Tribunal's Statute.

31. The Bank also contends that the Applicant has not raised any exceptional circumstances to justify her failure to exhaust internal remedies.

***The Applicant's Response***

32. The Applicant claims that the Bank's *res judicata* argument is without merit. The Applicant argues that the Bank has taken out of context her claims and asserts that, when the Application is fully considered, it is apparent that she is not seeking to re-litigate the part of Decision No. 553 related to her FY2015 OPE but that the "true gravamen" of her claims in this Application is the Bank's "failure to hold an OPE discussion, or indeed to take any steps in connection with the OPE process, upon the Applicant's return to work in 2017." The Applicant contends that, insofar as the Tribunal determines that any claim regarding the Applicant's FY2015 OPE is *res judicata*, "that has no effect in the remainder of the Application, which relates to a later period and constitutes a new claim based on new facts."

33. The Applicant states that this Application is challenging the PRS decision in Request for Review No. 409 and not Request for Review No. 406, as the Bank wrongly contends. The Applicant asserts that it is clearly stated in Request for Review No. 409 that the Applicant challenged her supervisor's "failure to hold an OPE this performance management cycle" in clear reference to the performance cycle in FY2017.

34. The Applicant asserts that Decision No. 553, which was issued in April 2017, could not have addressed the Applicant's claims in the present Application as these claims relate to events that arose after the Applicant returned to work in June 2017. The Applicant denies that her claim to have an OPE discussion is precluded from the Tribunal's review "simply because such behavior had manifested itself on previous occasions and been allowed by the Respondent to continue unchecked." She claims that, pursuant to Staff Rule 5.03, paragraph 2.01, she had a right to have an OPE meeting with her supervisor after her return to work in 2017 to discuss her "performance achievements, strengths, areas for improvements, and future development needs," which the Bank failed to observe.

35. Regarding the Bank's second preliminary objection, the Applicant asserts that she "was right to make a request for review to the PRS, and doing so constituted the exhaustion of the appropriate internal remedies within the meaning of Article II.2 of the Statute."



36. The Applicant contends that PRS had jurisdiction to review her claim in Request for Review No. 409. She explains that her supervisor's failure to hold an OPE discussion after her return to work does not constitute a performance management decision within the meaning of Staff Rules 9.06 and 9.07; it is therefore not subject to the performance review process prescribed therein. She asserts that her claims in Request for Review No. 409 challenged a "managerial action, inaction, or decision [...] not consistent with [her] contract of employment or terms of appointment," which falls within the PRS's jurisdiction under Staff Rule 9.03, paragraph 7.01. She states that "it is clear that Administrative Review of performance management decision was not the appropriate venue for the Applicant's complaint which falls squarely within the ambit of PRS purview."

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### *RES JUDICATA*

37. Article XI(1) of the Tribunal's Statute states: "Judgments shall be final and without appeal." Article XIII(1) provides: "A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment."

38. The Tribunal has consistently upheld "the need to avoid subsequent applications arising from the same grievance." *See C (No. 2)*, Decision No. 312 [2004], para. 10; *van Gent (No. 2)*, para. 21; and *Agerschou*, Decision No. 114 [1992], para. 42. Specifically, in *van Gent (No. 2)*, paras. 21–22, the Tribunal stated:

Article XI lays down the general principle of the finality of all judgments of the Tribunal. It explicitly stipulates that judgments shall be "final and without appeal." No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal's judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

Article XIII allows, however, for a limited exception to the general principle enunciated in Article XI. [...] The exceptional nature of the power of revision prescribed by Article XIII has been emphasized by the Tribunal in the Skandera Case, Decision No. 9, para. 7: “the powers of revision of a judgment are strictly limited and may be exercised only upon compliance with the conditions set forth in Article XIII.” (Underlining in original.)

39. In *Pal (No. 2)*, Decision No. 406 [2009], para. 34, citing *Madabushi*, Order No. 2002-10 [2002], para. 4, the Tribunal recalled that “previously adjudicated claims that an applicant attempts to submit again in another application are ‘irreceivable under the principle of *res judicata*.’”

40. The Tribunal held in *González Flavell (No. 4) (Preliminary Objection)*, Decision No. 597 [2018], para. 40, citing *B (No. 2)*, Decision No. 336 [2005], para. 39, that the two conditions that must be met for the application of *res judicata* are “that the parties are the same in both cases and that the substance of the claim is essentially the same in both applications.”

41. The Bank claims that the Applicant’s challenges to her OPEs for “any years after 2013/2014” are barred from the Tribunal’s review on the basis of the principle of *res judicata*. Specifically, the Bank asserts that the Applicant’s claims relating to her FY2015 OPE were fully adjudicated by the Tribunal in Decision No. 553. The Bank further asserts that claims regarding the Applicant’s FY2014 OPE were also examined by the Tribunal.

42. The Tribunal will review the facts and claims in Decision No. 553 *vis-à-vis* the facts and claims submitted in the present Application to determine whether they constitute *res judicata*.

43. The Tribunal observes that in Decision No. 553 the Applicant challenged “1) the decision to declare her position redundant; 2) administrative decisions concerning her Fiscal Year (FY) 2015 Overall Performance Evaluation (OPE); and 3) management’s decision following the recommendations of the Peer Review Panel.” In relation to the Applicant’s third claim, the Applicant also challenged “the refusal to review ‘unduly negative content in the 2013–2014 OPE and duress to sign,’” her SRI and alleged failures in relation to the 2013–2014 OPE process.

44. The Tribunal examined the Applicant's claims concerning the administrative decisions associated with her FY2015 OPE. The Applicant's principal claim in this regard was that the FY2015 OPE process was procedurally flawed. In particular, she contended that the Manager of the IEG Public Sector Evaluation Department (IEGPS Manager) was improperly designated as her supervisor for the OPE period and he was "unqualified to evaluate her work for that period." Furthermore, she asserted that the OPE discussion never took place and challenged the decision to award her a "default" performance rating of "Satisfactory," which she claimed should have been postponed until she was no longer on STD.

45. The Tribunal held at paras. 159–160 that there was no evidence that the Applicant's performance rating was arbitrary or improperly motivated or that the OPE process was procedurally flawed. Furthermore, regarding the Applicant's claim that the OPE discussion did not occur, the Tribunal found at para. 161:

[T]he evidence demonstrates that the IEGPS Manager was prepared to hold the OPE discussion with the Applicant. In light of the fact that the Applicant expressed concern about doing the OPE discussion while on STD, the Applicant cannot now fault the Bank for not holding an OPE discussion with her. Additionally, when the Director General offered to hold an OPE discussion with the Applicant, it was the Applicant who responded querying the purpose of such a meeting.

46. Finally, the Tribunal held the Applicant's additional claims connected with the FY2015 OPE process "to be unsuccessful, and that the issue of a failure to provide the Applicant with a work program has been appropriately addressed in connection with the redundancy decision." *See* para. 162.

47. The Tribunal further examined the Applicant's claims concerning her FY2014 OPE. The Tribunal found at para. 164:

The remaining claims, particularly concerning the FY2014 OPE rating and process are not supported by the record. The Tribunal observes that there is no evidence that the content in the FY2014 OPE was "unduly negative." In any event, the record shows that the Applicant's supervisors, the Director General and the IEGPS Manager, performed several reviews and amendments to the text of the FY2014 OPE at the Applicant's request. Having reviewed the record, the Tribunal

is satisfied that there were no procedural irregularities in the notification of the Applicant's SRI and in the manner in which her FY2014 OPE was conducted. While it may be preferable for the Applicant's manager to have verbally informed her of the SRI assigned to her, the record shows that the information was not concealed from her and was readily available on her HR Kiosk page.

48. The Applicant has stated in the course of the proceedings that the Bank has taken out of context her claims and asserts that, when the Application is fully considered, it is apparent that she is not seeking to re-litigate the claims examined in Decision No. 553 but that the "true gravamen" of her claims in this Application is the Bank's "failure to hold an OPE discussion, or indeed to take any steps in connection with the OPE process, upon the Applicant's return to work in 2017." The Tribunal will examine this assertion.

49. In the present Application, the Applicant is contesting the decision "to fail to afford the Applicant her right to an Overall Performance Evaluation after she returned from Short Term Disability leave in 2017." The Tribunal observes that the Applicant was absent on STD from 25 June 2015 until she returned to work in June 2017, during the OPE process for FY2017.

50. A further review of the present Application shows that the Applicant claims that she was denied her right to an OPE process while she was on STD. In fact, she states in the Explanatory Statement of her Application that her complaints concern the "[f]ailure to afford the Applicant her right to an [OPE] for any year after 2013/2014." Also, in the section of the Application setting out the facts of the Applicant's OPE claim, the Applicant made a reference to her FY2015 OPE process and the fact that this was the last OPE that she "ever received."

51. The Tribunal is of the view that, in addition to her claim regarding her OPE process upon her return to work in June 2017, the Applicant is also attempting to bring to the Tribunal, through this Application, claims regarding her FY2014 and FY2015 OPEs for a second round of litigation. Given that "previously adjudicated claims that an applicant attempts to submit again in another application are 'irreceivable under the principle of *res judicata*'" *Pal (No. 2)*, para. 34, the Tribunal finds that the Applicant's claims concerning her FY2014 and FY2015 OPEs are a matter that the Tribunal has already examined in Decision No. 553 and are, therefore, excluded from the Tribunal's review on the basis of the principle of *res judicata*.

52. Nonetheless, the Tribunal finds that the Applicant's claim that the Bank failed "to afford [her] her right to an Overall Performance Evaluation after she returned from Short Term Disability leave in 2017" constitutes a new claim that was not the subject of review by the Tribunal in Decision No. 553.

53. Finally, in response to the Bank's argument that the Applicant's claims cannot be considered under the exception provided for in Article XIII of the Tribunal's Statute, the Tribunal observes that the Applicant filed an application for revision to the Tribunal seeking the review of Decision No. 553 under Article XIII of the Tribunal's Statute. The Tribunal addresses this matter in a separate judgment. *See González Flavell (No. 13)*, Decision No. 611 [2019].

#### EXHAUSTION OF INTERNAL REMEDIES

54. Having concluded that the Bank's alleged failure "to afford [the Applicant] her right to an Overall Performance Evaluation after she returned from Short Term Disability leave in 2017" constitutes a new claim before the Tribunal, the Tribunal will examine the Bank's second objection to the admissibility of this Application.

55. The Bank states that, pursuant to Staff Rule 9.07, paragraph 3.02, the Applicant should have sought Administrative Review of her OPE related claims prior to submitting this Application to the Tribunal. The Bank denies that, by bringing her claims to PRS, the Applicant has exhausted the internal remedies required under Article II(2)(i) of the Tribunal's Statute. On her part, the Applicant asserts that she "was right to make a request for review to the PRS, and doing so constituted the exhaustion of the appropriate internal remedies within the meaning of Article II.2 of the Statute."

56. Article II(2)(i) of the Tribunal's Statute provides:

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

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

57. Staff Rule 9.06, paragraph 3.01, provides:

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

58. Staff Rule 9.07, paragraph 3.02, states:

Staff Members seeking formal reviews of Performance Management Decisions must do so through the Performance Management Review process. Peer Review Services (PRS) does not review Performance Management Decisions. Subject to Rule 7, “Applications,” paragraph 8, “Filing,” of the Rules of the World Bank Administrative Tribunal, a staff member must seek Performance Management Review of a Performance Management Decision prior to submitting an Application to the World Bank Administrative Tribunal (WBAT). If the staff member is not satisfied with the decision resulting from the Performance Management Review, or if the Decision-maker does not make a decision within the specified time period provided, the staff member may file an Application to the World Bank Administrative Tribunal (WBAT).

59. Staff Rule 9.06, paragraph 2.01(e), defines performance management decisions as “management’s: (i) determination of a staff member’s written performance evaluation; (ii) determination of a staff member’s performance rating; (iii) decision to place a staff member on an Opportunity to Improve (OTI) plan; or (iv) determination of the terms governing a staff member’s OTI plan.”

60. The Tribunal has expressed the importance of the requirement of exhaustion of internal remedies, which “ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action.” *Moss (Preliminary Objection)*, Decision No. 571 [2017], para. 46; *Ampah*, Decision No. 522 [2015], para. 55.

61. Furthermore, the Tribunal has stressed in numerous decisions that a failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. *See de Jong*, Decision No. 89 [1990], para. 33; *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25–26; *Peprah*, Decision No. 275 [2002], para. 24; *Islam*, Decision No. 280 [2002], para. 7; *Alrayes*, Decision No. 520 [2015], para. 55; *Moss (Preliminary Objection)*, para. 46.

62. The Applicant argues that PRS had jurisdiction to review her claim in Request for Review No. 409 because her supervisor’s failure to hold an OPE discussion upon her return to work in June 2017 does not constitute a performance management decision within the meaning of Staff Rules 9.06 and 9.07 and, therefore, is not subject to the performance review process prescribed therein.

63. The Tribunal observes that, in her Request for Review No. 409, the Applicant identified the employment matters in dispute as the (i) “failure to hold an OPE this performance management cycle” and (ii) “failure to have a discussion concerning an earlier OPE.” When PRS considered the Applicant’s claims, the Peer Review Chair noted that “PRS no longer ha[d] jurisdiction over performance claims and [was] not the appropriate forum in the Bank Group for resolving those claims”; it therefore dismissed the Request for Review. The Chair advised the Applicant to pursue her claim through the performance management process, as prescribed in the Staff Rules.

64. In the Tribunal’s view, there is no ambiguity in the Staff Rules that a staff member seeking review of performance management decisions is required to submit the matter to Administrative Review and Performance Management Review prior to seeking review with the

Tribunal. It is also evident from the Application that the Applicant is challenging a decision associated with her OPE when she disputes the failure “to afford the Applicant her right to an Overall Performance Evaluation after she returned from Short Term Disability leave in 2017.”

65. The Tribunal finds that, pursuant to Staff Rules 9.06 and 9.07, Administrative Review was the appropriate forum to review the Applicant’s claim. The record is clear that she failed to raise her claim before this forum in a timely manner.

66. Therefore, pursuant to Article II(2)(i) of the Tribunal’s Statute, the Tribunal declines to consider this claim on the basis that the Applicant did not exhaust the internal remedies required under Staff Rules 9.06 and 9.07.

#### DECISION

The Application is dismissed.



/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 26 April 2019