



World Bank Administrative Tribunal

2019

Decision No. 617

**Sara González Flavell (Nos. 11 and 12),
Applicant**

v.

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

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

**Sara González Flavell (Nos. 11 and 12),
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 Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche, Janice Bellace, Seward Cooper, and Lynne Charbonneau.

2. The Applicant's eleventh and twelfth Applications were received on 13 December 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 the alleged denial of the "full internal job search assistance to which she was entitled under her contract of employment prior to its termination in December 2017; [and the] failure to comply with the job search assistance obligations stipulated under the terms of the Applicant's Notice of Redundancy dated 1st July 2015." The Applicant also challenges the alleged denial of "the full external outplacement counselling services to which she was entitled under her contract of employment prior to its termination in December 2017; [and the Bank's] decision, by its [Human Resources (HR)] department, to refuse and/or ignore the Applicant's request for travel to Mexico City for purposes of job search and instead to provide only financial compensation after her termination."

4. On 6 and 13 February 2019, the Bank submitted preliminary objections contesting the admissibility of both Applications. On 26 February 2019, having considered the submissions of the parties, the President of the Tribunal decided to consolidate both Applications and join the preliminary objections to the merits. This judgment addresses the preliminary objections and the merits.

FACTUAL BACKGROUND

5. The historical context of this case is contained in *González Flavell*, Decision No. 553 [2017], *González Flavell (No. 4)*, Decision No. 597 [2018], and *González Flavell (Nos. 6 and 9)*, Decision No. 604 [2019].

6. On 14 November 2014, the Applicant was informed by the Director General of the Bank's Independent Evaluation Group (IEGDG) that the Applicant's position was declared redundant.

Relevant Facts Concerning Job Search Assistance

7. In late December 2014, the Applicant was referred to the Bank's Transition Support Team which manages career transition services. Such services include career consultation with in-house career advisers, referrals to external vendors for career transition/outplacement services, and immigration and/or tax advice where appropriate or eligible. According to the Bank, outplacement services, as stated in Staff Rule 7.01, paragraph 15.01(b), "were put in place to support staff members facing redundancies," and staff members "who are eligible for this type of service may consult with an external firm specialized in providing outplacement support."

8. Between January and August 2015, the Applicant received career counseling services and job search assistance from an HR Officer who assisted the Applicant in identifying job vacancies that matched her profile and to which she could apply. The Applicant also received outplacement counseling services through the Bank's contracted outplacement counseling services provider, Lee Hecht Harrison (LHH). The Applicant commenced the six-month outplacement counseling services on 28 January 2015.

9. On 27 April 2015, the Applicant contacted HR and stated that she wanted to put her "LHH assistance on hold due to various factors, including the fact that I am here on a G4 and cannot apply to external positions realistically until I manage to change my visa status, since with my present visa I cannot be offered employment on the external market." In another email on 22 May

2015, the Applicant shared with HR that she did not see the point of LHH or why she was with them at this stage.

10. Between 27 April and 8 June 2015, the Applicant received multiple email messages from HR informing her of the tools, such as Job Tracker, Skill Finder, and Transition Support, that were at her disposal for job searches. In an email dated 1 June 2015, the Applicant was informed by the HR Transition Support Program Manager that the Transition Support Team was not “in a position to notify staff [of] specific vacancies.” In particular, the Applicant was told: “As explained before, our role is to help and assist staff whose jobs may be at risk and give them guidance and support so they are better positioned when they apply to jobs.”

11. In an email on the same date, the Manager, HR Corporate Client Services responded to the Applicant’s complaints about lack of support. Noting that the Applicant had been given “extended time to begin thinking about [her] job strategy even before [she was] given the official date of redundancy,” he stated:

The support we have been providing to you thus far have included, but not limited to, multiple meetings and telephone calls to discuss job hunting strategies, outreach to other HR colleagues to identify potential opportunities across the [World Bank Group (WBG)], and connecting you (since Dec 2014/Jan 2015) with the Redeployment and Transition Support teams. I understand from your email below that you have actively been engaging with both teams, and making use of their services to the maximum possible, a service that has been provided to you even before you’re formally given a redundancy notice. Therefore, I’m surprised to read your email indicating that we have not provided support to you.

12. On 25 June 2015, the Applicant entered the Bank’s disability insurance program and began receiving Short Term Disability (STD) benefits.

13. 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.

14. On 7 June 2017, the Applicant received an email from an HR Specialist who had been designated as the Applicant’s point of contact with the Bank. The HR Specialist informed the

Applicant that she had been considered fit to return to work effective 2 June 2017. The HR Specialist further informed the Applicant that 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 HR Specialist also stated that the Applicant would remain on Administrative Leave for six months, until 1 December 2017 whereupon the Applicant's employment with the Bank would terminate.

15. In the same email from the HR Specialist, the Applicant was told:

I also understand that you have been in touch with [...] regarding job-search assistance with the outsourcing firm, Lee Hecht Harrison (LHH). We have no objection to you seeking services from LHH, as long as you feel you are able to do so, health-wise. In order to reconnect with LHH, all you need to do is let us know when you would like to start the services and our Transition Support unit will arrange for LHH to contact you directly to schedule an appointment. [...], who coached you previously, has left LHH. Therefore, LHH will assign you another coach. Please confirm your email and phone number so that LHH can contact you.

16. On 14 June 2017, the Applicant was informed by the HR Transition Support Program Manager that

[i]t has been a long time since you were last with LHH, and our agreement with them has always been time-bound. The normal term of service we have agreed with them is six months, which had been exhausted. However, given the specifics of your case and the time elapsed since you were last with LHH I have consulted and agreed with [the HR Manager, Client Services] and with [the Manager, HR Corporate Case Management] that we could make an exception to add another 6 months to your LHH service. I have already let LHH know about this, so you can re-start the service at any time.

The Applicant was also informed that HR would send emails on her behalf to the Bank's tax and immigration vendors for them to provide her with an "hour-long consultation at our expense." The Applicant was further informed that she needed to start those immigration and tax consultations that week due to the expiration of funding at the end of the month.

17. On 16 June 2017, in response to the Applicant's 13 June 2017 email messages to HR representatives, the Applicant was contacted by the HR Specialist. The HR Specialist reiterated

that the Applicant had been granted an additional six-month contract with LHH and was told to revert to LHH for any training-related questions she might have. The HR Specialist stated:

I note that you mention that you have reached out to [...] regarding assistance with job search/training. If you are referring to the Outplacement Support offered as part of the redundancy package, please note that it is not available to staff who have met the Rule of 85. Since you reached the Rule of 85 on November 29, 2015, you no longer qualify for the outplacement support.

[...]

Additionally, for your internal job search efforts, I wanted to recommend that you follow relevant advertisements on “myJobWorld”. As you may know, the “myJobWorld” system allows you to set up automatic alerts via JobTracker, so you are notified about new vacancy postings in areas of your interest.

18. Between 21 June and 14 September 2017, further email correspondence was exchanged between the Applicant and HR specifically surrounding the transition support services available to the Applicant. In one such email dated 21 June 2017, the Applicant was informed by the HR Specialist that she could “avail [herself] of any and all career support services we offer to other staff members, subject to availability.” The Applicant was also reminded that she could avail herself of LHH services, which were available for her to start prior to the end date of her contract with the Bank – 1 December 2017.

19. The Applicant responded to the HR Specialist’s 21 June 2017 email the same day raising several complaints. The Applicant stated, “I have also been informed in writing that I have no right to any assistance from the Bank regarding transition services due to having reached the rule of 85.” The Applicant also stated, “I believe I am still entitled to, and would greatly benefit from, a cohesive and well-planned training and learning plan which all staff have for use all year long.”

20. On 27 June 2017, the HR Specialist responded by email once again explaining to the Applicant the two categories of counseling services to which the Applicant was entitled. Referring to the Applicant’s specific request for training, the HR Specialist stated, “Staff members who have met the Rule of 85 are not eligible for retraining. You reached the Rule of 85 on November 29, 2015.” This message was reiterated to the Applicant by the HR Specialist on 14 September 2017.

21. On 15 September 2017, the Applicant wrote an email to the Vice President of Human Resources (HRVP) and the IEGDG requesting, *inter alia*, that the date of redundancy be brought forward to 1 October 2017. The Applicant stated:

I request that you now bring forward the date of my proposed redundancy to October 1, 2017, to be my last day at the Bank. I request payment in lieu of notice for the two months remaining between October 1, 2017 and December 1, 2017. As you are aware, payment in lieu of notice is provided for under the staff rules.

Please now confirm your agreement to bring forward the redundancy that HR have informed me the Bank has approved and that they insist must go ahead, and that you agree that my last day will be October 1, 2017 and that I will receive two months[?] salary in lieu of notice in addition to the other amounts to which I am entitled.

I further request that you now have HR Corporate Case management provide the exact and complete details of what I will receive as my redundancy payments and entitlements. I have requested these details previously, to continue to withhold such information is not simply inconsiderate and insensitive but falls short of their professional obligations.

22. The Applicant set out the background and reasons for the request to bring forward the date of redundancy, expressing her belief that she was not given a full six-month job search period nor was she “provided with job search support stipulated for under the Bank Staff Rules.” According to the Applicant, it had taken months to have the HR Specialist “understand the meaning of transition support.” The Applicant also stated that the “retroactive triggering of the notice of redundancy of 2015 also fails to comply with the Bank’s obligation regarding facilitating my return to work.”

23. On 20 September 2017, the HRVP sent the Applicant an email response noting her “request to action [her] redundancy earlier than originally planned.” The HRVP stated that he would leave that between the Applicant and her manager to decide. The Applicant was also provided with a new HR point of contact, and the HRVP made the following statement: “Let me be clear, you are entitled to career transition/outplacement services, which include career seminars, in-house career coaching and the services of Lee Hecht Harrison (LHH). The Career Management team have already authorized your [...] use [of] these services and I understand extended the services by an additional 6 months.”

24. On the same day, the Applicant met with an in-house career adviser whose role was to provide career advice to clients, including advising and consulting on job search planning and conducting effective job searches. Over the course of two months, the Applicant met with this career adviser a total of ten times.

25. On 27 September 2017, the Applicant received an email from an HR Analyst with a memorandum titled “Information/Benefits Upon Ending Employment.” The email also included a form for “Retired Staff Group Life Insurance Election.”

26. On 28 September 2017, the Applicant met with her new HR point of contact, the Manager, Client Services (Client Services Manager). The Client Services Manager subsequently sent the Applicant an email with an updated memorandum on the terms and conditions for the Notice of Redundancy with the new effective date of 1 October 2017 as per the Applicant’s request. The Applicant was also informed that she now had the redundancy amounts, which were “estimates and [did] not include [her Salary Review Increase] for FY17 [Fiscal Year 2017].” Finally, the Applicant was told: “[I]n an effort to accommodate your request, the Bank can agree to cash out the days left between your advanced last day of employment and December 1 (i.e. if your last day of employment is October 1, the Bank will pay you for the period between October 2 and December 1, in lieu of what is left of your job search period. [...]).” (Emphasis in original.) The Applicant was asked to confirm by the close of business the following day if she wished to process her employment termination effective 1 October 2017.

27. The relevant portions of the memorandum titled “Terms and Conditions for Notice of Redundancy” are as follows:

1. Further to your Notice of Redundancy dated July 1, 2015, I wish to confirm the terms and conditions of your leaving the service of the Bank Group under the provision of Staff Rule 7.01, Section 8. The effective date of your redundancy is October 1, 2017.

[...]

b) I understand that you have requested to cash out two months of the six-month job search period. I also understand that your manager has agreed to this

arrangement. On or about October 15, 2017, you will receive a lump sum amount equivalent to two months of your net pay.

c) Unless your visa status has changed, for the purpose of job or housing search, you and your spouse will be issued the equivalent of cash payments for Home Country Travel based on roundtrip air fares (Staff Rule 6.13 Home Country Travel) from Washington, D.C. to Mexico City as a lump sum payment on or about October 15, 2017.

28. On 2 October 2017, the Applicant responded to the Client Services Manager stating: "I'll get back to you regarding this after I've seen my lawyer, this is most unsatisfactory since so much was left to be provided to me on September 28/29 (with two weeks passing with nothing being sent to me at all after my reasonable request of September 15). Now I am left having to try to obtain appointments to resolve all outstanding matters which is proving difficult." The Applicant stated that she was trying to get a meeting with the pension office. She also inquired when she would receive a meeting with the office of the Human Resources Corporate Case Management unit (HRDCO) to review the redundancy papers.

29. On 3 October 2017, the Client Services Manager responded to the Applicant informing her that she was provided with all "redundancy papers and payments" available and that there were no outstanding documents due to the Applicant. The Client Services Manager stated, "I understand [...] that you had some questions as to whether you had been made redundant. Let me confirm that you were made redundant pursuant to the July 1, 2015 notice of redundancy. Your last day of employment will be December 1 unless you opt to bring forward that date, as you had previously requested."

30. The Client Services Manager also informed the Applicant, in reference to her request about having a meeting with the HRDCO's office, "[P]lease note that meeting with a staff member who has been declared redundant to review the redundancy documents/payment information is not a requirement under the Staff Rules nor is it the practice of HRDCO. Rest assured that you are not being treated differently from other staff in any way. However, I have reached out to [the HRDCO] and he would be happy to meet with you if you wish to do so. Please, kindly contact [the HRDCO] directly [...]."

31. Finally, the Client Services Manager informed the Applicant that, since she did not confirm that she wanted to move her termination date to 1 October 2017, she had been offered 6 October 2017 as an alternative last day of employment. The Client Services Manager stated:

I understand you wanted some additional time to review all of the separation and benefits information that was provided to you. As you will know, the Bank needs time to process any HR actions, including terminations; therefore, if you want to have October 6 as your last day of employment, I would need to hear back from you confirming this by **COB tomorrow, October 4, 2017**. If I do not hear back from you by tomorrow COB, we will revert to December 1, 2017 as your last day of employment, unless you tell us otherwise. (Emphasis in original.)

32. On 5 October 2017, the Applicant responded stating that HR Operations had failed to process her information, and that “[n]ecessary actions have not been taken in a timely manner.” The Applicant informed the Client Services Manager that she wished to reinstate the 1 December 2017 end of employment date because of the Bank’s failure to accommodate her “simple request” for information and documents. The Applicant’s end of employment date was set back to 1 December 2017.

Relevant Facts Concerning Home Country Travel

33. As noted above, the memorandum titled “Terms and Conditions for Notice of Redundancy,” which stipulated a 1 October 2017 date of redundancy, and which the Applicant received on 28 September 2017, contained the following provision:

c) Unless your visa status has changed, for the purpose of job or housing search, you and your spouse will be issued the equivalent of cash payments for Home Country Travel based on roundtrip air fares (Staff Rule 6.13 Home Country Travel) from Washington, D.C. to Mexico City as a lump sum payment on or about October 15, 2017.

34. On 9 November 2017, the Applicant sent an email to the Transition Support Program Manager stating that she had not received any response from HR to her previous request for information regarding travel to her home country for job search. The Applicant stated that the travel approval procedure had not been explained to her. The Applicant sent further messages to different HR representatives on this and other matters between 10 and 15 November 2017.

35. The corresponding amount for home job search travel was paid to the Applicant in the total redundancy payment she received upon her exit from the Bank. The Applicant received \$1,200.00 (\$600.00 each for her and her spouse) representing round-trip tickets from Washington, D.C., to Mexico City. This amount was reflected and described as “Lmp-Sum Job/Home Search Trav” in the Applicant’s 28 December 2017 payroll statement.

Peer Review Services (PRS) Requests for Review No. 406 and No. 416

36. On 30 October 2017 and 5 February 2018, the Applicant filed Requests for Review No. 406 and No. 416, respectively, before PRS. In PRS Request for Review No. 406, the Applicant challenged the alleged “failure to provide six months of assistance with a WBG job search specialist in accordance with applicable staff rules.” In PRS Request for Review No. 416, the Applicant challenged the alleged “[f]ailure by the appropriate Bank staff (HR) to observe [her] right, under Staff Rule 7 paragraph 14.01, to assist in the specific forms of (1) travel to [her] home country for [herself] and [her] spouse for job search; and (2) outplacement counseling services.”

37. On 15 August 2018, the Applicant received a letter from the Bank’s Chief Executive Officer with a copy of the PRS Panel’s Report in Consolidated Requests for Review Nos. 406 and 416. The Bank’s Chief Executive Officer informed the Applicant that the Panel found that

management acted consistently with your former contract of employment and terms of appointment in providing you with job search assistance and a home country travel allowance for you[r] job search. Specifically, the Panel determined that management followed the Staff Rules, procedures and WBG practice, and that management acted in good faith. The Panel therefore recommends that your requests for relief be denied.

38. The Chief Executive Officer informed the Applicant that the Panel’s recommendation was accepted and that the Applicant could, if dissatisfied with the decision, challenge it before the Tribunal.

The Applications Before the Tribunal

39. On 13 December 2018, the Tribunal received the Applicant's eleventh and twelfth Applications. The Applicant seeks compensation in the amount of six months' salary for the "wrongful dismissal of Request for Review No. 406 and the wrongful conduct of which complaint was made therein." The Applicant also seeks compensation in the amount of six months' salary for the "wrongful dismissal of Request for Review No. 416 and the wrongful conduct of which complaint was made therein." She requests an amount "equal to the cost of six months' outplacement job search assistance," and an "amount equal to three months' salary for lost opportunity and loss of earnings which she might have received but for the failure to provide the outsourcing firm services at the time/in the time-period requested by the Applicant."

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

Preliminary Objections

The Bank's Main Contentions

40. In its preliminary objections the Bank contends that the Applications should be denied on the grounds that they are barred by the principle of *res judicata* and do not relate to the Applicant's contract of employment or terms of appointment. The Bank states that the "gravamen of [the] Applicant's claim is the Notice of Redundancy of July 1, 2015, and all contents therein, including the six-months['] administrative leave," and "the six-months['] job search and home travel benefit for the purpose of job/house search."

41. To the Bank, there can be no mistake that the claim raised in Application No. 11 concerning internal job search assistance is the same as claims raised in *González Flavell* and *González Flavell (No. 4)* and should be dismissed. The Bank also contends that, should the Tribunal find that the Applicant's claim is not barred by *res judicata*, it is nevertheless irreceivable as it does not "relate to the non-observance of [the] Applicant's contract of employment or terms of appointment."

42. The Bank makes the same assertions regarding the Applicant's claims in Application No. 12. The Bank also asserts that the claims in Application No. 12 are time barred. According to the Bank, the Applicant must have been reasonably aware, by emails from HR to the Applicant dated 21 and 27 June 2017 and 14 September 2017, that she must commence services with LHH by 1 December 2017. The Bank contends that the Applicant had 120 days from these dates in June and September 2017 to file her claim with PRS. She filed her Request for Review with PRS on 5 February 2018, more than seven months after management communicated its decision in June 2017. Regarding home country travel for job/house search, the Bank contends that the Applicant was made aware on 28 September 2017 that she would be issued a lump sum payment for the travel; however, she filed her Request for Review challenging this matter on 5 February 2018, beyond the 120-day limit. To the Bank these claims are out of time.

The Applicant's Response

43. The Applicant contends that the principle of *res judicata* does not apply to either of her Applications. According to the Applicant, it is the actions of the Bank after the re-issuance of the Notice of Redundancy and after June 2017 that form the basis of PRS Request for Review No. 406 and thus Application No. 11. She asserts that "this new cause of action relates to the failure to provide the Applicant with the necessary job search assistance stipulated under the Staff Rules provisions and expressly promised by the [Bank] in the Notice of Redundancy itself." The Applicant notes that the PRS Panel found that it had jurisdiction to receive and review her request and did not consider that "it was bound by an earlier Tribunal decision." Similarly, the Applicant contends that the principle of *res judicata* does not apply to Application No. 12 since the matters raised therein are not about the Notice of Redundancy

but relate to the non-observance by the Respondent of its obligation to provide to the Applicant, when she requested these

- (a) tickets for herself and her husband to travel home to search for a new job (the Tribunal is reminded that the Applicant was the primary income-earner) and
- (b) outplacement services after termination by the Bank
- (c) as well as the IBRD's decision by its decision-maker [the Chief Executive Officer] to accept the Recommendations of the PRS Panel to dismiss the PRS

Requests, itself a violation and refusal to allow the Applicant a fair hearing and access to justice.

44. Regarding the Bank's statement that the claims in her Applications fall outside the contract of employment or terms of appointment, it is the Applicant's contention that this statement is false. According to the Applicant, Application No. 11 concerns facts which she asserts support her claim that "the [Bank] grossly failed to carry out its obligations owed to the Applicant as a staff member facing redundancy." The Applicant also states that the HRVP made the following statement to her: "Why should I re-assign you? You went to the Tribunal." To the Applicant, the "failure to provide assistance was not only a gross refusal to comply with its obligations but an act of retaliation by the [Bank]." The Applicant also points out that the Bank asserts that her claims in Application No. 12 are not within the Tribunal's jurisdiction but at the same time contends that it complied with its obligations. The Applicant asserts that "[t]o state that the [Bank] complied with its obligations and therefore the Application No[.] 12 should be dismissed is not to raise a preliminary objection on jurisdictional grounds."

45. Finally, in response to the Bank's assertion that Application No. 12 is time barred, the Applicant contends that this objection is "attempting to use an inapplicable date for calculation of the filing deadline." She states that Application No. 12 was filed as PRS Request for Review No. 416 within 120 days of the acts alleged. Regarding the presentation of her claims before the Tribunal, the Applicant notes that "time commences running after the latest of the event giving rise to the [application] or receipt of notice that the relief will not be granted." The Applicant states that she was granted extensions to file her Application and that Application No. 12 was duly filed during the extension period.

Merits

The Applicant's Contention No. 1

The Bank failed to afford the Applicant the right to internal and external job search assistance

46. With respect to the Bank's alleged failure to afford the Applicant the right to internal job search assistance, the Applicant states that she was entitled to fair treatment from the Bank and to

expect that “the Bank’s employees would abide by the Staff Rules and Principles of Staff Employment.” The Applicant contends that Staff Rule 7.1, paragraph 8.06, must be understood to mean

(i) assistance throughout the period between receiving notice of dismissal by reason of redundancy and termination of employment – a period of six months (or slightly less in the Applicant’s case, for reasons explained elsewhere) and (ii) that the Bank should take proactive steps to assist a redundant employee in this regard: see *Arellano (No. 2)* (Decision No. 161) at paragraph 42, *DV* (Decision No. 551) at paragraphs 69-70 and *do Sacramento* (Decision No. 493) at paragraphs 44-46.

47. To the Applicant, the following “facts and matters” reveal that the Bank did not treat her fairly. First, the Applicant states that the designated HR Specialist told her in June 2017 that she was not entitled to receive “transition support from the Bank’s HR department because of the ‘Rule of 85.’” The Applicant contends that this statement was wrong and negligent, and was only corrected in the middle of September 2017 when she was “left with only around 2 months of her notice period within which support could be provided.”

48. Second, the Applicant contends that the Bank’s HR department “failed to take any steps proactively to assist [her] in her internal job search between June and mid-September 2017.”

49. Third, the Applicant states that she was not provided access to a job search specialist at any point, and “she was not notified of any vacancies at her grade and within her area of expertise by anyone in the Bank at any point.” The Applicant claims she subsequently learned from colleagues that, during the period from June through September 2017, “numerous positions for which she would be suitable and had direct relevant experience [...] had been listed, yet the Applicant had not been notified of any of these openings [...]”

50. Fourth, the Applicant states that HR failed to provide her with the job search assistance that she had been promised in the 2015 Notice of Redundancy “and/or failed to inform the Applicant that she could not expect and/or was not entitled to receive the same type of support from the [Transition Support Unit] as she had been promised in 2015.”

51. Fifth, the Applicant claims that the support she received from HR after mid-September 2017 was “inadequate and provided too late for it to be materially of assistance to her.” The Applicant contends that, by the time she was given access to a consultant “career adviser,” “it was too late for her to apply for vacancies internally, as there was insufficient time for her application to be processed before the termination of her employment.” To the Applicant, this was “grossly unfair and caused significant prejudice to the Applicant’s ability to continue her career.”

52. Finally, the Applicant states that the Bank makes no attempt to deny the failure to provide any job search assistance during the months from June through September 2017, instead “arguing that it met its obligations by providing services outside the period in which it had an obligation to deliver these.” The crux of the Applicant’s argument is that the onus was on the Bank to supply the requisite services, and she contends that “no Staff Member of the Transition Services Unit ever met with [her] during her Notice of Redundancy period despite her many requests.”

53. Regarding the Bank’s alleged failure to afford the Applicant the right to external job search assistance, the Applicant contends that the Bank did not treat her fairly and failed to comply with Staff Rule 7.01, paragraph 14.01, “because it wrongly and unfairly imposed an arbitrary requirement that the Applicant commence services with LHH prior to 1 December 2017.” The Applicant states that LHH had no such requirement and the Bank insisted, for no good or rational reason, that she must commence use of LHH services before her employment terminated. The Applicant asserts that she needed to be in receipt of a Green Card before she could usefully take up the services offered by LHH. According to the Applicant, HR refused to properly consider her requests made from July 2017 onward that she be permitted to commence services with LHH from January 2018.

54. To the Applicant, the Bank “has no right to demand that the services commence by a specific date [...] in order to arrange its own economy of scale. The Respondent’s contractual arrangement is not relevant to the Applicant’s right.” The Applicant asserts that this “unfair limitation, based on nothing but the Respondent’s own convenience, adversely affected the Applicant.” Altogether, the Applicant contends that the Bank left her “alone with less support than all other staff affected by its 2014 through 2017 downsizing [...]. In so doing it directly

discriminated against the Applicant.” The Applicant claims that the Bank penalized and discriminated against her “for her disability and/or having to take STD.” According to the Applicant, her “emails to the Transition Services Unit were rebuffed by silence and/or statements relayed through [the HR Specialist]. No assistance was offered or provided.”

55. The Applicant does not deny that she has an obligation to apply to existing vacancies. Rather, it is her assertion that she first “needed assistance in identifying these potential jobs in the Bank’s vacancies from a job search specialist [...] who she had been informed on the date of reactivation of her redundancy notice, would be in contact with her.”

The Bank’s Response

The Bank made genuine efforts to provide the Applicant with internal and external counseling opportunities, and the Applicant bears primary responsibility for her career

56. Relying on the version of Staff Rule 7.01 that was applicable at the relevant time, the Bank contends that it made genuine efforts to provide the Applicant with career counseling services pursuant to Staff Rule 7.01, paragraph 9.06. The Bank recalls the Tribunal’s decision in *Arellano (No. 2)*, Decision No. 161 [1997], para. 42, in which the Tribunal held that the obligation on the Bank is to “make an effort; [...] not an obligation to ensure the success of such effort.” To the Bank, it is irrefutable that the Applicant was provided with access to career counseling services both in 2015, before the Applicant received the Notice of Redundancy, and after she returned from her two-year STD in 2017.

57. Responding to the Applicant’s claim that she was “entitled to ‘expect’ the job search assistance promised to her in the Notice of Redundancy dated July 1, 2015,” the Bank states that the required resources were made available to the Applicant. The Bank avers that the Applicant, like other staff members, had access to MyJobWorld – the internal website with postings of job vacancies. The Bank further notes that the Applicant was repeatedly sent emails reminding her to follow advertisements on MyJobWorld and that, once the Applicant created a profile, the “system allowed [the] Applicant to receive job vacancy e-mails automatically rather than manually from

an HR staff [...].” The Bank states that the Applicant was aware of MyJobWorld and how to use it because she admitted to applying to ten positions in an email she sent to HR on 21 May 2015.

58. The Bank states that, in 2015, the Applicant worked directly with a staff member in the Redeployment Team who assisted the Applicant in identifying job vacancies that fit her profile. The Applicant also benefited from outplacement counseling services with LHH for the period from 22 January to 4 August 2015. According to the Bank, during her paid administrative leave in 2017, the Applicant also made use of the counseling services provided by LHH from 19 June 2017 until 16 January 2018. The Bank observes that the Applicant met with an in-house career adviser on ten occasions over the course of two months, “which was significantly more than the average Bank staff client in similar circumstances.” The Bank submits into evidence a statement by this career adviser. The career adviser explained that her role was not to “look for job openings for clients, but to teach them how to look for appropriate opportunities and then to actively pursue positions.”

59. The Bank contends that although it was made clear to the Applicant that career counseling services were available to her, and what these services consisted of, the “Applicant instead engaged in a tactic of sending multiple emails to multiple Bank staff requesting different services, confusing services and then not understanding simple emails in response.” The Bank maintains that when the Applicant finally understood that she could begin the counseling services with LHH, provided that she commenced them before her last day of employment, “she then wanted to delay using the services to a time that was more convenient for her as she was juggling visa related issues.” The Bank states that access to LHH was not a service available to all staff whose positions were made redundant in 2017.

60. Finally, the Bank maintains that it is the Applicant’s responsibility to apply to existing vacancies and that, rather than “actively applying for job vacancies during the six-month administrative leave, the record shows that [the] Applicant used this time to create her own distress.” According to the Bank, it went “above and beyond what the staff rules required by providing counseling services beyond what other staff members receive.” The Bank states that the Applicant also benefited from outplacement counseling services with LHH for a total of 14 months, “significantly more than what other staff members [...] generally receive.” The Bank

submits that how the “Applicant chose to make use, or to not make use, of the services made available to her by [the Bank] cannot be attributed to [the Bank].”

The Applicant’s Contention No. 2

The Bank failed to provide her with an allowance for home country travel at a time when such allowance would have been useful to the Applicant

61. The Applicant contends that the Bank failed to comply with the version of Staff Rule 7.01, paragraph 14.01, that was applicable at the relevant time. According to the Applicant, despite her requests to HR to be able to travel to Mexico City to interview for a position notified to her by her friends and associates, the Bank refused to answer the Applicant’s request to know whether she could travel to Mexico during her employment with the Bank while under her Notice of Redundancy. The Applicant states that the Bank insisted on paying her the amount of the “ticket entitlement only on December 31, 2017 when she had already left the [B]ank and could no longer travel outside the country.” To the Applicant, in “this manner the [B]ank failed to assist her with her job search, and instead actively obstructed that job search by denying her the financial assistance for tickets at a time when she could travel.”

The Bank’s Response

The Applicant was provided with the allowance for home country travel

62. The Bank observes that the Applicant does not deny “receiving the allowance, but rather complains about when she received it.” To the Bank, the “Applicant wants things her way, despite [the] Bank’s policies or practices that are applied equally to all staff members.”

63. According to the Bank, the Applicant was informed through the Terms and Conditions for Notice of Redundancy memorandum dated 28 September 2017 of the manner in which the allowance would be disbursed to her. The Bank maintains that the record also shows that the Applicant was paid the sum of \$1,200.00 for the Applicant and her spouse to travel “for the purpose of job/house search” on her 28 December 2017 payroll statement, satisfying the requirement of Staff Rule 7.01, paragraph 15.01(a), as stated in the version of Staff Rule 7.01 the Bank relies on.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

PRELIMINARY OBJECTIONS

Admissibility of the Applicant's Claims

64. According to Article II(1) of the Tribunal's Statute:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.

65. 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:

- (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.

66. The Tribunal observes that the Applicant's claims concern the provision of internal and external job search assistance as required by Staff Rule 7.01 and referenced in the Notice of Redundancy issued to the Applicant. Therefore, her claims, valid or not, pertain to an allegation of the non-observance of the terms of appointment which, as stated in Article II(1) of the Tribunal's Statute, "include all pertinent regulations and rules in force at the time of alleged non-observance."

67. The Tribunal also finds the Bank's objection to Application No. 12 on the ground of timeliness equally unavailing. The Applicant resorted to PRS to address her claims relating to job search and allowance for home country travel. The PRS Panel found it had jurisdiction over these claims. After completing the PRS process, the Applicant requested in a timely manner an extension of time to file her Application with the Tribunal. Having been granted an extension of time to submit her Application, she filed her Application in a timely manner. These preliminary objections are therefore unsuccessful.

The Principle of Res Judicata

68. According to the Bank, the Applicant is seeking an appeal of the Tribunal's decisions in *González Flavell*, Decision No. 553 [2017] and *González Flavell (No. 4)*, Decision No. 597 [2018] concerning the Notice of Redundancy. Notwithstanding the fact that the record of the case reveals that the Applicant remains dissatisfied with the decision to declare her position redundant, the subject matter of the present Applications is different from the issues addressed in the prior cases. Though the Notice of Redundancy provided for job search assistance and a home travel allowance, the question of whether the Bank properly discharged its responsibilities in this regard has never arisen before the Tribunal. The principle of *res judicata* therefore does not apply to bar the review of the merits of the Applicant's claims.

THE MERITS

The Obligation to Provide Internal and External Job Search Assistance

69. The Tribunal observes that the parties refer to different versions of Staff Rule 7.01 resulting in the citation of paragraphs which are numbered differently but bear some similarity in the text. In its assessment of the Applicant's claims, the Tribunal relies on the version of Staff Rule 7.01 which was operative at the time the reactivated Notice of Redundancy was issued. This version of Staff Rule 7.01 in the Bank's archives bears 1 January 2016 as its effective date and 25 March 2018 as the date the document was retired. In this document the relevant provisions on job search assistance are found in Staff Rule 7.01, paragraph 8.06, and Staff Rule 7.01, paragraph 14.01.

70. Staff Rule 7.01, paragraph 8.06, operative at the time of the reactivated Notice of Redundancy, provides:

Following the effective date of the notice of redundancy, the Bank Group will assist redundant staff in seeking another position within the Bank Group by providing access to MyJobWorld and to a job search specialist. Staff are responsible for applying to existing vacancies in MyJobWorld. Placement also may be offered in a vacant lower level job in accordance with Rule 5.06. "Assignment to Lower Level Positions."

71. Staff Rule 7.01, paragraph 14.01, further provides:

14. Other Assistance

14.01 Staff members whose employment is being terminated pursuant to Section 8 of this Rule and who are eligible for severance payments will be entitled to the following assistance:

- a. An allowance for economy class air travel for the staff member and his or her spouse or domestic partner for job or housing search purposes in the amount specified for travel to the staff member's home country under Rule 6.13, "Home Country Travel, para. 3.01;"
- b. Outplacement counseling services provided by the Bank Group [...].

72. The Tribunal's jurisprudence on the scope of job search assistance is well established. In *Arellano (No. 2)*, para. 42, the Tribunal held:

The obligation of the Respondent, in this respect, is not to reassign staff members whose employment was declared redundant under Staff Rule 7.01 but to try genuinely to find such staff members alternative positions for which they are qualified. It is an obligation to make an effort; it is not an obligation to ensure the success of such effort.

73. Furthermore, in *Marshall*, Decision No. 226 [2000], para. 45, the Tribunal noted that "the job-search exercise requires efforts from both sides." In *DD*, Decision No. 526 [2015], para. 102, the Tribunal held that, while the Bank has an obligation to provide assistance to a redundant staff member to place her in a vacant position even at a lower level, "the evidence is not conclusive that the Bank failed to meet its obligation under the Staff Rule, *particularly as it offered the [a]pplicant assistance through resources allocated for this purpose.*" (Emphasis added.)

74. It is the Applicant's contention that the Bank failed to provide her with internal job search assistance once the Notice of Redundancy was reactivated in 2017. The Applicant also claims that the Bank failed to afford her "her contractual right to the full external outplacement counselling services to which she was entitled under her contract of employment prior to its termination in December 2017."

75. Having reviewed the record as a whole, the Tribunal finds that the Applicant's claims are without merit and must be dismissed. The record is replete with evidence of HR staff offering assistance to the Applicant including providing repeated explanations. Unlike in *DV*, Decision No. 551 [2016], para. 72, where the Tribunal found "no evidence in the record of any effort made by the IFC to assist the [a]pplicant to find another position within the World Bank Group," the present case is abounding with concrete examples of how the Bank made genuine efforts to assist the Applicant with internal and external job searches in 2015 and 2017.

76. Regarding the Applicant's entitlement to assistance in finding alternative jobs within the WBG, the Tribunal observes that the Applicant was provided with access to a job search specialist in 2015 and also in 2017. In addition, the Applicant was provided access to MyJobWorld and was reminded on multiple occasions to utilize this tool and set up automatic notifications. However, the Applicant's concept of job search assistance requires the job search specialist to review job descriptions for her, make direct contact with hiring managers on her behalf, and meet with HR officers "in a position to know of upcoming job openings prior to posting." According to the Applicant, she did not "need 'career advice,' she needed to identify a vacancy internally and apply for another job. This is how a job search assistant is supposed to assist a staff member facing a redundancy."

77. The Applicant's unique concept of job search assistance is not supported by the Staff Rules. The job search specialist is not a personal assistant tasked with looking for jobs for the Applicant, and the Bank was under no obligation to provide the type of support the Applicant demands. While the Redeployment Coordinator the Applicant met in 2015 might have assisted the Applicant in a manner which was more to her liking, the Applicant was notified that this was a temporary role

available to all staff for a limited time in Fiscal Years 2015–2017 and was subsequently phased out after the Bank’s restructuring period.

78. Staff Rule 7.01, paragraph 8.06, unambiguously states the manner through which the Bank will assist “redundant staff in seeking another position within the Bank Group.” The Bank provides such assistance through “access to MyJobWorld and to a job search specialist.” The Applicant expected to be notified of job vacancies “for which she had been identified as a good candidate.” However, the role of a job search specialist is not to seek out opportunities on the Applicant’s behalf; rather, it is to equip the Applicant with the relevant tools and knowledge to meaningfully engage in job searches on her own.

79. The Applicant remains responsible for her own employment and cannot impose this primary responsibility to find and apply to existing vacancies in MyJobWorld on the Bank. The Applicant’s responsibility to find herself employment required her to be proactive. Yet, like the staff member in *Marshall*, the Applicant was “overly passive in this regard.” *See Marshall*, para. 45. The Applicant was always able to request automatic email notifications of jobs that matched her profile through MyJobWorld. Instead, she expected to be formally notified of positions by HR staff, presumably after they had diligently searched for them on her behalf. The Applicant’s expectations do not correspond to the Bank’s obligation under Staff Rule 7.01, paragraph 8.06.

80. The Applicant also claims that, following the reactivation of the Notice of Redundancy in 2017, she was not provided with internal job search assistance until September 2017. This statement is not supported by the record. The record shows that the Applicant was informed, as early as 16 June 2017, that she should “follow relevant advertisements on ‘myJobWorld,’” and “set up automatic alerts via Job Tracker.” Although some confusion ensued after the Applicant requested retraining, this confusion should not have resulted in any delays to the Applicant accessing the career support services that were available to her. In an email of 21 June 2017, the HR Specialist informed the Applicant that she could “avail herself of any and all career support services we offer to other staff members, subject to availability.” On 27 June 2017, the HR Specialist once again explained to the Applicant the two categories of counseling services the Applicant was entitled to. Rather than pursue, with reasonable initiative, the services available to

her, the Applicant persisted in claiming that she was “still entitled to, and would greatly benefit from, a cohesive and well-planned training and learning plan which all staff have for use all year long.” Additionally, the Tribunal takes note that, following her continued complaints that she did not receive any job search assistance, the Applicant was told by the HR Client Manager what she already knew: “The Career Advisors have been in the same place on the 4th floor of the G building and they were available to you when you returned from STD, and you were free to approach them for assistance if you wanted it.”

81. The Tribunal finds that responsibility for any delays in the Applicant obtaining career counseling from a job search specialist until September 2017 falls squarely on the Applicant’s shoulders. The Applicant simply failed to discharge her personal obligation to find herself alternative employment and make full use of the Bank’s resources. The Tribunal is satisfied that the Bank fully discharged its obligations under Staff Rule 7.01, paragraph 8.06. The fact that the Applicant could not find another position within the WBG does not imply any failure on the part of the Bank to assist the Applicant before terminating her employment. *See Arellano (No. 2)*, para. 41.

82. Regarding the Applicant’s claim that the Bank failed to provide her with external job search assistance, the Tribunal finds that this claim also lacks merit. The record once again aptly demonstrates that in 2015 and 2017 the Applicant was provided access to LHH whose role was to assist the Applicant in finding alternative employment outside the WBG. The Applicant does not deny that she was provided with such outplacement support, as well as immigration and tax advice; rather, she contends that the Bank did not treat her fairly and failed to comply with Staff Rule 7.01, paragraph 14.01, “because it wrongly and unfairly imposed an arbitrary requirement that the Applicant commence services with LHH prior to 1 December 2017.”

83. The Tribunal does not find any arbitrariness in the Bank’s request to the Applicant to commence, *not complete*, services with LHH at least a day before her last day of employment as a Bank staff member. The record shows that the Applicant was provided with an exceptional amount of time and access to LHH, well beyond that required by Staff Rule 7.01, paragraph 14.01. Nevertheless, the Applicant was dissatisfied because she was not permitted to commence the

services on the date of her choosing. The Applicant's personal preferences cannot override the Bank's obligation to manage its resources according to the prevailing policies and practices that are consistent with the Staff Rules and in a manner that is fair to all staff. The Applicant fails to appreciate that the Bank was not obliged to provide outplacement services to former staff members, and the request that she commence the services prior to her last day was made to ensure that the services remained available to her. Once again, rather than proactively embracing the resources placed at her disposal, the Applicant sought to contest the timing of the availability of these resources. She has failed to demonstrate how her rights were affected, and her claim is dismissed.

Home Country Travel Allowance

84. The Tribunal will now address the Applicant's claim on the receipt of a travel allowance for job or housing search. The Applicant does not deny that she received the allowance for home country travel for job or housing search referred to in the Notice of Redundancy and required under Staff Rule 7.01, paragraph 14.01. Rather, it is the Applicant's contention that the Bank nevertheless breached Staff Rule 7.01, paragraph 14.01, by failing to provide her with that allowance prior to the termination of her employment at the Bank.

85. The Tribunal finds that this claim is meritless. The Applicant is unable to state any Staff Rule or Principle of Staff Employment which mandates the Bank to provide the travel allowance at a time which is convenient for the staff member. Furthermore, the memorandum on the Terms and Conditions for Notice of Redundancy dated 28 September 2017 duly informed the Applicant that she would receive the allowance as part of a lump sum payment to her at the end of her employment. The Applicant did not challenge this nor did she specifically request an advance of the allowance. Instead, the Applicant persisted in sending messages to HR inquiring whether she was able to travel to Mexico during her employment with the Bank. The Applicant was at liberty to travel to Mexico at a time that was convenient for her in the full knowledge that she would receive the travel allowance funds as part of a lump sum at the end of her employment with the Bank. The Tribunal finds that the Bank applied Staff Rule 7.01, paragraph 14.01, properly and acted consistently with its practices.

Allegations of Retaliation and Harassment

86. According to the Applicant, she reserved the right to amend her Applications and now does so by introducing new allegations of retaliation by several staff members of the Bank including the former HRVP. The Tribunal observes that the Applicant specifically declined raising claims of retaliation or harassment during the PRS proceedings. In its consolidated report, the PRS Panel noted, “In determining whether any bad faith exists, the Panel considered whether there was any evidence of discriminatory or retaliatory intent. During the hearing, in response to the Panel’s request for clarification, [the Applicant] stated that she was not alleging discrimination or retaliation.”

87. The Applicant is aware of the requirement to first exhaust internal remedies prior to raising certain claims before the Tribunal. Having specifically informed PRS that she was not alleging discrimination or retaliation, the Applicant cannot now introduce them before the Tribunal by way of a purported amendment to her Application through her Reply. The Applicant asserts that it was only when she received the Bank’s Answer that she realized “the reason, which she had not understood, as to why so many efforts to obtain job search assistance and correct facts as to her rights to outplacement services were refused by the [Bank].” The facts have always existed and did not change by the explanations provided in the Bank’s Answer. As was held in *EE*, Decision No. 148 [1996], para. 35, “[n]ot having raised [the challenges] before and [n]ot having taken them through administrative review, the [a]pplicant cannot now incorporate these [...] as part of a ‘pattern’ that can be indefinitely subjected to review by the Tribunal.” These claims are inadmissible.

Concluding Remarks

88. It is evident that the Applicant remains aggrieved by the redundancy decision, challenging every form of transitional assistance she received and finding fault with sincere attempts to assist her. Notwithstanding the Applicant’s sustained belief that her position was wrongly declared redundant, the fact remains that the Tribunal upheld the Notice of Redundancy in *González Flavell*,

Decision No. 553 [2017] and reaffirmed it in *González Flavell (No. 4)*, Decision No. 597 [2018].
The Applicant has failed to demonstrate any violation of her rights.

DECISION

The Applications are dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 25 October 2019