



World Bank Administrative Tribunal

2019

Decision No. 618

**Sara González Flavell (Nos. 14, 15, 16, and 17),
Applicant**

v.

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

(Preliminary Objection)

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

**Sara González Flavell (Nos. 14, 15, 16, and 17),
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 Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Janice Bellace, and Lynne Charbonneau.

2. The Applicant's fourteenth Application was received on 31 January 2019. The Applicant's fifteenth Application was received on 5 February 2019. The Applicant's sixteenth Application was received on 15 February 2019. The Applicant's seventeenth Application was received on 22 February 2019. The Applicant was represented by Mark Stephens of Howard Kennedy LLP. She also represented herself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. In Application No. 14, the Applicant challenges the payment of education benefits and the Bank's deductions or refusal to pay her end of employment payments until the education benefits were certified. In Application No. 15, the Applicant challenges the failure to provide her with documentation regarding her end of employment payments and to pay her the correct amount of money owed to her on her last day of employment. In Application No. 16, the Applicant challenges the denial of access to her staff records and the "note of ending employment notice and corresponding documents," the failure to provide her with information about "exit requirements," the communications from her former department, which she characterizes as harassment, the breach of her confidential information, and the requirement to certify her dependents. In Application No. 17, the Applicant challenges the failure to provide her with information about the language tuition benefit, which resulted in her losing her entitlement to that benefit. In all of her Applications, the Applicant claims that she was denied "a fair and impartial process under Peer Review Services and [a] fair hearing."

4. On 23 May 2019, having considered the submissions of the parties, the President of the Tribunal decided to consolidate the four Applications.

5. On 19 June 2019, the Bank submitted a preliminary objection challenging the admissibility of the Applications on the grounds that (i) the claims relate to the policies and procedures of Peer Review Services (PRS) and so the Tribunal lacks jurisdiction *ratione materiae*; (ii) the claims do not relate to the Applicant's contract of employment or terms of appointment; and (iii) the claims have already been litigated in other cases before the Tribunal and should be dismissed based on the principle of *res judicata*.

6. This judgment addresses the Bank's preliminary objection.

FACTUAL BACKGROUND

7. The historical context of this case is contained in *González Flavell*, Decision No. 553 [2017], and *González Flavell (No. 4) (Preliminary Objection)*, Decision No. 597 [2018].

8. On 7 June 2017, the Applicant was informed that she had been considered fit to return to work effective 2 June 2017. The Notice of Redundancy of 1 July 2015, which had been suspended, was reinstated; and, pursuant to the Notice, the Applicant was placed on Administrative Leave for six months until 1 December 2017, whereupon the Applicant's employment with the Bank was terminated.

PRS Request for Review No. 420 and Application No. 14

9. By email dated 28 September 2017, Human Resources (HR) Operations informed the Applicant that, in order to receive the education benefits for her children, she would have "to certify all of them at the end of the school year (AY [Academic Year] 17/18). Remember that if you have uncertified benefits, we will not be able to release your ending of employment benefits." HR Operations noted that, if one of the schools was not able to provide the certification, the Bank

“would create a receivable for the full amount given to you, and once you certify attendance” at the end of the year, the Applicant would be reimbursed.

10. By email dated 29 September 2017, HR Operations informed the Applicant that the education benefits had been deposited into her account, with a breakdown of the amount of each benefit for each child. HR Operations noted that the Applicant did “not need to go to [her] children’s school to certify attendance now. You have to do that at the end of the 17/18 school year.”

11. By email dated 13 October 2017, HR Operations informed the Applicant that she must notify them “within 31 calendar days of any change in attendance for” each child at the corresponding school.

12. After the Applicant provided information for the education benefits, by email dated 17 October 2017, HR Operations noted the amounts of the education grants for four of the Applicant’s children and stated that they would be processed in her payroll at the end of the month.

13. On 2 November 2017, the Applicant was reminded to provide certification of her education benefits so that the Bank could process her final payments.

14. By email dated 29 November 2017, an HR Specialist, citing Staff Rule 7.01, paragraph 15.02, reminded the Applicant to certify her education benefits prior to the last day of her employment. He informed the Applicant that, notwithstanding her separation from the Bank, the Applicant’s redundancy meant that she remained eligible for education benefits for the period from her last day of service through the end of the academic year. The Applicant was given the choice of submitting the Education Certifications (Form 677) completed by the school with a prorated tuition through 1 December or for the entire academic year or, without the Education Certifications, HR Operations would cancel the benefits and recover the amounts from the Applicant’s separation benefits. The HR Specialist stated that “[a]ll payments due to you as a result of your separation from the Bank will be held until such time as a decision is made on the above.

In order to make the December 15 payroll, you will need to make a decision (and if necessary, submit Form 677), by December 6, 2017.”

15. On 11 December 2017, the Applicant met with an HR Representative and was informed that her end of employment payments could not be processed until she supplied evidence of school certification for attendance until the end of that school year.

16. By email dated 12 December 2017, HR Operations summarized the meeting from the previous day with the Applicant and set out the next steps. HR Operations reminded the Applicant that she would need to return the Education Certifications (Form 677) to certify her children’s attendance up to December.

17. By email dated 14 December 2017 to HR Operations, the Applicant disputed the Bank’s requirement that she certify the education benefits for the full academic year before the payment of her end of employment payments. However, she attached certifications for four of her children and noted her fifth child’s school was unable to certify her attendance until the end of the academic year.

18. On 14 December 2017, the Applicant requested a copy of her staff receivable account and an itemized statement of the amounts deducted or paid with respect to her 2017–2018 education benefits.

19. By email dated 18 December 2017, HR Operations stated that, “at this time, we only required confirmation of the 17/18 tuition amount” and informed the Applicant of the need to resubmit the Education Certifications at the end of the school year for the remainder of the school year. HR confirmed the amounts of the education grants and receivables and that the Applicant’s end of employment payments had been released and would be reflected in the 31 December 2017 payroll.

20. By email on the same day, the Applicant disputed HR Operations’ information and claimed that, in the past, HR Operations had told her that the Bank would withhold the education benefits

from her end of employment payments if the schools would not certify attendance for the full academic year. The Applicant also asked for the “itemized list of my final payments for everything on termination from the [B]ank.”

21. On 28 December 2017, the Applicant received end of employment payments, including the severance payment, from the Bank.

22. The Applicant claims that she has not been paid the education benefits for one child for 2017–2018 and for December 2017–June 2018 for the other children.

23. On 23 March 2018, the Applicant submitted Request for Review No. 420 to PRS. She sought review of the following:

- (i) HR’s “failure to correctly follow and apply Staff Rules” regarding education benefits upon termination for redundancy;
- (ii) HR’s “wrongful attempt” to require [her] to repay to the Bank part of the education grants for the period after [her] separation from the Bank;
- (iii) “HR’s requirement for partial or full certification of academic attendance for 2017-2018”;
- (iv) HR’s “creation of receivable account and deductibles”;
- (v) HR’s withholding of [her] severance payment, pending receipt of school certifications;
- (vi) HR’s failure to provide a statement of account on deductions, receivables, and payments made relating to the 2017–2018 education benefits;
- (vii) HR’s requirement for another school certification at the end of the academic year; and
- (viii) HR’s “continuing lack of transparency and information” since December 2017 regarding [her] education grants.

24. By memorandum dated 20 April 2018 from the Acting Executive Secretary of PRS, the Applicant was informed that PRS did not have jurisdiction over claims (i) to (v) and (vii) because they were untimely. PRS determined that the Applicant became reasonably “aware of HR’s application of the Staff Rules regarding her education benefits upon termination due to redundancy” as early as 28 September 2017, pursuant to an email from HR. PRS further noted that the Applicant was also made aware by HR in its emails dated 30 October 2017, 2 November 2017, and 13 November 2017 of the education benefits certification process and entitlements. PRS

accepted jurisdiction over claims (vi) and (viii) regarding the failure to provide the Applicant with the requested financial information.

25. Regarding the receivable claims, the PRS Panel concluded in its report of 21 September 2018 that “(a) the WBG [World Bank Group] provided [the Applicant] with information necessary to assist her in understanding the education benefits that were provided to her and (b) the WBG followed the applicable Staff Rules and procedures with regard to education benefits information and payment.”

PRS Request for Review No. 423 and Application No. 15

26. On 21 September 2017, the Applicant requested a copy of the financial details of her end of employment payments.

27. On 27 September 2017, the Applicant received an “Ending Employment” memorandum. The Applicant claims to have identified several errors and that the Bank informed her the memorandum would be corrected and updated with more specific information.

28. The Applicant claims that she did not receive a salary payment in her personal bank account in October. Rather, according to the Applicant, HR informed her that she would need to get a check for her bi-monthly salary from the credit union until the end of her employment with the Bank.

29. On 2 November 2017, the Applicant received a revised “Information/Benefits Upon Ending Employment Memorandum.”

30. On 11 December 2017, the Applicant met with an HR Representative and specifically asked about receiving a payment upon termination.

31. In mid-December 2017, HR informed the Applicant that the Bank was withholding her end of employment payments because the Applicant owed money.

32. On 28 December 2017, the Bank transferred the Applicant's end of employment payments, including the severance payment, into the Applicant's personal bank account, but this did not include the education benefits.

33. On 28 March 2018, the Applicant submitted Request for Review No. 423 to PRS. She sought review of the following: “[f]ailure to notify [her] of how [her] severance pay calculation had actually been arrived at, or provide any documentation [...],” “[f]ailure to provide any payroll statements and statement of financial payment during December,” “[f]ailure to provide any breakdown of termination payment calculation,” “[r]efusal to provide [her] with [her] ending salary,” “[f]ailure to provide [n]otification of [t]ermination,” “[w]rongful delay of payment for a full [m]onth, and possibly [i]ncorrect [t]ermination [p]ayment, incorrect deduction for optional group term life insurance, and failure to pay her on 1 or 2 December 2017.”

34. By memorandum dated 10 August 2018, following a PRS hearing on 8 August 2018, the PRS Panel requested the Responding Manager to “provide an explanation of the itemized payments and deductions” reflected in the Applicant's December 2017 payroll statements.

35. On 16 August 2018, the Responding Manager provided the requested information to the PRS Panel. The Executive Secretary of PRS forwarded the information to the Applicant on 28 August 2018.

36. The PRS Panel found that the Bank “followed Staff Rule 7.01 and the proper procedures regarding [the Applicant's] severance and other termination payments, payroll statements, and termination date [...]” Following the Bank's provision of additional information, as ordered by the PRS Panel, the PRS Panel found that the deductions and payments made to the Applicant were sufficiently explained and were consistent with the Applicant's contract of employment and terms of appointment. The PRS Panel further determined that the Applicant timely received her final payroll statements, upon her request, and was notified of the exact termination date of her appointment. The PRS Panel accepted the Bank's explanation that the Applicant's end of employment payments were not paid on her last day of employment because the Applicant failed to certify her education benefits in a timely manner, and noted that the end of employment

payments were paid on the next payroll cycle after the Applicant had certified her education benefits. Finally, the PRS Panel noted that the end coverage for medical, life, and accident insurance was explained to the Applicant and was correctly calculated.

PRS Request for Review No. 422 and Application No. 16

37. By automatic email dated 13 November 2017, HR Operations informed the Applicant that confirmation of her household/dependency was pending.

38. In November 2017, HR informed the Applicant that she had failed to certify her dependents, as required for a dependency allowance.

39. On 1 December 2017, the Applicant met with an HR Representative and requested access to her Personnel Action Form (PAF).

40. By email dated 14 February 2018 to a Lead Counsel (Institutional Administration), Legal Vice Presidency, the Applicant requested that communications from her former department be limited because she considered their communications to be “wholly inappropriate and unwelcome.”

41. By emails dated 23, 26, and 27 February 2018 to Ombuds Services, the Applicant requested their assistance in obtaining the Applicant’s personnel file.

42. By email dated 26 February 2018 to the Lead Counsel, the Applicant requested her help in returning the Applicant’s laptop and phone and in obtaining the Applicant’s staff records and other documents.

43. By email dated 28 February 2018, the Lead Counsel informed the Applicant that a visitor’s pass had been requested to enable her to access the building and return her laptop and phone. The Lead Counsel directed the Applicant to Ombuds Services for her records pertaining to Ombuds Services and to a Senior HR Assistant for the Applicant’s personnel file.

44. By email dated 1 March 2018 to a Senior HR Assistant, the Applicant asked about the information in her personnel file and requested an appointment to review and copy her file. They exchanged emails between 5 and 8 March 2018 and scheduled a time for the Applicant to access her file.

45. On 9 March 2018, the Applicant met with the Senior HR Assistant and reviewed her PAF information and her December 2017 payroll statements. They continued to exchange emails, in which the Applicant requested documents.

46. By email dated 16 March 2018, the Senior HR Assistant provided the Applicant with the dependency allowance email confirmation for 2016 and 2017 and informed the Applicant that salary review increase ratings have not been included in staff records since 1996 but are available on the intranet.

47. On 29 March 2018, the Applicant submitted Request for Review No. 422 to PRS. She sought review of the following: the failure to certify her dependency benefit, the failure to pay her a dependency allowance, the failure to provide her with her personnel information, the failure to inform her about the exit procedures, and the transmission of “unwelcome, unsolicited and inappropriate communication by [her] former [d]epartment.”

48. The PRS Panel found that the Bank “followed the applicable Staff Rules and a proper process regarding [the Applicant’s] dependency allowance, staff records and checkout procedures.” Specifically, it stated that the Applicant “was not eligible for the dependency allowance in 2017 because her spouse’s salary exceeded the limit”; “that there is no evidence showing that [the Applicant] requested her PAF from HR prior to March 1, 2018, or that her PAF was withheld from her”; that the Applicant was given information about the checkout procedure and her responsibility to return Bank equipment; and that the Applicant’s former department stopped communicating directly with her in response to the Applicant’s request.

PRS Request for Review No. 413 and Application No. 17

49. Between 7 and 9 July 2017, the Applicant spoke with HR Operations, which promised to send her the necessary information regarding the requirements for reimbursement for language tuition.

50. By email dated 15 September 2017 to an HR Assistant, the Applicant reiterated her question about the language tuition benefit, including how to be reimbursed, the evidence required, and the qualifications of the tutor.

51. By email dated 28 September 2017 to the HR Business Partner for the Applicant's former department, the Applicant asked about the language tuition benefit. An HR Analyst responded to the Applicant on the same day, directing the Applicant to the form that the language tutor should complete and informing the Applicant that the reimbursement "is a maximum of \$1,000 capped at the education grant ceiling for the duty station."

52. On 16 January 2018, the Applicant submitted Request for Review No. 413 to PRS. She sought review of the following: the failure to provide her with information so that she could access the language tuition benefit in 2016–2017 and 2017–2018, and the maximum reimbursable amount of \$1,000.00 per child.

53. The PRS Panel found that the Bank "provided the requested language instruction benefit information and applied Staff Rule 6.14, paragraph 4.01 and Section XI, properly and consistently in this case."

PRS Process

54. By letter dated 27 July 2018, the Applicant was informed that a PRS hearing was scheduled for 8 August 2018, and of the PRS Panel's decisions on jurisdiction, issues, witnesses, and document requests in respect of Requests for Review Nos. 413, 420, 422, and 423.

55. By email dated 7 August 2018 to the PRS Executive Secretary, the Applicant objected to the “unfair and biased practices and process being adopted by PRS Secretariat and the ‘Panel,’” including the timing of the hearing.

56. The PRS Panel held a hearing on 8 August 2018.

57. On 21 September 2018, PRS issued its report in Consolidated Requests for Review Nos. 413, 420, 422, and 423. Having reviewed all of the Applicant’s receivable claims, the PRS Panel found

that the WBG acted consistently with [the Applicant’s] former contract of employment and terms of appointment in providing her with the requested information, documents, and payments due to her, including the explanation that HR provided on August 16, 2018. Specifically, the Panel determined that management followed the Staff Rules, procedures and WBG practices, and that management acted in good faith.

The PRS Panel recommended that the Applicant’s requests for relief be denied.

58. By letter dated 26 September 2018, the Managing Director and Chief Financial Officer accepted the PRS Panel’s recommendation.

The Applications before the Tribunal

59. The Applicant’s fourteenth Application before the Tribunal relates to PRS Request for Review No. 420. The Applicant challenges the payment of education benefits for her children and the Bank’s deductions or refusal to pay her end of employment payments until the education benefits were certified. She seeks compensation in the amount of six months’ salary for the PRS Panel’s partial dismissal of her claims, six months’ salary for the Bank’s acceptance of the PRS Panel’s recommendation, four months’ salary for the Bank’s “fail[ure] to allow the Applicant use of its PRS System,” six months’ salary for the Bank’s “decision to reclaim” the amount paid for education benefits for 2017–2018 and “to deny her right to apply for and receive such benefit[s],” four months’ salary for the refusal to provide her with documentation relating to the calculation of her education benefits, four months’ salary “for the continuing failure to pay” education benefits

for 2017–2018, and four months’ salary for the PRS Secretariat’s conduct. In addition, she requests “a full and detailed reconciliation and/or explanation” relating to the calculation of the education benefits, an order for the Bank to “cease and desist its demands for the Applicant to sign false statements by use of its internal forms,” payment of the Applicant’s outstanding education benefits for 2017–2018, and “[i]nterest at a commercial rate on the amount which the [Bank] wrongfully withh[e]ld [...] from September/October 2017 [...] to present date.” She claims legal fees and costs in the amount of \$4,980.00.

60. The Applicant’s fifteenth Application before the Tribunal relates to PRS Request for Review No. 423. The Applicant challenges the failure to provide her with documentation regarding her end of employment payments and to pay her the correct amount of money owed to her on her last day of employment. She seeks compensation in the amount of six months’ salary for the Bank’s acceptance of the PRS Panel’s recommendation, six months’ salary for the failure to pay her the correct amount “for her redundancy and severance pay on termination,” six months’ salary for the failure to provide her with the properly signed “Request for Amount of Severance Pay Approval” that accurately reflected her end of employment payments, four months’ salary for the refusal to provide her with information relating to her salary review increases and their effect on her other payments and entitlements, six months’ salary for wrongfully treating her as an employee on the “payroll” after she had left the Bank’s service, and four months’ salary for the PRS Secretariat’s conduct. In addition, she requests “a full and detailed reconciliation and/or explanation” relating to the calculation of her end of employment payments, payment of “the full amount of her entitlement to severance and termination pay,” payment “for the retroactive application of the SRI [salary review increase] through to her date of termination,” “[a]ccurate financial forms showing the Applicant was not an employee and should not have been on the [Bank’s] payroll from December 2[,] 2017 onwards,” and “[i]nterest at a commercial rate on the amount which the [Bank] wrongfully withh[e]ld from the Applicant [...] from December 1, 2017 to present date.” She claims legal fees and costs in the amount of \$4,890.00.

61. The Applicant’s sixteenth Application before the Tribunal relates to PRS Request for Review No. 422. The Applicant challenges the denial of access to her staff records and to the “note of ending employment notice and corresponding documents,” the failure to provide her with

information about “exit requirements,” the communications from her former department, which she characterizes as harassment, the breach of her confidential information, and the requirement to certify her dependents. She seeks compensation in the amount of three months’ salary for the Bank’s acceptance of the PRS Panel’s recommendation, three months’ salary for the Bank’s failure to comply with its obligations on her last day of service, four months’ salary for the Bank’s refusal to timely provide her with her PAF upon her request, three months’ salary for the Bank’s failure to provide her with “information or any documentation and usual standard HR entries” in her PAF, two months’ salary for “stating that the Applicant was under an obligation to update her dependents[’] information,” six months’ salary for disclosing her confidential information, three months’ salary for requiring her to certify her dependents, and four months’ salary for the PRS Secretariat’s conduct. In addition, she requests a “full and detailed statement and schedule itemizing the missing forms” from her PAF, an order that her PAF be “brought up to date” with a copy to be provided to her, and an order that the Bank “cease and desist from a. sharing her personal information[; and] b. sharing and discussing her personal medical information and files [...]; and attempting to obtain further personal information it is not entitled to [...].” She claims legal fees and costs in the amount of \$4,890.00.

62. The Applicant’s seventeenth Application before the Tribunal relates to PRS Request for Review No. 413. The Applicant challenges the failure to provide her with information about the language tuition benefit, which resulted in her losing her entitlement to that benefit. She seeks compensation in the amount of six months’ salary for the Bank’s acceptance of the PRS Panel’s recommendation, three months’ salary for the Bank’s failure to respond to her requests for information, two months’ salary for the Bank’s refusal to provide her with a relevant form and information regarding eligibility and how to certify and apply for the language tuition benefit, two months’ salary for stating that language tutors must sign and certify a relevant form, and four months’ salary for the PRS Secretariat’s conduct. In addition, she requests “[p]ayment of language tuition expenses incurred by the Applicant during the academic year 2017 to 2018” and “[p]ayment of an amount of three years[’] language tuition benefit per child [...].” She claims legal fees and costs in the amount of \$4,890.00.

63. In all of her Applications, the Applicant claims that she was denied “a fair and impartial process under Peer Review Services and [a] fair hearing.”

64. The Bank raised a preliminary objection challenging the admissibility of the Applications.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank’s Main Contentions

65. The Bank characterizes “[t]he gravamen of the current Applications [as] challeng[ing] the policies and procedures of the PRS process itself.” The Bank relies on the Tribunal’s jurisprudence “that procedural decisions taken by PRS in the course of its review of a case [...] are not subject to review by the Tribunal.” It recalls that the Applicant’s complaints about the PRS process in these Applications are identical to those in *González Flavell (Nos. 5 and 7) (Preliminary Objection)*, Decision No. 603 [2019], which the Tribunal decided in Decision No. 603 “to be procedural decisions the PRS Panel was entitled to make and/or well within the PRS discretion as provided for in the Staff Rule.” The Bank submits that the PRS Panel did not refuse to deal with the Applicant’s complaint so the Applicant has failed to make a *prima facie* case that her rights have been violated.

66. In any case, the Bank submits that “the PRS process and decision making followed the Directives and Procedures applicable to the PRS Review process.”

PRS Request for Review No. 420

67. The Bank submits that the Applicant’s claim for education benefits is not yet ripe and should be dismissed because the Applicant has not yet provided the required certification to receive the education benefits, despite reminders to the Applicant in the spring and summer of 2018.

68. The Bank further states that, without the required documentation from the Applicant, the Bank cannot take a decision about these benefits, specifically, an adverse decision that could be challenged before the Tribunal.

69. Regarding the first semester education benefits, the Bank states that the Applicant provided the requisite certifications on 18 December 2017 and she received her end of employment payments, without a deduction of the education benefits, in the next pay period. According to the Bank, there was no adverse decision.

70. The Bank states that the Applicant's claim for a reconciliation of her education benefits for academic year 2017–2018 has been satisfied by the Bank's provision of the requested information.

71. Finally, the Bank submits that its practice of paying end of employment benefits, which was applied to the Applicant's case, is a matter of policy and not cognizable before the Tribunal.

PRS Request for Review No. 423

72. Regarding the Applicant's claim for payments due on her last day of service, the Bank claims that the "Applicant offers no explanation as to how this claim meets the jurisdictional challenge" and denies that an adverse decision was taken, as the Applicant received all monies due to her in the next available pay period after submitting the required documents.

73. The Bank states that the Applicant received all amounts owed to her once she complied with her obligation to provide the certification for education benefits so there was no adverse decision, specifically, the unlawful retention of monies, as alleged by the Applicant.

74. The Bank states that the practice is to pay end of employment payments according to the payroll schedule, which would have been 15 December 2017, in the Applicant's case, but "[a]s Applicant had failed to provide required documents in time to process her ending employment benefits [...] Applicant simply received the amount corresponding to her one day of Administrative Leave." The Bank explains that, after the Applicant provided the necessary

information, she was paid the monies due to her on the next payroll day, 28 December 2017. The Bank contends that any delays in processing the Applicant's pension benefits were due to the Applicant's failure to submit the required documents in time.

75. The Bank urges the Tribunal to dismiss the Applicant's claim regarding the Bank's failure to provide financial statements and accounts in relation to payments and deductions because the Applicant was provided with her final payroll statements on 9 March 2018. According to the Bank, there is no adverse decision that can be reviewed by the Tribunal.

76. The Bank further states that the manner in which the Bank pays separation benefits is before the Tribunal in her eleventh Application regarding the payment of travel to the Applicant's home country for the purpose of house and job search.

PRS Request for Review No. 422

77. The Bank denies withholding the Applicant's staff records from her or rendering an adverse decision. Therefore, the Bank submits that the Tribunal has no jurisdiction over the Applicant's complaint about the Bank's failure to provide her with a copy of her staff records.

78. The Bank denies that the Applicant was entitled to have a manager meet with her on her last day of service, or to be provided with checkout procedures or a "letter of termination." According to the Bank, therefore, these claims are not admissible as they do not relate to the Applicant's contract of employment or terms of appointment. In any case, the Bank submits that the Applicant was provided with information about the end of her employment and the relevant procedures and forms.

79. The Bank submits that its use of the Applicant's medical information, which it claims was already disclosed by the Applicant, cannot be a breach of her contract of employment or terms of appointment. According to the Bank, this claim is not admissible.

80. The Bank states that its requirement for the Applicant to provide a certification of dependency was in accordance with the Staff Rules so this complaint is devoid of all legal merit.

PRS Request for Review No. 413

81. The Bank claims that the Applicant's complaint about the failure to provide sufficient information about the language tuition benefit "cannot be said to properly concern Applicant's terms of appointment or contract of employment." In any case, the Bank states that these provisions are set out in the Staff Rules and the Applicant cannot claim ignorance.

The Applicant's Response

82. The Applicant contends that the Bank has failed "to identify which of the contested matters it believes '*ratione materiae*' to apply to."

83. She submits that the denial of her right "to a fair and impartial hearing by" PRS is reviewable by the Tribunal. The Applicant clarifies that she does not challenge PRS's policies and procedures, but rather the failure to follow PRS's process and procedures.

84. The Applicant contends that, aside from her complaints about the PRS process, the complaints in the Consolidated Applications "all fall squarely within the subject-matter jurisdiction of the Tribunal" as they identify "serious breaches by the [Bank] of its own Staff Rules in the manner in which it treated the Applicant in December 2017." She states that her claims "correctly rely on obligations owed to the Applicant under her previous contract of employment with the [Bank]."

85. The Applicant states that the Bank misstates or misattributes to her the claims relating to having a manager meet with the Applicant on her last day of service, paying the Applicant all monies owed to her on her last day of service, paying the Applicant education benefits prior to the end of the school year, and the confidentiality of the Applicant's medical information. The Applicant rejects the Bank's characterization of her claims and refers to her Applications, where

she identifies the relevant Staff Rules and Principles of Staff Employment that she claims have been breached. The Applicant contends that the Bank's submissions on these claims go to the merits.

86. The Applicant rejects the Bank's *res judicata* argument regarding her claim for education benefits because she contends that the Tribunal's decision concerned unrelated matters and the Bank "misread [...] actual events and proper sequence." The Applicant claims that education benefits are paid in advance and that, although she had provided the correct forms, the Bank wrongfully made deductions.

87. The Applicant submits that the Bank cannot rely on her eleventh Application before the Tribunal as the basis for *res judicata* because the matter is still pending before the Tribunal. Moreover, the Applicant notes that Application No. 11 challenges a separate matter and invokes a right due to the Applicant's redundancy, which is distinct from the Applicant's end of employment payments.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

CLAIMS RELATING TO THE PRS PROCESS

88. The jurisprudence regarding the Tribunal's review of the PRS process is well-established.

89. In *Lewin*, Decision No. 152 [1996], para. 44, the Tribunal stated:

The Tribunal is not an appellate body reviewing the proceedings, findings and recommendations of the Appeals Committee. Its task is to review the decisions of the Bank; it is not to review the Report of the Appeals Committee.

90. In *Yoon (No. 11)*, Decision No. 433 [2010], para. 16, the Tribunal held that

it will not readily review procedural decisions by the Appeals Committee such as those identified in paragraph 2 of this judgment. It is evident that, while it is an important part of the CRS [Conflict Resolution System], the Appeals Committee is not a typical unit of the Bank; it does not make decisions on behalf of the Bank.

The Tribunal does not micromanage the activities of such a body. In this case, the Appeals Committee was in the best position to make these procedural decisions given the multiple appeals the Applicant filed, and the Tribunal will not second-guess them. True enough, as a matter of abstract principle, decisions of the Appeals Committee could be subject to the Tribunal's review in the event that they resulted in violation of a staff member's rights, e.g. a refusal to deal with a complaint at all. The Tribunal will intervene whenever staff members' rights are violated. In this case, however, the Applicant has failed to show even a *prima facie* violation of her rights. At the most, hers are complaints about routine procedural arrangements, with no demonstration of the manner in which they prejudiced her access to consideration by the Appeals Committee.

91. In *DK (Preliminary Objection)*, Decision No. 537 [2016], para. 76, the Tribunal observed:

[T]he Appeals Committee was later renamed PRS. According to the Tribunal's prior jurisprudence, it is not for the Tribunal to review challenges to procedural decisions made by PRS. However, as mentioned in *Yoon (No. 11)*, para. 16, the Tribunal may review such challenges if "they [result] in violation of a staff member's rights." The Tribunal otherwise will not review "routine procedural arrangements" and decisions by PRS.

92. The specific aspects of the PRS process that the Applicant is challenging relate to (i) the delay in transmitting her Requests for Review to the Responding Managers; (ii) the identification of the Responding Managers; (iii) the consolidation of her requests for review; (iv) the constitution and assignment of the PRS Panels; (v) the appearance of the Responding Manager's designee at the hearing; and (vi) the scheduling of the hearing.

93. The Tribunal finds that the above-noted decisions by PRS are "routine procedural arrangements." In *González Flavell (Nos. 5 and 7) (Preliminary Objection)*, para. 90, the Tribunal "observe[d] that the [a]pplicant's challenges to the PRS decisions regarding document production, calling of witnesses, and consolidation of claims go to the heart of the procedural decisions that PRS has the power to make when considering claims." Additionally, the Tribunal held that the designation of panel members is a "procedural decision[...]" that the PRS is entitled to make under its rules of procedure." *Id.*

94. The Tribunal determines that, in this case, PRS did not “refus[e] to consider [the Applicant’s] claims at all or [...] prejudic[e] [the Applicant’s] access to have her claims considered.” *See also González Flavell (Nos. 5 and 7) (Preliminary Objection)*, para. 89.

95. The Tribunal finds that the claims regarding procedural violations committed by PRS are inadmissible.

APPLICATION NO. 14 CONCERNING REQUEST FOR REVIEW NO. 420

96. Of the Applicant’s eight claims in Request for Review No. 420, six were dismissed by PRS as being out of time because the Applicant reasonably became “aware of HR’s application of the Staff Rules regarding [her] education benefits as early as 28 September 2017.” PRS accepted jurisdiction over the claims relating to the failure to provide a statement of account relating to the Applicant’s 2017–2018 education benefits and the lack of information since December 2017 relating to the education benefits.

97. 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.

98. In *Ampah (Preliminary Objection)*, Decision No. 522 [2015], para. 57, the Tribunal stated 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).

99. The Tribunal finds that PRS correctly dismissed six of the Applicant's claims because of a failure to exhaust internal remedies.

100. With respect to the two claims reviewed by the PRS Panel, the PRS Panel concluded that the Bank provided the Applicant "with information necessary to assist her in understanding the education benefits" and that the Bank "followed the applicable Staff Rules and procedures with regard to education benefits information and payment." The PRS Panel findings and recommendations were accepted by the Managing Director and Chief Financial Officer.

101. The PRS Panel also "noted that the final details of [the Applicant's] education benefits could not be determined until she had submitted her education benefits certification at the end of the 2017-2018 academic year."

102. The Bank asserts that the Applicant's claim for education benefits is not ripe because the Applicant has failed to provide the necessary certifications for the Bank to take a decision.

103. The Applicant disputes the Bank's assertion that education benefits are paid out against certifications, as opposed to requests for education benefits that are subsequently certified. Moreover, she asserts that she had provided the forms but had not received the education benefits.

104. The Tribunal concludes that the Applicant's claims regarding the provision of information and payment of her education benefits for 2017–2018, which were reviewed by PRS, are within the Tribunal's subject-matter jurisdiction.

105. On 10 October 2019, the Tribunal ordered the Applicant to produce evidence that she had provided the Bank with certificates of attendance for the 2017–2018 academic year for each child for whom the Applicant claims an education benefit and the Bank’s response, if any, upon receiving such certificates of attendance. The Applicant did not respond to the Tribunal’s order. The Tribunal notes that, in her Application, the Applicant claims that she “should not be forced to require third parties [i.e., her children’s schools] to provide forms twice to the [Bank],” effectively claiming that the education certificates she provided in December 2017 should be sufficient for the Bank to pay her education benefits for the entire 2017–2018 academic year.

106. The Tribunal concludes that the Applicant’s claim regarding the Bank’s failure to provide her with education benefits is not yet ripe, as she has not provided the requisite certificates of attendance.

107. The Bank contends that the Applicant’s claim for education benefits is barred by the principle of *res judicata*. In *González Flavell (Nos. 6 and 9) (Preliminary Objection)*, Decision No. 604 [2019], the Tribunal dismissed the Applicant’s claim regarding the alleged wrongful detention of her personal belongings because the Applicant was responsible for collecting her personal items. According to the Bank, “[s]imilarly, [A]pplicant was responsible for providing the forms so that she could receive her final employment payments.”

108. The Tribunal finds that, although the legal principles to be applied in this case may be similar to those in *González Flavell (Nos. 6 and 9) (Preliminary Objection)* regarding the Applicant’s responsibility, it cannot be said that the “substance of the claim is essentially the same in both applications.” *B (No. 2)*, Decision No. 336 [2005], para. 39. The Tribunal determines that the principle of *res judicata* does not apply in this case.

APPLICATION NO. 15 CONCERNING REQUEST FOR REVIEW NO. 423

109. In her fifteenth Application, the Applicant challenges the failure to provide her with documentation regarding her end of employment payments and the failure to pay her the correct amount owed to her on her last day of employment.

110. The Bank states that the manner in which it pays end of employment benefits is before the Tribunal in the Applicant's eleventh Application so Application No. 15 should be dismissed by applying the principle of *res judicata*.

111. For the purposes of this Tribunal, "[t]he 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.'" See *González Flavell (No. 4) (Preliminary Objection)*, para. 40, and *B (No. 2)*, para. 39.

112. However, the eleventh Application concerns the timing of the payment for the Applicant's travel to her home country, which is different from the payment of the Applicant's end of employment payments.

113. The Tribunal concludes that the principle of *res judicata* does not apply to the claim for the Applicant's end of employment payments.

114. The Bank further states that there were no adverse decisions because the Applicant received all monies owing once she provided certain documentation and that the Applicant was provided with her final payroll statements on 9 March 2018.

115. In its report, the PRS Panel determined that the Bank provided the Applicant with sufficient information about her end of employment payments, namely, through her December 2017 payroll statements, which showed a breakdown of deductions and payments, information related to her salary review increases from 2015 through 2017, and the 2 November 2017 ending employment memorandum. Further to the PRS Panel's request of 10 August 2018, the Bank provided an explanation of the itemized payments and deductions in the Applicant's December 2017 payroll statements. The PRS Panel concluded that this additional information "sufficiently clarified the deductions and payments made to [the Applicant]. [...] [T]hese deductions and payments were consistent with [the Applicant's] former contract of employment and terms of appointment."

116. The Tribunal observes that the Applicant's end of employment payments were paid on 28 December 2017, the earliest payroll date after the Applicant had provided the required documentation to the Bank.

117. The Tribunal finds that, although these claims are within the Tribunal's subject-matter jurisdiction, the Bank has adequately addressed the Applicant's grievances by providing her with sufficient information and paying her end of employment payments as soon as she complied with the Bank's requirements. Accordingly, the Tribunal summarily dismisses these claims.

APPLICATION NO. 16 CONCERNING REQUEST FOR REVIEW NO. 422

118. The Applicant's claims in her sixteenth Application relate to her access to her staff records, the provision of information about "exit requirements," allegedly harassing communications from her former department, a breach of her confidential information, and the requirement to certify her dependents.

119. The Bank denies that it withheld the Applicant's staff records from her or rendered an adverse decision, so it contends that the Tribunal has no jurisdiction over this claim.

120. The PRS Panel found that on 9 March 2018, eight days after the Applicant's request to access her PAF, HR provided the Applicant with the requested documents. It observed that there was no evidence that the Applicant requested her PAF prior to 1 March 2018 or that it was withheld from her.

121. Although the Tribunal finds that the Applicant's claim regarding access to her staff records is part of her terms of appointment and contract of employment, it summarily dismisses this claim. The record shows that the Applicant was given access to her staff records within a reasonable time after her request.

122. The Bank contends that the Tribunal has no jurisdiction over the Applicant's claim that she was not provided information about "exit requirements" because the Applicant has no such

entitlement and, in any case, the Applicant was provided with information and the relevant procedures and forms.

123. The Tribunal observes that Staff Rule 7.01, paragraph 16.01 “Exit Requirements,” clearly sets out the obligations of a staff member upon leaving the service of the Bank, which the Applicant reasonably should have known. In contrast, the Applicant has not identified any Staff Rule or policy that requires a Bank official to meet with her on her last day to give her information about “exit requirements.” Consequently, the Tribunal summarily dismisses this claim.

124. The Bank does not contest the receivability of the Applicant’s claim regarding allegedly harassing communications from staff in her former department. Claims of harassment are within the Tribunal’s subject-matter jurisdiction.

125. On this issue, the PRS Panel

found that the evidence does not show that [the Applicant] asked [the Director of her former department] to stop sending her emails regarding the return of her personal belongings and WBG equipment. The Panel noted that [the Director of her former department] stopped sending emails to [the Applicant] after [the Applicant] informed [the Lead Counsel at the Bank] that [her former department’s] communications with her should be “limited.”

126. The Tribunal finds that the Applicant has not made a *prima facie* case for harassment. *See, e.g., DP*, Decision No. 547 [2016], para. 105. Accordingly, the Tribunal summarily dismisses this claim as devoid of all merit.

127. In her sixteenth Application, the Applicant claims a breach of her confidential information because her medical records were disclosed without her consent “as is clear from various statements made in Tribunal decisions concerning the Applicant.” She does not provide any further information regarding this claim.

128. The Bank submits that its use of the Applicant's medical information, which it claims was already disclosed by the Applicant, cannot be a breach of her contract of employment or terms of appointment. According to the Bank, this claim is not admissible.

129. The Tribunal finds that, although this claim is admissible, it is devoid of all merit and is therefore summarily dismissed.

130. With respect to the Applicant's claim about the dependency certification, she asserts that the Bank's requirement was erroneous, caused "deliberate confusion," and therefore the Bank treated her "in a demeaning manner and without fairness."

131. The record contains the following relevant emails:

- (i) an automatically generated email from HR Operations dated 13 November 2017, reminding the Applicant to confirm her household/dependency status;
- (ii) an email dated 30 November 2017 from HR that "HROps has sent you numerous emails with the self-service link reminding you to complete your certification. If you were having issues with connectivity to Bank systems you needed to contact ITS [Information and Technology Solutions] for assistance. Given the current situation, HROps has agreed to complete the certification"; and
- (iii) an email dated 18 December 2017 from the Applicant to HR requesting a paper copy to confirm the dependency allowance, which the Applicant claims she never received.

132. It is not disputed that the Applicant did not claim and was not entitled to a dependency allowance. The record is clear that the Applicant was asked by HR to provide certifications for her dependents, although there was no need for her to do so. However, the Tribunal dismisses this claim on the basis that the Applicant did not suffer harm.

APPLICATION NO. 17 CONCERNING REQUEST FOR REVIEW NO. 413

133. In her seventeenth Application, the Applicant claims that she was not provided with information about the language tuition benefit.

134. The Bank contends that this claim does not “properly concern Applicant’s terms of appointment or contract of employment,” but in any case the relevant provisions are set out in the Staff Rules.

135. The Tribunal summarily dismisses this claim as lacking in merit since the Staff Rules are clear regarding the language tuition benefit and the process for accessing it. Staff Rule 6.14, paragraph 4.01(b), states:

For children attending pre-primary, primary, or secondary school in the duty station country, bona fide instruction in the Home Country language of the Staff Member or the Staff Member’s spouse or Domestic Partner if neither is the language of the duty station. For this purpose, bona fide instruction means instruction by:

- i. An education institution qualified to provide language instruction; or
- ii. A tutor who is not a close relative of the child, the Staff Member, or the Staff Member’s spouse or Domestic Partner, and who is qualified to teach the language. For this purpose, close relative has the same meaning as in Staff Rule 4.01, “Appointment.”

136. The Applicant was informed by an HR Analyst by email on 28 September 2017 that the maximum language tuition benefit per child is \$1,000.00, which is consistent with Staff Rule 6.14, Annex-1-Annex A “Education Benefits,” paragraph 2, which states, “Within the applicable maximum stated in paragraph 1 above or Column (vi) of Annex B and Annex C to this Rule, the maximum grant each academic year for instruction in languages is \$1,000 per child.” The HR Analyst also provided the Applicant with a link to the form the language tutor needed to complete and informed the Applicant of the need to “attach an invoice of dates of instruction and cost per session.”

137. The record shows that the Applicant was provided with sufficient information about the language tuition benefit. Therefore, the Tribunal summarily dismisses this claim.

CONCLUSION

138. The Tribunal dismisses the preliminary objection regarding the principle of *res judicata*.

139. However, the Tribunal upholds the preliminary objection regarding the challenges to the PRS process, specifically the claims in each Application that the Applicant was denied “a fair and impartial process under Peer Review Services and [a] fair hearing.”

140. The Tribunal concludes that the Applicant’s claim regarding her education benefits for the 2017–2018 academic year, as set out in Application No. 14, is not yet ripe.

141. The Tribunal summarily dismisses the following claims:

- (i) the claims set out in Application No. 15, including those regarding the payment of money owed to the Applicant on her last day of employment and the provision of documentation regarding the Applicant’s end of employment payments;
- (ii) the claims set out in Application No. 16, including those regarding the Applicant’s access to her staff records, the provision of information about “exit requirements,” the allegedly harassing communications from staff in her former department, the breach of her confidential information, and the requirement that she certify her dependents; and
- (iii) the claims set out in Application No. 17, including those relating to the provision of information about the language tuition benefit.

DECISION

The Applications are dismissed.

/S/ Andrew Burgess
Andrew Burgess
Vice-President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 25 October 2019