



World Bank Administrative Tribunal

2019

Decision No. 603

**Sara González Flavell (Nos. 5 and 7),
Applicant**

v.

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

(Preliminary Objection)

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

**Sara González Flavell (Nos. 5 and 7),
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), and Marielle Cohen-Branche.

2. The Applicant’s fifth and seventh Applications were received on 31 July 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. In Application No. 5, the Applicant challenges the decision by the Peer Review Services (PRS) to partially uphold Request for Review No. 393. In Application No. 7, the Applicant challenges (i) the decision by PRS to partially uphold Request for Review No. 386 and (ii) the alleged failure to provide the Applicant with “a full and/or proper explanation” of the mistakes made in the calculation of her education benefits while she was on Short Term Disability (STD) and “a justification and reconciliation of amounts repaid to correct errors of deductions due to supposed ‘over-payment.’”

4. On 19 September and 3 October 2018, the Bank submitted preliminary objections contesting the admissibility of both Applications under Article II of the Tribunal’s Statute. This judgment addresses the Bank’s preliminary objections.

FACTUAL BACKGROUND

5. The historical context of this case is contained in *González Flavell*, Decision No. 553 [2017] and *González Flavell (No. 2)*, Decision No. 570 [2017].

6. The Applicant joined the Bank in October 1988. She served in different positions within the Legal Vice Presidency until August 2012 when she joined the Independent Evaluation Group (IEG) as a Level GG Special Assistant to the Senior Vice President and Director General of IEG (Director General).
7. On 2 June 2015, the Applicant started a period of sick leave.
8. On 25 June 2015, the Applicant formally requested to be placed on STD with the Reed Group, the Bank's disability administrator. Under Staff Rule 6.22 (Disability Insurance program), paragraph 7.01 (Disability Pay), her pay while she was on STD leave was calculated at the rate of 70% of her net salary.
9. On 1 July 2015, the Applicant received a Notice of Redundancy.
10. On 12 August 2015, the Reed Group notified the Applicant that she had been approved for STD from 2 June 2015 until 18 September 2015. The Applicant's STD leave was subsequently extended.
11. On 28 October 2015, the Applicant challenged the Notice of Redundancy and other decisions before the Tribunal. The Tribunal rendered Decision No. 553 on 21 April 2017 considering these matters. The Tribunal found that the decision to abolish the Applicant's position and declare her employment redundant was affected by IEG management's perception of the Applicant's performance deficiencies and her working relationship with the Director General.
12. On 19 May 2017, the Applicant filed another application before the Tribunal challenging, *inter alia*, (i) the decision to continue the Applicant on the STD pay rate of 70% of her salary and (ii) the decision to place her on Administrative Leave at a pay rate of 70% of her salary. On 25 October 2017, the Tribunal dismissed the Applicant's primary claims in Decision No. 570 [2017] stating that the Applicant had failed to exhaust internal remedies. The Tribunal further stated that "the issues raised, and remedies sought, in the remainder of the [a]pplication are either moot or devoid of all merit."

13. Applications No. 5 and No. 7 are two of the recent applications by the Applicant.

Application No. 5: Alleged misuse of the Applicant's annual leave

14. By email dated 17 December 2015 to the Applicant, a Human Resources (HR) Specialist, Compensation and Benefits, informed the Applicant that while she was absent on STD, and after she had exhausted all her sick days, she would have the option of authorizing the use of her annual leave days to continue to be paid at 100% of her salary for the duration of the annual leave "rather than the 70% disability benefit pay."

15. On 23 December 2015, a Senior HR Business Partner wrote to the Applicant to inform her that the Bank system did not immediately reflect her STD status and erroneously showed that she was on Administrative Leave until 12 November 2015 but that steps had been taken to correct that error. He informed the Applicant that the Bank had decided to pay her 100% of her salary until that date as an *ex gratia* payment. From 13 November 2015, however, the Applicant's salary would be reduced to 70% as per Staff Rule 6.22 applicable to disability, unless she authorized HR to apply her annual leave to allow her to continue receiving 100% of her salary.

16. On 5 April 2016, the HR Specialist sent an email to the Applicant stating that her STD had been extended through 19 June 2016 and asking the Applicant to confirm if she "would like us to apply your annual leave so you can continue to receive 100% pay. If you decide not to apply your annual leave, your salary will be reduced to 70%."

17. By email dated 6 May 2016, the HR Specialist informed the Applicant that, as she had tried to call her many times over the previous few weeks without being able to reach her, the HR Specialist would "proceed in applying your annual leave from January 11, 2016 forward as you have already been paid at 100% for this time." The HR Specialist stated that, once the Applicant's annual leave was exhausted, she would instruct Payroll to begin paying the Applicant at 70% disability pay.

18. On 6 May 2016, the HR Specialist wrote to the Applicant's unit leave coordinator, requesting her to apply the Applicant's sick leave and annual leave starting 12 January 2016. On the same date, the leave coordinator applied the Applicant's annual leave for the period from 18 February to 11 May 2015, which the Director General approved on 7 May 2016.

19. By email dated 24 May 2016, the HR Specialist requested the leave coordinator to apply the Applicant's "annual leave as current," in light of "an agreement with [the Applicant] that the Bank would not apply any sick leave or annual leave until after 12 November 2015."

20. From 25 May to 31 May 2016, the HR Specialist and leave coordinator exchanged further emails regarding the use of the Applicant's sick leave and annual leave. On 31 May 2016, the leave coordinator confirmed that she had "applied 27 days of [the Applicant's] annual days from January 14 to March 2 [2016]."

21. By email dated 31 May 2016, the HR Specialist informed the Applicant as follows:

Please note that your sick and annual leave has been applied through March 2, 2016. I have instructed payroll to begin your STD 70% disability pay effective March 3 through your current STD approval date of June 19, 2016. Note that since you have previously been paid at 100% since March 3, Payroll will create a receivable for the amount that was overpaid to you.

22. The Applicant claims that she did not read the HR Specialist's email until much later because it was sent to the wrong email address and that, as she was on STD, she had been advised by her doctor to minimize her email use. Instead, she states that she only discovered that her annual leave had been used without her consent on 30 October 2016, while reading the Bank's Answer in her first case before the Tribunal. The Applicant notes that she checked the Bank's leave recording system and realized that the system incorrectly recorded that she had taken annual leave between 18 February and 11 May 2015 and from 14 January to 2 March 2016.

23. On 8 December 2016, the Applicant filed a written submission to the Tribunal, in the context of her first case, challenging the Bank's use of her annual leave without her consent and

requesting that the Bank correct its errors. In response, the Bank argued that the Applicant's claim was not ripe for the Tribunal's review as the Applicant had not exhausted internal remedies.

24. On 24 July 2017, the Applicant filed Request for Review No. 393 before PRS.

25. On 27 March 2018, the PRS Panel issued its report in Request for Review No. 393. The Panel found that "the Bank acted consistently and followed Bank practice when it applied [the Applicant's] annual leave after her sick leave had been exhausted." The Panel found, however, that the Bank had failed to "inform [the Applicant] of the option for retroactive adjustment of her annual leave while on STD after applying her annual leave without her consent under Staff Rule 6.06." The Panel further determined that the Applicant did not provide any evidence to substantiate her allegation that she was discriminated against because of her disability or that the Bank acted in bad faith. The Panel recommended that the Bank (i) retroactively adjust the Applicant's annual leave for the period from 14 January to 2 March 2016, (ii) correct the Applicant's annual leave record between 18 February and 11 May 2015, and (iii) provide a reconciliation of the amounts that the Bank owed to the Applicant.

26. On 2 April 2018, the Human Resources Vice President (HRVP) accepted the PRS Panel's recommendation.

27. Application No. 5 was received on 31 July 2018. The Applicant challenges the decision by PRS to partially uphold Request for Review No. 393. The Applicant seeks (i) compensation in an amount of four months' salary; (ii) provision of the Applicant's leave records; (iii) further and/or alternatively to the compensation, the right to "cash in" 41 days of annual leave retroactively; (iv) further and/or alternatively to the compensation, the right to apply retroactively any remaining days of annual leave exceeding the maximum amount of sixty days paid in lieu of termination, to be attributed to the period of STD for the days accrued prior to 19 March 2017 until exhausted; and (v) legal fees and costs in the amount of \$10,756.62.

Application No. 7: Alleged miscalculation of the Applicant's education benefits

28. On 21 July 2015, the Applicant applied for education benefits for the 2015–2016 academic year for five of her six children.
29. On 31 July 2015, the Applicant received the amount of \$87,337 for education benefits for the 2014–2015 academic year.
30. On 23 June 2016, HR Operations discovered that the Applicant was receiving “partial pay” in the payroll system. HR Operations proceeded to reduce the Applicant's education benefits to 70% in line with her partial pay.
31. By email dated 6 July 2016, the Applicant informed HR Operations that her education allowance had been incorrectly calculated. The following day, HR Operations responded to the Applicant's email noting that her education benefits had been reduced as a result of her partial pay status.
32. On 22 and 23 July 2016, the Applicant submitted a request for education benefits for two of her children for the 2016–2017 academic year.
33. By email dated 25 July 2016, HR Operations wrote to the Applicant confirming that they had processed the education certifications for four of her children for academic year 2015–2016.
34. On 31 July 2016, the Applicant received education benefits for one of her children for academic year 2015–2016 and for another for academic year 2016–2017.
35. On 22 August 2016, the Applicant visited HR Operations “to try to establish the grounds on which my education benefit has been reduced to 70 percent.”
36. On 9 September 2016, the Applicant submitted requests for education benefits for four of her children for the 2016–2017 academic year.

37. By email dated 20 September 2016, HR Operations wrote to the Applicant to inform her that they had “authorized 70% of the education benefit based on your partial pay percentage” and confirm that they had processed the grants for her children for the 2016–2017 academic year.

38. By email dated 26 September 2016, the Applicant wrote to HR Operations complaining of HR’s “lack of promptness in processing my requests and the erroneous amounts arrived” and the fact that she had “incurred significant late fees for my school bills.”

39. On 30 September 2016, the Applicant received education benefits in the amount of \$40,676.82 for four of her children for the 2016–2017 academic year.

40. By email dated 5 October 2016, the Applicant wrote to HR Operations complaining of a miscalculation of her education benefits. She stated that her STD status “should not affect my benefits, it affects only my salary” and explained that “education benefits are not entitlements determined by salary rather by ex-pat status and year of entry and remain the same whatever the salary of the staff member hence are not benefits related to salary and are not subject to any deduction.”

41. On 19 October 2016, a Program Manager, Insurance Programs, responded to the Applicant’s email noting:

I have spoken with our colleagues in HR operations, which have been working on a detailed response to your query. While it appears [that] there was an initial error in the processing of your education benefit, my understanding is that the correction has been made, and that you should see that correction in your October 31 paycheck. As a result, [...] there are no additional payments due at this time [...]. You should have the detailed reconciliation in the near future, but I wanted to let you know that no additional payments are due, and that the education benefit will continue to be available to you for the duration of your short-term disability, pursuant to the rules associated with that benefit.

42. On the same date, the Applicant responded requesting a “breakdown of amounts” that she would receive in her paycheck of 31 October 2016, “so I can understand these new calculations and check that there have been/are no further or continuing errors.”

43. In her paycheck of 31 October 2016, the Applicant received the amount of \$32,670.34 for the corrections made to the Applicant's education benefits.
44. By email dated 8 March 2017, the Applicant reminded the Program Manager that she had not yet received "a detailed reconciliation" from him or his team.
45. On 15 March 2017, the Program Manager responded to the Applicant's email apologizing for the delay and enclosing a reconciliation of the payment of \$32,670.34 that she had received on 31 October 2016, "which represented a full payment for everything you were owed." The Program Manager stated that the "issue of miscalculation of your education benefits was resolved in your October 2016 check."
46. On 25 May 2017, the Applicant filed Request for Review No. 386 before PRS.
47. On 16 March 2018, the PRS Panel issued its report in Request for Review No. 386. The PRS Panel found that there was an unreasonable delay in providing the Applicant with detailed reconciliation statements regarding her education benefits and that such failure amounted to unfair treatment inconsistent with Principle 2.1 of the Principles of Staff Employment. The Panel did not find evidence that management acted in bad faith. The Panel recommended that the Bank compensate the Applicant "in the amount of one (1) month of her former net salary."
48. On 27 March 2018, the HRVP accepted the PRS Panel's recommendation.
49. Application No. 7 was received on 31 July 2018. The Applicant challenges (i) the decision by PRS to partially uphold Request for Review No. 386 and (ii) the alleged failure to provide the Applicant with "a full and/or proper explanation" of the mistakes made in the calculation of her education benefits while she was on STD and "a justification and reconciliation of amounts repaid to correct errors of deductions due to supposed 'over-payment.'"
50. The Applicant seeks (i) compensation in the amount of four months' salary for the "decision to accept the recommendation of the [PRS] Panel and/or the Panel's wrongful decision

to uphold only part of the PRS Request and/or the Panel and/or the PRS Secretariat's procedurally unfair conduct and alleged procedural unfairness"; (ii) compensation in the amount of three months' salary "in order to increase the amount of compensation awarded by the Panel in respect of that aspect of the Request for Review which was upheld"; (iii) a "full and detailed reconciliation and/or explanation of the errors, incorrect deductions and retroactive adjustments made by the Bank's HR department in the calculation of the Applicant's benefits for 2015-2016 and 2016-2017"; and (iv) legal fees and costs in the amount of \$11,469.62.

51. On 19 September 2018, the Bank filed preliminary objections challenging the admissibility of Application No. 5 on the grounds that (i) the Application is time-barred; (ii) the Tribunal lacks jurisdiction *ratione materiae*; and (iii) the Application should be dismissed on the basis of the principle of *res judicata*.

52. On 3 October 2018, the Bank filed preliminary objections challenging the admissibility of Application No. 7 on the grounds that (i) the Application is time-barred; and (ii) the Tribunal lacks jurisdiction *ratione materiae*.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank's Contentions

53. The Bank objects to the admissibility of Applications No. 5 and No. 7 on the basis of Article II(2)(a) of the Tribunal's Statute. The Bank claims that the Applicant was aware of the Bank's use of her annual leave without her consent as early as October 2016 and that she also became aware of her reduced education benefits as early as July 2016. The Bank asserts that these are the relevant dates of the events giving rise to these Applications. The Bank further claims that Requests for Review No. 393 and No. 386 were untimely and should have been dismissed by PRS on this basis. The Bank avers that the decisions by the PRS Panels in Requests for Review No. 393 and No. 386 to receive a "stale claim for review" from the Applicant were not correct and should not be "binding on the Tribunal."

54. In relation to Application No. 7, the Bank asserts that this Application is untimely even if the date of the HRVP's decision in Request for Review No. 386 is considered the proper date from which to calculate the timeliness of this Application before the Tribunal. In this regard, the Bank states that the Applicant was notified of the HRVP's decision on 27 March 2018 and had until 25 July 2018 to file her Application. Given that the Application was received on 31 July 2018, six days after the deadline, the Bank asserts that the Application should be inadmissible. The Bank asserts that time limitations are "de rigueur" and should be disregarded only in exceptional circumstances, which the Applicant has not shown in the present case.

55. The Bank avers that the Applicant's challenges of "the policies and procedures of the PRS process itself" in Application No. 5 and Application No. 7 are outside the Tribunal's review. The Bank asserts that the Tribunal "is not an appellate body reviewing the proceedings, findings and recommendations of the [PRS Panel]" or the regularity of the PRS process. Also, the Bank asserts that, in issuing their recommendations, the PRS Panels and HRVP "followed the Directives and Procedures applicable to the PRS Review process." The Bank maintains that the PRS Panels reviewed the Applicant's claims of discrimination and found that the Applicant had failed to substantiate her allegations. The Bank submits that, under the PRS Directives and Procedures, there is no obligation on the part of the PRS Panels or HRVP to grant all the relief that the Applicant requests.

56. In relation to Application No. 5, the Bank objects to the admissibility of this Application on the basis of the principle of *res judicata*. The Bank contends that the parties in this Application "are the same as the parties in WBAT Decision No. 570" and that the "substance of the claim is essentially the same in both applications." For the Bank, "the principles of when staff receive 70 percent of their salary are at issue, albeit in one case she argued to increase her salary to 100 percent and in the other to refute receipt of 100 percent when she was only entitled to 70 percent of her salary."

The Applicant's Response

57. The Applicant contends that the Bank's objections to the timeliness of Application No. 5 and Application No. 7 on the basis of Article II(2)(ii)(a), namely "the occurrence of the event

giving rise to the application,” are “ill-founded,” “factually incorrect and erroneous,” and should be rejected.

58. The Applicant claims that Applications No. 5 and No. 7 are timely. The Applicant asserts that, pursuant to Article II(2)(ii) of the Tribunal’s Statute, the time limit for filing an application before the Tribunal is 120 days from “the latest” of the three situations identified therein. She argues that, as she exhausted the required internal remedies through PRS, the timeliness of Applications No. 5 and No. 7 should be properly assessed under “either or both of Article II.2(ii)(b) and (c)” of the Tribunal’s Statute, requiring that the 120 days to file an application before the Tribunal be calculated from the date on which she received notice of the decision that PRS had granted her relief.

59. Regarding Application No. 5, the Applicant asserts that she received the HRVP’s letter accepting the PRS Panel’s recommendation in Request for Review No. 393 on 2 April 2018. She therefore had until 31 July 2018 to file an application before the Tribunal, which she did on 31 July 2018. The Applicant argues that the Bank’s argument that Request for Review No. 393 was untimely is “irrelevant” and also “without foundation.” She claims that it was in the course of her first case before the Tribunal that she found out that her annual leave had been used without her consent and was subsequently advised by the Bank to raise this claim before PRS “as soon as her health allows.” She asserts that it was only in April 2017 that she had the certainty that her claims were not ripe for the Tribunal’s review. She states that she filed Request for Review No. 393 on 24 July 2017, which was accepted as timely by PRS.

60. Concerning Application No. 7, the Applicant states that she received the HRVP’s letter accepting the PRS Panel’s recommendation in Request for Review No. 386 on 27 March 2018. She therefore had until 25 July 2018 to file an application before the Tribunal, which she did on 24 July 2018. She explains that her counsel wrote to the Tribunal Secretariat on 25 July 2018 informing it that he had posted the Application by mail on 24 July 2018. The Applicant claims that the proper date for this Application is the date on which she posted her Application by mail. Moreover, the Applicant states that it is “simply wrong” for the Bank to assert that Request for Review No. 386 was untimely. According to her, PRS accepted to review the claim because it was

brought within the prescribed 120 days, calculated from 15 March 2017, the date on which HR communicated the reconciliation of her education benefits, until 25 May 2017, the date on which she filed Request for Review No. 386.

61. With regard to the objection *ratione materiae*, the Applicant denies the Bank's argument that she is asking the Tribunal to "micromanage" PRS activities and contends that her claims are about PRS's failure to "follow basic requirements of fairness" and observe "the Staff Rules and her contract of employment." According to the Applicant, the procedural issues of which she complains evidence a "cavalier disregard" by PRS for its own procedures and constitute a violation of Principle 2.1 of the Principles of Staff Employment. Finally, the Applicant asserts that her complaints about the PRS processes are claims "of substance, not of procedure."

62. The Applicant denies the Bank's contention that the claims in Application No. 5 constitute *res judicata*. The Applicant contends that the matters raised in this Application were not determined in either Decision No. 553 or Decision No. 570. She states that the claims made in this Application "are more specific than simply a general complaint about the rate at which the Applicant was paid" and concern the "consequences for her of the way in which the Bank went about 'using up' her annual leave without her consent."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

TIMELINESS OF THE APPLICATIONS

63. The Tribunal will first review the Bank's preliminary objections on the grounds that the Applicant's claims are time-barred.

64. Article II(2) of the Tribunal's Statute states:

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

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

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

65. Staff Rule 9.03, paragraph 7.02, states in relevant part:

A Staff Member seeking review of a disputed matter is required to submit the matter first to the Peer Review Services prior to appealing to the World Bank Administrative Tribunal, unless the matter comes under one of the exceptions listed in paragraphs 7.03 or 7.04 of this Rule.

66. Staff Rule 9.03, Section 8, sets the time limitations for submitting requests for review to PRS as follows:

8.01. A Staff Member who wishes to request peer review must submit a Request for Review with the Peer Review Secretariat within 120 calendar days of receiving notice of the disputed employment matter. [...].

8.02 A Staff Member receives “notice” of a disputed employment matter when s/he receives written notice or ought reasonably to have been aware that the disputed employment matter occurred.

67. In *Moss (Preliminary Objection)*, Decision No. 571 [2017], para. 46, the Tribunal observed:

[A] failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. *See de Jong*, Decision No. 89 [1990], para. 33; *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25-26; *Peprah*, Decision No. 275 [2002], para. 24; *Islam*, Decision No. 280 [2002], para. 7; *Alrayes*, Decision No. 520 [2015], para. 55.

68. The Tribunal has also emphasized that the prescribed time limits are very “important for a smooth functioning of both the Bank and the Tribunal.” *See Agerschou*, Decision No. 114 [1992], para. 42; *Tanner*, Decision No. 478 [2013], para. 45; *Alrayes*, para. 56.

Timeliness of Application No. 5 Concerning Request for Review No. 393

69. The Tribunal observes that the Bank has objected to the admissibility of Application No. 5 on the basis of Article II(2)(ii)(a) of the Tribunal’s Statute, which provides that an application before the Tribunal must be filed within 120 days after “the occurrence of the event giving rise to the application.” The Bank claims that the event giving rise to this Application occurred as early as October 2016, the date on which the Applicant became aware that the Bank had used her annual leave without her consent. The Bank asserts that Request for Review No. 393 was not timely filed before PRS, which makes this Application out of time before the Tribunal.

70. For her part, the Applicant contends that Application No. 5 is timely. She argues that, because she exhausted the required internal remedies at PRS, the timeliness of Application No. 5 should be properly assessed under “either or both of Article II.2(ii)(b) and (c)” of the Tribunal’s Statute, requiring that the 120 days be calculated from the date on which she received notice of the HRVP decision. The Applicant asserts that “[t]he Statute is plainly not concerned with anything prior to that,” and states that, pursuant to Article II(2)(ii) of the Tribunal’s Statute, the time limit for filing an application is 120 days from “the latest” of the three situations identified therein.

71. The Tribunal notes that the PRS Panel addressed the issue of the timeliness of Request for Review No. 393 and concluded in its report that the Applicant’s claim was timely and that PRS had jurisdiction to review it, a conclusion with which the Tribunal agrees.

72. The question presented to the Tribunal is whether Application No. 5 was submitted to the Tribunal in a timely manner. The Tribunal observes that, pursuant to Article II(2)(ii) of the Tribunal’s Statute, applications before the Tribunal shall not be admissible unless they are filed within 120 days “after the latest of the following” situations: “(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.” The Bank has argued that the right provision to calculate the timeliness of Application No. 5 is Article II(2)(ii)(a) of the Tribunal’s Statute, namely “the occurrence of the event giving rise to the application.” The Tribunal disagrees. In the present case, it is the view of the Tribunal that the timeliness of Application No. 5 should be examined under Article II(2)(ii)(b) of the Tribunal’s Statute.

73. The record shows that the PRS Panel issued its report in Request for Review No. 393 on 27 March 2018, recommending that the Bank (i) retroactively adjust the Applicant’s annual leave for the period from 14 January 2016 to 2 March 2016, (ii) correct the Applicant’s annual leave record between 8 February and 11 May 2015, and (iii) provide a reconciliation. The HRVP accepted the PRS Panel’s recommendation on 2 April 2018.

74. The Tribunal considers that the timeliness of Application No. 5 is to be calculated from the date on which the Applicant received notice from the HRVP that the relief she had asked for in Request for Review No. 393 would be partially granted, which according to the record was on 2 April 2018. Pursuant to Article II(2)(ii)(b) of the Tribunal’s Statute, the Applicant therefore had until 31 July 2018 to file a timely application before the Tribunal. The record indicates that the Application was received on 31 July 2018. The Tribunal concludes that Application No. 5 was filed in a timely manner.

Timeliness of Application No. 7 Concerning Request for Review No. 386

75. The Bank equally objects to the admissibility of Application No. 7 on the basis of Article II(2)(ii)(a) of the Tribunal’s Statute, claiming that the event giving rise to this Application occurred as early as July 2016, the date on which the Applicant became aware that the Bank had miscalculated her education benefits. The Bank asserts that Request for Review No. 386 was not timely filed before PRS and that this also makes this Application untimely before the Tribunal. For her part, the Applicant contends that the timeliness of Application No. 7 is to be properly assessed under “either or both of Article II.2(ii)(b) and (c)” of the Tribunal’s Statute. She asserts

that she filed Request for Review No. 386 within the prescribed 120 days, calculated from 15 March 2017, the date on which HR communicated the reconciliation of her education benefits.

76. The Tribunal observes that the PRS Panel addressed the issue of the timeliness of Request for Review No. 386 and concluded in its report that the Applicant's claim was timely and that PRS had jurisdiction to review it. The Tribunal agrees with the PRS Panel's conclusion.

77. Therefore, the question to be answered by the Tribunal is whether Application No. 7 was filed in a timely manner before the Tribunal. As concluded above, the Tribunal finds that the timeliness of Application No. 7 should be examined under Article II(2)(ii)(b) of the Tribunal's Statute.

78. The record shows that the PRS Panel issued its report in Request for Review No. 386 on 16 March 2018, recommending that the Bank compensate the Applicant "in the amount of one (1) month of her former net salary." The HRVP accepted the PRS Panel's recommendation on 27 March 2018. The Applicant received notification of the HRVP's decision on the same date. Therefore, according to Article II(2)(ii)(b) of the Tribunal's Statute, the Applicant had 120 days after the date of receipt of such notice up to 25 July 2018 to file a timely application before the Tribunal.

79. The Applicant claims that her Application was timely because she sent it by mail on 24 July 2018. Regarding the date of the filing of an application before the Tribunal, the Filing Instructions on the Tribunal's website state:

The applicant must file the duly signed original and eight copies of the application with the Executive Secretary of the WBAT. (See Rule 7(8) of the WBAT's Rules.) An applicant may either hand deliver the application and its eight copies directly to the Tribunal or may send them by an efficient mail service. If the applicant decides to send the application and its eight copies, the date of the filing of the application is the date on which the application was posted, not the date on which the application was received by the Executive Secretary. In order for an application to be admissible before the Tribunal, it must satisfy the jurisdictional requirements of Article II of the Tribunal's Statute.

80. The record shows that the Applicant's counsel wrote to the Tribunal's Secretariat on 25 July 2018, informing it that an application challenging the PRS Panel's recommendation in Request for Review No. 386 "ha[d] been sent yesterday via international courier." The record also contains a copy of a FedEx postage stamp showing that a package addressed to the Executive Secretary of the Tribunal was shipped from the United Kingdom on 25 July 2018.

81. It is clear from the Filing Instructions that, if an applicant decides to send an application by mail, "the date of the filing of the application is the date on which the application was posted, not the date on which the application was received by the Executive Secretary." Having been posted on 25 July 2018, the Tribunal considers that 25 July 2018 is the date of the filing of the present Application.

82. The Tribunal finds that the Applicant filed Application No. 7 within the allotted time limit.

JURISDICTION *RATIONE MATERIAE*

83. The second ground on which the Bank objects to the admissibility of Applications No. 5 and No. 7 concerns the Tribunal's jurisdiction *ratione materiae*. The Bank avers that the Applicant's challenges of "the policies and procedures of the PRS process itself" in Application No. 5 and Application No. 7 are outside the Tribunal's review because the Tribunal does not review the regularity of the process that leads to a PRS Panel recommendation. On her part, the Applicant argues that she is not asking the Tribunal to micromanage the PRS decision but contends that her claims are that PRS failed to "follow basic requirements of fairness and, in doing so, has acted contrary to the Staff Rules and her contract of employment."

84. The following cases are relevant regarding the Tribunal's review of PRS decisions: 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.

85. The Tribunal held in *Yoon (No. 11)*, Decision No. 433 [2010], para. 16:

The Tribunal's jurisprudence is clearly to the effect 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 [...].

86. 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.

87. The Applicant challenges the following procedural decisions by PRS in Request for Review No. 393: the PRS Panel's decision to consolidate Requests for Review No. 386 and No. 393 and the subsequent reversal of such decision; the PRS Panel's decision to call certain witnesses; the designation of PRS Panels before the receipt of the Responding Manager's Response; and the PRS Panel's decision to proceed to the hearing although the Responding Manager had failed to respond to a request for documents. The Applicant also challenges the "inadequate compensation/other relief" by PRS.

88. In Request for Review No. 386, the Applicant challenges the alleged delay in the process; the alleged late filing of the Responding Manager's Response; and the alleged failure by the Responding Manager to provide requested documents in the mandatory format. The Applicant also

contests PRS's alleged failures to consider part of her Request for Review and to provide reconciliation.

89. The Tribunal observes that the Applicant is challenging procedural decisions made by PRS in Requests for Review No. 393 and No. 386 that constitute "routine procedural arrangements." As held in *Yoon (No. 11)*, para. 16, the Tribunal "does not micromanage the activities" of PRS and "will not second-guess" its procedural decisions unless "they resulted in violation of a staff member's rights, e.g. a refusal to deal with a complaint at all." *See also Yoon (No. 12)*, Decision No. 436 [2010], para. 22. In the present case, the Tribunal considers that a violation of the Applicant's rights would be PRS refusing to consider her claims at all or PRS prejudicing her access to have her claims considered. The Applicant's challenges to procedural decisions made by PRS in Requests for Review No. 393 and No. 386 are not, however, that they constitute "a refusal to deal with a complaint at all" or that they "prejudiced [the Applicant's] access to consideration" of her claims by PRS.

90. Instead, the Tribunal observes that the Applicant'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. According to Staff Rule 9.03, paragraph 11.03 (f) and (g), a PRS panel may "[c]onsolidate for review one or more Requests for Review filed by the same Staff Member" and "[d]ecide upon the parties' document and witness requests." Regarding the Applicant's challenges to the designation of panels and the alleged delay of proceedings, the Tribunal notes that these are procedural decisions that the PRS is entitled to make under its rules of procedure.

91. The Applicant also complained that her allegations of discrimination were not properly examined by PRS and that PRS awarded inadequate relief. The Tribunal observes that PRS addressed the Applicant's allegations of discrimination in both Requests for Review and determined that the Applicant had not provided any evidence to substantiate her allegations that she was discriminated against because of her disability or that the Bank acted in bad faith. The Tribunal further observes that, according to paragraph 6.14 of the Peer Review Procedures, it is

within the purview of PRS “to decide whether to recommend relief for the Requesting Staff Member and/or other corrective action.”

92. The Tribunal finds that the claims regarding procedural violations allegedly committed by PRS in Requests for Review No. 393 and No. 386 are inadmissible.

RES JUDICATA

93. The last ground on which the Bank objects to the admissibility of Application No. 5 is the principle of *res judicata*. The Bank contends that the parties in Application No. 5 “are the same as the parties in WBAT Decision No. 570” and the “substance of the claim is essentially the same in both applications.”

94. Article XI(1) of the Statute of the Tribunal provides: “Judgments shall be final and without appeal.” The Tribunal recalls that “previously adjudicated claims that an applicant attempts to submit again in another application are ‘irreceivable under the principle of *res judicata*.’” *Pal* (No. 2), Decision No. 406 [2009], para. 34, citing *Madabushi*, Order No. 2002-10 [2002], para. 4.

95. The Tribunal recalled in *González Flavell* (No. 4) (*Preliminary Objection*), Decision No. 597 [2018], para. 40, citing *B* (No. 2), Decision No. 336 [2005], para. 39, that “[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.’”

96. The Tribunal, therefore, will examine the claims and facts in Decision No. 570 and compare them to those in Application No. 5.

97. In her application before the Tribunal in Decision No. 570, the Applicant challenged, among others, (i) the “decision to continue her on [STD] at 70% of her salary” and (ii) the Bank’s decision to “place [the] Applicant on Administrative Leave, but to pay her salary at STD equivalent of 70% as though she continued to be on STD status and to deny her the full benefits due and payable according to her family entitlements.”

98. According to the facts of the case in Decision No. 570, the Bank's Reed Group had informed the Applicant in January 2017 that her STD benefits had been approved until 19 March 2017 and, in order for the benefits to continue until the return to work date, an "updated attending physician's statement" was required for review of the extension of STD benefits until 31 May 2017. In response, the Applicant had requested whether "[n]ow that I am no longer on STD (STD expired March 19) will I receive my full salary from March 19 even though we are all awaiting a decision from Reed about my return? Their delay is now costly." *See* paras. 12 and 19. It is further stated that, "[o]n 10 April 2017, the Bank informed the Tribunal, in connection with the Applicant's first Application, that the Applicant's STD benefits had ended on 19 March 2017. However, the Bank stated that, due to the Applicant's refusal to participate in an Independent Medical Evaluation, the Applicant had been placed on Administrative Leave and continued receiving payment at 70% of her salary as though she remained on STD status." *See* para. 24.

99. The Tribunal observed in Decision No. 570, para. 48:

There is no basis for the Tribunal to award the Applicant payment of full salary from and after her submission of her medical certification as fit to return to work on 19 March 2017. A cease and desist order to the Bank and the Reed Group to withdraw its continuation of the STD and confirm that the Applicant is already validly returned to the Bank on the basis of the Return to Work form of 16 March 2017 is equally unnecessary as the Applicant has already returned to work effective 2 June 2017.

100. At para. 49, the Tribunal further observed:

Having revoked the Authorization for Release of Personal Medical Records, the Applicant was informed on several occasions that a new release authorization was needed for her return to work claim to be processed. Pending that, the Bank continued to pay the Applicant her salary as though she were on STD even though she neither provided the medical assessment to justify receipt of STD benefits beyond 19 March 2017, nor did she provide the documentation requested to process her return to work and thus, justify her receipt of 100% of her salary. [...] The Tribunal finds that the Applicant cannot on one hand decry the state of limbo which she created through her own actions, and on the other petition to receive full pay for the period where she received benefits to which she was not entitled.

101. The Tribunal finds that the claims and issues raised by the Applicant in Decision No. 570 differ from those in Application No. 5. The issues at stake in that case concerned the Applicant's employment status pending the resolution of her return to work claim. In the present case, however, the Applicant is challenging the use of her annual leave without her consent while she was on STD. The Tribunal considers that "the substance of the claim" is not the same in Decision No. 570 and the present Application.

102. The Tribunal finds that the Bank's objection on the principle of *res judicata* is dismissed.

DECISION

- (1) The Bank's preliminary objections on the timeliness of Applications No. 5 and No. 7 are dismissed;
- (2) The Bank's preliminary objections on the Applicant's challenges of the decisions taken by PRS in Requests for Review No. 393 and No. 386 are upheld;
- (3) The Bank's preliminary objection on the principle of *res judicata* is dismissed; and
- (4) The Tribunal will address the following claims on the merits: (i) the Bank's alleged use of the Applicant's annual leave without her consent while she was on STD; (ii) the Bank's actions regarding the calculation and payment of the Applicant's education benefits for academic years 2015–2016 and 2016–2017; and (iii) the Bank's alleged failure to provide a detailed reconciliation of statements regarding the Applicant's education benefits.

/S/Andrew Burgess

Andrew Burgess

Vice-President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 26 April 2019