



World Bank Administrative Tribunal

2019

Decision No. 616

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

v.

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

(Merits)

**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 the Tribunal in plenary session, with the participation of Judges Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche, Janice Bellace, Seward Cooper, and Lynne Charbonneau.
2. The Applications were received on 31 July 2018. The Applicant was represented by Edward Capewell and 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. 5, the Applicant contested the decision of the Vice President of Human Resources (HRVP) to accept the Peer Review Services (PRS) recommendation to partially uphold Request for Review No. 393, specifically with regard to the use of her annual leave without her consent while she was on Short Term Disability (STD).
4. In Application No. 7, the Applicant challenged (i) the decision of the HRVP to accept the PRS recommendation to partially uphold Request for Review No. 386 and (ii) the Bank's 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 its errors of deductions due to supposed 'over-payment.'"

FACTUAL BACKGROUND

5. The historical context of this case is contained in *González Flavell (Nos. 5 and 7) (Preliminary Objection)*, Decision No. 603 [2019].
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 Special Assistant to the 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 through 1 June 2017.
11. On 10 September 2015, the Bank suspended the Notice of Redundancy. On the same date, the Applicant was informed that the Notice would be suspended until she was either off STD or declared by the disability administrator to be "fit to engage in a job search."

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

12. 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.” The HR Specialist also confirmed for the Applicant that her annual leave balance was 673 hours.

13. 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 applied her annual leave to allow her to continue receiving 100% of her salary.

14. 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%.”

15. 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 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 disability pay at 70% of her annual salary.

16. 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 also applied the Applicant’s annual leave for a separate period from 18 February to 11 May 2015, which the Director General approved on 7 May 2016.

17. 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 November 12, 2015."

18. 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 leave days from January 14 to March 2 [2016]."

19. 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.

20. 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 her doctor had advised her to minimize her email use. She states instead 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.

21. On 8 December 2016, the Applicant filed a written submission to the Tribunal to dispute the Bank's use of her annual leave without her consent and request that the Bank correct its errors. On 31 March 2017, the Tribunal informed the Applicant's counsel that those claims were not "ripe for Tribunal review, as they have not been subject to review by [the] Applicant's management or to review by the Internal Justice System."

22. On 24 July 2017, the Applicant filed Request for Review No. 393 before PRS, alleging "wrongful leave usage and recording."

23. 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 records for the period from 18 February to 11 May 2015, and (iii) provide a reconciliation of the amounts that the Bank owed to the Applicant.

24. On 2 April 2018, the HRVP accepted the Panel’s recommendations.

25. On 31 May 2018, the Manager of the HR Corporate Case Management unit wrote to the Applicant, confirming that the Bank retroactively adjusted the use of her annual leave, as recommended by PRS. The Bank’s adjustment of 738 hours of annual leave was offset by the “amount of additional disability benefits [the Applicant] received as a result of the application of [her] annual leave to increase [her] disability benefit during the period of [her] disability.” As a result, the Bank compensated the Applicant \$42,746.36.

26. Application No. 5 was received on 31 July 2018. The Applicant challenges the decision of the HRVP to accept the PRS recommendation 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 60 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.

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

27. On 21 July 2015, the Applicant applied for education benefits for the 2015–2016 academic year for five of her six children.

28. On 31 July 2015, the Applicant received the amount of \$87,337.00 for education benefits. This amount included \$86,862.00 in education grants and \$2,725.00 for travel costs (a related education benefit). These payments were offset by a total of \$2,250.00 (three items of \$750.00 each), as part of the certification process from the preceding academic year (2014–2015).

29. 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. HR Operations stated before PRS that it was not aware that this “partial pay” was due to STD.

30. 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.

31. On 18 July 2016, the Applicant requested the payment of the education benefits for her sixth child for the 2015–2016 academic year.

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 it had processed certifications for four of her children for academic year 2015–2016. These payments were prorated to 70%.

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 15 August 2016, the Bank created a net receivable due by the Applicant in the amount of \$6,341.83 based on education benefits paid to the Applicant at 100% which it later determined should have been reduced to 70%. Because of this net receivable, the education allowance amounting to \$5,561.29 for one of the Applicant’s children for academic year 2016–2017 was offset in total.

36. 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.”

37. On 9 September 2016, the Applicant submitted requests for education benefits for four of her children for the 2016–2017 academic year.

38. By email dated 20 September 2016, HR Operations wrote to the Applicant to inform her that it had “authorized 70% of the education benefit based on your partial pay percentage” and to confirm that it had processed the grants for her children for the 2016–2017 academic year. HR Operations further noted that “if the partial pay is [at] any time returned to 100% then [the payments due] will be corrected on a prorated basis from the date [of the update].” In the same email, HR Operations listed the amounts that the Applicant was entitled to receive for each of her children.

39. By email dated 26 September 2016, the Applicant wrote to HR Operations complaining of HR’s “lack of promptness in processing [her] requests and the erroneous amounts arrived” and the fact that she had “incurred significant late fees for [her] school bills.” She added that HR delays were “tantamount to breach of [her] employment contract and have caused significant distress.”

40. 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. In addition, the Applicant

received a total of \$1,925.00 for travel costs related to the education benefits. In line with the Applicant's partial pay status, these amounts were reduced by a total of \$7,431.58.

41. 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 [her] benefits, it affects only [her] salary" and explained that "education benefits are not entitlements determined by salary but 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."

42. Between 5 October and 19 October 2016, the Applicant exchanged emails with a Program Manager, Insurance Programs, in which the Applicant sought clarification on the education benefits she was entitled to receive. On 19 October, the Program Manager 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.

43. 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."

44. 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. HR acknowledged before PRS that this error had an impact on the Applicant for approximately 75 days, for which HR apologized.

45. Between October 2016 and March 2017, the Applicant sought several meetings with HR and the Ombuds Office to clarify the facts surrounding the calculation of her education benefits.

46. 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.

47. 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.” He also stated that the “issue of the miscalculation of your education benefits was [...] resolved in your October 2016 check.”

48. On 25 May 2017, the Applicant filed Request for Review No. 386 before PRS challenging (i) the education benefits certified, and amounts paid between 2015 and 2017; (ii) the unreasonable delay in providing financial information and payment of the education benefits; and (iii) the Bank’s alleged discriminatory actions on the grounds of her disability.

49. According to the Bank, an HR Specialist sent a detailed explanation of the amounts of the education benefits that were paid to the Applicant for the school years 2015–2016 and 2016–2017 to the Acting Executive Secretary of PRS on 12 February 2018. It is the understanding of the Bank that the Acting Executive Secretary sent the reconciliation to the Applicant on 13 February 2018. The reconciliation included the following information:

a. Child 1

- i. 2015–16: The Applicant was entitled to receive \$9,239.66. This amount was erroneously reduced to \$8,280.52. The amount was corrected, and the Applicant received a payment of \$959.14 on 31 October 2016.
- ii. 2016–17: The Applicant was entitled to receive \$9,797.16. This amount was erroneously reduced to \$6,766.66. On 31 October 2016, the amount was corrected, and the Applicant received a payment of \$2,900.00. On 30 September

2017, she received an additional payment of \$130.50 to cover the remaining difference.

b. Child 2

- i. 2015–16: The Applicant was entitled to receive \$11,114.66 but received \$9,960.80 because of the erroneous reduction. On 31 October 2016, she received the difference of \$1,153.86.
- ii. 2016–17: The Applicant was entitled to receive \$11,672.16. This amount was erroneously reduced to \$8,079.16. On 31 October 2016, the amount was corrected, and the Applicant received a payment of \$3,462.50. On 30 September 2017, she received an additional payment of \$130.50 to cover the remaining difference.

c. Child 3

- i. 2015–16: The Applicant was entitled to receive \$7,364.66, but this amount was erroneously reduced to \$6,600.15. On 31 October 2016, the Applicant received the difference of \$764.51.
- ii. 2016–17: The Applicant was entitled to receive \$7,922.16. This amount was erroneously reduced to \$5,454.16. On 31 October 2016, the amount was corrected, and the Applicant received a payment of \$2,337.50. On 30 September 2017, she received an additional payment of \$130.50 to cover the remaining difference.

d. Child 4

- i. 2015–16: The Applicant was entitled to receive 30,852.00 Canadian dollars (CAD) (at the time, this amount was equal to \$24,642.00) but received instead \$22,847.41 due to the erroneous reduction. On 31 October 2016, she received the corrected difference of \$1,794.59.
- ii. 2016–17: The Applicant was entitled to receive 32,287.36 CAD (at the time, this amount was equal to \$24,836.00). This amount was erroneously reduced to \$20,376.84. On 31 October 2016, the Applicant received a payment of \$8,732.93. On 31 July 2017, the Bank deducted the extra \$4,273.77 that the Applicant had received from her payroll.

e. Child 5

- i. 2015–16: The Applicant was entitled to receive \$27,270.00. She received instead \$25,032.14 due to the erroneous reduction. On 31 October 2016, she received the amount of the difference, which was \$2,237.86.
- ii. 2016–17: The Applicant was entitled to receive \$28,080.00. This amount was erroneously reduced to \$13,949.18. On 31 October 2016, the amount was corrected, and the Applicant received a payment of \$5,978.23. On 30 September 2017, she received an additional payment of \$8,152.59 to cover the remaining difference.

f. Child 6

- i. 2015–16: The Applicant was entitled to receive \$6,193.15 but, due to the erroneous reduction, received \$5,512.32 instead. On 31 October 2016, she received the difference, which was \$680.83.
- ii. 2016–17: The Applicant was entitled to receive \$6,279.04. This amount was erroneously reduced to \$3,892.90. On 31 October 2016, the amount was corrected, and the Applicant received a payment of \$1,668.39. On 30 September 2017, she received an additional payment of \$717.75 to cover the remaining difference.

50. 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.”

51. On 27 March 2018, the HRVP accepted the Panel’s recommendation.

52. On 31 May 2018, the Manager of the HR Corporate Case Management unit wrote to the Applicant, confirming that she would be paid the compensation that the PRS Panel had

recommended. He also told the Applicant that she had already received a copy of the reconciliation of the education benefits for her children during the resolution of her claims before PRS.

53. The Tribunal received Application No. 7 on 31 July 2018. The Applicant challenges (i) the decision of the HRVP to accept the PRS recommendation 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 its errors of deductions due to supposed ‘over-payment.’”

54. 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”; (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.

55. On 19 September and 3 October 2018, the Bank filed preliminary objections challenging the admissibility of Applications No. 5 and No. 7.

56. On 26 April 2019, the Tribunal rendered its judgment on preliminary objections in *González Flavell (Nos. 5 and 7) (Preliminary Objection)*. The Tribunal found that it had jurisdiction over the Applicant’s claims regarding “(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.” The Tribunal concluded that the Applicant’s claims

regarding procedural violations allegedly committed by PRS in Requests for Review No. 393 and No. 386 were inadmissible.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

Application No. 5

The Applicant's Contentions

The Bank acted contrary to her contract of employment and terms of appointment

57. The Applicant claims that the Bank acted contrary to her contract of employment and terms of appointment when it (i) applied her annual leave without her consent and (ii) did not inform her of the retroactive adjustment of her annual leave while on STD.

58. The Applicant further claims that she suffered harm as a result of the Bank's actions for which she should be compensated. She asserts that (i) the Applicant was unable to apply her annual leave between January and March 2017 "when she wished to because she was wrongly informed that she had no annual leave to take"; (ii) the Applicant wrongly received payment for 19 days of annual leave at the termination of her employment with the Bank "when in fact she should have been entitled to receive payment in lieu of the maximum untaken amount permissible (60 days)"; (iii) the Applicant lost a claim before the Tribunal in *González Flavell*, Decision No. 553 [2017] due to the incorrect assumption that she was on annual leave between February and March 2015 and not entitled to an Overall Performance Evaluation; (iv) the Applicant incurred costs and time in pursuing her complaints with HR, PRS, and the Tribunal; and (v) the Applicant "still has some days of sick leave and annual leave unaccounted for."

59. The Applicant claims that she has not been adequately compensated by the Bank, as the amount that she received represented a "retroactive correction" of the Bank's errors, rather than compensation.

60. The Applicant further contends that the Bank's actions did not correspond to her intentions, as her intentions were to take a payment in December 2017 in lieu of the annual leave that she had accrued, rather than to have the annual leave applied during her STD.

The Bank's Response

The Bank practice of making retroactive adjustments to leave time was not in contravention of the Applicant's terms of appointment; the Bank decision to apply the Applicant's annual leave was not arbitrary, discriminatory, improperly motivated, or manifestly unreasonable; and the Applicant was more than adequately compensated for the use of her annual leave

61. The Bank claims that the practice of using a staff member's annual leave while on STD "is a long-standing practice that was instituted in order to protect staff members' salaries, especially at a time when they need it most" and that such practice is within its discretionary power and consistent with Staff Rules and Principles. The Bank explains that HR routinely makes allocations of annual leave time "[i]n order to maximize the income replacement benefit for disability participants." The Bank further claims that the ability to make retroactive adjustments in the Bank's leave recording system provides both HR and the disabled staff member much needed flexibility with respect to the administration of disability claims as well as allowing HR to increase the staff member's salary to 100% instead of the 70% income replacement benefit referenced in the Staff Rule. The Bank submits that, in deciding to apply this practice in the Applicant's case, "in which [she] ha[d] not expressed to HR a clear intent to the contrary," the Bank acted in the Applicant's best interests and, as the Applicant later revealed herself, "it was her preference as well."

62. According to the Bank, Staff Rule 6.06, paragraph 3.03, confers on managers the discretion to use a staff member's annual leave "for absences which have not been approved as another form of leave." The Bank relies on *Peprah (No. 2)*, Decision No. 310 [2004], paras. 33–36, to claim that the manager in the present case acted within her discretionary power to use the Applicant's annual leave. The Bank maintains that it duly informed the Applicant that it would apply her annual leave to her STD benefits, but the Applicant "chose to ignore" these emails. The Bank asserts that, during her STD, the Applicant was in contact with the Bank on numerous occasions and "could have

easily communicated whether or not she wanted to use her leave to top up or keep her salary at 70 percent,” but she “stayed silent on this point and as many times before, when it was to her benefit.”

63. The Bank states that the Bank’s disability administrator informed the Applicant that, pursuant to Staff Rule 6.22, the Applicant had to use her accrued sick leave to cover her absences. While conceding that the leave recording system should have amended the Applicant’s status on 12 August 2015, when the Applicant was informed by the disability administrator that her request for STD had been approved as of 2 June 2015, the Bank claims that it remedied this oversight by granting the Applicant an *ex gratia* payment for the period until 12 November 2015 to allow the Applicant to receive 100% of her salary. The Bank submits that it was made clear to the Applicant that as of 13 November 2015 the Bank would apply the Applicant’s accrued sick leave and that she was reminded in several instances that, if she wanted to continue to receive 100% of her salary after all her sick leave had been exhausted, she would have to apply her annual leave. The Bank asserts that, given the Applicant’s lack of response, HR employed its practice of applying annual leave to increase the Applicant’s disability pay to 100% and therefore retroactively adjusted the Applicant’s leave records from 14 January to 2 March 2016.

64. The Bank submits that, despite complaining about the use of her annual leave, the Applicant has stated her preference to apply her annual leave to her STD benefits in another case before the Tribunal, *González Flavell*, Decision No. 553 [2017]. According to the Bank, the Applicant “is trying to have it both ways.” On the one hand, she stated that she would have wanted the Bank to apply her annual leave, so she could continue to receive 100% of her salary. On the other hand, when the Bank did so, she “decries” the use of her annual leave and demands additional compensation.

65. The Bank asserts that the only claim the Tribunal need consider in relation to Application No. 5 is the matter of adequate compensation. The Bank claims that the Applicant has been sufficiently compensated for the use of her annual leave. In this regard, the Bank refers to the *ex gratia* payment of almost \$17,000.00 and to the amount of \$35,993.00 the Applicant received because of her termination date being extended by 53 days. Furthermore, the Bank submits that, in line with the authority conferred by the Peer Review Procedures and Staff Rule 9.03, paragraph

3.01, the PRS Panel considered that monetary compensation was not warranted in this case and recommended other relief. The Bank states that it complied with the PRS recommendation and rescinded its decision to use the Applicant's annual leave and made a retroactive adjustment of the Applicant's leave, "resulting in a payment of \$42,746.36 on June 27, 2018."

66. Finally, the Bank contends that the Applicant has not suffered any harm or actual damages that would warrant further compensation. Relying on the Tribunal's finding in *Moret*, Decision No. 113 [1992], para. 44, the Bank asserts that the Tribunal has not awarded compensation in cases where the applicant does not demonstrate harm resulting from a late response from the Bank.

Application No. 7

The Applicant's Contentions

The Bank failed to provide a detailed reconciliation, and the Bank failed to make the correct payments

67. The Applicant claims that PRS failed to make a finding as to whether the reconciliation was "sufficient for her to be able to understand what exactly had happened with regard to the education benefits to which she was entitled, and whether she was able to determine that she had been paid everything to which she had been entitled." The Applicant alleges that, although the facts were complex, PRS erred in "simply [...] acknowledg[ing]" them while failing "to ensure that the facts had been properly explained to the Applicant by the department of the Bank which had created the complexity." In this regard, the Applicant contends that "[s]imple T accounts" showing "the transfer information and a granular break-down per child" should have been provided to her.

68. The Applicant further claims that the Bank's failure to provide her with "a full, detailed and transparent explanation of the deductions made, and the [PRS] Panel's failure to deal with that allegation" amount to unfair treatment. According to the Applicant, the Bank has not only breached relevant Staff Rules and regulations but has also acted in contravention of Principles 2.1 and 9.1 of the Principles of Staff Employment.

69. The Applicant claims that, “to the best of her knowledge and understanding, it appears that she has still not been paid the correct amount in respect of one or more of her children for 2016.” The Applicant states that the Bank’s failure to provide her with a full and detailed reconciliation “means that she cannot be sure whether she has been paid everything to which she is entitled.”

The Bank’s Response

The Applicant was sufficiently compensated, and the reconciliation provided to the Applicant was sufficiently clear

70. The Bank asserts that the issues before the Tribunal are the adequacy of the compensation recommended by PRS and the “sufficiency” of the reconciliation provided to the Applicant.

71. The Bank claims that the Applicant has been sufficiently compensated for the delay of five months that HR took to provide her with the reconciliation. The Bank states that PRS, based on a complete and thorough review of the evidence, recommended that the Applicant be compensated with one month’s salary for the “unreasonable delay” in providing the Applicant with a detailed reconciliation regarding her education benefits. Relying on the Tribunal’s finding in *Moret*, the Bank asserts that further compensation is not warranted given that the Applicant has not demonstrated that she suffered any harm from such delay. In this regard, the Bank contends that the Applicant has already received the amounts that she was owed, as of 31 October 2016. Finally, the Bank notes that, although it takes all requests by staff “seriously,” the delay in this case was the “result of miscommunication amongst staff members involved in the matter.”

72. The Bank admits that having prorated the Applicant’s education benefits to 70% while she was on STD “was simply an honest error in the interpretation of Staff Rule 6.22, para. 7.09” but asserts that it had corrected this error. The Bank notes that HR duly informed the Applicant on 19 October 2016 that “HR had corrected the error in processing her education benefits” and paid the Applicant the amount of \$32,670.34 for “full payment of the amounts that [the Bank] clawed back in error.”

73. Finally, the Bank contends that the reconciliation provided to the Applicant satisfied the PRS Panel's criteria and provided the Applicant with all the required information. The Bank asserts that the Applicant, having claimed education benefits since 2001, "is very familiar with the program, the process to follow, as well as where to obtain all required documentation" and cannot complain at this stage that she could not understand the reconciliation provided by HR. The Bank further contends that it is within "the professional judgment of the competent Bank units" to determine the format of its accounting practices for Bank payments to staff and outstanding liabilities as well as to estimate and adjust those calculations when needed to explain to staff members. For the Bank, the Applicant's disagreement with the reconciliation format is not tantamount to a violation of her contract of employment or terms of appointment.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Application No. 5: The Bank's alleged use of the Applicant's annual leave without her consent

74. In *González Flavell (Nos. 5 and 7) (Preliminary Objection)*, the Tribunal decided it had jurisdiction over one claim from Application No. 5, namely the alleged use of the Applicant's annual leave without her consent. The Applicant claims that the Bank applied her annual leave without her consent while she was on STD. The Bank contends that the practice of using a staff member's annual leave while he or she is on STD is a long-standing practice at the Bank and is intended to increase the staff member's disability pay to 100% of his or her salary. The Bank further claims that it can make retroactive adjustments in its leave recording system in order to provide the staff member and HR with flexibility. The Bank also alleges that, in any case, the Applicant was informed that her annual leave would be applied, but she "chose to ignore" these emails.

75. The Bank invokes Staff Rule 6.06, paragraph 3.03, which states:

Annual leave may be taken, with prior approval, at the initiative of the Staff Member. A Staff Member's Manager may also require annual leave to be taken for absences which have not been approved as some other form of leave.

76. The record shows that the Applicant was informed on 17 December 2015 that, after she had exhausted her sick leave, she would have the option to authorize the use of her annual leave so that she could continue to be paid at 100% of her salary, instead of the STD rate, which would be 70% of her salary. She was similarly informed on 23 December 2015 that she could authorize the application of her annual leave from 13 November 2015, in order to maintain her salary at the 100% rate. Moreover, on 5 April 2016, the Applicant was again asked if she would like to apply her annual leave. On 6 May 2016, an HR Specialist stated in an email to the Applicant that she had tried to call the Applicant many times over the previous few weeks and that, since she received no response from the Applicant, she would proceed to apply her annual leave “from January 11, 2016 forward as [the Applicant had] already been paid at 100% for this time.”

77. On 6 May 2016, the Applicant’s annual leave was applied from 18 February to 11 May 2015. Moreover, on 31 May 2016, the leave coordinator confirmed that she had applied the Applicant’s annual leave from 14 January to 2 March 2016. The Applicant was informed on 31 May 2016 that her annual leave had been applied from 14 January through 2 March 2016 and that, from 3 March 2016, her 70% STD pay rate would retroactively begin.

78. The Applicant claims that she learned about the use of her annual leave only in October 2016 during the proceedings in another case before the Tribunal. She further claims that she did not authorize the use of her annual leave during her STD and that she did not receive HR’s communications, as they were sent to the wrong email address.

79. The Tribunal notes that, in the PRS Panel’s Report in Request for Review No. 393, the Panel concluded that the Bank acted consistently and followed its practice in applying the Applicant’s annual leave from 14 January to 2 March 2016. The Panel took into account that it is the Bank’s established practice in cases where staff members have not responded to communications and where they have already been paid at 100% of their salary to apply staff members’ annual leave after their sick leave has been exhausted, since staff members would likely prefer to receive 100%, rather than 70%, of their salary while on Disability Leave.

80. The Tribunal observes that the Panel also found that it was an administrative error for the Applicant's annual leave to be applied from 18 February to 11 May 2015. Moreover, the Panel concluded that the Bank did not act in accordance with the Applicant's contract of employment or terms of appointment in one respect: when it failed to inform her that there was an option to retroactively adjust her annual leave while she was on STD.

81. The Tribunal has recognized in its jurisprudence the importance of annual leave to staff members. In *L*, Decision No. 353 [2006], para. 26, the Tribunal stated, "Because annual leave is part of the compensation of staff members, it is a carefully protected property right which cannot be encroached upon except in accordance with due process of law."

82. The Tribunal notes that the present case does not concern the Bank withholding the Applicant's annual leave. Rather, it concerns the application of her annual leave without her consent. The Tribunal recalls that Staff Rule 6.06, paragraph 3.03, states that annual leave may be taken "at the initiative of the Staff Member," but that it also confers on a staff member's Manager the discretion to require the use of annual leave in a particular circumstance.

83. The Bank has asserted that it contacted the Applicant multiple times to inform her of the option to take her annual leave and that, in applying her annual leave to her STD, it followed a long-standing practice with the understanding that staff members on Disability Leave ordinarily prefer to receive 100% of their salary for as long as possible. The Bank also claims that there is generally less communication with staff members during this time.

84. The Tribunal accepts that the Bank has an established practice of applying staff members' annual leave while they are on Disability Leave in order to increase the percentage of their salary that they receive. The Tribunal also notes that the Bank attempted to contact the Applicant through multiple avenues, including telephone and email, over a period of five months to inform her of the option of applying her annual leave, and that the Applicant did not respond. Moreover, the Bank has the ability to retroactively adjust a staff member's annual leave record, if the staff member subsequently objects. The Tribunal observes that this is in fact what has happened in the present case.

85. The Applicant also contends that she has not been adequately compensated by the Bank. She claims that she was unable to apply her annual leave between January and March 2017 because she was informed that she had no more annual leave to take. She also asserts that she should have received payment in lieu of the maximum amount of untaken annual leave, which is 60 days, rather than the payment she received for 19 days at the termination of her employment with the Bank. However, the Bank contends that the Applicant has been adequately compensated, as she received an *ex gratia* payment, as well as additional compensation for her employment being extended for 53 days and the payment that PRS recommended.

86. The PRS Panel recommended the following in its Report: that the Bank retroactively adjust the application of the Applicant's annual leave from 14 January through 2 March 2016; that the Bank correct the administrative error of applying her annual leave from 18 February through 11 May 2015; and that the Bank provide the Applicant with a reconciliation of the amounts that it owes to her to be offset by any amounts she may owe to the Bank.

87. On 31 May 2018, the Bank emailed the Applicant, informing her that she would be compensated \$42,746.36. In making this calculation, the Bank credited the Applicant 480 annual leave hours for the period of 18 February to 11 May 2015 added to 258 annual leave hours for the period of 14 January to 2 March 2016, offset by 234.45 hours for the amount of additional disability benefits she received when her annual leave was applied from 14 January to 2 March 2016.

88. The Tribunal finds that the Applicant has been adequately compensated for the use of her annual leave during her STD. Taking into account that the Bank followed its practice in applying the Applicant's annual leave after attempting to inform her multiple times that she had the option, and that the Bank has a process to retroactively adjust a staff member's annual leave if needed, the Tribunal holds that no further compensation is warranted.

Application No. 7: Whether the Bank acted fairly in its actions relating to the Applicant's education benefits in 2015–2016 and 2016–2017

89. The Applicant contends that the Bank has treated her unfairly by not providing her a “full, detailed and transparent explanation” of the payments that it made to her under her education benefits in 2015–2016 and 2016–2017. The Bank maintains that the reconciliation it provided to the Applicant was sufficient, and that she has been adequately compensated for the delay in providing her with the reconciliation.

90. Principle 2.1 of the Principles of Staff Employment states in relevant part:

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. They shall not differentiate in an unjustifiable manner between individuals or groups within the staff and shall encourage diversity in staffing consistent with the nature and objectives of the Organizations. They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.

91. Principle 9.1 of the Principles of Staff Employment states in relevant part that “[s]taff members have the right to fair treatment in matters relating to their employment.”

92. The Tribunal has recognized that the Principles of Staff Employment form part of the contract of employment or terms of appointment of staff members. *BB*, Decision No. 426 [2009], para. 52.

93. Moreover, the Tribunal has consistently held that it is within its jurisdiction to review discretionary decisions. In *AK*, Decision No. 408 [2009], para. 41, the Tribunal observed that

[d]ecisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment.

94. The Tribunal notes that the Bank has the discretion in how to administer its benefits programs to its employees, as well as the discretion in how to provide information about the administration of employees' benefits to them. The Tribunal will not interfere with discretionary decisions, unless the decisions at issue constitute an abuse of discretion. *See Sisler*, Decision No. 491 [2014], para. 63.

95. The record indicates that the Applicant informed HR Operations on 6 July 2016 that her education benefits had been incorrectly calculated. She was told on the following day by HR Operations that her benefits had been reduced due to her partial pay status.

96. The Applicant visited HR Operations on 22 August 2016 to discuss the reduction of her education benefits. HR Operations told her on 20 September 2016 that she was still on partial pay, and that her benefits had been reduced accordingly.

97. On 26 September 2016, the Applicant wrote to HR Operations and complained that HR had not processed her requests in a prompt manner. She added that the HR delays were "tantamount to breach of [her] employment contract." On 5 October 2016, the Applicant wrote again to HR Operations that her education benefits had been miscalculated. Between 5 and 19 October 2016, she exchanged emails with the Program Manager, Insurance Programs regarding her education benefits.

98. On 19 October 2016, the Program Manager responded to the Applicant. In his email, he stated that there had been an error in the processing of her education benefits, but that the error had been corrected, and that the Applicant would be receiving the corrected amount in her paycheck of 31 October 2016. The Program Manager also stated that the Applicant would receive a "detailed reconciliation in the near future." The Applicant responded to the email from the Program Manager on the same day, requesting "a breakdown of amounts" that she would receive in her upcoming 31 October paycheck.

99. On 31 October 2016, the Applicant received an amount of \$32,670.34, representing the corrections made to her education benefits. She continued to contact HR and the Ombuds Office in order to clarify the calculation of her education benefits between October 2016 and March 2017.

100. On 15 March 2017, the Program Manager responded to the Applicant and attached a reconciliation of the payment that she had received on 31 October 2016. He stated in the email that the miscalculation of the Applicant's benefits had been resolved in the 31 October check.

101. The Bank claims that an HR Specialist sent a "detailed explanation" of the amounts of the education benefits that were paid to the Applicant in 2015–2016 and 2016–2017 to the PRS Acting Executive Secretary on 12 February 2018. The Bank further states that it is its understanding that the Acting Executive Secretary sent the reconciliation to the Applicant on 13 February 2018.

102. Therefore, the Tribunal finds that the Applicant did receive a reconciliation of the calculation of her education benefits at least on 15 March 2017 and later also during the PRS proceedings in February 2018.

103. The Tribunal notes that the reconciliation that the Applicant was sent on 15 March 2017 showed the amounts that she was eligible to receive for each child in both education years, the amounts she did receive for each child, and the differential amounts in the 31 October 2016 paycheck that she received once the error in the calculation of her education benefits was corrected. The Tribunal observes that the calculations and amounts provided in the reconciliation of 15 March 2017 and the reconciliation provided to PRS are the same. Moreover, the Bank has provided additional documents to the Tribunal showing the amounts that each of the Applicant's children was entitled to for each education year, what the Applicant was paid, and what the 31 October 2016 differential was. The amounts provided in these documents match the amounts in the other two reconciliations. In these circumstances, the Tribunal concludes that the Bank has provided the Applicant access to "full, detailed and transparent" information on the calculation of her education benefits.

104. The next question before the Tribunal concerns whether the delay in providing the Applicant with a reconciliation was unreasonable.

105. In Request for Review No. 386, the PRS Panel found that the delay in responding to the Applicant was unreasonable, particularly in the period from October 2016 to March 2017.

106. The Applicant relies on *DC (Merits)*, Decision No. 530 [2016] to make the point that the delay in this case was unreasonable. In *DC (Merits)*, the Tribunal held that a delay in providing the applicant information about his severance payments for over a year caused him harm. *Id.*, para. 40.

107. In the present case, the Applicant began to seek a breakdown or reconciliation of the payments of her education benefits in October 2016. She received the first reconciliation on 15 March 2017, despite continuously seeking a reconciliation or clarification of the payment she received on 31 October 2016 in that period. The Tribunal finds that the Bank's delay in providing the Applicant with the information that she sought was unreasonable.

108. The PRS Panel recommended that the Bank compensate the Applicant in the amount of one month of her former salary. The Bank informed the Applicant on 31 May 2018 that she would be compensated that amount. The Applicant contends that she is entitled to further compensation.

109. The Bank relies on *Moret*, para. 44, to support its claim that the Applicant has been sufficiently compensated. In *Moret*, the applicant alleged that he had received a delayed response from the Bank regarding his rejection of a Bank proposal in relation to a separation agreement. *Id.*, para. 43. In that case, the delay was approximately four months. *Id.*, para. 44. The Tribunal in *Moret* ruled that the delay did not cause the applicant harm because he had already been informed of the Bank's position several months before, and the Bank's response did not contain new elements. *Id.*

110. In contrast, the Tribunal in *DC (Merits)* determined that the delay in that case had caused the applicant harm, as he was unable to protect his interests before the end of his contract. *DC*

(*Merits*), para. 40. The Tribunal ordered compensation in the amount of three months of his salary. *Id.*, p. 20.

111. In the present case, the length of the delay in the Bank responding to the Applicant with a reconciliation was five months. However, the Applicant was awarded compensation by PRS in the amount of one month of her former salary. The Tribunal finds that she did not suffer additional harm that would warrant further compensation, as she had received the correct payments in her 31 October 2016 paycheck. The reconciliation that was provided to her on 15 March 2017 restated the amount she had already received. Therefore, the Tribunal holds that the Applicant has been sufficiently compensated, and no further compensation is warranted. The Tribunal awards no legal fees or costs to the Applicant for either the jurisdictional or merits phase of the proceedings.

DECISION

The Applications are dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 25 October 2019