



World Bank Administrative Tribunal

2019

Decision No. 604

**Sara González Flavell (Nos. 6 and 9),
Applicant**

v.

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

(Preliminary Objection)

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

**Sara González Flavell (Nos. 6 and 9),
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 sixth and ninth Applications were received on 8 August 2018. The Applicant was represented by Edward Capewell and Mark Stephens of Howard Kennedy LLP. The Applicant also represented herself. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges (i) the dismissal by Peer Review Services (PRS) of Requests for Review Nos. 401 and 410; (ii) the Bank’s alleged failure to “provid[e] a six-month period of job search under the Notice of Redundancy”; (iii) her manager’s refusal to attend mediation; (iv) the “wrongful detention of [her] personal belongings and possessions”; and (v) “misleading statements as to personal job assistance.”

4. On 26 September and 24 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 background of this case is contained in *González Flavell*, Decision No. 553 [2017] and *González Flavell (No. 4)*, Decision No. 597 [2018].

6. On 14 November 2014, the Applicant was informed, at a meeting with the Independent Evaluation Group's Senior Vice President and Director General (IEGDG), that her position had been declared redundant. According to the Applicant, the IEGDG stated that she would assist the Applicant in her job search and would contact the Inter-American Development Bank (IADB) to determine whether a position currently existed or would arise in the near future.

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

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

9. On 7 June 2017, the Applicant was informed that she was considered fit to return to work by the Reed Group, the Bank's disability insurance administrator. This decision was made effective 2 June 2017. The following steps were taken: The Notice of Redundancy which was suspended was reinstated and, pursuant to the Notice, the Applicant was placed on Administrative Leave with one hundred percent pay to enable her to conduct job searches. The Applicant remained on Administrative Leave for six months until 1 December 2017 when her employment with the Bank ended.

PRS Request for Review No. 401

10. On 5 October 2017, the Applicant submitted Request for Review No. 401 to PRS. She sought review of the Bank's alleged failure to "provid[e] a six-month period of job search under the Notice of Redundancy."

11. On 9 April 2018, the Applicant received a memorandum from the PRS Acting Executive Secretary titled "Request for Review No. 401 (Sara Gonzalez Flavell) Panel's Decision to Dismiss Based on Lack of Jurisdiction."

12. The Applicant was informed that she filed her Request for Review on 5 October 2017, more than 120 calendar days after becoming aware of the disputed employment matter through written communications to her dated “(a) July 1, 2015, (b) August 12, 2015, (c) September 10, 2015, (d) May 25, 2017, and (e) June 6, 2017, explaining that she would be on STD until June 1, 2017 and subsequently have a six-month job search period (*i.e.*, from June 2, 2017 to December 1, 2017).” The Applicant was informed that the “Panel determined that [her] claims [were] untimely and PRS [had] no jurisdiction to review the claims.”

The Applicant’s possessions and her request for mediation

13. In the summer of 2017, the Applicant visited the Bank’s premises. She also made attempts to meet the IEGDG. The IEGDG declined the Applicant’s requests to meet. In addition, the Applicant was informed that her point of contact at the Bank was a Human Resources Specialist. During this time, the Applicant consulted the offices of Ombuds and Mediation Services.

14. In August 2017, the Applicant found some of her possessions in open boxes in a consultant’s office in the Office of the IEGDG. According to the Applicant, she discovered that several items were broken and “many items, including documents representing a life-long career of work and research, were missing.”

15. On 16 August 2017, the Applicant sent the IEGDG an email message inquiring whether she would attend mediation to discuss matters such as the IEGDG’s alleged promise to provide assistance with the Applicant’s job search.

16. On 17 August 2017, the IEGDG responded to the Applicant stating:

Given that you have two cases currently pending before the Administrative Tribunal, I do not think that a mediation session will be productive.

During your “*job search period*” HR is better placed than me to assist you. Bear in mind that in order to maintain consistency in the communications between you and the Bank, [the Human Resources Specialist] (HRDCO) will continue to be

your point of contact for all questions you may have. Please do not hesitate to send her any questions you may have during this time. She will in turn liaise with HR, myself or other relevant stake holders to ensure you receive appropriate guidance. (Emphasis in original.)

17. On the same day, the Applicant responded to the IEGDG requesting that she reconsider her decision not to engage in mediation. The Applicant stated that mediation would be constructive and reminded the IEGDG that, in November 2014, she had given the Applicant her “personal assurance that [she] stood ready to provide every assistance for [the Applicant’s] job search given that [the IEGDG] no longer required a Special Assistant, less than two years after advertising the position.” The Applicant added that HR was doing “nothing” to assist her and they had “reluctantly provided 6 months[’] access to an outsourcing firm which specializes in jobs in the DC area[.]”

18. On the same day, a Senior Mediation Officer of the Bank’s Mediation Services contacted the Applicant stating that she was unaware that the Applicant had two pending cases before the Tribunal. The Senior Mediation Officer informed the Applicant that “[i]t would not be appropriate to pursue the request for mediation with [the IEGDG] at this time. I will have to close this case unless the request is to have your tribunal cases referred to mediation.”

19. Between 18 August and 14 September 2017, the Applicant exchanged further email messages with the Senior Mediation Officer on the request for mediation. The Senior Mediation Officer informed the Applicant that, because there was a pending matter before the Tribunal, they could proceed with mediation only if both parties agreed. The Applicant disagreed with the Senior Mediation Officer noting that the matters to be mediated were different from the issues before the Tribunal.

20. On 14 September 2017, the Senior Mediation Officer sent the Applicant an email message attaching the IEGDG’s response to the repeated requests for mediation. In addition, the Senior Mediation Officer informed the Applicant that the Mediation Office had “the right to evaluate a case to determine whether it is appropriate for mediation.” The Senior Mediation Officer stated:

Cases that are already under investigation/fact finding of any type are “deemed appropriate” only if both parties agree to mediate. The reason for this is that we want to avoid mediation interfering or causing a potential disruption in an ongoing proceeding of a Tribunal or other case.

We do not have [the IEGDG’s] consent to mediate in this matter.

21. The attached email from the IEGDG reads in relevant part as follows:

As for a meeting to mediate about possible references, I do not believe there is any need to mediate as I do not consider that there is a dispute. [The Applicant] is welcome to use my name as a reference and she can freely advise future employers to contact me directly, if she wishes to do so. Please bear in mind that [the Applicant] has alleged – in various [Internal Justice Services] IJS forums – that she may be rather uncomfortable in my presence. It is therefore surprising that she insists to meet with me as opposed to channeling all interactions via [the Human Resources Specialist].

In any event, I do not see any dispute that needs to be mediated as I am happy to provide any references she may need and her personal items are available for her to retrieve them.

22. On 5 December 2017, the Applicant received an email from the IEG Director of Strategy and Operations. The Director of Strategy and Operations inquired about the Applicant’s personal belongings. She stated: “As you will recall, we have been carefully keeping here about 8 boxes of items that were in your office and belong to you. Would you kindly let me know if you would like to come here to check their content yourself and take home what you’d like? Or would you prefer us to courier them all to your house?”

23. On the same day, the Applicant responded challenging the Director of Strategy and Operations’ statement that they had been carefully keeping the Applicant’s possessions.

24. Between 5 and 20 December 2017, the Applicant and the Director of Strategy and Operations exchanged further email messages concerning the Applicant’s possessions. The Applicant received boxes containing her personal possessions on 15 December 2017 and informed the Director of Strategy and Operations that certain items were missing, and others

were broken. The Director of Strategy and Operations expressed surprise and noted that the Applicant had been given several opportunities to collect her belongings from the office.

PRS Request for Review No. 410

25. On 18 December 2017, the Applicant submitted Request for Review No. 410 to PRS. She identified the disputed employment matters as (i) the refusal of her manager, the IEGDG, to attend mediation; (ii) the “wrongful detention of [her] personal belongings and possessions”; and (iii) “misleading statements as to personal job assistance.”

26. On 16 February 2018, the Applicant received a memorandum from the PRS Acting Executive Secretary titled “Request for Review No. 410 (Sara Gonzalez Flavell) Dismissal of Request for Review.” The memorandum noted that, with respect to the Applicant’s contentions about mediation, the Applicant did not contest any specific managerial decision or action. The Applicant was informed that her claim focused on “[the IEGDG’s] behavior and conduct which [the Applicant alleged] was ‘retaliation against a staff member for using the IJS.’” The Applicant was further informed:

Because your assertions focus on allegations of misconduct, PRS is not the appropriate venue to review the claim. Allegations of misconduct fall outside the scope of Peer Review Services. Rather, the Office of Ethics and Business Conduct, pursuant to Staff Rule 3.00 (EBC), para. 6.01 (Scope of Allegations Addressed by EBC), has the authority to review allegations of misconduct.

27. The Applicant was further informed that she had 120 calendar days from 17 August 2017 to file her request for review when she received notice that the IEGDG was unwilling to mediate. The Peer Review Chair found that the Applicant’s filing on 18 December 2017 was late. Her claim was deemed by PRS as out of time and beyond its scope of review.

28. Regarding the Applicant’s claim on the “wrongful detention of [her] personal belongings and possessions,” the PRS Acting Executive Secretary informed the Applicant that this claim was also filed in an untimely manner. The Applicant was informed that she first became aware that her “personal possessions in [her] office had been mishandled and some of [her] belongings

were missing,” before 7 June 2017 and at the latest by 9 August 2017. Accordingly, the Applicant had 120 calendar days from 9 August 2017 to file her request for review, and it was deemed that she filed her request more than 120 days after receiving notice of the matter which gave rise to her claim.

29. Finally, regarding the Applicant’s claim on “misleading statements as to personal job assistance,” the Applicant was informed that her claim was both filed in an untimely manner and beyond PRS’ jurisdiction. The Applicant was informed that she did not contest any specific managerial decision or action, rather her claim focused on the IEGDG’s behavior and conduct. The PRS Acting Executive Secretary once again informed the Applicant that, “[b]ecause [her] assertions focus on allegations of misconduct, PRS is not the appropriate venue to review the claim.”

Applications before the Tribunal

30. On 8 August 2018, the Applicant filed her sixth Application before the Tribunal. She challenges the dismissal of PRS Request for Review No. 401 and the Bank’s alleged failure to provide her with a six-month job search period between the notification of redundancy and the effective date of termination.

31. On the same day, the Applicant also filed her ninth Application before the Tribunal. She challenges the (i) dismissal of PRS Request for Review No. 410; (ii) alleged failure by the IEGDG to provide her with assistance in finding new employment; (iii) denial of her request for mediation with the IEGDG; and (iv) “wrongful detention and disposal and/or negligent loss of the Applicant’s personal possessions.”

32. On 26 September 2018, the Bank filed a Preliminary Objection challenging the admissibility of the Applicant’s sixth Application on the grounds that (i) the Application is time-barred; (ii) her claims do not relate to her contract of employment or terms of appointment; (iii) the Tribunal lacks jurisdiction *ratione materiae*; and (iv) the Application should be dismissed on the principle of *res judicata*.

33. On 24 October 2018, the Bank filed a Preliminary Objection challenging the admissibility of the Applicant's ninth Application on the grounds that (i) the Application is time-barred; (ii) the claims do not relate to the Applicant's contract of employment or terms of appointment; and (iii) the Application should be dismissed on the principle of *res judicata*.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Bank's Main Contentions Relating to PRS Request for Review No. 401

The Application is time-barred, the claims do not relate to the Applicant's contract of employment or terms of appointment, the Tribunal lacks jurisdiction ratione materiae, and the Application is barred by res judicata.

34. The Bank first contends that the underlying claim in PRS Request for Review No. 401 is time-barred. The Bank notes that the Applicant was informed on multiple occasions that the Notice of Redundancy would be reactivated.

35. Second, the Bank argues that the matter at hand concerned practices "to provide the Applicant a salary when she is by policy not entitled to a salary" and therefore did not form part of the Applicant's employment contract or terms of employment with the Bank. To the Bank, given that Article II(1) of the Tribunal's Statute provides that the Tribunal shall hear applications concerning allegations of "non-observance of the contract of employment or terms of appointment," the Applicant's claims are clearly irreceivable.

36. Third, the Bank maintains that the Applicant is challenging the policies and procedures of PRS which are beyond the Tribunal's jurisdiction *ratione materiae*. The Bank states that the Applicant is specifically challenging the "delay in process; consolidation of 401 with 406 [...] and appointment of the same Panel for 401 as for 406 prior to any Panel decision on any matter [...]."

37. Finally, the Bank argues that the Application should be dismissed on the principle of *res judicata*. According to the Bank, this matter has already been resolved in *González Flavell (No.*

4), where the Applicant contested the validity of the Notice of Redundancy. The Bank states that excerpts from Decision No. 597 demonstrate that the substance of the claim in this Application is essentially the same as the substance of the claims that were already fully adjudicated in Decision Nos. 553 and 597.

38. The Bank also states that the Applicant is indirectly seeking an appeal of Decision No. 553 and *González Flavell (No. 2)*, Decision No. 570 [2017]. The Bank argues that the “gravamen of the issues that the Applicant is raising in this Application is the action taken by the Applicant which delayed her return to work and reactivation of the Notice of Redundancy of July 2015.” According to the Bank, the “Tribunal has repeatedly heard and resolved [the] Applicant’s current argument – that she should have been paid for delays that she causes herself. The Tribunal need not entertain this claim again.”

The Applicant’s Response

The Application is not time-barred, the Applicant’s claim relates to her contract of employment, the Tribunal has jurisdiction over the claim, and the claim is not barred by res judicata.

39. According to the Applicant, the Bank’s assertion that her Application is time-barred is without merit. The Applicant states that the approach the PRS Panel took in ascertaining the timeliness of her request for review was incorrect. The Applicant avers that the proper date from which to calculate the 120 days was 7 June 2017. The Applicant maintains that 7 June 2017 was the first date on which she could reasonably have been made aware that the

ordinary six month notice period to which she was entitled had been truncated by 5 days and this communicated to her that HR staff were now acting in a hostile matter [*sic*] and abusing her rights and her dignity and in stark contrast to the manner in which HR had assisted her before her Tribunal application and award under Decision 553[.]

40. The Applicant asserts that “[u]ntil 7 June, 2017 the Applicant had every reason to believe that, reasonably, either no notice of redundancy would now be re-activated, or at least that a full six months’ notice and job search period would be provided.”

41. To the Applicant, the rejection of her request for review on the basis of lack of timeliness was wrong and contrary to Principle 9.1 of the Principles of Staff Employment on fairness and Staff Rule 9.03 governing PRS proceedings. The Applicant maintains that she filed the underlying claim before PRS in a timely manner. The Applicant also states that the Application itself was also filed in a timely manner. She states that she requested and received an extension of time to file her Application before the Tribunal.

42. Regarding the Bank's assertion that the Applicant's claim does not concern her contract of employment, the Applicant states that the Bank's argument "proceeds from the assumption that this Application is a challenge to 'practices to provide the Applicant a salary when she is by policy not entitled to a salary[.]'" The Applicant maintains that her Application is not about this issue; rather, she asserts that she is complaining about the Bank's "failure to comply with, *inter alia*, Staff Rule 7.01, paragraph 8.04 which entitles her to receive written notice of redundancy under which her employment would be 'terminated six months from the effective date of the notice of redundancy[.]'" To the Applicant, this Application clearly relates to her contract of employment.

43. The Applicant next addresses the Bank's assertion that the Tribunal lacks jurisdiction *ratione materiae*. According to the Applicant, she is not challenging PRS policies and procedures nor has she raised a complaint of procedural unfairness.

44. Finally, the Applicant maintains that her claim is not barred by the principle of *res judicata*. The Applicant asserts that her Application is about the Bank's "failure in 2017 to give proper notice of termination of employment by reason of redundancy." This, to the Applicant, is a different matter from the issues which were reviewed by the Tribunal in Decision Nos. 553 and 570. The Applicant states that the matters addressed in this Application have never been considered by the Tribunal, namely (i) the PRS Panel's dismissal of PRS Request for Review No. 401 in April 2018; or (ii) the length of the job search period provided to the Applicant on 7 June through 1 December 2017.

The Bank's Main Contentions Relating to PRS Request for Review No. 410

The Application is time-barred and the claims do not relate to the Applicant's contract of employment or terms of appointment.

45. The Bank maintains that the Applicant's ninth Application, concerning PRS Request for Review No. 410, is time-barred. According to the Bank, the underlying claims were deemed out of time by the PRS Panel since the Applicant filed her request on 18 December 2017, beyond the 120-day time limit. Regarding the request to mediate her perceived dispute with the IEGDG, the Bank states that the Applicant should have filed that claim before the Tribunal by 15 December 2017 because she received notice of the decision not to mediate on 17 August 2017; however, she requested an extension to file her Application before the Tribunal on 30 May 2018. The Bank maintains that at this point the Applicant's claim was already time-barred.

46. The Bank also argues that the Applicant was aware of her manager's statement on 17 August 2017 that "HR is better placed than [the IEGDG] to assist" the Applicant. The Bank states that the Applicant should have filed her claim before the Tribunal within 120 days of this date. Having failed to do that, the Bank contends that the Applicant's claim is out of time. With respect to the Applicant's personal belongings, the Bank asserts that the Applicant had visited her office in the summer of 2017 to search for her belongings and concluded at the time that some documents and personal belongings were missing. The Bank asserts that this claim is also time-barred as it was filed "more than the mandatory 120 days dictated by the Tribunal Statute, Article II."

47. The Bank further contends that the Applicant's claims do not relate to her contract of employment. According to the Bank,

[a]lleging that the manager offered to call a former colleague at the IADB also does not form part of the Applicant's employment contract or terms of employment with the Bank [...]. The manager has no obligation to make personal phone calls for [the] Applicant; it was Applicant's role to search for a job whether the Notice of Redundancy of July 1, 2015 was reactivated or not.

48. The Bank avers that, with respect to the Applicant's possessions, "[p]lacing the Applicant's possessions in boxes does not form part of the Applicant's employment contract or terms of employment with the Bank and therefore the claim is inadmissible before the Tribunal." Finally, on the Applicant's requests for mediation, the Bank maintains that both the Mediation Office and the Applicant's manager determined that there was no appropriate issue to mediate. According to the Bank, the Applicant's "desire to discuss general issues does not form part of the Applicant's employment contract or terms of employment with the Bank."

49. Finally, the Bank reasserts its contention that this Application, like that concerning Request for Review No. 401, is barred by the principle of *res judicata*.

The Applicant's Response

The Application is not time-barred, the Applicant's claims relate to her contract of employment, and the claims are not barred by res judicata.

50. According to the Applicant, the *dies a quo* for her mediation claim is 14 September 2017 since that was the date the Senior Mediation Officer notified her that both parties did not agree to mediation. To the Applicant, the date of her manager's original email is not relevant for the purposes of calculating the date by which a PRS request for review should have been filed. Regarding her possessions, the Applicant avers that she could not have known of the "definitive non-action by her manager and breach of her promises and goodwill [...] and the non-return of a significant part of her possessions, until December 2017 when her relationship with her manager ended and only a part of her possessions was returned to her." The Applicant maintains that neither PRS Request for Review No. 410 nor her Application before the Tribunal was time-barred.

51. The Applicant challenges the Bank's assertion that her claims do not relate to her contract of employment. According to the Applicant, such an argument is "erroneous and is, in fact, simply an attempt by the Respondent to argue the substantive merits of the Application under the guise of a preliminary objection." According to the Applicant, her Application clearly states the decisions she is contesting and the staff rules of which non-observance is complained.

52. Finally, the Applicant asserts that she is not raising any issue that has been determined under Decision Nos. 553 and 570 and her Application is not barred by *res judicata*.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

53. The Tribunal will first review the Bank's objection on the ground that the Applicant's claims are time-barred.

Application No. 6 Concerning Request for Review No. 401

54. The Applicant submitted Request for Review No. 401 to PRS on 5 October 2017 challenging the Bank's alleged failure to provide her with a full six-month job search period. The PRS Panel declined to review her request on the ground that the Applicant filed it more than 120 calendar days after becoming aware of the disputed employment matter through written communications to her dated "(a) July 1, 2015, (b) August 12, 2015, (c) September 10, 2015, (d) May 25, 2017, and (e) June 6, 2017, explaining that she would be on STD until June 1, 2017 and subsequently have a six-month job search period (*i.e.*, from June 2, 2017 to December 1, 2017)." The Bank asserts that the PRS Panel's finding was correct and the Applicant is barred from raising this claim before the Tribunal as the claim underlying PRS Request for Review No. 401 was out of time when she filed that request.

55. The Applicant, on the other hand, submits that the proper date from which to calculate the 120 days to submit a request to PRS was 7 June 2017 as that was when she received the reactivated Notice of Redundancy and the date she could reasonably have been aware of the occurrence of the disputed employment matter, namely the alleged reduction in length of time for the job search period by five days.

56. The Tribunal observes that the question at hand is not whether the Applicant was aware of the duration of the job search period or that she would be provided with a six-month job search period. Rather, it is the Applicant's argument that the 7 June 2017 email informing her that the Notice of Redundancy had been reactivated reduced her available job search period by

five days since her employment was due to terminate on 1 December 2017. In other words, the Applicant alleges that she could not have known until 7 June 2017 whether she would be given a full six-month job search period.

57. The Tribunal finds that, while the Applicant received a message on 7 June 2017 that she was considered fit to return to work by the Reed Group, the record shows that, on 25 May 2017, the Applicant was made aware that, if the Reed Group decided that she was fit to return to work, thereby reactivating the Notice of Redundancy, this decision would be made effective 2 June 2017 – the day after the Applicant’s STD status ended.

58. On 25 May 2017, the Human Resources Specialist informed the Applicant: “To be clear (i) your current employment status is STD and will continue to be such until June 1, 2017; and (ii) in the event the Notice of Redundancy takes effect, you will have the full six months’ job search/administrative leave period.”

59. On 2 June 2017, the Human Resources Specialist further informed the Applicant:

Please note that due to your late submission (which occurred on the last day of your STD despite requests made to you since March 2017), the REED Group will only be able to make a determination on your health status in the next couple of weeks. Between today and the moment in which the REED Group determines your health status, you cannot continue on STD (as you have completed 2 years on it already). Consequently, you are being placed on [Leave Without Pay] LWOP starting today. *Now, in order to facilitate matters for you, we can agree to make whatever determination REED makes in the next few days retroactive to today.*

In other words:

- (i) if REED concludes that you are Fit to Return to Work, your Administrative Leave/Job Search Period will start effective today June 2, 2017 (the LWOP status will be replaced by Admin Leave retroactively),
- (ii) if REED concludes that you qualify for [Long Term Disability] LTD, the LTD will be made effective today, (the LWOP status will be replaced by LTD retroactively), and

- (iii) if REED concludes that you cannot return to work and you do not qualify for LTD, the next steps will be made effective today as well (the LWOP status will be replaced by the new status – as determined by the Bank – retroactively).

This exceptional accommodation is made with the understanding that your Release will be received via courier in the next few days. Would you be so kind as to share the tracking information you referred to in your email with me please? (Emphasis added.)

60. The Tribunal finds no ambiguity in the Human Resources Specialist's message. It is evident that the Applicant was aware of the accommodations which were made to benefit her. As a result, her claim is not only out of time but is also manifestly lacking in merit. Not only was the Applicant aware that the effective date of the start of her job search period would be made retroactive to 2 June 2017 once the Reed Group completed its assessment, but she was also aware that this was a special accommodation made by the Bank to ensure that she was able to receive one hundred percent of her salary as opposed to being placed on Leave Without Pay because of her own refusal to provide the Reed Group with her release authorization form in a timely manner.

61. In *González Flavell (No. 2)*, para. 49, the Tribunal held that the Applicant could not “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.” Similarly, in this case, the Applicant cannot on the one hand benefit from the retroactive effect of the Reed Group's decision, and on the other hand accuse the Bank of reducing her job search period by five days.

62. The record further shows that the Applicant herself sought to have her termination date brought forward from 1 December 2017 to 1 October 2017, requesting “payment in lieu of notice for the two months remaining[.]” In an email message on 15 September 2017 to the then Vice President, Human Resources (HRVP), the Applicant specifically requested an earlier termination date in lieu of notice for the remaining two months which would have been part of her six-month job search period.

63. It is then apparent, from the Applicant's own actions, that compliance with the obligation to provide a full six-month job search period was not as important to her as she asserts since she requested two months' net salary as a "cash out" from the six-month job search period.

Application No. 9 Concerning Request for Review No. 410

64. The Applicant submitted Request for Review No. 410 on 18 December 2017. She challenged the (i) refusal of her manager, the IEGDG, to attend mediation; (ii) "wrongful detention of [her] personal belongings and possessions"; and (iii) "misleading statements as to personal job assistance."

65. Regarding the alleged denial of her right to mediation and the allegedly "misleading statements as to personal job assistance," the Tribunal finds it unnecessary to review the timeliness of these claims as they are manifestly devoid of all merit. On 14 September 2017, the Applicant received a definitive response from the Mediation Office on the appropriateness of mediation. She also received the IEGDG's email that the IEGDG did not have a problem providing the Applicant with a reference for the Applicant's job searches. On this date the perceived dispute was effectively resolved and there was no longer a dispute to mediate. The IEGDG stated that she was happy to provide the Applicant with a job reference – this addressed the Applicant's claims that the IEGDG had promised to assist her with her job search. A former manager cannot be forced to make personal calls to secure the Applicant employment, and the Applicant bears primary responsibility for her own employment. The IEGDG's expression of willingness to support the Applicant through the provision of references resolved the dispute the Applicant sought to mediate and rendered the Applicant's subsequent claim of the denial of her rights demonstrably unfounded.

66. With respect to the Applicant's claim on the "wrongful detention and disposal and/or negligent loss" of her personal possessions, the Bank asserts that this claim is time-barred since the Applicant had visited her office in the summer of 2017 to search for her belongings and concluded, at that time, that some documents and personal belongings were missing.

67. The record, which consists of documents provided by the Applicant, shows that the Applicant first became aware that her “personal possessions in [her] office had been mishandled and some of [her] belongings were missing,” at the latest by 9 August 2017. Accordingly, the Applicant had 120 calendar days from 9 August 2017 to file her request for review before PRS. She did not file her request until 18 December 2017. The Tribunal maintains that stale claims cannot be resuscitated through an application before the Tribunal. *See ED (No. 4)*, Decision No. 259 [2001], para. 9.

68. According to the Applicant, it was only when she received the boxes at her home on 15 December 2017 that she definitively knew that items were missing and broken. The Tribunal finds this statement implausible given the Applicant’s own email messages on this matter. On 5 December 2017, the Applicant sent an email message to the Director of Strategy and Operations in which she listed the missing items and stated categorically:

You ask if I would like to come and select which of my possessions I would like. The statement is mystifying. I am not sure why you ask if I would like to check the contents, *I have already done so which is how I know what is missing (I did so in the presence of the consultant occupying the office at that time whose name is still on the office door)*. I have photos also as proof of the disarray and unsecured area my belongings are in. Obviously I want all my possessions, but they are to remain in situ until I am allocated an office which will no doubt happen in due course. (Emphasis added.)

69. The Applicant herself stated that she visited the Bank’s premises in the summer of 2017. She also stated that she visited the Office of the IEGDG in August 2017 and saw her possessions in the office of a consultant. She knew as of the date of that visit that items were missing or broken, and she should have filed her PRS request for review within 120 days of that date. Rather, the Applicant filed Request for Review No. 410 on 18 December 2017 when, as PRS found, it was already out of time.

70. The Tribunal notes the Applicant’s assertion that she lost “items of financial and irreplaceable sentimental value [...] (including a top of the line Mont Blanc fountain pen which was a personal gift many years ago from a manager and mentor I hold in the highest esteem and who has since passed on)[.]” The Applicant entered the Bank’s disability program on 25 June

2015 and was away from the office because of STD. She was always aware of the important personal items she left behind but made no arrangements to collect them or secure them in a manner she deemed satisfactory. The Applicant notes in her pleadings that “[o]ver the summer of 2015” she received “email communications asking her to remove her possessions from the office and informing her that these would otherwise be packed and stored[.]”

71. The record confirms this. On 7 April 2016, the IEGDG sent the Applicant an email message informing her:

IEG will have someone else sit in the office that you were earlier using. You have left a few materials and personal items in the office. Could you please arrange for these to be collected before May 6 – alternatively, we would be happy to box them up and you can collect them at your convenience.

72. On 6 June 2016, the IEGDG again contacted the Applicant this time to let her know that “we have boxed up the materials that you left in the office [...] you can collect them at your convenience.” The record does not contain a response from the Applicant to either of these messages and she has not explained why she did not arrange for the collection of these personal items within a reasonable time. The Applicant ultimately bears responsibility for her personal items, and she was always at liberty to collect them.

73. Having found that the Applications are time-barred, and the underlying claims are manifestly devoid of merit, the Tribunal considers that review of the remaining grounds for dismissal proffered by the Bank is unwarranted.

DECISION

The Applications are dismissed.

/S/Andrew Burgess

Andrew Burgess

Vice-President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 26 April 2019