



World Bank Administrative Tribunal

2022

Decision No. 685

**Ana María Grofsmacht, Claudia Cecilia Nin, Luis Ramon Pereyra,
and Luis Orlando Perez,
Applicants**

v.

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

(Preliminary Objection)

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

**Ana María Grofsmacht, Claudia Cecilia Nin, Luis Ramon Pereyra,
and Luis Orlando Perez,
Applicants**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mahnoush H. Arsanjani (President), Marielle Cohen-Branche (Vice-President), Janice Bellace (Vice-President), Andrew Burgess, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Applications were received on 1 April 2022. The Applicants were represented by Ryan E. Griffin of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency.

3. The Applicants challenge the “Bank’s failure to disclose to affected staff the terms on which it made Depreciation SCM [Special Compensation Measures] pay pensionable from 2015 to 2020.”

4. On 4 October 2022, the Bank submitted its preliminary objections. This judgment addresses those preliminary objections.

FACTUAL BACKGROUND

5. The First Applicant joined the Bank in 2004. In 2014 she was promoted to Senior Procurement Specialist in the Bank’s Argentina Country Office and worked there until her retirement on 30 November 2020.

6. The Second Applicant joined the Bank in 2002 and worked as a Team Assistant and Program Assistant in the Bank's Argentina Country Office until her retirement on 31 October 2020.

7. The Third Applicant joined the Bank in 1990. He later became a Senior Facilities Coordinator in the Bank's Argentina Country Office and worked there until his retirement on 31 October 2020.

8. The Fourth Applicant joined the Bank in 2003 and worked as a Senior Public Health Specialist in the Bank's Argentina Country Office until his retirement on 1 May 2021.

9. In their pleadings, the Applicants incorporate by reference the factual pleadings made by the applicant in *Rofman*, Decision No. 669 [2022] and the factual findings made by the Tribunal in that judgment.

10. The relevant factual background is as follows. From 2016 to 2020, the Bank's SCM policy provided for Depreciation SCM which would involve the temporary indexation of compensation to a hard currency, allowing for pensionability in the Staff Retirement Plan (the Plan). Pursuant to this policy, the Plan was amended in November 2016 to make Depreciation SCM pensionable. The definition of net salary was updated, with retroactive effect to 1 January 2016, to state, "[N]et salary does include certain depreciation special compensation measures provided in accordance with the World Bank Group Directive of Staff Rule 6.27 Special Compensation Measures." This amendment would allow Depreciation SCM pay to be incorporated into the Highest Average Net Salary (HANS) for the Defined Benefit Pension calculation.

11. Neither the Plan nor the SCM policy documents provided details regarding the implementation of Depreciation SCM with regard to pensionability. According to the Bank, "the responsibility for implementing the SCM at a granular level was appropriately entrusted to specialized HR [Human Resources] and Treasury officers, consistent with many similar pension and compensation computations" and, as such, "the respective methodology [for incorporating Depreciation SCM into the HANS calculation] was determined in late 2015 by HR and Treasury officers, in consultation with legal counsel to the [Plan]."

12. Beginning in 2016, Argentina experienced an economic crisis causing inflation and rapid depreciation of the Argentinian peso relative to the U.S. dollar. These events triggered the commencement of Depreciation SCM, and the Applicants' salaries were temporarily indexed to the U.S. dollar from April 2016 to March 2017 and from July 2018 through their respective retirements pursuant to the SCM Framework. From November 2020 through his retirement, the Fourth Applicant's Depreciation SCM pay was subject to transition arrangements that were put into effect following modifications to the SCM Framework that were approved in 2020.

13. The Bank states that, beginning in March 2018, the Applicants had "online access to monthly statements and the Net Plan Pension Calculator, each of which applied the approved methodology in calculating their pension benefits."

14. Following the implementation of Depreciation SCM in Argentina, the Pension Administration (PENAD) increased its outreach to the Argentina Country Office. The Benefits Administrator hosted two presentations, in April and September 2018, which addressed pension questions generally and questions on the HANS calculation and Depreciation SCM more specifically. The Bank explains that the April 2018 outreach was a "two-hour brown bag lunch" hosted by the Benefits Administrator. With respect to the September 2018 outreach, the Bank states:

[T]he Benefits Administrator delivered another presentation to the Argentina country office, responding specifically to questions on the HANS thereafter and confirming that the Depreciation SCM are treated as pensionable. [...] The Benefits Administrator further provided the slide deck used for the presentation and link to a recording of a similar session, which was already available on PENAD's video channel.

15. Later, in March 2020, HR and the Benefits Administrator met with Argentina Country Office staff to further clarify the HANS methodology. As part of these efforts, the Benefits Administrator gave a presentation on pension benefits to the Argentina Country Office Staff Association, and PENAD hosted a series of pension education seminars targeting country office staff.

16. Between 31 October 2020 and 1 May 2021, each of the four Applicants retired. Following their respective retirements, the Applicants each received Termination Completion Packets which included the calculations for their pension benefits.

17. On 6 October 2021, each of the Applicants emailed a letter to the Pension Benefits Administration Committee (PBAC) through the Benefits Administrator appealing PENAD's calculation of their respective benefits. These letters, for the most part identical, each claim that the calculation of the respective Applicant's Total Gross Monthly Pension was mistaken and state:

I believe this difference is explained by what I believe is an incorrect implementation by PENAD of rules regarding the pensionable status of Special Compensation Measures payments made to all LRS [Locally Recruited Staff] based in Buenos Aires between July 2018 and my retirement date.

18. On 22 October 2021, each of the Applicants received an identical email from the Benefits Administrator, stating:

This email is to confirm that Pension Administration has received your request to the PBAC for a review of the calculation of your pension benefit, in particular the highest average net salary incorporating the special compensation measure. The PBAC is scheduled to meet on Friday, October 29, 2021 and your request has been included in the agenda.

Please note that under the terms of the Plan, prior to the PBAC considering any claim for benefits, payments or other rights under the Plan, it must first be submitted to the Benefits Administrator within two years of the claim arising.

As you failed to raise the claim to me, as Benefits Administrator, within two years of it arising, I am informing you that your challenge to the methodology is now out of time. The methodology has been in effect and applied in the calculation of your pension benefits for many years, without you raising a claim, and it is too late to do so now.

19. On 2 December 2021, each of the Applicants received another, for the most part identical, email from the Benefits Administrator, stating:

During its recent meeting held on October 29, 2021, the Pension Benefits Administration Committee (Committee) considered your submission, dated

October 6, 2021, in which you requested that an alternate formula be adopted to recalculate your Staff Retirement Plan benefits.

The Committee reviewed your request and Article 19.2 (g) of the Staff Retirement Plan (SRP), which requires that all claims for benefits, payments or other rights under the Plan must first be submitted to the Benefits Administrator within two years from the claim arising.

The Committee noted that the methodology was approved in 2015 and implemented for Argentina beginning in 2016 using the approved methodology consistently across all countries and participants with pensionable special compensation measures. Starting in March 2018, you had online access to (i) your monthly pension benefit statements, which were calculated using the approved methodology for incorporating pensionable special compensation measures, and (ii) the Net Plan Pension Calculator, which also applied the approved methodology in calculating your estimated pension benefits. The Committee further recognized that Pension Administration provided presentations to the Argentina Country Office staff and remained available to all staff for specific one-on-one engagements, including your individual counseling session during which you received estimates of your pension benefits without expressing any concerns.

The Committee, therefore, found that you failed to comply with the applicable time limit for submitting a claim for benefits, payments or other rights under the Plan, as you never submitted a request to the Benefits Administrator, and instead, submitted your request directly to the Committee long after you were reasonably on notice of the application of the approved methodology to your benefits, as it has been in place since 2016 and reflected in your monthly benefits since March 2018, more than three years prior to your recent submission. The Committee reasoned that the approved methodology was applied in the calculation of your pension benefits as the benefits were accrued, not upon your retirement. Allowing untimely claims to proceed at the point of a participant's retirement would undermine the applicable time limits set forth in the Plan, as similar claims may be brought for decades ahead, thereby exposing the Plan to instability and unpredictability.

Accordingly, the Committee rejected your request as inadmissible, having failed to comply with the applicable time limitations and requirements set forth in the Plan, and accordingly, the Committee declined to review the merits.

The decision of the PBAC is conclusive and binding on all persons concerned, subject to the appeal of the decision to the World Bank Administrative Tribunal within 120 days of receiving this communication.

The email sent to the First Applicant did not include the reference to an individual counseling session.

Procedural history

20. Meanwhile, on 22 October 2021, a colleague of the Applicants, Rafael Rofman, filed the application challenging PENAD's calculation of his Defined Benefit Pension with respect to Depreciation SCM. Pleadings were exchanged on the merits following the application. *See Rofman* [2022].

21. On 1 April 2022, each of the Applicants filed an application with the Tribunal, similarly challenging PENAD's calculation of their Defined Benefit Pensions with respect to Depreciation SCM.

22. In their applications, the Applicants requested consolidation of their cases as well as consolidation with Mr. Rofman's earlier application. In its comments on the requests, the Bank did not object to the consolidation of the applications with each other, but it did object to the consolidation of the new applications with Mr. Rofman's application. The Bank further proposed "that the interest of judicial economy would further be served by suspending the New Cases until the Tribunal has issued its decision in the Rofman Case." The Bank added:

[T]here are efficiencies in suspending the New Cases until the Tribunal reaches its decision in the [Rofman Case], as it will serve as a bellweather [*sic*] for the Applicants in the New Cases. The Applicants in the New Cases acknowledge that their claims raise identical issues of law and fact, despite the jurisdictional issues, and the Tribunal's favorable or unfavorable decision in the Rofman Case would signal to the Applicants whether the Tribunal views their applications as potentially meritorious and worth pursuing – or not. As a result, suspension of the New Cases would reduce the volume of filings and legal expenses for the individuals involved until there is greater clarity on the merits and value of incurring such legal costs for the [A]pplicants.

23. On 21 April 2022, after considering the views of the parties, the Tribunal decided to (i) consolidate the Applicants' respective cases; (ii) deny the request for consolidation with Mr. Rofman's application; and (iii) suspend the consolidated application pending the Tribunal's judgment in the Rofman Case.

24. On 3 June 2022, the Tribunal issued its judgment in *Rofman* [2022] in which it dismissed the application. In *Rofman* [2022], the Tribunal first considered what the SCM policy required with respect to pensionability and second whether the HANS methodology violated that policy, noting that there was nothing in the SCM policy – whether in the Staff Rule, Procedure, or the Plan – which stated that Depreciation SCM must be fully pensionable. The Tribunal thus considered that, while the SCM policy required that Depreciation SCM be incorporated into net salary for pension calculations, it was silent as to the method of implementation.

25. The Tribunal further determined that the HANS methodology was not arbitrary, discriminatory, improperly motivated, reached without fair procedure, or in violation of the contract of employment or the terms of appointment of the staff member and therefore found that the Bank did not abuse its discretion in the methodology’s development. The Tribunal finally concluded that the PBAC properly interpreted the Plan when it denied the applicant’s challenge to the HANS methodology.

26. On 14 July 2022, the Tribunal notified the Applicants and the Bank of the Tribunal’s judgment in *Rofman* [2022]. The Tribunal further notified the parties that it had decided to resume the proceedings in the consolidated application.

27. On 28 July 2022, the Applicants requested to file a consolidated amended Application in light of the *Rofman* [2022] judgment. The Tribunal granted the request, and on 15 August 2022 the Tribunal received the Applicants’ consolidated amended Application. In their consolidated amended Application, the Applicants challenge the “Bank’s failure to disclose to affected staff the terms on which it made Depreciation SCM pay pensionable from 2015 to 2020.”

28. The Applicants request the following relief:

- (i) Notice from the Bank to all current and former staff who received pensionable Depreciation SCM pay between 2015 and 2020: 1) informing all affected staff that under the policy in effect from 2015 to 2020, such pay was only partially pensionable; 2) explaining fully the specific methodology used to achieve such partial pensionability; 3) providing a layperson-accessible illustration of the partial pensionability resulting from that methodology (*e.g.*, each dollar of

Depreciation SCM pay is worth approximately \$0.08 worth of base salary for purposes of calculating the Highest Average Net Salary (HANS) on which pension benefits are based); and 4) explaining that staff are receiving this notice because the Bank never made the details of this partial pensionability framework available to staff while it was in effect despite being obligated under principles of transparency and fairness to do so.

- (ii) Posting of a link to the notice described in (i) on the webpage used by staff to access the Pension Benefit Estimation Calculator tool.

29. The Applicants further request the Tribunal to award them, “and all affected staff, an amount it deems just and reasonable as compensation for the Bank’s lack of transparency and violation of their reasonable expectations with respect to a core element of their compensation.”

30. The Applicants also request, pursuant to Rule 26 of the Tribunal’s Rules, “that any determination in this case that the Bank breached its obligations of transparency to staff regarding compensation policies be applied to all similarly situated current and former staff members.”

31. The Applicants claim legal fees and costs in the amount of \$21,310.00.

32. On 20 September 2022, the Tribunal received the Bank’s submission requesting summary dismissal of the consolidated amended Application. On 23 September 2022, the Tribunal denied the request for summary dismissal.

33. On 27 September 2022, the Tribunal received the Bank’s submission requesting the suspension of the proceedings pending the outcome of Mr. Rofman’s request for reconsideration of *Rofman* [2022]. On 29 September 2022, the Tribunal denied the request for the suspension of proceedings.

34. On 4 October 2022, the Bank submitted its consolidated preliminary objections.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Contention No. 1

The consolidated amended Application should be dismissed under the principles of finality of judgments and res judicata

35. The Bank contends that the consolidated amended Application should be dismissed under the principle of finality of judgments. The Bank submits that, as the Applicants have “continuously argued that their cases are identical in fact and in law to the Rofman case,” they “should therefore be bound by the Tribunal’s conclusion in the Rofman Decision.” The Bank further submits that the Tribunal has already addressed the Applicants’ claims regarding non-transparency in *Rofman* [2022]. The Bank avers:

Not only did the Tribunal find that the process used to adopt the methodology was not arbitrary, discriminatory, improperly motivated, reached without fair procedure, and as a result, the Bank did not abuse its discretion in the development of the methodology, but the Tribunal specifically considered that, following the implementation of the Depreciation SCM, PENAD increased its outreach efforts to further clarify the methodology to the Country Office staff. The Tribunal found that these efforts to educate staff on their pension benefits further demonstrate that the Bank followed a proper procedure with the HANS methodology.

36. The Bank next contends that the consolidated amended Application should be dismissed under the principle of *res judicata*. The Bank notes that there are two conditions that must be met for *res judicata* to be applicable: (i) the parties are the same, and (ii) the substance of the claim is essentially the same in both applications. The Bank submits that “[t]here is no doubt” that the second element of *res judicata* has been met as, to the Bank, the substance of the present consolidated amended Application is identical to that considered in *Rofman* [2022]. The Bank avers, “Throughout these parallel proceedings, [Mr.] Rofman and [the] Applicants, have constantly argued for their cases to be bound and considered as one and the same.”

37. The Bank further submits that, “through this lens,” the first element of *res judicata* has also been met. The Bank invites the Tribunal to consider the parties in this case as “parties in privity” to Mr. Rofman. The Bank notes Black’s Law Dictionary’s definition of privity: “Privity is defined

as ‘[t]he connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property); mutuality of interest.’”

The Applicants’ Response

The Applicants’ claim is not barred by Rofman, Decision No. 669 [2022]

38. The Applicants contend that their present claim presents a “distinct legal issue from that considered in Decision No. 669” such that the consolidated amended Application should not be barred under the principle of finality. To the Applicants, the Tribunal in *Rofman* [2022] “did not address the distinct question of whether the policy underlying PENAD’s methodology was transparently communicated to staff.” The Applicants submit that “[t]here is thus no bar to the Tribunal taking jurisdiction over this distinct but closely related claim.”

39. The Applicants next contend that *res judicata* is inapplicable because the Applicants were not parties to *Rofman* [2022]. The Applicants submit that “barring staff members’ claims based on the actions of a different staff member in a prior case would undermine due process and the fundamental notion that all staff members have equal access to the Tribunal.” The Applicants suggest that the Bank’s rationale for treating the Applicants and Mr. Rofman as the same party is “entirely disingenuous” as the Bank has consistently opposed and succeeded in blocking the Applicants’ requests for consolidation and Rule 26 treatment.

40. The Applicants further assert that they “are not ‘in privity’ with Mr. Rofman, as [the Bank] claims, because they do not share any ‘legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property).’” The Applicants note:

Their original claims, and his, all concerned their own individual pension benefits. And while [the] Applicants here share with each other a legally recognized interest in this proceeding as the result of the Tribunal’s consolidation order, they do not share any such interest with Mr. Rofman because consolidation with his case was (at [the Bank’s] urging) denied.

The Bank's Contention No. 2

The consolidated amended Application is inadmissible because the Applicants did not exhaust internal remedies

41. The Bank's contentions are twofold. First, the Bank contends that the Applicants failed to timely exhaust internal remedies as required by Article II(2) of the Tribunal's Statute. The Bank submits that the jurisdictional defects of the Applicants' original applications persist as the issue of transparency was "an essential element" of the claims in their original applications. The Bank notes that, "[t]o comply with the statutory time limit set forth in the [Plan], a claim must be submitted to the Benefits Administrator within two years of the claim arising." The Bank submits:

Contrary to [the] Applicants' assertion in the [o]riginal [a]pplications, the *dies a quo* for retirement benefits does not start at retirement, as this would allow claims against the [Plan] into perpetuity. [...] Instead, a "staff member has to pursue a claim within the time frame articulated by the Tribunal or other bodies, counting from the day staff members knew or should have known of the claim."

42. With respect to allowing claims against the Plan into perpetuity, the Bank notes:

Currently, the youngest participant who received Depreciation SCM is twenty-six years old, and will reach mandatory retirement age in 2062, which is forty years from now. [...] It is inconceivable that in forty years, the Tribunal may be faced with a claim concerning the methodology of the SCM measures that was rescinded in 2020. Forty years from now, documents may no longer be available, witnesses may have left the Bank, retired or died. Aside from the obvious intention of Article 19(g) of the [Plan], the Tribunal has routinely held that staff members must not sit on their claims but rather are required to exercise their rights in a timely manner.

43. The Bank contends that the "Applicants should have been on notice of the methodology of the depreciation SCM as early as April [2016], or at the latest by March 2018, the date of first notice [that] SCM methodology was applied in monthly statements." The Bank submits that the

Applicants did not challenge a missed pension payment in retirement in October 2021. They challenged a methodology that had been in place and consistently applied in the calculation of their pension benefits since 2016. The methodology is not applied retroactively at the point of retirement, but as the right to the benefit is accrued over time. The termination package gave no greater notice to [the] Applicants than the monthly statements available to them from March 2018

onwards, as it simply set forth the amount of benefits they were entitled to under the terms and conditions of the Staff Retirement Plan. [The] Applicants' focus on the date of receiving their termination package ignores the extensive educational efforts, documented in the record and noted by the Tribunal, to inform affected participants of how SCM would impact their pension benefits that were underway for years prior to their separations.

44. The Bank next contends that, “[i]f the Tribunal finds that the alleged breach of transparency is a new claim, then the Tribunal must also find that [the] Applicants have failed to exhaust internal remedies.” The Bank submits that, if the consolidated amended Application presents a new claim, the Bank “has not agreed to submit this claim directly to the Tribunal.” The Bank further submits that no exceptional circumstances are present in this case and that, therefore, the consolidated amended Application should be dismissed.

The Applicants' Response

The Applicants have timely exhausted internal remedies

45. The Applicants first contend that they have timely exhausted internal remedies with respect to their original applications, as they brought their claims to PENAD within two years of when they arose. The Applicants submit that, as Plan “participants only become eligible for benefits upon retirement,” the “start date for any limitations period for a claim related to SRP benefits ‘shall normally be the date of retirement,’” citing *Taborga (No. 2)*, Decision No. 324 [2004], para. 24.

46. The Applicants contend that, “[e]ven assuming *arguendo* that [the] Applicants' claims could have arisen prior to their respective retirement dates, however, they still could not have arisen until [the] Applicants learned of the relevant facts—in this case, the methodology they contended was flawed.” The Applicants submit that “the earliest possible date on which they could have learned of this methodology was January 31, 2020, the date on which PENAD finally, after months of back-and-forth emails and discussion, shared a sample spreadsheet reflecting the methodology” with Mr. Rofman.

47. The Applicants disagree with the Bank's position that they could have learned of the methodology prior to 2020. The Applicants submit that “it is impossible that [the] Applicants could

have become aware of the facts relevant to their original [a]pplications at any time in 2016 because the Bank did absolutely nothing to communicate the underlying policy or the methodology for implementing it to staff.”

48. The Applicants further submit that their claims could not have arisen in 2018 when they received access to monthly statements because “neither the monthly statements nor the Calculator actually disclosed the methodology, much less the underlying policy, to Plan participants.” The Applicants note that they “had no reason to suspect in March 2018 that the benefit estimates provided in their monthly statements or through the Pension Calculator were being calculated using a methodology that did not fully account for their Depreciation SCM pay.” The Applicants also dispute that they could have learned of the methodology during the outreach to Argentina Country Office staff, as “there is no indication in either [the Bank’s] brief or PBAC’s decision as to when these alleged ‘presentations’ occurred, much less that they specifically addressed the partial pensionability of Depreciation SCM pay or the methodology through which that policy was implemented.”

49. The Applicants next contend that no additional exhaustion efforts were required for the Applicants to amend their original applications. The Applicants submit that the Tribunal

granted [the] Applicants’ request to amend their original [a]pplications, presumably with the knowledge that [the] Applicants’ amended claims would not be materially identical to their original claims. And [the] Applicants thereafter filed an amended claim that is indisputably part of the same case or controversy.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

50. Article II(2) of the Tribunal’s Statute provides the following:

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.

51. The Tribunal has emphasized the importance of the statutory requirement of the exhaustion of internal remedies. *See, e.g., O*, Decision No. 323 [2004], para. 27.

52. The Tribunal has also decided that “[e]xhaustion of internal remedies means formal remedies and includes timely recourse to the Appeals Committee [now Peer Review Services].” *Rittner*, Decision No. 335 [2005], para. 36. In this regard, the Tribunal has also held that “a staff member’s failure to observe the time limits for submission of an internal complaint or appeal constitutes non-compliance with the statutory requirement of exhaustion of internal remedies (*e.g., Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25–26).” *Malekpour*, Decision No. 320 [2004], para. 14.

53. In the present case, the Benefits Administrator and, subsequently, the PBAC concluded that the Applicants failed to comply with the applicable time limits for submitting a claim under the Plan. Therefore, the Tribunal will now determine whether the Applicants submitted their claims challenging the calculation of their pension benefits to the Benefits Administrator in a timely manner.

54. Article 19.2(g) of the Plan provides, “Any claim for benefits, payments or other rights under the Plan must first be submitted to the Benefits Administrator no later than two years after the claim arises.”

55. The parties disagree as to the date of the *dies a quo*. To the Applicants, as Plan participants become eligible for benefits only upon retirement, the *dies a quo* for claims related to their pension benefits should be the date of retirement. The Bank, however, asserts that the *dies a quo* for the Applicants’ claims was much earlier as the “Applicants should have been on notice of the methodology of the depreciation SCM as early as April [2016], or at the latest by March 2018, the date of first notice [that] SCM methodology was applied in monthly statements.”

56. In *B (No. 2)*, Decision No. 336 [2005], para. 25, the Tribunal held with respect to the time limit for submitting claims under the Plan, “The three-year period[, in effect at the time,] will begin on the date that the identifiable right arose, this normally being the date of retirement or the date

on which the applicant became aware of the deficiency he or she is claiming.” *See also Taborga (No. 2)* [2004], para. 24.

57. The Tribunal also considered the *dies a quo* for pension claims in *Homolya (Preliminary Objection)*, Decision No. 505 [2015]. At paragraph 25, the Tribunal noted:

The [a]pplicant suggests that she did not know about her ineligibility to a pension or about the Bank’s non-contribution to her national pension system; she states that she only came to know in 2012 when she began to prepare for her retirement. The Tribunal is unconvinced. Given her letter of appointment, to which the Local Staff Benefits Handbook was annexed, and her acceptance of the terms of appointment, she was on notice that she would not receive any pension under [the Plan] and that the Bank would not contribute to her national pension. Her alleged ignorance is hardly excusable.

58. The Tribunal continued:

The Tribunal has repeatedly stated that “ignorance of the law is no excuse” (*Novak*, Decision No. 8 [1982], para. 19; *Bredero*, Decision No. 129 [1993], para. 23; *Setia*, Decision No. 134 [1993], para. 26). Further, the [Bank] is not under an obligation to inform each staff member of his rights and duties under the Staff Rules which are published and disseminated precisely with the object of ensuring that all staff are kept informed. [*Homolya (Preliminary Objection)*] [2015], para. 25, quoting *Courtney (No. 3)*, Decision No. 154 [1996], para. 32.]

59. The Tribunal concluded, “Consistent with the Tribunal’s jurisprudence, the [a]pplicant should have known or presumed to have known the terms of her appointment or the Staff Rules applicable to her. In sum, her pension claims are barred by the statute of limitation[s].” *Homolya (Preliminary Objection)* [2015], para. 26.

60. The Tribunal will therefore determine when the Applicants should have known or could be presumed to have known of their claims.

61. The record reflects that, beginning in March 2018, the Applicants received monthly pension statements which were calculated using the methodology developed to incorporate Depreciation SCM pay into pension benefits. The record also reflects that, around this time, the Applicants had access to the Net Plan Pension Calculator, which showed estimates of the same.

The Applicants submit that neither of these sources could have provided notice of their claims, as “neither the monthly statements nor the Calculator actually disclosed the methodology, much less the underlying policy, to Plan participants.”

62. The Tribunal notes that it is true that the detailed calculations incorporating the Applicants’ Depreciation SCM pay into their pension benefits were not reflected in the Applicants’ monthly pension statements or in the pension estimates shown by the Net Plan Pension Calculator. However, the Tribunal does not agree that this fact prevented the Applicants from having notice of their claims.

63. In this regard, the Tribunal first observes that the detailed calculations were likewise not reflected in the Applicants’ respective Termination Completion Packets they received upon retirement. Rather, the Termination Completion Packets provided the same level of detail with respect to the incorporation of Depreciation SCM pay into the Applicants’ pension benefits. The Tribunal thus considers that the Applicants received equal notice of the calculation of their pension benefits with respect to Depreciation SCM in March 2018 as they received upon their respective retirements. In other words, in March 2018 the Applicants were on notice that their pension benefit calculations reflected the incorporation of Depreciation SCM pay, and it is reasonable to expect that they could have raised concerns at that time if the calculations did not reflect the expected amounts.

64. The Tribunal next observes that the record demonstrates that the Applicants had multiple opportunities to learn from and to consult with PENAD about the calculation of their pension benefits with respect to Depreciation SCM. Specifically, the Benefits Administrator hosted two presentations, in April and September 2018, which addressed pension questions generally and questions on the HANS calculation and Depreciation SCM more specifically. Later, in March 2020, HR and the Benefits Administrator met with Argentina Country Office staff to further clarify the HANS methodology. The Tribunal also notes the Benefits Administrator’s statement in her 2 December 2021 email summarizing the PBAC decision:

The Committee further recognized that Pension Administration provided presentations to the Argentina Country Office staff and remained available to all

staff for specific one-on-one engagements, including your individual counseling session during which you received estimates of your pension benefits without expressing any concerns.

65. The record does not reflect that any of the Applicants raised concerns regarding the calculation of their pension benefits with respect to Depreciation SCM during or following any of these engagements despite having ample opportunity to do so. The Tribunal compares the efforts of the present Applicants with those of their colleague, Mr. Rofman, who did raise his concerns with PENAD after using the Net Plan Pension Calculator. *See Rofman* [2022], paras. 22–23. The Tribunal concludes that, based on the information available to them beginning in March 2018, the Applicants should have been aware, as Mr. Rofman evidently was, of how Depreciation SCM would impact their pension benefits and from that time could have raised concerns if the amounts were different than they might have expected.

66. The Applicants each submitted their challenges to the Benefits Administrator on 6 October 2021. Having concluded that the Applicants should have known of their claims beginning in March 2018, the Tribunal notes that the Applicants' claims were submitted about three and a half years following the *dies a quo*. Recalling that claims under the Plan must be submitted to the Benefits Administrator no later than two years after the claim arises, the Tribunal finds that the Applicants failed to timely exhaust internal remedies.

67. The Tribunal notes that the Bank further contends that the Applicants have not exhausted internal remedies with respect to their amended claims and that their claims are barred under the principles of finality of judgments and *res judicata*. Having already found that the Applicants did not timely raise their claims with the Benefits Administrator, the Tribunal finds it unnecessary to address these remaining objections.

DECISION

The consolidated amended Application is dismissed.

/S/ Mahnoush H. Arsanjani

Mahnoush H. Arsanjani

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 November 2022*

* Judge Burgess attended deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.