



World Bank Administrative Tribunal

2023

Decision No. 691

**HB,
Applicant**

v.

**International Finance Corporation,
Respondent**

(Preliminary Objection)

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

**HB,
Applicant**

v.

**International Finance Corporation,
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 Application was received on 20 October 2022. The Applicant was represented by Ryan E. Griffin of James & Hoffman, P.C. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 1 May 2023.

3. The Applicant challenges the determination that he was ineligible for an IFC Departmental Performance Award.

4. On 2 December 2022, the IFC submitted preliminary objections. This judgment addresses the IFC's preliminary objections.

FACTUAL BACKGROUND

5. The Applicant joined the IFC in March 2007 as an Associate Financial Officer. He later became a Financial Officer and a Senior Financial Officer in 2009 and 2015, respectively. In 2018, the Applicant was promoted to Grade Level GH, Principal Financial Officer in the Treasury and Syndications Vice Presidential Unit (VPU).

6. On 22 July 2019, following an investigation by the Ethics and Business Conduct Department (EBC), the Applicant was notified via a letter from the Human Resources Department

Vice President (HRDVP) that there was sufficient evidence to find that the Applicant had committed misconduct as a result of his failure to disclose a change in his immigration status. The HRDVP imposed the following sanctions:

- Ineligibility for salary increase for a period of five years;
- Ineligibility for promotion for a period of five years;
- Restitution to the WBG [World Bank Group] for financial losses attributable to [the Applicant's] actions for the total amount of Mobility Premium benefits paid to [the Applicant] from April 12, 2007, to January 4, 2016, which would be reimbursed to the WBG through a reduction in [the Applicant's] payroll; and
- This letter will remain on [the Applicant's] personnel record indefinitely.

7. Following his receipt of the HRDVP's letter, the Applicant did not challenge either the finding of misconduct or the sanctions imposed.

8. The Applicant claims that he was notified in November 2021 that he was being selected by his Department for a Departmental Performance Award under the IFC's Departmental Performance Awards program. Under this program, all IFC staff (excluding those in Level-GJ and Level-GK positions) who receive performance ratings of 4 or 5 receive a standard award amount. IFC staff who receive a performance rating of 3.5 are eligible to be selected by their department to receive an award "based on relative performance and budget availability." The Applicant received a performance rating of 3.5 for Fiscal Year 2021.

9. The Applicant's HR Business Partner (HRBP) states that, on or around 29 November 2021, the Applicant's Manager asked her to contact HR Case Management to inquire about the Applicant's eligibility for a Departmental Performance Award. The HRBP states that HR Case Management "confirmed that as part of the sanctions imposed by the HRDVP following EBC's investigation, [the Applicant] was ineligible for a financial award."

10. On 29 November 2021, the Applicant had a telephone conversation with the HRBP. According to the Applicant, during this call the HRBP informed him that his Department had included him on its list of nominees for Departmental Performance Awards, but that he could not

receive an award. The HRBP states that she informed the Applicant that “he was ineligible for a performance award under the IFC Departmental Awards program due to the sanctions imposed on him by the HRDVP in connection with the investigation conducted by the EBC.” The HRBP explained to the Applicant that she “consulted with the HR Case Management team who had previously reviewed his case and confirmed the interpretation regarding the HRDVP’s decision on the application of the sanctions.” According to the Applicant, the HRBP also told him that she had asked the Manager, HR Development Corporate Operations (HRDCO), if the Applicant could be included on a list of awardees without receiving any monetary award, but that the Manager, HRDCO, had rejected that idea.

11. On 3 December 2021, the Applicant sought mediation concerning his eligibility for a Departmental Performance Award and “other related issues.” On 25 February 2022, the Applicant was informed by Mediation Services that management had declined to participate and that the request for mediation would therefore be closed.

12. On 18 April 2022, the Applicant filed a Request for Review with Peer Review Services (PRS). In his Request for Review, the Applicant challenged the decision to “take away [his] earned Departmental Award on the ground that [he is] under a sanction which prevent[s] [him] from getting any salary increase.”

13. On 23 May 2022, the Peer Review Chair dismissed the Request for Review for lack of jurisdiction. In the dismissal, the Peer Review Chair noted:

Staff Rule 9.03 (Peer Review Services), paragraph 7.04 (d) provides that, “Panels do not review Requests for Review concerning [...] actions, inactions, or decisions taken in connection with Staff Member misconduct investigations conducted under Staff Rule 3.00, ‘Ethics and Business Conduct Department (EBC),’ [...] including [...] the imposition of disciplinary measures.”

The Peer Review Chair concluded that the Request for Review “relates directly to a disciplinary measure that was imposed on [the Applicant] in connection with an EBC misconduct investigation. Accordingly, the Chair determined that [the] claim falls outside of the scope of review of PRS.”

14. On 6 September 2022, the Applicant requested and later received an extension until 20 October 2022 to file an application with the Tribunal. On 20 October 2022, the Applicant then filed this Application with the Tribunal. The Applicant challenges “[t]he determination communicated to him on November 29, 2021, that he was ineligible for an IFC Departmental Performance Award.”

15. The Applicant requests the following relief:

- i. Rescission of the November 2021 decision deeming [the Applicant] ineligible for an IFC Departmental Performance Award based on the disciplinary measures imposed on him in July 2019.
- ii. A grant of the full award [the Applicant] would have received as the result of his selection for a Performance Award but for management’s wrongful determination concerning his eligibility, inclusive of both the monetary component and any associated non-monetary recognition.
- iii. An affirmative declaration from WBG that there is currently no ban on [the Applicant’s] eligibility for IFC Departmental Performance Awards or any other IFC Awards Programs.
- iv. A letter of retraction and apology from [the Manager, HRDCO] to the appropriate senior management personnel within the IFC Treasury VPU, with a copy to [the Applicant], acknowledging that [the Manager, HRDCO’s] November 2021 ineligibility determination was in error and that there is currently no ban on [the Applicant’s] eligibility for any IFC Awards Programs.

16. The Applicant further requests

compensation in an amount deemed just and reasonable by the Tribunal to remedy the damage to his career and professional reputation and the emotional distress resulting from being falsely deemed ineligible for an IFC Departmental Performance Award and in effect double-punished for the same conduct for which he was already disciplined in 2019.

17. The Applicant claims legal fees and costs in the amount of \$13,995.00.

18. On 2 December 2022, the IFC submitted preliminary objections and requested that the Application be dismissed.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The IFC's Contention No. 1

The claim is time-barred because it is the implementation of a previous administrative decision

19. The IFC contends that the Applicant is “directly challenging the HRDVP’s sanctions imposed on [the] Applicant on July 22, 2019, more than three (3) years ago.” The IFC submits that the Applicant was aware of the sanctions imposed on him at that time yet failed to file his Application within the 120-day timeline provided in the Tribunal’s Statute. To the IFC, the “alleged November 2021 decision [the] Applicant relies on is simply the implementation of [the] HRDVP confirming [the] Applicant’s misconduct and an application of the relevant sanctions imposed in 2019.”

20. The IFC contends that it is “well settled case law” that staff cannot toll the time limit for administrative review by requesting review of administrative decisions which are reconfirmations of a previous administrative decision. The IFC submits that, to make his case, the Applicant must establish that the decision he is challenging “was a new decision or challengeable action, independent from, and unrelated to, the sanctions imposed on [the] Applicant in 2019 as a result of his misconduct.” The IFC notes that the HRBP informed the Applicant that, “pursuant to the sanctions imposed by the HRDVP following a finding of misconduct, [the] Applicant was ineligible for financial awards from the IFC for a period of five years from the date of [the] HRDVP’s 2019 decision.” The IFC contends that this information “was not a new decision but rather was the implementation of the decision taken by [the] HRDVP on July 22, 2019.”

21. The IFC notes the Applicant’s contention that the November 2021 communication cannot constitute an ongoing implementation of the 2019 sanctions because the HRDVP’s sanctions letter was silent as to ineligibility for performance awards. The IFC further notes, though, that the sanctions letter provided that the Applicant would be ineligible for salary increases for a period of five years and submits that, “[w]hile the language of the sanction refers to a freeze in ‘salary’ increases, the clear intent of that sanction has been to freeze the income level of the staff member. Participation in staff bonus pools would be contrary to the salary freeze as written.”

22. The IFC avers that it “has applied the HRDVP’s decision consistently since 2019 and such implementation was previously unchallenged by [the] Applicant.” The IFC avers that the Applicant had also received a performance rating of 3.5 for Fiscal Year 2020 but did not question his ineligibility for a Departmental Performance Award at that time, which, to the IFC, “clearly demonstrated that the Applicant was aware of the implications of the HRDVP’s 2019 decision and the fact that the selection for the award is at his manager’s discretion, as his 3.5 rating does not automatically entitle him to the award.” The IFC submits that, “[w]ith respect to 2021, nothing had changed other than [the] Applicant’s creative, albeit seemingly disingenuous, attempt to find recourse to the Tribunal to re-interpret a sanction with longstanding interpretation and application.”

The Applicant’s Response

The Application is timely because the Applicant is challenging the November 2021 decision and not the 2019 sanctions

23. To the Applicant, the IFC’s contention is “simply wrong as a matter of fact and misguided as a matter of due process.” The Applicant submits that he did not contest the disciplinary sanctions in 2019 and that he is not contesting them now. Rather, the Applicant contends he is challenging only the November 2021 decision that he was ineligible for a Departmental Performance Award.

24. In the Applicant’s view, the November 2021 decision “cannot constitute mere ongoing implementation of the July 2019 disciplinary sanctions because [the HRDVP’s] 2019 sanctions letter is entirely silent as to Departmental Performance Awards eligibility.” The Applicant notes that the sanctions letter “simply provides that he is ineligible for ‘salary increase[s],’” which, the Applicant submits, “are entirely different than the one-time, lump-sum, non-salary bonuses given out under IFC’s longstanding Departmental Awards Program.” The Applicant further submits that the 29 November 2021 phone call with the HRBP was the “first time that [he] learned that management interpreted his 2019 sanctions as rendering him ineligible for Departmental Performance Awards.” To the Applicant, “[t]his was thus the earliest date on which [he] ‘ought reasonably to have been aware’ of the pertinent facts on which his claim is based and therefore constitutes the *dies a quo* for purposes of the instant Application.”

25. With respect to due process, the Applicant contends that the IFC's position would render the Manager, HRDCO's November 2021 "re-interpretation" of the disciplinary sanctions "unreviewable no matter how far it departs from the express text of [the HRDVP's] decision." To the Applicant, it would be an "extremely troubling" outcome to hand a "subordinate [HR] official the authority to impose unwritten and unexplained disciplinary sanctions with no mechanism for seeking this Tribunal's review" as it would "fundamentally undermine the fairness and accountability of [the WBG's] internal disciplinary and justice processes."

26. The Applicant further contends that his Fiscal Year 2020 non-selection for a Departmental Performance Award is "entirely irrelevant to the question of the *dies a quo* for the entirely distinct decision under review here." The Applicant notes that, when he did not receive an award for Fiscal Year 2020, "he was in exactly the same position as the many other IFC staff members who also earned ratings of 3.5 but were not recipients of the limited number of Awards given out." The Applicant avers that the IFC has "failed to offer any evidence that this decision was based on [his] supposed categorical ineligibility, much less any evidence that [he] was informed of this supposed basis for the decision." To the Applicant, he is challenging "an ineligibility decision that he was first informed of on November 29, 2021, and that he had no reason to know of prior to that date."

The IFC's Contention No. 2

The Application is further inadmissible because the Applicant did not exhaust internal remedies

27. The IFC contends that, because PRS dismissed his claim on the basis of lack of subject matter jurisdiction, the Applicant failed to exhaust internal remedies. The IFC avers that the Tribunal's standard provides that, "when PRS (or other organs of the Internal Justice Services) has declined jurisdiction, for whatever the reason, be it untimeliness or lack of subject matter jurisdiction, the Tribunal has determined that the staff member has failed to exhaust internal remedies."

28. The IFC also contends that, although PRS dismissed the Applicant's Request for Review for lack of subject matter jurisdiction, the Applicant's Request for Review was also untimely. The IFC notes that the Applicant states he was informed of the decision that he was ineligible for the

Departmental Performance Award on 29 November 2021. The IFC submits that the Applicant was required to submit his Request for Review by 29 March 2022, but that he instead submitted it on 18 April 2022. The IFC avers that “it is well-settled in Tribunal case law that a failure to observe time limits for the submission of an internal complaint or appeal is regarded as a failure to comply with the statutory requirement of the exhaustion of internal remedies.”

29. The IFC next contends that, because IFC staff members with a performance rating of 3.5 are not entitled to a Departmental Performance Award but instead are selected at the discretion of their managers based on the assessment of their performance, the Applicant is disputing a performance management decision. The IFC submits that Staff Rule 9.07 requires staff members to seek Performance Management Review of a performance management decision before submitting an application with the Tribunal. The IFC contends that, as the Applicant has sought neither Administrative Review nor Performance Management Review, the Applicant has failed to exhaust internal remedies and his Application is inadmissible.

The Applicant’s Response

The Applicant exhausted internal remedies

30. The Applicant contends that he properly exhausted internal remedies by seeking PRS review. The Applicant submits that PRS “got the jurisdictional analysis wrong” and that the Tribunal should proceed with a *de novo* review of his claims. In the Applicant’s view, PRS was incorrect to dismiss his Request for Review under the theory that his request was related to a disciplinary measure in connection with an EBC misconduct investigation. Rather, the Applicant explains that he is challenging “the entirely separate November 2021 decision by [the Manager, HRDCO] that was taken entirely outside of the misconduct-related processes prescribed under Staff Rule 3.00, and with none of the associated procedural protections including the right to a Tribunal appeal.”

31. The Applicant further contends that his Request for Review with PRS was timely. To support this contention, the Applicant first submits that this objection by the IFC is untimely as it was not asserted in the IFC’s initial filing of preliminary objections. The Applicant next submits

that the IFC is incorrect, as the time limit for seeking review with PRS was appropriately tolled while he sought mediation.

32. The Applicant also contests the IFC's assertion that he was required to seek Performance Management Review of his claim in order to exhaust internal remedies. The Applicant cites Staff Rule 9.07, which establishes the Performance Management Review process for reviewing "Performance Management Decisions." Specifically, the Applicant quotes Staff Rule 9.07, paragraph 2.01(e), which defines "Performance Management Decisions" as

Management's (i) determination of a staff member's written performance evaluation; (ii) determination of a staff member's performance rating; (iii) decision to place a staff member on an Opportunity to Improve (OTI) plan; or (iv) determination of the terms governing a staff member's OTI plan.

The Applicant submits that he is not challenging any of the enumerated managerial decisions and was therefore not required to seek Performance Management Review.

The IFC's Contention No. 3

The Applicant was not entitled to the award because he was never selected by his Manager to benefit from the award

33. The IFC finally contends that the Applicant was not entitled to the Departmental Performance Award and that, therefore, there was no violation of his rights. The IFC notes that, as the Applicant received a performance rating of 3.5, he could be considered for an award by his Manager but that the decision of selecting the Applicant for an award was at his Manager's discretion. The IFC submits that it is "indisputable that [the] Applicant, like all other IFC staff with 3.5 ratings, was not entitled to the 2021 performance award" and that for Fiscal Year 2021 "fifty seven percent (57%) of staff members in the same VPU as [the] Applicant, who also received a performance rating of 3.5, were not awarded the financial reward." To the IFC, this "clearly shows that the award is not an entitlement of staff members with a 3.5 performance rating and that [the] Applicant was not unfairly treated by management."

The Applicant's Response

The Applicant's claim relates to his eligibility for the award and not his entitlement to the award

34. The Applicant contends that the fact that Departmental Performance Awards are discretionary rather than mandatory for staff members with a 3.5 rating is “entirely immaterial to the jurisdictional analysis” of the present Application. The Applicant avers that he is challenging the Manager, HRDCO’s “apparent instruction to his departmental leadership that [the Applicant] was categorically ineligible, *ab initio*, for a Performance Award—*i.e.*, that his manager and his department were barred from even considering him for a discretionary Award.” The Applicant contends that

this instruction violated his terms of employment because it was inconsistent with the plain terms of the 2019 sanctions letter and that he had a right to at least be considered for an Award on equal footing with all other staff members in his department who received a 3.5 rating, regardless of the ultimate outcome of that discretionary decision.

35. The Applicant thus submits that he “does not need to demonstrate entitlement to an Award to establish jurisdiction, which turns only on the existence of a contestable eligibility determination by [the Manager, HRDCO].” To the Applicant, the IFC’s contentions regarding his lack of an “entitlement” to an award are thus “completely irrelevant.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICANT ALLEGES A VIOLATION OF HIS RIGHTS

36. The Tribunal will first consider the IFC’s objection as to the Tribunal’s subject matter jurisdiction over the Applicant’s claim.

37. Article II(1) of the Tribunal’s Statute provides:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words “contract of

employment” and “terms of appointment” include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.

38. In *McKinney*, Decision No. 183 [1997], paras. 13–17, the Tribunal stated:

The Tribunal’s jurisdiction in this case [under Article II(1) of the Tribunal’s Statute] turns, therefore, upon whether the [a]pplicant has “alleged” a plausible claim of contract violation.

[...]

It is sufficient for the Tribunal to exercise jurisdiction that the [a]pplicant has tenably “alleged” that there are circumstances that warrant an examination of the merits of his allegations.

Whether the [a]pplicant can sustain his case is a matter to be determined at the next stage, at which the merits are addressed through the conventional exchange of pleadings. It would be premature and improper for the Tribunal, by declaring this application inadmissible on the ground of jurisdiction *ratione materiae*, to deprive the [a]pplicant of an opportunity to make his case.

39. The threshold issue for the Tribunal’s subject matter jurisdiction is thus whether the Applicant has alleged a plausible claim of non-observance of his contract of employment, terms of appointment, or any other violation of his rights as a staff member.

40. The IFC contends that the Applicant was not entitled to the Departmental Performance Award and that, therefore, there was no violation of his rights which may be challenged before the Tribunal. The Tribunal observes, however, that—notwithstanding the range of reliefs requested by the Applicant—he is challenging his ineligibility for the Departmental Performance Award, which he contends constituted an improper expansion of the 2019 disciplinary sanctions.

41. Specifically, the Applicant alleges that management treated him unfairly by deeming him ineligible for the Departmental Performance Award. He alleges that his due process rights were violated because the ineligibility determination was “effectively a new and additional sanction for the same pre-2019 conduct for which [he] has already been disciplined once.” In this respect, the Applicant alleges that the Manager, HRDCO lacked the authority to impose the additional sanction

and that the additional sanction was issued more than three years after he received his Notice of Alleged Misconduct.

42. The Applicant's claims will require consideration of the general principles of interpretation. As one example, the principle of *contra proferentem* requires ambiguity to be construed against the interests of the party that has drafted the language in question. Moreover, due to the circumstances of this particular case, there is also the question of the scope of the 2019 disciplinary sanctions, which will require particular consideration of the express language used in the sanctions imposed.

43. The Tribunal is unable to adjudicate these claims until the matter is before the Tribunal on the merits. The Tribunal finds that the Applicant has alleged a plausible claim and concludes that it has subject matter jurisdiction.

WHETHER THE APPLICANT EXHAUSTED INTERNAL REMEDIES

44. 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.

45. 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.

46. The IFC contends that, because PRS dismissed his Request for Review for lack of subject matter jurisdiction and because the Applicant's Request for Review was untimely, the Applicant did not exhaust internal remedies.

47. On 18 April 2022, the Applicant filed his Request for Review with PRS, challenging the decision to “take away [his] earned Departmental Award on the ground that [he is] under a sanction which prevent[s] [him] from getting any salary increase.”

48. On 23 May 2022, the Peer Review Chair dismissed the Request for Review, citing Staff Rule 9.03, paragraph 7.04, which provides:

Panels do not review Requests for Review concerning:

[...]

- d. actions, inactions, or decisions taken in connection with Staff Member misconduct investigations conducted under Staff Rule 3.00, “Ethics and Business Conduct Department (EBC),” Staff Rule 8.01, “Disciplinary Proceedings,” or Staff Rule 8.02, “Protections and Procedures for Reporting Misconduct (Whistleblowing),” including decisions not to investigate allegations, decisions to place a Staff Member on administrative leave, alleged procedural violations, factual findings, performance management actions taken pursuant to Staff Rule 3.00, “Ethics and Business Conduct Department (EBC),” and the imposition of disciplinary measures.

The Peer Review Chair concluded that the Request for Review “relates directly to a disciplinary measure that was imposed on [the Applicant] in connection with an EBC misconduct investigation. Accordingly, the Chair determined that [the] claim falls outside of the scope of review of PRS.”

49. Pursuant to the World Bank Group Directive/Procedure on “Conduct of Disciplinary Proceedings for EBC Investigations,”

Subject staff members may appeal any disciplinary decision made under the provisions of Staff Rule 3.00, “Office of Ethics and Business Conduct,” to the World Bank Administrative Tribunal.

50. The Tribunal observes that the Peer Review Chair correctly dismissed the Applicant’s Request for Review because the Applicant’s claim related to the implementation of a disciplinary sanction in connection with an EBC investigation. The Tribunal considers that, while the Applicant is not challenging the disciplinary sanction *per se*, his claim is sufficiently related to the sanction as to fall under the terms of the World Bank Group Directive/Procedure on “Conduct of

Disciplinary Proceedings for EBC Investigations.” The Tribunal thus finds that, despite the Peer Review Chair’s dismissal, there was no failure to exhaust internal remedies, as the Applicant was entitled to bring his claim directly to the Tribunal.

51. In so finding, the Tribunal recognizes that the issues raised by the Applicant are unique. The Tribunal considers that the Applicant took prudent action in filing his Request for Review with PRS.

52. The IFC contends that the Applicant is “directly challenging the HRDVP’s sanctions imposed on [the] Applicant on July 22, 2019, more than three (3) years ago.” To the IFC, the “alleged November 2021 decision” was not a new decision but simply the application of the 2019 sanctions.

53. The Applicant submits that he did not contest the disciplinary sanctions in 2019 and that he is not contesting them now. In the Applicant’s view, the November 2021 decision “cannot constitute mere ongoing implementation of the July 2019 disciplinary sanctions because [the HRDVP’s] 2019 sanctions letter is entirely silent as to Departmental Performance Awards eligibility.” The Applicant contends that 29 November 2021 was the earliest date on which he “ought reasonably to have been aware’ of the pertinent facts on which his claim is based” and therefore constitutes the *dies a quo* for his Application.

54. Pursuant to Tribunal precedent, an applicant cannot “toll the time limit by requesting an administrative review of alleged ‘administrative decisions’ which do not constitute separate administrative decisions but which are simply re-confirmations of the original administrative decision.” *Kehyaian (No. 3)*, Decision No. 204 [1998], para. 23. *See also Al-Muthaffar (Preliminary Objection)*, Decision No. 502 [2014], para. 36.

55. The Tribunal recalls that, in his letter of 22 July 2019, the HRDVP imposed the following sanctions on the Applicant:

- Ineligibility for salary increase for a period of five years;

- Ineligibility for promotion for a period of five years;
- Restitution to the WBG for financial losses attributable to [the Applicant's] actions for the total amount of Mobility Premium benefits paid to [the Applicant] from April 12, 2007, to January 4, 2016, which would be reimbursed to the WBG through a reduction in [the Applicant's] payroll; and
- This letter will remain on [the Applicant's] personnel record indefinitely.

56. The Tribunal observes that the sanctions letter is silent as to eligibility for performance awards.

57. Staff Rule 6.01, "Compensation," sets forth "guidelines for periodic review and administration of general levels of compensation, salary scales, and annual pay increases for employees of the World Bank Group." Under the section titled "Annual Pay Increases," Staff Rule 6.01, paragraph 3.09, provides:

The Total Merit Increase will be determined annually as the total salary increase authorized for distribution to staff through pay for performance increases. The Total Merit Increase equals the sum of the Structure Adjustment, the Salary Progression Adjustment [SPA] and the Supplemental Merit Increase [SMI].

- a. The Structure Adjustment reflects the percentage of payroll adjustment required to broadly align the salary scale with the 75 percentile of the comparator market.
- b. The Salary Progression Adjustment is determined for the Washington salary plan based on a five-year rolling average of the ratio of the salaries of confirmed staff members in grade for more than one year to the Midpoint. For staff appointed in locations other than Washington, the SPA is determined based on the ratios of the salaries of confirmed staff members who have been in their grade for more than one year to the Midpoints.
- c. The Supplemental Merit equals the five-year average of the ratio of the salaries of all confirmed staff to the Midpoints, minus the SPA. The payable SMI is based on the ratio of salaries to Midpoints for staff with performance ratings of 4 or 5.

58. Under the section titled "Performance-Based Award Program," Staff Rule 6.01, paragraph 3.16, provides:

The Bank may pay a non-pensionable performance-based award to staff members (“Individual Performance Award”) within the Bank’s Finance Complex to measure, recognize and reward achievements throughout the year. The Individual Performance Award is for sustained and superior annual performance which is typically linked to the annual performance evaluation process, and subject to certain eligibility requirements adopted by the Bank’s Finance Complex.

59. The Tribunal observes that the scope and interpretation of the first sanction applied to the Applicant, “ineligibility for salary increase for a period of five years,” is a matter to be decided on the merits. However, the Tribunal recalls the HRBP’s explanation to the Applicant that she “consulted with the HR Case Management team who had previously reviewed his case and confirmed the interpretation regarding the HRDVP’s decision on the application of the sanctions.” The Tribunal observes, therefore, that the content of the 29 November 2021 determination required consultation and interpretation. Until this interpretation was communicated to the Applicant, the ineligibility of the Applicant for a performance award was arguably not clear and, as such, not yet ripe for challenge. The Tribunal considers that, for jurisdictional purposes, the 29 November 2021 determination amounted to more than a reconfirmation of a previous decision.

60. The IFC further contends that the Applicant’s Request for Review was untimely. With respect to the timeliness of the Applicant’s Request for Review, Staff Rule 9.03, paragraph 8.01, provides the following: “A Staff Member who wishes to request peer review must submit a Request for Review with the Peer Review Secretariat within 120 calendar days of receiving notice of the disputed employment matter.”

61. Staff Rule 9.03, paragraph 8.03, provides further:

If a Staff Member requests mediation of the disputed employment matter with the Office of Mediation Services prior to the expiration of the 120 calendar day deadline for submitting a Request for Review, then following the termination of an unsuccessful mediation, the Staff Member has the greater of 30 calendar days or the remainder of the 120 calendar day period to submit a Request for Review.

62. For the reasons set out above, the Tribunal finds that the Applicant first learned of the ineligibility determination on 29 November 2021. The Applicant sought mediation regarding the award ineligibility determination and other matters on 3 December 2021, four days after learning

of the determination he is challenging. On 25 February 2022, Mediation Services notified the Applicant that his mediation request would be closed. At that point, under Staff Rule 9.03, paragraph 8.03, the Applicant had “the greater of 30 calendar days or the remainder of the 120 calendar day period” to bring his Request for Review to PRS. Four days of the original 120-day period had passed before the Applicant sought mediation, so he had 116 calendar days from 25 February 2022 to submit his Request for Review. As the Applicant submitted his Request for Review on 18 April 2022, the Tribunal concludes that he timely sought to exhaust internal remedies.

63. The IFC also contends that the Applicant should have sought Performance Management Review because, in its view, the Applicant is seeking review of a performance management decision.

64. Staff Rule 9.07, paragraph 3.02, provides the following:

Staff Members seeking formal reviews of Performance Management Decisions must do so through the Performance Management Review process. Peer Review Services (PRS) does not review Performance Management Decisions. Subject to Rule 7, “Applications,” paragraph 8, “Filing,” of the Rules of the World Bank Administrative Tribunal, a staff member must seek Performance Management Review of a Performance Management Decision prior to submitting an Application to the World Bank Administrative Tribunal (WBAT).

65. Staff Rule 9.07, paragraph 2.01(e), defines “Performance Management Decisions” as

Management’s: (i) determination of a staff member’s written performance evaluation; (ii) determination of a staff member’s performance rating; (iii) decision to place a staff member on an Opportunity to Improve (OTI) plan; or (iv) determination of the terms governing a staff member’s OTI plan.

66. The Tribunal considers that the Applicant is not challenging a performance management decision as defined in the Staff Rules. Accordingly, the Tribunal finds that the Applicant was not required to seek Performance Management Review prior to filing his Application. The Tribunal thus concludes that the Applicant has properly brought his Application before it.

WHETHER THE APPLICATION IS TIMELY

67. Article II(2) of the Tribunal's Statute provides:

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

[...]

(ii) the application is filed within one hundred and twenty days after the latest of the following:

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

68. The Tribunal recalls that, on 18 April 2022, the Applicant timely filed a Request for Review with PRS. When PRS correctly dismissed the Applicant's Request for Review on 23 May 2022, the Applicant, having received an extension, timely filed his Application with the Tribunal. The Tribunal thus dismisses the IFC's preliminary objection.

CONCLUDING REMARKS

69. The Applicant requested that the Tribunal strike from the record each of the annexes to the IFC's pleadings. The Tribunal finds it unnecessary to refer to the annexes or to rule on the Applicant's request at this stage.

DECISION

(1) The IFC's preliminary objections are dismissed; and

- (2) The IFC shall contribute to the Applicant's legal fees and costs in the amount of \$5,000.00 for the preliminary objection phase of the proceedings.

/S/Mahnoush H. Arsanjani
Mahnoush H. Arsanjani
President

/S/ Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 12 May 2023