



World Bank Administrative Tribunal

2024

Decision No. 709

**HS,
Applicant**

v.

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

(Preliminary Objection)

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

**HS,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Janice Bellace (President), Seward Cooper (Vice-President), Lynne Charbonneau (Vice-President), Ann Power-Forde, Martha Halfeld Furtado de Mendonça Schmidt, Thomas Laker, and Raul C. Pangalangan.

2. The Application was received on 13 May 2024. The Applicant was 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. The Applicant's request for anonymity was granted on 9 October 2024.

3. The Applicant challenges the (i) decision to declare his position redundant, (ii) "series of decisions amounting to career mismanagement leading up to the redundancy decision," (iii) decision to place him in a "temporary" position slated for redundancy (the temporary assignment claim), (iv) decision to "subject [the Applicant] to various forms of managerial misconduct" (the misconduct claim), (v) decision to not shortlist the Applicant for certain positions in the Fiscal Year (FY) 2022 (FY22) batch rotation exercise of the Water Global Practice (GP), and (vi) decision to exclude the Applicant from the Water GP's FY22 and FY23 batch rotation exercises (non-inclusion claims).

4. On 3 July 2024, the Bank filed preliminary objections challenging the admissibility of the Applicant's (i) FY23 non-inclusion claim, (ii) temporary assignment claim, and (iii) misconduct claim made to the Ethics and Business Conduct Department (EBC), on various grounds of untimeliness and failure to exhaust internal remedies. This judgment addresses the Bank's preliminary objections.

FACTUAL BACKGROUND

5. The Applicant joined the Bank in September 2005 through the Young Professionals Program and has since held positions as a Water Resources Specialist, Senior Water Resources Specialist, and Senior Water Resources Management Specialist with various departments. He has served as a Task Team Leader for numerous projects across multiple duty stations including in Azerbaijan, the Kyrgyz Republic, and the West Bank and Gaza. The Applicant holds an open-ended appointment.

6. In 2015, the Applicant began a three-year field assignment, based in Bishkek, Kyrgyz Republic.

7. According to the Applicant, in September 2018, only weeks after the Applicant had undergone surgery to repair a ruptured Achilles tendon, his then Practice Manager in the Water GP (hereinafter former Practice Manager) pressured him to travel to Romania for a mission that the former Practice Manager described as a corporate priority. The Applicant states that, due to a lack of disability accommodations on the mission, the medical consequences of the trip were “disastrous,” resulting in chronic infection and multiple surgeries in the years since the mission.

8. Following the Romania mission, the Applicant went on Short-Term Disability (STD) from October 2018 to January 2019, after which he was approved for part-time work at 30 percent or 12 hours per week.

9. On 1 November 2019, the Applicant was reassigned to the Global Unit in the Water GP (SWAGL). As of that date, the Applicant also returned to full STD and remained on full STD through October 2020. Although the new position’s duty station was Washington, D.C., the Applicant states that he initially remained in Bishkek because the COVID-19 pandemic delayed his relocation to Washington, D.C., and that he later temporarily relocated to Novosibirsk, Russian Federation, due to his wife’s medical needs.

10. On 26 May 2021, according to the Applicant, he met via Webex with the then Global Director of the Water GP (hereinafter former Water Global Director) and a Human Resources (HR) Manager (HR Manager). The Applicant states that, during the meeting, the former Water Global Director notified him for the first time that his position in SWAGL was temporary. According to the Applicant, the former Water Global Director emphasized that the issue was budget-driven, not performance-related, and stated that the Applicant would likely be separated from the Bank within twelve months if he was unable to secure another position.

11. The Applicant states that, following his 26 May 2021 meeting with the former Water Global Director and the HR Manager, the Applicant met with his current Practice Manager (Practice Manager) via Webex on 9 June 2021 to further discuss his job situation. The Applicant states that the Practice Manager reiterated the message conveyed by the former Water Global Director – that his SWAGL position had always been only an interim arrangement and that he would need to quickly secure a position outside of the Global Unit.

12. On 26 July 2021, the Practice Manager sent an email to the Applicant, copying the former Water Global Director and the HR Manager, confirming the contents of their June 2021 conversation, including the temporary nature of his SWAGL position and the possibility of separation from the Bank if he was unable to secure another position. The email stated in part:

I would like to once again confirm, that given the restructuring of the Bank during the past two years, which shifted the Global Practice staff to the regions while maintaining only a small team in the Global Unit, there is no longer a work program to support the position to which you were assigned (on a temporary basis) as you transitioned from your posting in ECA [Europe and Central Asia] during your STD.

We have also noted that you have followed our advice and applied to a number of positions during the past Water GP cluster recruitment processes, however, have not been selected. As such, we strongly encourage you to place priority attention in this FY to finding a new assignment within the World Bank Group or externally. If you are unable to find a position in the Water GP or in other parts in the Bank by the end of this FY (June 30, 2022), we will discuss with you options for separation from Bank employment. These options could come into effect at any time by June 30, 2022.

13. On 22 March 2022, according to the Applicant, the former Water Global Director authorized the end of the Applicant's telecommuting arrangement and his return to his duty station in Washington, D.C.

14. According to the Applicant, he contacted EBC in April 2022 to raise concerns of discrimination, harassment, and hostile work environment; related concerns stemming from his treatment with respect to the Romania mission and subsequent events including his reassignment to a position later identified as temporary; and management's failure to include him in the FY22 batch rotation exercise.

15. On 9 May 2022, the Applicant relocated to Washington, D.C.

16. On 11 May 2022, the Practice Manager emailed the Applicant a Notice of Redundancy, stating:

As per our communication on July 26, 2021, I would like to inform you that the Senior Water Resources Management Specialist position in SWAGL will be abolished effective June 30, 2022. Please find attached the notice of redundancy signed by the [Vice President, Sustainable Development]. As indicated in the redundancy notice, you will be on Administrative Leave as of July 1, 2022. You are not expected to work after this date, and I would encourage you to focus on your job search during the period of Administrative Leave through December 31, 2022. As indicated in the memo and shared with you in my previous communications, several HR resources are available to support your job search. Suppose you secure another position within the World Bank prior to December 31, 2022. In that case, the redundancy notice will be moot, and you would proceed on to that new position.

17. The Notice of Redundancy stated in part:

1. [...] your employment has become redundant with effect July 1, 2022. This decision has been taken in accordance with Staff Rule 7.01, paragraphs 9.02 (b. A specific position or set of functions performed by an individual in an organizational unit must be abolished) and 9.03.

2. During your six-month reassignment/termination notice period, I would like to encourage you to work closely with your HR Team and the staff in Career Advisory Services in this endeavor. [...]

3. Pursuant to Staff Rule 6.06, paragraph 10.08, I have decided to place you on administrative leave during your six-month job search period. The administrative leave will begin on July 1, 2022.

18. On 16 May 2022, the Applicant returned to STD for further treatment on his left leg. The Applicant underwent a series of five surgeries at MedStar Georgetown Hospital from 17 to 26 May 2022. Since the Applicant was on STD, the commencement of the Administrative Leave was paused.

19. On 31 May 2022, the Applicant submitted Request for Review No. 573 to Peer Review Services (PRS) and supplemented his filing three days later on 3 June 2022. The Applicant raised two claims, challenging the Bank's decisions to (i) not shortlist and select him for a position as part of the FY22 batch rotation exercise in the Water GP (FY22 non-shortlisting claim) and (ii) make his position redundant (redundancy claim).

20. On 16 June 2022, PRS referred the matter to the Office of Mediation Services (Mediation Services) as both the Applicant and the former Water Global Director were willing to resolve the matters informally.

21. The Applicant states that he again contacted EBC in "mid-2022," following receipt of the Notice of Redundancy, to raise concerns about the redundancy decision.

22. On 6 September 2022, the PRS proceedings resumed after the parties were unable to reach an agreement.

23. On 7 December 2022, EBC wrote to the Applicant informing him that it was closing its case following a "preliminary review" of his misconduct allegations. EBC stated in part:

We have concluded the preliminary review of the allegations and determined that:

i. the Peer Review Services (PRS) is the appropriate avenue to address the concerns you raised relating to HR and employment related actions (particularly the issues of redundancy, non-selection in batch recruitments, eligibility for global mobility benefits, re-assignment and performance evaluation)[:] and

ii. with respect to the other allegations, i.e. of discrimination, harassment/hostile work environment, misrepresentation, failure to report concerns to EBC and unauthorized disclosure of confidential information, there is insufficient evidence of a violation of staff rules to warrant further review.

Consequently, EBC determined that there is insufficient factual basis to proceed to the formal investigation stage. We have therefore closed the case.

24. On 3 and 4 January 2023, the Applicant and a Senior HR Business Partner I (Senior HR Business Partner) had multiple email exchanges in which the Senior HR Business Partner first informed the Applicant of his ineligibility to participate in the Water GP batch rotation for FY23. The Senior HR Business Partner stated that “[t]he rotations are for staff that has been four years in the assignment, and the person has to come with a position. You are not four years into the assignment, and we do not have a position.” The Senior HR Business Partner also informed the Applicant that he would be able to participate in the next round of the mobility exercise, if there were positions available for batch recruitment.

25. On 11 January 2023, the Applicant emailed the current Water Global Director (Water Global Director) and the Vice President, Sustainable Development requesting to be included in the batch rotation.

26. Also on 11 January 2023, the People and Culture (HR) Vice Presidency held a townhall for all Bank staff to discuss the Bank’s internal mobility exercise.

27. On 18 January 2023, the Applicant received an email from the Vice President, Sustainable Development, stating that, as the Applicant may be recovered from his STD in July 2023, then the six-month administrative leave and the job search period associated with the redundancy may begin, and that the Applicant may count on management’s support for his job search efforts.

28. On 16 February 2023, the Peer Review Panel in Request for Review No. 573 met to discuss outstanding matters. The Peer Review Panel noted that, at the 11 January 2023 townhall, management stated that it was addressing the apparent shortcomings of the 2022 mobility exercise through the recent changes it had made to have increased flexibility, shared responsibility, and

consistency in the way it ensures the mobility of staff. Based on these developments, the Peer Review Panel decided to refer the Applicant and the former Water Global Director back to Mediation Services.

29. On 13 March 2023, PRS officially referred the case back to Mediation Services and stayed proceedings on Request for Review No. 573.

30. On 20 March 2023, the Applicant wrote to PRS, stating:

The decision of the [Peer Review Panel] is duly noted, and intake with [Mediation Services] is already scheduled. Two questions, if I may (and I am not sure if the [Peer Review Panel] is at liberty to answer):

[...] Has the [Peer Review Panel] in its decision to [refer] the parties [back] to [Mediation Services] based their decision solely on the documentation [submitted] and the townhall, or has [there] been any communication with witnesses?

[...] [The Peer Review Panel] refers to the January 11, 2023 townhall. On that exact day, I requested the chairs of the Water GP Talent Board and the SD [Sustainable Development] Talent Council [the Water Global Director and the Vice President, Sustainable Development] to be included in the batch rotation, based on the guidelines distributed by them (and referred to in the townhall). On January 18, 2023, [the Vice President, Sustainable Development] responded that I would not be included in the Batch Rotation. I am preparing a RFR [Request for Review] for this HR decision, which I am planning to send to PRS this coming Wednesday. Would it be possible to include this RFR in the mediation, since the HR issues overlap?

31. On 21 March 2023, PRS responded in part:

With regard to your second question, please note that the PRS Secretariat cannot advise you on what to discuss during the mediation process. For guidance and advice, you may wish to contact the Staff Relations Counselors at the Staff Association (SA). [...]

If you wish to challenge the alleged determination by [the Vice President, Sustainable Development] regarding your participation in the FY23 mobility exercise, you may wish to file a Request for Review with PRS. The Peer Review Chair will then make a determination regarding whether PRS has the mandate to review your claims. Attached is the Request for Review Form for your convenience.

32. On 12 May 2023, Mediation Services advised PRS that the Applicant and the Water Global Director (who had taken over from the former Water Global Director as Delegated Responding Manager as of 26 March 2023) could not reach an agreement on the issues and referred the case back to PRS for further review.

33. That same day, the Applicant informed PRS via email that, in light of the unsuccessful mediation, he intended to submit a new Request for Review regarding the FY23 batch rotation exercise. In that email, the Applicant quoted the second question he asked PRS in his 20 March 2023 email, and further stated:

Hope this finds you well. I refer to the Memo of PRS of March 13, 2023 and my question to PRS of March 20, 2023 [...]. PRS noted that I could submit a request for review of the decision of [the Vice President, Sustainable Development].

Mediation was conducted on May 8, 2023 and concluded without an agreement. Could you please advise me on the deadline for submitting the RFR challenging the January 18 decision? Is that May 18, 2023 or is that within a defined period after mediation has been concluded without agreement?

34. On 16 May 2023, PRS responded to the Applicant's query, stating in relevant part:

Regarding your questions about the deadline to submit a Request for Review with PRS, please note that you have 120 calendar days from the date when you received written notice or ought reasonably to have been aware that the disputed employment matter occurred. We note that you stated that you have been through mediation. Staff Rule 9.03, para. 8.03 provides that "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."

You may find it useful to use the Peer Review deadline calculator on the PRS' website: [...].

Please note that once the Secretariat receives your RFR Form, the Peer Review Chair will determine whether your claims were filed within the 120-calendar day deadline and whether they are within the jurisdiction of PRS.

35. On 30 May 2023, the Applicant submitted Request for Review No. 604 to PRS, seeking a review of some of the Bank's decisions related to the Water GP batch rotation exercise for FY23. The contested decisions include (i) non-authorization of ending Telecommute from 26 May 2021 until 22 March 2022; (ii) his non-inclusion in the FY23 Water GP batch rotation exercise; and (iii) unfair treatment in the FY23 batch rotation exercise.

36. On 23 August 2023, the Peer Review Panel issued its First Partial Dismissal decision in Request for Review No. 604, dismissing the Applicant's claim with regard to the non-authorization of ending Telecommute on the grounds of untimeliness.

37. On 13 December 2023, PRS issued the Peer Review Panel's Report in Request for Review No. 573. Under the "Overall Conclusion and Recommendations of the Panel" section of the report, the Peer Review Panel stated:

Upon considering the totality of evidence on record, the Panel concluded that: (i) the Non-Shortlisting Decision regarding the respective Antananarivo and Bamako positions had reasonable and observable bases; (ii) due process had been followed; and (iii) there was no evidence that the Non-Shortlisting Decision for these respective two positions was made in bad faith or improperly motivated. The Panel, however, found that the Non-Shortlisting Decision for the Yaoundé position lacked an observable basis and that the shortlisting process lacked transparency. The Panel found that the Non-Shortlisting Decision for the Yaoundé position was not made in bad faith or improperly motivated. The Panel found that management did not act fairly and transparently by not including [the Applicant] in at least one shortlist as part of the FY22 Water GP batch recruitment. To provide relief to [the Applicant] for the lack of an observable basis and for the lack of transparency in the shortlisting process for the Yaoundé position, the Panel recommends that the WB [World Bank] compensate [the Applicant] in the amount of one month net salary, at his last drawn salary. To provide relief to [the Applicant] for the lack of fairness and transparency of the shortlisting process regarding the inclusion in at least one shortlist for a position, the Panel recommends that the WB compensate [the Applicant] in the amount of three months net salary, at his last drawn salary.

Upon considering the totality of evidence on record, the Panel concluded that the Redundancy Decision had a reasonable and observable basis; management followed a fair and proper process; and the Redundancy Decision was made in good faith. The Panel, therefore, recommends the dismissal of [the Applicant's] redundancy claim and does not recommend that any relief be granted to him.

38. On 2 January 2024, the Peer Review Panel, in a Second Partial Dismissal in Request for Review No. 604, dismissed the Applicant's claim with regard to his non-inclusion in the FY23 Water GP batch rotation phase, pursuant to Staff Rule 9.03. In reaching its decision to dismiss the Applicant's FY23 non-inclusion claim, the Peer Review Panel stated:

The Panel noted that in his RFR, [the Applicant] wrote: "January 4, 2023 – Received clarification from [the Senior HR Business Partner] that I am not included in the Batch Rotation as I do not come with a position." [The Applicant] also wrote: "January 18, 2023 – [the Vice President, Sustainable Development] informs me of not being included in the Batch Rotation [...]."

The Panel considered the PRS filing requirement contained in Staff Rule 9.03, paragraph 8.01, which provides that "[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." Under Staff Rule 9.03, paragraph 8.02, "[a] staff member receives 'notice' of a disputed employment matter when s/he receives written notice or ought reasonably to have been made aware that the disputed employment matter occurred."

The Panel found that on January 3, 2023, [the Applicant] was first informed of his ineligibility to participate in the FY23 Batch Rotation, and that the January 18, 2023 email was a mere confirmation of the January 3, 2023 notification. From January 3, 2023, the deadline to file with PRS would have been May 3, 2023. [The Applicant] filed his RFR on May 30, 2023, which is more than 120 calendar days. The Panel noted that even if the date of January 18, 2023 is taken as the date when [the Applicant] was notified of his ineligibility to participate in the Batch Rotation, the claim would still be untimely as the deadline to file would have been May 18, 2023. Therefore, the Panel dismissed the claim as untimely, pursuant to Staff Rule 9.03, paragraph 11.03 (b) (i).

39. On 8 January 2024, the Applicant requested the Peer Review Panel to reconsider its decision to dismiss his FY23 non-inclusion claim in Request for Review No. 604.

40. On 8 February 2024, the Peer Review Panel denied the Applicant's request to reassess the timeliness of the claims that were dismissed in Request for Review No. 604, stating in part:

On January 8, 2024, [the Applicant] requested, via email, that alleged "omissions and errors be corrected" in the Panel's Decision on Witnesses and Additional Information and Partial Dismissal of [the Applicant's] Claims of January 2, 2024 ("Decision"). Specifically, [the Applicant] requested the timeline in the Decision to be supplemented with certain events. [The Applicant] also requested the Panel to

reassess the timeliness of the claims which were dismissed with the Decision, taking into consideration the Panel's Decision to Refer the Parties to Mediation Services [...] in RFR No. 573 of March 13, 2023 ("Referral").

The Panel noted that the Referral [for mediation] was issued in a separate Request for Review (i.e., RFR No. 573), in which [the Applicant] challenged (1) management's decision not to shortlist and select him for a position as part of the Fiscal Year 2022 (FY22) batch recruitment ("Non-Shortlisting Decision") and (2) management's decision to make his position redundant ("Redundancy Decision"). The Panel noted that the disputed employment matters in RFR No. 573 (the Non-Shortlisting Decision and the Redundancy Decision) are different from the disputed employment matters in RFR No. 604 (i.e., (a) "[n]on-inclusion in the [Fiscal Year] 2023 (FY23) Water [Global Practice (GP)] Batch Rotation phase" ("Batch Rotation Decision"), (b) "non-authorization of ending of Telecommute from May 26, 2021 until March 22, 2022" ("Telecommuting Decision"), and (c) "unfair treatment in the FY23 Batch [R]ecruitment phase" ("Unfair Treatment Claim"). The Panel noted that it referred the parties to [Mediation Services] for [the Applicant's] claims in RFR No. 573, and not for his claims in RFR No. 604.

[...]

In his email of January 8, 2024, [the Applicant] stated that in paragraphs 9, 10 and 13 of the Decision, the Panel omitted to make a reference to Staff Rule 9.03, paragraph 8.03, which provides that "[i]f 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." The Panel is of the view that the above provision applies to a staff member who "requests" mediation, and not when parties are referred to mediation by a Panel as in this case.

Based on [the] paragraphs [...] above, the Panel decided to reject [the Applicant's] request to revise its Decision.

41. On 23 February 2024, the Applicant wrote to EBC requesting that it reopen its review into his claims based on additional factual developments since December 2022, including information contained in his PRS filings and in a Workers' Compensation case he filed on 7 November 2022.

42. On 17 April 2024, EBC denied the Applicant's request, stating that it "[did] not see any basis to re-open the review." EBC further stated, "The concerns described below are substantively

similar to those we reviewed in 2022 and further to our review of the information you have shared, we have determined that our previous conclusions remain valid.”

43. On 2 May 2024, the Applicant received clearance from his doctor to return to work full-time with accommodations effective 16 May 2024. On 16 May 2024, the Applicant was placed on Administrative Leave associated with the redundancy “per the Notice of Redundancy issued in May 2022.”

Present Application

44. On 13 May 2024, the Applicant filed this Application with the Tribunal contesting the Bank’s decisions to

- (i) declare his position redundant (redundancy claim);
- (ii) engage in actions amounting to career mismanagement leading up to the redundancy decision;
- (iii) place the Applicant in a “temporary” position slated for redundancy (temporary assignment claim);
- (iv) subject the Applicant to various forms of managerial misconduct including (a) harassment, hostile work environment, and retaliation (the misconduct claim), and (b) disclosure of confidential medical information;
- (v) exclude the Applicant from the Water GP FY22 batch rotation exercise (FY22 non-inclusion claim);
- (vi) not shortlist the Applicant for certain positions in the FY22 recruitment process (FY22 non-shortlisting claim); and
- (vii) exclude the Applicant from the Water GP’s FY23 batch rotation exercise (FY23 non-inclusion claim).

45. The Applicant requests the following specific performance: (i) rescission of the disputed redundancy decision; (ii) reappointment and priority placement in the Water GP’s FY25 mobility exercise, with a guaranteed position starting in summer 2025 and, if applicable, temporary

placement with a full work program ahead of any such regular placement through the FY25 batch rotation/recruitment process; (iii) alternatively, reappointment to a mutually agreeable position on an open-ended basis; and (iv) restoration of 50 days' sick leave balance upon reappointment.

46. The Applicant requests the following compensation: (i) "reimbursement for the approximately \$44,755 in costs incurred by [the Applicant] in evacuating himself and his family from Russia following Russia's invasion of Ukraine in February 2022"; (ii) \$131,481.00 to make up for the extended reduction in the Applicant's salary as a result of his prolonged STD; (iii) to the extent the impugned redundancy decision is not rescinded, compensation to offset the future costs that the Applicant is likely to incur to procure international work disability insurance, which he currently estimates at approximately \$15,000.00 per year; and (iv) compensation in a further amount deemed just and reasonable by the Tribunal to remedy the damage to the Applicant's career, the exacerbation of his health issues, and the emotional distress caused by management's decision to compel the Applicant to travel on mission in September 2018 while medically unfit to do so and the various damage to his career stemming therefrom.

47. The Applicant requests legal fees and costs in the amount of \$8,135.00.

48. On 3 July 2024, the Bank filed preliminary objections to the following claims: (i) the FY23 non-inclusion claim, based on untimeliness and non-exhaustion of internal remedies; (ii) the temporary assignment claim, based on untimeliness and non-exhaustion of internal remedies; and (iii) the misconduct claim, based on untimeliness.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Contentions

49. The Bank contends that the Applicant failed to timely file his FY23 non-inclusion claim with PRS, which constitutes a failure to comply with the statutory requirement to exhaust all internal remedies, and that the Applicant's FY23 non-inclusion claim should thus be barred. Specifically, the Bank states:

[The] Applicant is contesting the Second Partial Dismissal Decision for RfR No. 604 by PRS, which dismissed [the] Applicant's claim regarding [...] his non-inclusion in the FY23 Water GP Batch Rotation phase. PRS decided that [the] Applicant's claim at issue in its Second Partial Dismissal Decision was not submitted within the prescribed time limits pursuant to Staff Rule 9.03 paragraph 8.01, because [the] Applicant filed his RfR [No. 604] on May 30, 2023, which is more than 120 calendar days after he was informed of the decision on January 3, 2023. PRS further explained that the January 18, 2023 email from [the Vice President, Sustainable Development] was merely a confirmation of the January 3, 2023 notification. Even if PRS considered this date of January 18, 2023 as the notification date, the claim would still be time-barred because it exceeds the 120 calendar day limit.

50. The Bank contends that the Applicant's assertion that the mediation process in connection with Request for Review No. 573 should have tolled the filing deadline for what later became Request for Review No. 604 lacks merit. Specifically, the Bank asserts that the claims within Request for Review No. 604, including the FY23 non-inclusion claim, are distinct from the claims addressed in the earlier mediation related to Request for Review No. 573, which dealt with the FY22 non-inclusion claim and other issues. To the Bank, since the disputed employment matters in these two Requests for Review are separate, the referral to Mediation Services in Request for Review No. 573 does not toll the filing deadlines for the unrelated claims in Request for Review No. 604. Further, the Bank asserts that the Applicant's reliance on Staff Rule 9.03, paragraph 8.03, is misplaced because the rule applies when a staff member requests mediation, and in the present case it was PRS – not the Applicant – that referred the parties to mediation under Request for Review No. 573.

51. Consequently, the Bank submits that, because the Applicant did not file his FY23 non-inclusion claim within 120 days of the decision he was contesting, the dismissal decision was properly issued by PRS, and that “[t]his claim cannot be resurrected in the Tribunal.”

52. Further, the Bank contends that the Applicant's challenge to the temporary assignment decision is untimely and should be dismissed. The Bank asserts that the managerial decision designating the Applicant's position within SWAGL as “temporary” was first conveyed to him orally during a meeting on 26 May 2021. The Bank further asserts that subsequently, on 26 July

2021, the Applicant received written confirmation of this decision, reflecting previous conversations between the Applicant and his managers. According to the Bank, for the Applicant's claim to be admissible before the Tribunal, he was required to file his Application or to request an extension by 23 September 2021, which is 120 days after receiving notice of the contested decision. The Bank submits that the Applicant failed to do so, filing his Application only on 13 May 2024. Accordingly, the Bank contends that the Applicant is time-barred in contesting this decision before the Tribunal.

53. Furthermore, the Bank contends that the 26 July 2021 written confirmation was a mere confirmation of the 26 May 2021 notification. The Bank contends that, even if the Tribunal were to consider 26 July 2021 as the notification date, the claim would still be time-barred because it overwhelmingly exceeds the 120–calendar day limit mandated by the Tribunal rules. With respect to the Applicant's contention that the temporary assignment decision is not a separate claim but instead further evidentiary support for his redundancy claim, the Bank contends that “[the] Applicant may be attempting to abandon his claim relating to the [temporary assignment decision], recognizing that it is time-barred.”

54. In addition, the Bank contends that the Applicant's challenge to EBC's decision in respect of the misconduct claim is untimely and should be dismissed. The Bank submits that the Applicant is contesting EBC's decision not to pursue a full investigation of the Applicant's complaint of discrimination, harassment, the existence of a hostile work environment, and other charges following its preliminary inquiry. The Bank notes that EBC informed the Applicant of this decision on 7 December 2022. The Bank contends that, for the Applicant's claim to be admissible before the Tribunal, he was required to file his Application, or request an extension, by 6 April 2023, which is 120 days after receiving notice of the contested decision. The Bank contends that the Applicant failed to do so, instead filing his Application only on 13 May 2024, well beyond the 120-day statutory limitation.

55. The Bank notes that the Applicant recently requested EBC to reopen its investigation into his claims, a request EBC denied on 17 April 2024 citing a lack of substantive new evidence that might warrant reopening the case. The Bank avers that the EBC decision of 17 April 2024

constitutes a mere confirmation of the previous decision. The Bank asserts that the “Applicant cannot toll the time limit by requesting an administrative review of the EBC [d]ecision of December 7, 2022.” Consequently, the Bank submits that the Applicant’s challenge to EBC’s decision to close the case is untimely and should be dismissed.

56. Finally, the Bank contends that the Applicant has not met the exceptional circumstances threshold established by the Tribunal in order to justify his delay in either filing a timely application to challenge the FY23 non-inclusion decision, temporary assignment decision, or EBC decision on the misconduct claim, or requesting an extension to file the same. The Bank asserts, “[The Applicant] knows how to request an extension, as evidenced by his other requests to the Tribunal. [The Applicant’s] decision not to seek such extensions for the claims should bind him.” As a result, the Bank contends that the three aforementioned claims be dismissed and the relief requested be denied.

The Applicant’s Response

57. The Applicant contends that he exhausted internal remedies with respect to his FY23 non-inclusion claim because his challenge to the non-inclusion claim in PRS Request for Review No. 604 was timely. The Applicant contends that, because it failed to apply Staff Rule 9.03, paragraph 8.03, PRS erred in concluding that the Applicant’s FY23 non-inclusion claim was untimely.

58. The Applicant contends that he is not directly challenging the temporary assignment decision in his Application. Rather, he states that he is simply contending that the temporary assignment decision is merely one ground on which he is challenging the redundancy decision and that it does not constitute a standalone claim. Specifically, the Applicant contends that the eventual redundancy decision was, in part, the product of management’s ongoing lack of transparency regarding his career prospects including, critically, misleading him about the temporary nature of the SWAGL position and thus depriving him of earlier opportunities to attempt to secure a non-temporary position or, at the very least, one that would have enabled him to participate in the FY22 and FY23 mobility exercises. The Applicant further contends that management’s failure to disclose the temporary nature of his SWAGL position for an extended period was one of many unreasonable

and arbitrary errors of judgment that, taken together, amounted to mismanagement of his career and resulted, ultimately, in his entirely avoidable redundancy.

59. To the Applicant, the Bank disingenuously construes his contentions regarding his remapping to SWAGL as a claim and, based on this erroneous portrayal, contends that the Applicant failed to file a PRS claim within 120 days of 26 May 2021.

60. The Applicant contends that his misconduct claims are timely and, in any event, are reviewable in connection with his redundancy challenge. The Applicant submits that the Bank's contention that he may not challenge EBC's decision to close its investigation on the theory that the decision was communicated to the Applicant on 7 December 2022, and that EBC's 17 April 2024 decision not to reopen its investigation was "mere confirmation of the previous decision," is incorrect for two reasons.

61. First, the Applicant contends that EBC's 17 April 2024 decision is a new decision, not merely confirmation of the 7 December 2022 decision, because it constituted EBC's evaluation – or at least opportunity to evaluate – significant information beyond what was available to it in 2022. To the Applicant, the fact that EBC ultimately reached the same conclusion is irrelevant. The Applicant further contends that EBC's 17 April 2024 decision was necessarily substantively different from its 7 December 2022 decision because it was "based on information that was not available – and, as to many of the new pieces of evidence, had not occurred yet – as of the earlier date."

62. Second, the Applicant contends that his misconduct claims are reviewable not only on a standalone basis but also as part of his redundancy claim because, like the temporary assignment issue, they constitute one of the many flawed steps leading to the ultimately flawed decision. Specifically, the Applicant contends that management's actions leading up to the redundancy decision were improperly motivated by hostility toward his disability status and/or retaliatory animus for the Applicant's suggestion that his supervisor bore responsibility for the "disastrous" consequences of his 2018 Romania mission. To the Applicant, "[t]hese issues are closely related

and entirely bound up in his ‘principal claim,’ i.e., the ultimate redundancy decision, and thus reviewable in connection with that claim under *Iqbal* [Decision No. 485 [2013]].”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE APPLICANT FILED HIS APPLICATION IN A TIMELY MANNER AND EXHAUSTED INTERNAL REMEDIES

63. Article II(2) of the Tribunal’s Statute sets out the requirements for admissibility of applications to the Tribunal. It states:

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

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

64. Regarding time limitations for submitting Requests for Review, Staff Rule 9.03 provides, at paragraphs 8.01 to 8.03:

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

- 8.02 A Staff Member receives “notice” of a disputed employment matter when s/he receives written notice or ought reasonably to have been aware that the disputed employment matter occurred.
- 8.03 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.

65. Throughout its jurisprudence, the Tribunal has also underscored the importance of the requirement of exhaustion of internal remedies, which “ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action” (*Brar (Preliminary Objection)*, Decision No. 647 [2021], para. 65) and “greatly assists the Tribunal in promptly and fairly disposing of the cases before it” (*Berg*, Decision No. 51 [1987], para. 30). The Tribunal has also emphasized in numerous decisions that a failure to observe time limits for submitting an internal complaint or appeal, resulting in that complaint or appeal being rejected as untimely, is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. *See, e.g., DW*, Decision No. 556 [2017], para. 50; *Sharpston*, Decision No. 251 [2001], paras. 25–26; *Setia*, Decision No. 134 [1993], para. 23; *de Jong*, Decision No. 89 [1990], para. 33.

66. In view of the above jurisprudence, the Tribunal will address the admissibility of the following claims raised in this Application: (i) the FY23 non-inclusion claim; (ii) the temporary assignment claim; and (iii) the misconduct claim.

FY23 non-inclusion claim

67. The Tribunal notes that the Applicant was first informed on 3 January 2023, by email, of his ineligibility to participate in the FY23 batch rotation exercise. In that email, the Applicant was expressly informed by the Senior HR Business Partner that “[t]he rotations are for staff that has been four years in the assignment, and the person has to come with a position. You are not four years into the assignment, and we do not have a position.”

68. The Tribunal observes that, on 11 January 2023, the Applicant wrote to the Water Global Director and the Vice President, Sustainable Development requesting to be included in the batch rotation.

69. The Tribunal further observes that, on 18 January 2023, the Vice President, Sustainable Development wrote back to the Applicant. The Tribunal notes that the Vice President, Sustainable Development did not respond to the Applicant's request to be included in the batch rotation, instead stating that, as the Applicant may be recovered from his STD in July 2023, then the six-month administrative leave and the job search period associated with the redundancy may begin, and that the Applicant may count on management's support for his job search efforts.

70. The Tribunal notes that the Applicant submitted Request for Review No. 604 on 30 May 2023 raising three claims, including non-inclusion in the FY23 batch rotation exercise. The Tribunal further notes that, in the Applicant's Request for Review No. 604, he stated, "January 4, 2023 – Received clarification from [the Senior HR Business Partner] that I am not included in the Batch Rotation as I do not come with a position." The Applicant also stated in Request for Review No. 604, "January 18, 2023 – [the Vice President, Sustainable Development] informs me of not being included in the Batch Rotation [...]."

71. The Tribunal observes that, on 2 January 2024, the Peer Review Panel dismissed the Applicant's FY23 non-inclusion claim for lack of jurisdiction, as the claim was untimely filed under Staff Rule 9.03. The Peer Review Panel concluded:

The Panel considered the PRS filing requirement contained in Staff Rule 9.03, paragraph 8.01, which provides that "[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." Under Staff Rule 9.03, paragraph 8.02, "[a] staff member receives 'notice' of a disputed employment matter when s/he receives written notice or ought reasonably to have been made aware that the disputed employment matter occurred."

The Panel found that on January 3, 2023, [the Applicant] was first informed of his ineligibility to participate in the FY23 Batch Rotation, and that the January 18, 2023 email was a mere confirmation of the January 3, 2023 notification. From January 3, 2023, the deadline to file with PRS would have been May 3, 2023. [The

Applicant] filed his RFR on May 30, 2023, which is more than 120 calendar days. The Panel noted that even if the date of January 18, 2023 is taken as the date when [the Applicant] was notified of his ineligibility to participate in the Batch Rotation, the claim would still be untimely as the deadline to file would have been May 18, 2023. Therefore, the Panel dismissed the claim as untimely, pursuant to Staff Rule 9.03, paragraph 11.03 (b) (i).

72. The Tribunal agrees with the Peer Review Panel’s decision as it is consistent with Staff Rule 9.03 and the record before the Tribunal. Accordingly, the Tribunal also concludes that the Applicant did not file his FY23 non-inclusion claim with PRS in a timely manner and therefore failed to exhaust internal remedies in a timely manner.

Whether there were exceptional circumstances to excuse the late filing of the FY23 non-inclusion claim

73. Given the Tribunal’s finding that the Applicant did not file his FY23 non-inclusion claim with PRS in a timely manner, the next question to address is “whether there existed in the instant case exceptional circumstances under Article II, paragraph 2 [...], of the Statute of the Tribunal.” *Guya*, Decision No. 174 [1997], para. 4. Article II(2) provides an exception to the late filing of an application and failure to timely exhaust internal remedies on the basis of “exceptional circumstances.”

74. The Applicant has the burden to show that “exceptional circumstances” exist. *See Hristodoulakis*, Decision No. 296 [2003], para. 17. In *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30, the Tribunal articulated its approach to cases where “exceptional circumstances” are at issue, stating:

The jurisprudence of the Tribunal is well-established regarding the treatment of exceptional circumstances. In all such cases the Tribunal has followed a strict approach so as to prevent the undermining of statutory limitations. Exceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent “contemporaneous proof.” [...] Alleged unawareness of the grievance mechanisms or ignorance of the law do not constitute such exceptional circumstances. (*Dey*, Decision No. 279 [2002], paras. 16 and 17; *Means*, Decision No. 298 [2003], para. 12.)

75. In determining whether exceptional circumstances exist, the Tribunal takes into account several factors, including “the extent of the delay and the nature of the excuse invoked by the [a]pplicant.” *Yousufzi*, Decision No. 151 [1996], para. 28. In *Malekpour*, Decision No. 320 [2004], para. 22, the Tribunal stated that the circumstances invoked by an applicant must have imposed “real and serious impediments” to fulfilling the statutory requirements in Article II(2) of the Tribunal’s Statute, and not be a “[m]ere inconvenience.” *See also Hristodoulakis* [2003], para. 17.

76. In the present case, the Applicant does not explicitly allege exceptional circumstances but rather asserts that he timely exhausted internal remedies with respect to his FY23 non-inclusion claim – despite the Peer Review Panel’s dismissal of the claim – because the March to May 2023 mediation tolled the clock on the claim. He contends that the Peer Review Panel failed to correctly apply Staff Rule 9.03, paragraph 8.03, which, in his view, rendered his claim timely. Specifically, the Applicant asserts that he entered mediation on this issue within 120 days of it arising, on 13 March 2023, and states that, when mediation was unsuccessful, he filed his Request for Review No. 604 with PRS 10 days later on 22 May 2023, well within the 30-day window provided under Staff Rule 9.03, paragraph 8.03. Further, the Applicant contends that the mediation in question concerned the same “disputed employment matter” at issue in Request for Review No. 604 – the Applicant’s FY23 non-inclusion claim.

77. The Bank contends that the Applicant’s assertion that the mediation process in connection with Request for Review No. 573 should have tolled the filing deadline for what later became Request for Review No. 604 lacks merit. Specifically, the Bank asserts that the claims within Request for Review No. 604, including the FY23 non-inclusion claim, are distinct from the claims addressed in the earlier mediation related to Request for Review No. 573, which dealt with the FY22 non-inclusion claim and other issues. To the Bank, since the disputed employment matters in these two Requests for Review are separate, the referral to Mediation Services in Request for Review No. 573 does not toll the filing deadlines for the unrelated claims in Request for Review No. 604. Further, the Bank asserts that the Applicant’s reliance on Staff Rule 9.03, paragraph 8.03, is misplaced because the rule applies only when a staff member requests mediation, and in the present case it was PRS – not the Applicant – that referred the parties to mediation under Request for Review No. 573.

78. The Tribunal observes that, on 31 May 2022, the Applicant submitted Request for Review No. 573 (which was supplemented on 3 June 2022), which challenged (i) management's decision to not shortlist and select him for a position as part of the FY22 batch rotation exercise in the Water GP and (ii) redundancy. The record shows that, on 16 June 2022, the Peer Review Panel referred the matter to Mediation Services and that Mediation Services referred the case back to PRS on 1 September 2022 as the parties could not reach an agreement.

79. The record shows that the Peer Review Panel referred the parties to Mediation Services for a second time in early 2023. In the Peer Review Panel's Report in Request for Review No. 573, the Peer Review Panel explained its reason for the second referral, stating:

On January 11, 2023, during the People and Culture (PAC) (formerly HR) Vice Presidency Unit (VPU)'s virtual Townhall for all WB staff, the Chairs of the Talent Councils, the Chair of the Staff Association (SA), and the PAC Vice President, discussed the WB's 2022 internal mobility exercise (Townhall). On February 16, 2023, the Panel met to discuss outstanding matters. The Panel noted that, at the Townhall, Management stated that it was addressing the apparent shortcomings of the 2022 mobility exercise through the recent changes it had made to have increased flexibility, shared responsibility, and consistency in the way it ensures the mobility of staff. Therefore, the Panel decided to refer [the parties] back to [Mediation Services]. On March 13, 2023, the PRS Secretariat referred the case back to [Mediation Services] and stayed the Proceedings. [...] On May 12, 2023, [Mediation Services] advised the PRS Secretariat that [the parties] could not reach an agreement on the issues and referred the case back to PRS for further review. Accordingly, the PRS Secretariat lifted the stay and the Proceedings resumed on May 18, 2023.

80. The Tribunal notes that the Applicant did not submit his Request for Review No. 604, which contained his FY23 non-inclusion claim, until 30 May 2023.

81. The Tribunal considers that the record is clear that PRS's second referral of the parties to Mediation Services was made pursuant to the Applicant's Request for Review No. 573, in an effort for the parties to reach an amicable resolution on the specific claims raised in that Request for Review – namely, the (i) FY22 non-shortlisting claim related to the FY22 batch rotation in the Water GP and (ii) redundancy claim. In PRS's memorandum referring the parties to Mediation

Services, dated 13 March 2023, the subject line states, “Request for Review No. 573 [the Applicant] [–] Peer Review Panel’s Decision to Refer the Parties to Mediation Services,” and the memorandum refers only to the specific disputed employment matters submitted under Request for Review No. 573. The memorandum states in part:

Given the above statements made during the Townhall and the fact that [the Applicant] is mapped to the SD [Sustainable Development] Global Practice Group, the Panel decided to refer the parties to [Mediation Services]. The Panel noted your previous inability to reach an amicable resolution of the disputed employment matters (i.e., non-shortlisting for a position during the 2022 batch recruitment and redundancy) through [Mediation Services] in June – September 2022. The Panel hopes that, in light of the clarifications provided by Management at the January 11 [2023] Townhall, you will now be able to reach an amicable resolution of the disputed matters.

82. The Tribunal observes that the memorandum makes no reference to any claim by the Applicant related to the FY23 batch rotation. In fact, the Tribunal notes that, at the time of PRS’s second mediation referral, the Applicant had not even made a formal FY23 batch rotation–related claim as he filed his Request for Review No. 604 (which included his FY23 non-inclusion claim) on 30 May 2023, approximately two and a half months after the referral. The Tribunal cannot accept the Applicant’s assertion that the Peer Review Panel referred him to mediation to resolve his FY23 non-inclusion claim – a claim that was not submitted under Request for Review No. 573 and a claim that did not exist until 30 May 2023 when it was submitted under Request for Review No. 604. PRS referred mediation of the Applicant’s FY22 claims raised under Request for Review No. 573. Therefore, it cannot be questioned that disputed employment matters under Request for Review No. 573 and under Request for Review No. 604 are different, and the PRS-referred mediation in March 2023 did not include disputed employment matters under Request for Review No. 604.

83. When the Applicant requested PRS to reconsider its decision that it lacked jurisdiction over the FY23 non-inclusion claim under Request for Review No. 604, PRS in rejecting the request explained:

The Panel noted that the Referral [for mediation] was issued in a separate Request for Review (i.e., RFR No. 573), in which [the Applicant] challenged (1)

management's decision not to shortlist and select him for a position as part of the Fiscal Year 2022 (FY22) batch recruitment ("Non-Shortlisting Decision") and (2) management's decision to make his position redundant ("Redundancy Decision"). The Panel noted that the disputed employment matters in RFR No. 573 (the Non-Shortlisting Decision and the Redundancy Decision) are different from the disputed employment matters in RFR No. 604 (i.e., (a) "[n]on-inclusion in the [Fiscal Year] 2023 (FY23) Water [Global Practice (GP)] Batch Rotation phase" ("Batch Rotation Decision"), (b) "non-authorization of ending of Telecommute from May 26, 2021 until March 22, 2022" ("Telecommuting Decision"), and (c) "unfair treatment in the FY23 Batch [R]ecruitment phase" ("Unfair Treatment Claim"). The Panel noted that it referred the parties to [Mediation Services] for [the Applicant's] claims in RFR No. 573, and not for his claims in RFR No. 604.

84. Furthermore, the Tribunal observes that the Applicant's reliance on Staff Rule 9.03, paragraph 8.03, is misplaced because the rule applies only when a staff member requests mediation within the 120-day deadline for filing a Request for Review, giving the staff member the greater of 30 calendar days or the remainder of the 120 calendar days to submit a Request for Review following the termination of an unsuccessful mediation. In this case, the Applicant did not request mediation, but rather the Peer Review Panel referred the parties to Mediation Services twice in Request for Review No. 573.

85. The Tribunal considers that there is no scope for the Applicant to confuse the deadline for filing a Request for Review in cases of PRS-referred mediation as opposed to Applicant-requested mediation. The Tribunal observes that the issue of a deadline for filing a Request for Review does not arise in the case of a PRS-referred mediation because the Applicant has already filed the Request for Review. The Tribunal observes that PRS-referred mediations are governed by Staff Rule 9.03, paragraph 11.03(a), which states that, "[a]t any stage in a proceeding, a Panel may [...] [r]efer a matter to [Mediation Services]." The Tribunal further observes that PRS expressly informed the Applicant about this provision on 13 March 2023 in its mediation referral memorandum.

86. Importantly, the Tribunal is not convinced that PRS's 16 May 2023 email response to the Applicant somehow misled the Applicant or otherwise made him believe that the time tolling provision in Staff Rule 9.03, paragraph 8.03, applied to his FY23 non-inclusion claim. In the Applicant's 12 May 2023 email to PRS, it is clear that the Applicant was referring to filing a new

Request for Review to challenge the new FY23 non-inclusion claim because he stated that he was preparing a Request for Review to challenge the “HR decision” in the Vice President, Sustainable Development’s 18 January 2023 email.

87. The Applicant’s email also stated that mediation in Request for Review No. 573, which had been conducted on 8 May 2023, had been “concluded without an agreement.” Therefore, it was reasonable to conclude that PRS’s email response was referring to a future mediation that the Applicant may request regarding the 18 January 2023 decision and what deadline would apply in such a situation. It is not reasonable to conclude that the Applicant was misled that the concluded mediation somehow tolled the filing deadline for his anticipated new Request for Review. First, time tolling provisions to file a Request for Review do not apply in PRS-referred mediation. Second, neither of the two PRS-referred mediations in Request for Review No. 573 included the 18 January 2023 decision. And third, there was no ongoing mediation as the Applicant informed PRS that mediation was concluded without an agreement in Request for Review No. 573. In short, the Tribunal is not convinced that the Applicant was misled by PRS’s 16 May 2023 response regarding the applicability of time tolling provisions for his new FY23 non-inclusion claim.

88. In view of the foregoing, the Tribunal finds that there are no exceptional circumstances excusing the late submission of the Applicant’s FY23 non-inclusion claim to PRS. Consequently, the Tribunal finds that the Applicant failed to exhaust internal remedies due to untimeliness, and the Tribunal rejects the claim as inadmissible.

Temporary assignment claim

89. The Bank contends that the Applicant’s challenge to the temporary assignment decision fails to meet the Tribunal’s requirements of timeliness and exhaustion of remedies and should be dismissed.

90. The Tribunal observes the Applicant’s assertion, in response to the Bank, that he is not challenging the temporary assignment decision but is instead challenging the redundancy decision. The Tribunal further notes the Applicant’s contention that he “is not asserting a standalone claim

on this issue” and is simply contending that the temporary assignment decision, along with other managerial actions, amounted to career mismanagement and ultimately led to his redundancy.

91. In view of the Applicant’s clarification that he is not challenging the temporary assignment decision as a standalone claim, and the parties’ agreement that his redundancy claim is timely, the Tribunal finds that it need not decide whether the Applicant exhausted internal remedies with respect to the temporary assignment decision. Thus, at the merits stage the Tribunal will not address the temporary assignment decision as an independent and separate claim. The Tribunal, however, may consider facts relating to the temporary assignment decision to the extent relevant in its review of the Applicant’s redundancy claim at the merits stage.

Misconduct claim

92. The Bank contends that the Applicant’s challenge to EBC’s decision to close the case related to his misconduct claim is untimely and should be dismissed. Specifically, the Bank asserts that the EBC decision of 17 April 2024 to not reopen its inquiry into the Applicant’s claims constitutes a mere confirmation of the previous decision to close the case on 7 December 2022. The Bank further asserts that the “Applicant cannot toll the time limit by requesting an administrative review of the EBC [d]ecision of December 7, 2022.”

93. The Applicant contends that EBC’s 17 April 2024 decision is a new decision, not merely confirmation of the 7 December 2022 decision, because it constituted EBC’s evaluation – or at least opportunity to evaluate – significant information beyond what was available to it in 2022. To the Applicant, the fact that EBC ultimately reached the same conclusion is irrelevant. The Applicant further contends that EBC’s 17 April 2024 decision was necessarily substantively different than its 7 December 2022 decision because it was based on new information that was not available at the time the case was initially closed.

94. The Tribunal observes that the Applicant contacted EBC in April 2022 and sometime in “mid-2022” to raise concerns of discrimination, harassment, and creation of a hostile work environment by his former Practice Manager and current management team related to his treatment

with respect to the Romania mission, reassignment to a temporary position, non-inclusion in the FY22 batch rotation exercise, and redundancy.

95. The Tribunal notes that, on 7 December 2022, EBC notified the Applicant that it was closing its case following a “preliminary review” of his allegations due to an “insufficient factual basis to proceed to the formal investigation stage.” EBC further stated, “Please note that EBC reserves the right to reopen its review should new evidence become available or facts change.”

96. The Tribunal observes that, on 23 February 2024, the Applicant wrote to EBC requesting that it reopen its review “as new evidence is available and facts have changed.” The Tribunal observes that the Applicant submitted a lengthy summary of his allegations (approximately 15 printed pages) as well as nine specific pieces of additional information for EBC to evaluate:

- (i) 10 November 2023 decision of the Administrative Review Panel (ARP) awarding Worker’s Compensation;
- (ii) 10 January 2024 “PRS report and filings of [the Applicant] and management on [Request for Review No. 573];
- (iii) Communications with Health and Safety Directorate (HSD) of December 2022–January 2023 and with senior management of January 2023;
- (iv) May–November 2023 PRS filings on Request for Review No. 604;
- (v) November 2022 Worker’s Compensation Claim;
- (vi) 3 August 2023 Worker’s Compensation Claim;
- (vii) 2020-2022 verbatim transcripts of meetings with management;
- (viii) 2023 witness statements submitted as part of Worker’s Compensation Claims; and
- (ix) 31 January 2024 referral to EBC from Broadspire representative regarding the issues raised in [the Applicant’s] Worker’s Compensation Claims.

97. The Tribunal observes that EBC responded to the Applicant on 17 April 2024, stating that it had reviewed the Applicant’s request to reopen its review of his allegations that it had closed in December 2022. EBC stated that, based on the information shared by the Applicant, it did not see any basis to reopen the review. EBC further stated, “The concerns described below are substantively similar to those we reviewed in 2022 and further to our review of the information you have shared, we have determined that our previous conclusions remain valid.”

98. The Tribunal notes that EBC has no deadlines to report misconduct, as opposed to other conflict resolution units, such as PRS, that have strict filing deadlines. Moreover, due to the potential ongoing nature of misconduct, as opposed to the singular and final nature of an administrative decision, it is understandable that the investigative process can be reopened upon receipt by EBC of newly submitted information and facts to warrant a review of that newly submitted information, and subsequently, a new decision on whether or not to reopen the preliminary review or investigation.

99. In the present case, the Tribunal finds that EBC's 17 April 2024 decision not to reopen the case was not a mere confirmation of its December 2022 closure decision, but rather a new decision based on its review of evidence newly submitted by the Applicant. The Tribunal notes that, following the Applicant's request to reopen its review, EBC accepted and considered the evidence newly submitted by the Applicant, and reached a conclusion based on its review of this evidence, which the Tribunal considers to be a new decision. This review and decision-making process was confirmed by EBC's email to the Applicant on 17 April 2024, informing him that EBC had reviewed the newly submitted evidence but still reached the same conclusion to close the review.

100. The Tribunal observes that, following receipt of EBC's new decision not to reopen the case, the Applicant timely filed his Application with the Tribunal on 13 May 2024, within 120 days of the EBC decision, challenging EBC's decision not to reopen the review. Based on the foregoing, the Applicant's claim is timely, and the Bank's preliminary objection of this issue is denied. This claim will be heard on merits.

CONCLUSION

101. In conclusion, the Tribunal upholds the Bank's preliminary objection with respect to the Applicant's FY23 non-inclusion claim and rejects the Bank's preliminary objection with respect to the Applicant's misconduct claim. Furthermore, in view of the Applicant's clarification that he is not challenging the temporary assignment decision as a standalone claim, the Tribunal finds that it need not decide whether the Applicant exhausted internal remedies with respect to the temporary assignment decision.

DECISION

- (1) The Tribunal finds inadmissible the Applicant's FY23 non-inclusion claim due to failure to timely exhaust internal remedies;
- (2) The Tribunal accepts jurisdiction in respect of the Applicant's misconduct claim; and
- (3) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$6,000.00 for the preliminary objection phase of the proceedings.

/S/Janice Bellace
Janice Bellace
President

/S/ Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 18 October 2024