



The Bench

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Newsletter of the World Bank Administrative Tribunal

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Tribunal Welcomes New Judges

Three new judges have joined the Administrative Tribunal, bringing extensive and diverse experience to its deliberations.

Martha Halfeld Furtado de Mendonça Schmidt, a Brazilian national, comes to the Tribunal after serving as a labor judge in Brazil and on the United Nations Appeals Tribunal and the Inter-American Development Bank Administrative Tribunal. Judge Halfeld has a PhD and a master’s in law from the Université Panthéon-Assas (Paris II), France. She has taught at the National Judicial Training Centre for Labor Judges in Brazil and has written more than 40 articles on subjects from human rights to international labor standards.

Thomas Laker, from Germany, served as Judge and President of the United Nations Dispute Tribunal in Geneva and as Presiding Judge at the Administrative Tribunal in Hamburg. Judge Laker is currently serving as the Chairperson of the Panel of Adjudicators of the Organization for Security and Co-operation in Europe and is also a member of the Administrative Tribunals of several international organizations, including the United Nations Relief and Works Agency for Palestine Refugees in the Near East. He brings ample experience in formal conflict resolution and co-authored the “Handbook on the Internal Justice System at the United Nations.”

Raul Pangalangan, a national of the Philippines, sat in landmark cases involving war crimes and crimes against humanity while serving as a Judge at the International Criminal Court at The Hague. He teaches

constitutional law and public international law at the University of the Philippines where he was previously Law Dean. Judge Pangalangan is currently co-chair of the *Asian Journal of International Law* and editor-in-chief of the *Philippine Yearbook of International Law*. A member of the Permanent Court of Arbitration (The Hague), he has also been elected to the Institut de Droit International.

The new judges participated in their first session from April 29 to May 3, when the Tribunal issued seven judgments and one order.



Top left: Judge Martha Halfeld Furtado de Mendonça Schmidt

Top right: Judge Thomas Laker

Bottom left: Judge Raul Pangalangan

Upcoming Events

Session Overview

On September 18, 2024, join the virtual presentation that will share key developments and summarize the Tribunal’s newest decisions. The session overview is a forum for staff and stakeholders to ask questions about the judgments and express their views.

Fall 2024 Session Dates

The Tribunal’s next session will begin on October 15, 2024.

Tribunal Stresses Importance of Transparency in Staffing Decisions

In *HM v. IBRD*, the Tribunal considered the implications of a batch rotation—or mobility—exercise, a relatively new exercise that affects many staff members. The Staff Association has previously [shared staff concerns](#) about inconsistencies in how the process is managed. The applicant in this case challenged his non-selection during such a mobility exercise along with the non-extension of his term appointment following the exercise. Before bringing his case to the Tribunal, the applicant submitted a request for peer review; during that proceeding, his manager gave two reasons for the decision not to extend his term appointment: (1) the applicant’s non-selection during the mobility exercise and (2) a regional time limit that applied to his appointment.

The Tribunal determined, first, that it did not have jurisdiction to review the non-selection decision because of the applicant’s late filing. However, because the Bank cited that decision as a basis for its non-extension decision, the Tribunal determined that it could consider relevant facts about the non-selection decision. In examining aspects of that decision, the Tribunal found that the decision-making body, the Talent Board, kept records of its decisions in the mobility exercise but not of its reasoning for not assigning the applicant. The Tribunal noted that, as with any managerial decision procedure, batch rotation selections must reflect transparent deliberations. Here, however, the Tribunal saw “nothing in the record to demonstrate the Talent Board’s consideration of the matching and assignment factors [...] or the position descriptions posted [...]” (para. 118). It therefore could not “review whether there was a ‘lack of demand’ for the [a]pplicant, as alleged by the Bank [...]” (para. 121).

Finding that the mobility exercise outcome lacked transparency and sufficient documentation, the Tribunal did not accept that the outcome reasonably explained the decision not to extend the applicant’s appointment. The Tribunal also noted that the applicant’s manager mistakenly applied a regional term limit of five years, which should have been eight years as specified by the staff guide on the Bank’s global mobility framework. Finally, the Tribunal emphasized that reasons for end-of-employment decisions should be provided in writing when the decision is communicated to a staff member. The Bank was ordered to pay the applicant 21 months’ net salary.

Although the applicant’s delay in filing his non-selection claim limited the Tribunal’s review of the batch rotation exercise, this case highlights two important issues. First, it emphasizes the importance of keeping some record of the basic reasoning for decisions that affect staff members. Second, it demonstrates a need to improve communication and training for managers so that they can apply policies, like that of regional term limits, correctly.

“**The Tribunal observes nothing in the record to demonstrate the Talent Board’s consideration of the matching and assignment factors [...] or the position descriptions posted in the Compass portal. [...] The Tribunal considers that the documentation does not provide a transparent deliberation procedure amenable to judicial review.**”

– *HM*, Decision No. 704,
para. 118

Tribunal Reaffirms Need for Bank Practices to Conform with Staff Rules

In *HK v. IBRD*, the Tribunal considered whether the Bank could deny a Mobility Premium to a staff member who satisfied the requirements in the Staff Rules. The Bank had determined that explicit language in the applicant's Letter of Appointment (LOA) made him ineligible to receive a Mobility Premium. The applicant challenged this determination as conflicting with Staff Rule 6.21.

The Tribunal first considered the discrepancy between the LOA and the Staff Rules. Despite the LOA's terms, the applicant appeared to be eligible for a Mobility Premium under Staff Rule 6.21. The Tribunal found that, because the LOA stated that the Staff Rules would prevail in case of a conflict, Staff Rule 6.21 should determine his eligibility.

Next, the Tribunal examined the long-standing practice in the Information and Technology Services Vice Presidency (ITS) of not offering Mobility Premium benefits to otherwise-eligible staff members. Acknowledging that an organization's practice can form part of the conditions of employment, the Tribunal nevertheless found the ITS practice not binding because it conflicted with the Bank's written rules. The Tribunal noted that Staff Rule 6.21 "provides that a waiver may be granted" to the rule but that "the Bank had not issued any such waiver" at the time of the applicant's appointment (para. 76).

Finally, the Tribunal considered the ITS Waiver issued later by the Bank, which codified ITS's practice of not offering Mobility Premium benefits. Despite the original conflict between the LOA and Staff Rule 6.21, the Tribunal found that the Mobility Premium was not "a fundamental and essential term" of the applicant's appointment because it was not a part of his original bargain with the Bank (paras. 81 and 82). Consequently, the Tribunal determined that the ITS Waiver applied to the applicant. It ordered the Bank to pay the applicant's Mobility Premium benefits from his start date to the effective date of the ITS Waiver.

Tribunal Case Sheds Light on Bank's Duty of Care to Staff

In *HN v. IBRD*, the Tribunal considered the level of care required of the Bank and its Health and Safety Directorate (HSD). The applicant—who lived and worked in a fragile and conflict-affected country—claimed that the Bank breached its duty of reasonable care as her medical condition worsened.

Upon becoming ill, the applicant provided HSD with information from her local doctors. HSD reviewed her records and encouraged her to follow the prescribed treatment. Receiving follow-up information, HSD advised her to apply for out of country care (OCC). As it received more information in the following months, HSD again advised the applicant to request OCC, which she did. It later approved and coordinated her non-emergency medical evacuation (NEME) to Spain. Throughout that time, HSD responded to the applicant's inquiries, reviewed records, and engaged with her insurance company to expedite OCC approval. Unfortunately, doctors in Spain found that she had cancer.

The Tribunal reviewed the medical records provided to HSD and found nothing that met the conditions in Staff Rule 6.07, paragraph 4.05, for a NEME. It noted that HSD responded to the applicant's communications with concrete steps and specific advice. In determining the reasonableness of those actions and advice, the Tribunal considered what the Bank knew or should have known at the time—rather than what information became available later. It found that the Bank acted entirely reasonably in terms of the advice provided and actions taken to ensure the applicant received adequate medical care.

Recognizing "that susceptibility, generally, to personal illness is part of the human condition," the Tribunal stated, "The Bank's duty cannot and does not extend to insulating staff members from all risk of developing a personal illness" (para. 97). The judgment emphasized that HSD does not have a doctor-patient role but instead facilitates staff members' access to health care, especially staff members in countries with limited health care options.

Judgments address timeliness and unfair treatment

The World Bank Administrative Tribunal heard eight cases in its May 2024 session. One case, *HI v. IBRD*, involved a preliminary objection and was dismissed. Six cases were heard on the merits: *HK v. IBRD*, *HL v. IFC*, *HM v. IBRD*, *HN v. IBRD*, *HO v. IBRD*, and *HP v. IFC*. *HJ v. IBRD* was withdrawn by the applicant and the Tribunal issued an order dismissing the application.

In *HL v. IFC*, the applicant, in connection with her non-selection for a position, challenged the application of a testing policy during the selection process. Finding that the application of the testing policy was not retroactive and that the IFC employed a fair and reasonable procedure in granting exemptions during the selection process, the Tribunal dismissed the application. The Tribunal also dismissed the application in *HO v. IBRD*, in which the applicant challenged the Bank's denial of workers' compensation benefits for certain treatments obtained by the applicant for a respiratory illness secondary to mold exposure in the workplace. The Tribunal determined that the decision of the Administrative Review Panel denying the benefits was reasonably sustainable on the basis of the evidence and that there were no procedural violations in the administration of the applicant's claim.

In *HP v. IFC*, the applicant challenged, among other things, the non-renewal of her term appointment as substantively unfounded, as improperly motivated by discrimination and hostility on the manager's part for the applicant's need to telecommute from D.C. due to medical need, and as retaliatory and procedurally flawed. In considering the non-renewal decision, the Tribunal recalled that the IFC rescinded its earlier redundancy decision and noted that the applicant was not afforded the redundancy benefits of the Staff Rules. The Tribunal considered that the IFC was required to provide some information to the applicant for her to understand the reasons for the non-renewal and found that the IFC did not meet this requirement. The Tribunal found, however, that the IFC's reason for the non-renewal was honest and not pretextual and considered that the applicant should have properly invoked any rules which may have excused her from relocating to her duty station but did not do so. The Tribunal found the non-renewal decision was not an abuse of discretion relating to the applicant's health and was satisfied that the decision was not improperly motivated by discrimination or hostility and was not retaliatory. Dismissing the applicant's remaining claims, the Tribunal ordered that the applicant be paid three months' net salary for the IFC's failure to provide sufficient reasons for the non-renewal decision and \$5,000.00 towards legal fees and costs.

The text and summaries of all the Tribunal's judgments and orders may be found [here](#).



Top row (from left to right): Farkanda Haseen, Devon Bromfield, Kaara Martinez, Zakir Hafez, Tara Ippoliti, Robert Newman
Bottom row (from left to right): Judges Thomas Laker, Ann Power-Forde, Seward Cooper, Janice Bellace, Lynne Charbonneau, Martha Halfeld Furtado de Mendonça Schmidt, Raul Pangalangan