



World Bank Administrative Tribunal

2021

Decision No. 654

**Chantal Andriamilamina (No. 4),
Applicant**

v.

**International Finance Corporation,
Respondent**

(Preliminary Objection)

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

**Chantal Andriamilamina (No. 4),
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and with the participation of Judges Andrew Burgess (President), Marielle Cohen-Branche (Vice-President), and Ann Power-Forde.
2. The Application was received on 2 September 2020. The Applicant represented herself and was assisted by Monika Bileris, Esq. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant is challenging the IFC's decision to make her employment redundant, the Peer Review Services dismissal of her Request for Review No. 459, and a Performance Management Review of managerial decisions regarding her Fiscal Year 2018 (FY18) performance evaluation and performance rating.
4. The IFC filed preliminary objections to the Application on 22 October 2020. This judgment addresses the IFC's preliminary objections.

FACTUAL BACKGROUND

5. The Applicant joined the IFC on 2 September 1997 as an Investment Officer (IO). She was promoted to Principal Investment Officer on 1 July 2010. Throughout her employment with the IFC, the Applicant has worked in many sectors, and, in August 2012, she joined the Manufacturing, Agribusiness and Services (MAS) department and served as a Principal Investment Officer, Grade Level GH.

6. In July 2017, the Applicant was transferred from the Agribusiness Unit to the Health and Education Unit (H&E) of the MAS department. According to the Applicant, this reassignment was due to management's acceptance of a January 2017 Administrative Review recommendation, pertaining to her FY16 performance evaluation, to change her reporting away from her former supervisor, Ms. R. The Applicant states that her transfer to H&E took place in the context of an "IFC Reorganization and Workforce Planning" period, and in the context of a "readjustment of the Corporation's organizational structure, and a process of re-mapping/reassignment of selected staff across global and regional lines, before the rebalancing of the grade structure and associated staff cuts were executed."

7. According to the Applicant, before her transfer to H&E was "formally confirmed to all relevant MAS managers in late July," she and her new H&E supervisor (Supervisor) discussed the Applicant's FY18 objectives which were to include "the processing and closing of three MAS transactions and getting up to speed on the H&E sectors." The Applicant also states that she "accepted [the Supervisor's] proposal to primarily assign her on H&E projects in Africa [...]" According to the Applicant, "four events derailed the agreed work plans and [led] to decisions, inactions and actions, including retaliation, that harmed and mismanaged [her] career instead of allowing a fresh start with a new team as expected."

8. The Applicant outlines these four events as follows:

- a) The appointment of [Ms. R] as Regional Industry Head for MAS in LAC [Latin America and the Caribbean] on August 16, 2017, only three weeks after [...] [the] decision to transfer [the] Applicant to the Global H&E Unit (whose primary objective was supposedly to create a healthy distance i.e. reduce risk of retaliation, with [Ms. R]);
- b) [The] Applicant's decision to appeal the PRS [Peer Review Services], PMR [Performance Management Review] and EBC [Ethics and Business Conduct Department] decisions through a consolidated application with the Administrative Tribunal on November 15, 2017;
- c) The appointment of [...] [the] IFC's VP [Vice President] for Africa and MENA [Middle East and North Africa] (VP), announced on December 8, 2017 and effective January 2018, and his retaliation against [the] Applicant by blocking

her business and administrative mapping to the MAS teams in the Africa and MENA region; and

- d) The implementation of IFC's organizational realignment and Workforce Planning throughout FY18/19, with the latter focusing strongly on the reduction of Grade H and G2 staff in HQ [headquarters].

9. The Applicant received notice on 4 October 2018 of her FY18 performance evaluation and Salary Review Increase (SRI) rating of 3.

10. On 3 December 2018, the Applicant requested Administrative Review of her FY18 performance rating and performance evaluation. The remedies the Applicant sought from the Administrative Reviewer included changing her SRI rating, amending her performance evaluation comments, and reviewing options for interim assignments outside MAS.

11. On 2 January 2019, the Administrative Reviewer provided MAS management with findings and recommendations. The Administrative Reviewer recommended maintaining the performance rating of 3, but noted that the performance evaluation was "not quite balanced." The Administrative Reviewer recommended "[r]evision of the FY18 performance evaluation supervisor's comments to better reflect some of [the] positive feedback received from the Feedback Providers." Management revised the performance evaluation accordingly.

12. On 1 February 2019, the Applicant filed Request for Review No. 459 with Peer Review Services (PRS). She stated the "Disputed Employment Matter(s)" as "[c]ontinued career mismanagement stemming from the design of objectives and work program, breach of due process during the Mid-Year Review, unfair Mid-Year review comments, and unfair annual FY18 evaluation." She stated that she received notice of these disputed employment matters on "October 4, 2018, date of communication of FY18 SRI and thus completion of the FY18 performance evaluation cycle."

13. In her Request for Review, the Applicant stated as follows:

This peer review is requested to evaluate and remedy the continued mismanagement of my career at IFC, which stems from unfair FY18 performance

evaluation, denial of due process with respect to my FY18 Mid-Year Review and feedback discussion, and management's failure to provide a work program commensurate with the quantitative business objectives set for me in FY18.

For a full background, this request should be examined in conjunction with the information provided in my Administrative Review (AR) request, the AR Findings, and the PMR request concerning my FY18 performance evaluation. The AR was completed on January 2nd 2019 and the decision maker accepted its recommendations on January 3rd, 2019. The PMR request will be submitted on February 2nd, 2019.

I refer to continued career mismanagement because my career prospects and professional reputation have been irremediably damaged by decisions made by members of MAS management throughout the past three performance cycles, starting in FY16. A first claim of career mismanagement was submitted to and partially examined by PRS in 2016/17. In December 2018, I filed with the Administrative Tribunal claims concerning my FY17 performance evaluation and the mismanagement of my career throughout FY16/17. This Peer Review submission focuses on the mismanagement of my career during the FY18 performance cycle. (Emphasis in original.)

14. Additionally, in her Request for Review, the Applicant described the following "Key Issues" with respect to her FY18 work program and performance evaluation:

a) My supervisor was unable to provide me a suitable work program in H&E[.]

[...]

b) I was forced by [the VP] and his new team to withdraw completely from the SanLei project in Lesotho after the project obtained unequivocal Sr. Management approval to proceed to due diligence, and my supervisor had no say.

[...]

c) My mapping to the Africa region (either by formal mapping or the assignment of a core regional business territory) has not been implemented.

[...]

d) Due process to discuss the two Agribusiness Transaction Managers' respective feedback on the HAID and SanLei projects before the finalization of Mid-Year Review was denied to me.

[...]

- e) As confirmed by the findings of the FY18 Administrative Review, the evaluation failed to recognize some of the strengths identified by the multi-rater feedback providers that are particularly relevant for the execution of the IFC 3.0 strategy. This reflects a historical pattern and might serve the purpose of the workforce planning i.e. set me up for poor performance and eventually, exit.
- f) My SRI of 3 does not reflect the fact that I consistently exceeded expectations on critical aspects of the competency framework for IOs (the strengths that have been repeatedly underrated over the past three fiscal years such as the demonstrated ability to work well across the WBG [World Bank Group] and with external development partners).

15. Also on 1 February 2019, the Applicant requested a Performance Management Review (PMR) of managerial decisions regarding her FY18 performance evaluation and performance rating. She stated:

I am requesting a Performance Management Review of my FY18 Performance Evaluation because the evaluation is not balanced, and due process was violated during the mid-year review, resulting in arbitrary comments from the relevant transaction managers. These together with the inability of my supervisor to provide me a work program and business territory on par with other Principal IOs in the H&E Unit are contributing to the continued mismanagement of my career at IFC. I have submitted a separate PRS request [...].

16. In an email dated 2 April 2019, IFC management notified the Applicant of the Performance Management Reviewer's recommendations. Based on the revision of the Applicant's FY18 Staff Annual Review, the Performance Management Reviewer recommended that management not take any other actions in response to the Applicant's PMR Request. The Applicant was also informed that the Performance Management Reviewer noted that, "in view of the history of the conflicts during the last three years of [the Applicant's] employment in MAS, it would be beneficial if [the Applicant] could be moved to another department in IFC or elsewhere in the World Bank Group." The IFC Chief Operating Officer (COO) declined to accept this recommendation regarding transferring the Applicant and informed the Applicant accordingly.

17. On 10 April 2019, the Supervisor confirmed via email to the Applicant that the Applicant's position was "being affected by business changes within CMGCS [MAS Global – H&E]," and would be abolished. Further, the Applicant was informed that she was not matched for

reassignment during the reassignment phase of the “Workforce Planning exercise” and based on the business needs of the IFC. The Applicant was asked to inform management by 26 April 2019 as to whether she was willing to separate voluntarily.

18. In an email dated 26 April 2019, the Applicant informed her Supervisor that she was “not prepared to accept a [Mutually Agreed Separation] on the standard terms offered to all staff asked to accept involuntary separation,” and stated that she “come[s] into this process with major existing claims that [she is] unwilling to waive.” The Applicant stated that, “[i]f a tailored [Mutually Agreed Separation] cannot be envisaged, [she] would opt for redundancy, without waiving [...] any of [her] existing claims and rights to appeal to all relevant judicial instances.”

19. The Applicant received a Notice of Redundancy memorandum from the IFC COO dated 29 May 2019. The Applicant was placed on a six-month administrative leave beginning on 1 July 2019.

20. The Applicant’s employment with the IFC ended on 31 December 2019.

21. On 22 February 2020, the PRS Executive Secretary issued a memorandum regarding “Request for Review No. 459 (Chantal Andriamilamina) Panel’s Decision to Dismiss the Request for Review.” The PRS Panel concluded that all claims in the Applicant’s Request for Review No. 459 were either untimely or outside of PRS subject-matter jurisdiction under Staff Rule 9.03 and dismissed the Applicant’s claims in their entirety. Specifically, the PRS Panel found the Applicant’s claims regarding the alleged failure to provide her with a suitable work program in H&E, the alleged failure to remove her from the SanLei project, and the alleged refusal to map her to the Africa region were untimely. The PRS Panel further found that the Applicant’s claim of an alleged due process failure in her FY18 performance evaluation, her claim that her FY18 performance evaluation failed to recognize her key strengths, and the Applicant’s challenge to her FY18 SRI rating were all outside the subject-matter jurisdiction of the PRS Panel.

22. On 17 April 2020, the Applicant requested an extension of time to file an application with the Tribunal. The President of the Tribunal granted the Applicant an extension until 31 July 2020 to file an application.

23. On 20 July 2020, the Applicant requested a second extension of time to file an application. The President of the Tribunal granted the Applicant an extension until 31 August 2020.

24. On 31 August 2020, the Applicant requested a third extension of time to file an application. The President of the Tribunal granted the Applicant an extension until 2 September 2020.

25. On 2 September 2020, the Applicant filed her Application with the Tribunal.

26. This is the Applicant's fourth application with the Tribunal. In her first application before the Tribunal, the Applicant challenged the reassignment of two projects from her work program for FY16, her FY16 performance evaluation, her performance cycle for FY17, and the IFC's alleged mismanagement of her career. With respect to these claims, the Tribunal, in *EQ (Preliminary Objection)*, Decision No. 584 [2018], upheld the IFC's preliminary objection regarding the Applicant's claims relating to her FY17 performance cycle and alleged career mismanagement. In *EQ (Merits)*, Decision No. 595 [2018], the Tribunal addressed the Applicant's claims regarding her FY16 work program and FY16 performance evaluation, and dismissed them.

27. In her second application before the Tribunal, the Applicant challenged her FY17 performance evaluation and alleged that the IFC failed to act fairly in the management of her career. In *Andriamilamina (No. 2)*, Decision No. 614 [2019], the Tribunal found there was "a reasonable and observable basis for the substance of the performance evaluation," and dismissed the career mismanagement claim, "finding no basis." *Id.*, para. 111.

28. Finally, in her third application with the Tribunal, the Applicant sought a revision of *EQ (Merits)* [2018] invoking Article XIII of the Tribunal's Statute. The Tribunal dismissed this application in *Andriamilamina (No. 3) (Preliminary Objection)*, Decision No. 620 [2019].

29. In the present Application, the Applicant challenges
- a) the [...] decision to make her employment redundant, as per Notice of Redundancy dated May 29, 2019 and received by [the] Applicant June 5, 2019;
 - b) the PRS decision to dismiss her PRS [Request for Review No.] 459, dated February 22, 2020;
 - c) the undated Performance Management Review (PMR) of [the] Applicant's FY18 performance evaluation, submitted to the IFC COO on March 28, 2019; and
 - d) the [IFC's] decision regarding the PMR recommendations, dated April 2, 2019.
30. The Applicant seeks compensation in the amount of four years' salary based on her last salary before termination, as well as legal fees and costs in the amount of \$9,485.00. The Applicant also seeks
- a) Access to her Talent Review ratings and assessments as recorded in HR [Human Resources] files;
 - b) [A] Restoration Letter;
 - c) Moral damages in the amount of US\$200,000; [and]
 - d) All other relief as the Tribunal may deem just and appropriate.
31. On 22 October 2020, the IFC filed preliminary objections challenging several of the Applicant's claims as inadmissible before the Tribunal.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The IFC's Contentions

32. The IFC contends that the Applicant's claims regarding the mismanagement of her career – that is, alleged “irregularities with regard to the set-up of [the] Applicant's annual objectives and work program, her performance evaluations, and her assignments in the context of [the] IFC's

reorganization” – are inadmissible due to untimeliness, a failure to timely exhaust internal remedies, or the principle of *res judicata*.

33. The IFC contends that the Applicant failed to meet the Tribunal’s Article II(2)(ii) jurisdictional requirements with respect to her claims regarding performance management decisions, specifically, her FY18 SRI rating of 3 and her FY18 performance evaluation. To the IFC, the Applicant was required to submit her Application to the Tribunal within 120 days of 2 April 2019, the date she was informed of “management’s decision to adopt the Performance Management Reviewer’s recommendation not to take any action.” The IFC contends that the Applicant has failed to show the existence of any exceptional circumstances which would excuse her untimely filing.

34. The IFC further claims that the Applicant’s first submission to the Tribunal was on 17 April 2020, and asserts that the submission extension she requested from the Tribunal on that date did not pertain to the FY18 performance management decisions. The IFC contends that, contrary to any assertions by the Applicant, the PRS decision of 22 February 2020 is irrelevant to the performance management claims because PRS does not constitute an available remedy for purposes of Article II(2)(ii)(b) of the Tribunal’s Statute as, pursuant to Staff Rule 9.03, paragraph 7.04(h), PRS is prohibited from reviewing performance management decisions. The IFC contends that the Applicant’s PRS proceedings with respect to FY18 matters are therefore not relevant to the FY18 performance management claim and, further, notes that, according to the Applicant, she declined to join the PRS and PMR proceedings.

35. The IFC draws on *FM (Preliminary Objection)*, Decision No. 631 [2020], paras. 108–109, to support its claims of untimeliness on the part of the Applicant and to contend that her PRS filing is irrelevant:

[E]ach separate claim before the Tribunal must be filed in a timely manner within the requirements of Article II(2).

The Tribunal is mindful that it might be burdensome for staff members to file an appeal from jurisdictional decisions made by PRS, especially if they have multiple other claims before PRS that proceed to the merits phase. In such circumstances,

staff members may seek guidance from the PRS Secretariat or the Tribunal Secretariat regarding the best course of action. For example, in a case where a staff member receives a jurisdictional dismissal of a claim but has other pending claims before PRS, the staff member can request an extension of time from the Tribunal to file an application challenging those dismissed claims until the PRS process is complete. The Tribunal has granted such requests in the past.

In the IFC's view, "[t]he same principle must apply where a staff member has various claims pending and decided in different internal administrative review fora." The IFC also highlights that the Applicant was told by the PRS Secretariat that she should seek advice on admissibility from the pertinent Internal Justice Services entity.

36. Finally, with respect to the Applicant's claim regarding FY18 performance management decisions, the IFC contends that the Applicant's request for a stay of proceedings from the Tribunal in *Andriamilamina (No. 2)* [2019] in order to consolidate her then-pending application with claims pending in other internal administrative fora does not relieve the Applicant of the requirement of a timely application to the Tribunal with respect to the FY18 performance management decisions. The IFC contends that, even if the submission deadline was tolled during this period, the clock would have restarted on the date the Applicant was notified of the Tribunal's denial of her request for a stay and consolidation – 7 October 2019. As the Applicant filed her first request for an extension of time to file the Application on 17 April 2020, the IFC asserts that she is beyond the 120-day limit imposed by Tribunal Statute, Article II(2).

37. The IFC also contends that the Applicant's career mismanagement claims pertaining to her assignments and work program in FY18 are inadmissible for failure to timely exhaust internal remedies. The IFC submits that the Applicant failed to bring her complaints in these respects to PRS within "120 days of receiving notice or becoming otherwise aware of the disputed employment matter" as required by Staff Rule 9.03. More specifically, the IFC submits that FY18 ended on 30 June 2018 and that the Applicant submitted her PRS Request for Review on 1 February 2019. To the IFC, this time frame "is significantly more than 120 days later than any conceivable management action or decision towards [the] Applicant in FY18," and the IFC notes that PRS rejected these claims as untimely.

38. With respect to the Applicant’s career mismanagement claim, articulated by the Applicant as a pattern involving “actions/decisions” in FYs 16, 17, 18, and 19 which cumulatively, allegedly, put the Applicant at a disadvantage, the IFC asserts that these claims are also inadmissible as *res judicata*, for failure to exhaust internal remedies, or for untimeliness.

39. The IFC contends that, should this claim be taken to constitute “a distinct claim of *continued* career mismanagement over the period FY16-FY19,” it is inadmissible for failure to exhaust internal remedies as the Applicant did not bring such claim to PRS, but rather focused “specifically and expressly” on FY18 in PRS Request for Review No. 459. (Emphasis in original.) Conversely, the IFC contends that, should this claim be understood as “in relation to specific acts during FY 16–19,” such claim would still be inadmissible. In this regard, the IFC asserts the following:

- The Applicant’s claim pertaining to “an alleged failure to align quantitative objectives with adequate assignment [...] is *res judicata*,” as it was reviewed by the Tribunal in *Andriamilamina (No. 2)* [2019].
- The Applicant’s claim regarding reassignment in FY18 is barred for failure to timely exhaust internal remedies.
- The Applicant’s claim regarding underrating her strengths in FY17 and FY18 is *res judicata* with respect to the former and untimely with respect to the latter.
- The Applicant’s claim regarding undue criticism of her in FY18 is untimely as it pertains to FY18 performance management decisions.
- The Applicant’s claim concerning access to her Talent Review ratings and assessments formed part of her application in *Andriamilamina (No. 2)* [2019] and is *res judicata*.
- The Applicant has not exhausted any internal remedies relating to claims in FY19, and thus her claim pertaining to her FY19 work program and FY19 performance evaluation process is inadmissible. According to the IFC, the Applicant concedes that she has not exhausted internal remedies with respect to any management acts from FY19 and has not brought any independent claims in this regard beyond the redundancy claim.

40. The IFC also asserts that, in response to its preliminary objections, the Applicant “proceeds to set out specific components of the alleged mismanagement of her career,” and it “concludes that

[the] Applicant therefore intends to continue to separately pursue her claim concerning the management of her career [...].”

41. Additionally, the IFC contends that the Applicant’s claims of due process violations by PRS pertaining to her claims of career mismanagement are also inadmissible. The IFC maintains that the “Applicant cannot circumvent her failure to address her claims, which have not been previously adjudicated, in the appropriate internal forum and to do so in a timely manner by introducing her claims under the guise of a ‘due process violation’ by PRS, which are outside of the Tribunal’s scope of review.” The IFC submits that these claims are “outside the Tribunal’s jurisdiction *ratione materiae* according to Article II(1) of the Tribunal’s Statute.” Further, the IFC contests the Applicant’s assertion that the PRS Executive Secretary agreed to PRS jurisdiction over her claims. In the IFC’s view, the Applicant herself submits that “she was informed repeatedly and expressly about the need to file a formal complaint with respect to various violations in different fora [...].”

42. The IFC concedes that the Applicant’s claim regarding the termination of her employment due to redundancy is properly before the Tribunal and does not address the merits of this claim in its preliminary objections.

The Applicant’s Response

43. The Applicant asserts that her claims of continued career mismanagement are admissible as they are timely and have not been previously adjudicated, and as she has exhausted internal remedies.

44. The Applicant contends that the IFC seeks to “dismiss her overarching claim of mismanagement of her career by the IFC,” and she submits that the IFC seeks to push “against a holistic review of the elements of [her] claims, so that the links in the contested management decisions are severed and their considerable negative cumulative impact on [her] professional reputation, career and professional prospects after her termination are ignored.” To the Applicant, the IFC engaged in irregularities with respect to her annual objectives and work program,

performance evaluations, and assignments. The cumulative impact of these alleged irregularities in the context of the IFC's reorganization, the Applicant contends, "amounted to the mismanagement of her career and led to her eventual termination."

45. The Applicant further contends that her career mismanagement "is intrinsically intertwined with the wrongful termination of her employment contract," in that, had her career "not been so badly mismanaged, her open-ended contract would likely have been maintained [...]."

46. The Applicant asserts that the purpose of the PMR "was to have an independent review of her FY18 performance evaluation issues, the findings of which would inform the PRS Review of her continued career mismanagement claims [...]." She submits, with respect to the IFC's contention that she needed to appeal the IFC's decision regarding the PMR recommendation by 2 August 2019, that "it was difficult for her to launch a new case" due to her redundancy as of 1 July 2019, "the acceleration of the proceedings with WBAT Cases Nos 18/23 and 19/7, and the delayed response of the Tribunal and [the IFC] regarding her request for a consolidation of the PMR, PRS, and EBC cases with WBAT case 18/23." The Applicant further asserts that PRS delayed the hearing process without considering her expressed concerns about the consequences.

47. The Applicant maintains that her claims before PRS "have been arbitrarily reframed to her detriment." She contends that the purpose of her Request for Review was to evaluate the continuing mismanagement of her career, which she submits "stemmed from the cumulative negative impact of a series of actions, inactions and decisions of [...] management on her career prospects in the context of [the] IFC's reorganization." The Applicant submits that during the PRS intake meeting she asked PRS to examine both the impact of decisions and actions taken in FY18 and "how they confirmed patterns of practices and inconsistencies that were observables [*sic*] across consecutive performance cycles." She claims that "[t]he PRS Executive Secretary fully supported the proposed scope of review [...]" but that the PRS Panel unilaterally reframed her claims and "completely skipped the holistic review of patterns of practices regarding the substance of [her] work program and performance evaluation across three consecutive performance cycles, i.e., FY 16/17/18 [...]."

48. The Applicant asserts that “[t]imeliness is the first test to be met by a request for review” and that, “[b]ased on the PRS procedures, if [her] claims were not timely, such conclusion should have been communicated to [her] before PRS requested [the] Applicant’s Manager to submit her Response and before appointing a Panel [...]” Further, she contends that “[j]urisdiction is the second test to be met by a request for review, before a Manager is requested to respond,” and claims that PRS confirmed it had jurisdiction over her career mismanagement claims during her intake meeting on 28 February 2019.

49. In the Applicant’s view, PRS acted in bad faith. She contends that

PRS deliberately waited until the Administrative Tribunal had issued its judgments in [her] cases (WBAT 18/23 and WBAT 19/7) to issue its decision, and presented inconsistent rationales for its decision on timeliness and jurisdiction in order not to contradict the arguments presented by the Tribunal to dismiss [her] claims of mismanagement [of] her career through to FY16/17.

50. The Applicant submits that her FY19 performance evaluation and SRI were communicated to her in September and October of 2019 respectively when she was on administrative leave, and that issues related to this performance cycle are to be reviewed as part of her redundancy claim. From the Applicant’s perspective, “[t]here was no point launching yet another set of separate Administrative Review and Performance Management Review [...]”

51. The Applicant insists that PRS “extensively abused its discretion and violated [her] due process rights,” and she claims there are “structural shortcomings of the [PRS] in terms of its independence and fairness [...]” The Applicant suggests that these shortcomings “and the loopholes in the procedures regarding PRS jurisdiction and procedures for career mismanagement claims that stem from annual objectives and performance evaluation related issues” should be addressed at the institutional level, but she asks the Tribunal to consider the negative impact of these issues which she contends are violations of her due process rights.

52. The Applicant asserts that the Tribunal has found that patterns of conduct may show career mismanagement and that the Tribunal has accepted jurisdiction in cases of termination and career mismanagement which involved “a series of management actions over an extended period.”

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

53. The parties agree that the Applicant's redundancy claim is properly within the Tribunal's jurisdiction.

54. In addition to the redundancy claim, the Applicant also challenges (i) "the undated Performance Management Review (PMR) of [the] Applicant's FY18 performance evaluation, submitted to the IFC COO on March 28, 2019;" (ii) "the IFC COO's decision regarding the PMR recommendations, dated April 2, 2019"; and (iii) "the PRS decision to dismiss her PRS [Request for Review No.] 459, dated February 22, 2020."

55. The IFC raises preliminary objections contending that the Applicant's claims relating to FY18 performance management-related decisions, FY18 assignments and work program, and allegations of career mismanagement are inadmissible before the Tribunal on jurisdictional grounds. Further, the IFC contends that the Applicant's claims of violations of due process by PRS are also inadmissible before the Tribunal on jurisdictional grounds. The IFC's preliminary objections are considered below.

PERFORMANCE MANAGEMENT CLAIM

56. Staff Rule 9.06, paragraph 3.01, states:

Administrative Review is the first step for requesting review of a Performance Management Decision and must be exhausted before seeking Performance Management Review. Administrative Review is conducted by the World Bank Group Human Resources Vice President, or an official designated by the World Bank Group Human Resources Vice President, who considers whether management acted within its discretion, satisfied its obligations to the staff member, and followed proper procedures in connection with the Performance Management Decision under review. Peer Review Services (PRS) does not review Performance Management Decisions. Staff members must seek Administrative Review and Performance Management Review of a Performance Management Decision prior to submitting an Application to the World Bank Administrative Tribunal (WBAT).

And Staff Rule 9.07, paragraph 3.02, provides:

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). If the staff member is not satisfied with the decision resulting from the Performance Management Review, or if the Decision-maker does not make a decision within the specified time period provided, the staff member may file an Application to the World Bank Administrative Tribunal (WBAT).

57. On 4 October 2018, the Applicant received notice of her FY18 performance evaluation and SRI rating of 3. Pursuant to Staff Rules 9.06 and 9.07, the Applicant undertook the processes of Administrative Review and Performance Management Review for the purposes of contesting her FY18 performance evaluation and SRI rating.

58. On 2 April 2019, the Applicant was notified of the IFC COO’s decision regarding the PMR recommendation.

59. Article II of the Tribunal’s Statute provides:

1. 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. [...]
2. 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.

60. The Tribunal finds it clear that the Applicant's challenge to the FY18 performance evaluation and SRI rating of 3, as reviewed through the PMR process and IFC management and as communicated to the Applicant on 2 April 2019, is untimely before the Tribunal. The Applicant first approached the Tribunal on 17 April 2020, when she requested and was granted an extension of time to file an application. This date, however, is clearly beyond the 120-day requirement of Tribunal Statute, Article II(2)(ii)(b). Accordingly, the Applicant's claim contesting her FY18 performance evaluation and SRI rating of 3 is out of time and therefore inadmissible.

61. Further, the Applicant has not provided any "exceptional circumstances" which would excuse her untimely filing as contemplated in Tribunal Statute, Article II(2). The Applicant states:

[The IFC] contends that [the] Applicant has failed to appeal the PMR Decision made by the IFC COO regarding her FY18 performance evaluation by the August 2, 2019 deadline and did not invoke exceptional circumstances to justify not meeting the time limit. This is not accurate. In her application, [the] Applicant explained that the primary purpose of the PMR review was to have an independent review of her FY18 performance evaluation issues, the findings of which would inform the PRS Review of her continued career mismanagement claims [...]. [The] Applicant also explained that, as a result of the very difficult circumstances she faced during the summer of 2019 as a result of her redundancy, the acceleration of the proceedings with WBAT Cases Nos 18/23 and 19/7, and the delayed response of the Tribunal and [the IFC] regarding her request for a consolidation of the PMR, PRS and EBC cases with WBAT case 18/23 [...], it was difficult for her to launch a new case. Considering that [the] Applicant was already declared redundant as of July 1st, 2019, her focus and hope were on making prompt and positive progress on the PRS process, while waiting for the Tribunal's decisions on WBAT Cases Nos 18/23 and 19/7. Unfortunately, PRS has kept delaying the Hearing process, ignoring [the] Applicant's repeated expressions of concerns about the consequences. Furthermore, the PRS Case Dismissal memo dated February 22, 2020 shows no evidence that the PMR's findings were taken into account in the Panel's analysis.

62. The Tribunal finds these assertions by the Applicant unconvincing with respect to constituting "exceptional circumstances" as contemplated in the Tribunal's Statute. The Applicant suggests that "it was difficult for her to launch a new case" as a result of her notification of

redundancy and her pending cases with the Tribunal during the summer months of 2019. However, the Applicant's alleged difficulties in using the Bank Group's Internal Justice Services cannot constitute exceptional circumstances for purposes of Article II. The Tribunal has emphasized a "strict approach" with respect to finding exceptional circumstances which "cannot be based on allegations of a general kind but require reliable and pertinent 'contemporaneous proof.'" *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30. The Applicant received the IFC's decision regarding the PMR recommendation on 2 April 2019, and the deadline to timely file an application with the Tribunal would have been 31 July 2019, several weeks after the Applicant's notification of redundancy dated 29 May 2019 and which the Applicant states that she received on 5 June 2019. This seems to the Tribunal to be sufficient time to contemplate and pursue the proper avenues of redress, particularly for an applicant who has previously availed herself of the Bank Group's Internal Justice Services as she was entitled to do. The Tribunal concludes that the Applicant has not presented any grounds upon which her failure to timely file with the Tribunal would be excusable.

63. With respect to FY19, the record does not indicate that the Applicant has pursued any internal remedies. She states that her FY19 performance evaluation and SRI were communicated to her on 27 September 2019 and 30 October 2019, respectively, while she was on administrative leave. The Applicant contends: "Her redundancy was effective July 1st, 2019. Thus, all FY19 performance cycle related issues are to be reviewed as part of the redundancy case. There was no point launching yet another set of separate Administrative Review and Performance Management Review [...]."

64. Again, the Tribunal finds this position unconvincing. The Tribunal has emphasized the importance of exhausting internal remedies as required by Tribunal Statute, Article II(2). *See, e.g., Berg*, Decision No. 51 [1987], para. 30. The Tribunal finds that the Applicant has not timely filed her performance management claims as explained with respect to FY18, and it finds her claims pertaining to performance management decisions in FY19 are also inadmissible for failure to exhaust internal remedies.

FY18 ASSIGNMENTS AND WORK PROGRAM

65. The Applicant is challenging the decision of PRS with respect to her Request for Review No. 459, which she received on 22 February 2020. The IFC raises a preliminary objection to the Applicant's claims in relation to her FY18 work program and assignments, contending that these claims are inadmissible for failure to timely exhaust internal remedies. At the outset, the Tribunal notes that the Applicant's challenge of the PRS decision is within the 120-day time frame of Tribunal Statute, Article II, given that her first contact with the Tribunal requesting an extension of time for her Application was on 17 April 2020. Therefore, should the Tribunal find that PRS incorrectly dismissed any of the Applicant's claims, such claims may be properly before the Tribunal given that the Applicant has made a timely application to the Tribunal following the completion of the PRS process.

66. All of the Applicant's claims before PRS were dismissed on jurisdictional grounds as either untimely or outside of the subject-matter jurisdiction of PRS. As stated in *Al-Muthaffar (Preliminary Objection)*, Decision No. 502 [2014], para. 49, "[...] in its examination of whether an applicant has exhausted internal remedies in a timely manner pursuant to its Statute and jurisprudence, the Tribunal must of necessity examine whether an applicant brought his or her claim in a timely manner before PRS and the decision of PRS on such request for review." The Tribunal therefore reviews jurisdictional findings of PRS in the course of examining its own jurisdiction over the claims raised by the Applicant. *See BJ*, Decision No. 443 [2010], para. 29.

67. The IFC contends that PRS correctly dismissed all of the Applicant's claims. The Applicant's claims pertaining to her FY18 performance evaluation and SRI rating of 3 were dismissed by PRS as outside its subject-matter jurisdiction. As outlined above, pursuant to Staff Rules 9.06 and 9.07, Administrative Review and Performance Management Review are the appropriate avenues of redress for claims regarding performance management decisions, and Staff Rule 9.03, paragraph 7.04, states with respect to PRS:

Panels do not review Requests for Review concerning:

[...]

- h. the following decisions regarding performance management: (i) a Staff Member's written performance evaluation; (ii) a Staff Member's performance rating; (iii) the decision to place a Staff Member on an Opportunity to Improve (OTI) plan, or (iv) the terms governing a Staff Member's OTI plan.

The Tribunal therefore finds that these claims were appropriately dismissed by PRS for lack of subject-matter jurisdiction and are indeed inadmissible before the Tribunal as already discussed.

68. PRS also dismissed on the basis of untimeliness the Applicant's claims regarding "failure to provide [the Applicant] with a suitable work program in H&E," "[r]emoval from the SanLei project in Lesotho," and "[a]lleged refusal to map [the Applicant] to the Africa region." The IFC contends that all of these claims pertain to the Applicant's work program for FY18, which concluded on 30 June 2018. Staff Rule 9.03, paragraph 8.01, sets the time limits for submitting a Request for Review with PRS at "within 120 calendar days of receiving notice of the disputed employment matter." And Staff Rule 9.03, paragraph 8.02, states, "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." The IFC avers that, pursuant to Staff Rule 9.03, paragraphs 8.01 and 8.02, the Applicant's claims with respect to her work program and assignments should have been brought to PRS within 120 days of 30 June 2018, the conclusion of FY18. As the Applicant's Request for Review was filed on 1 February 2019, the IFC contends that these claims were out of time and are inadmissible for failure to timely exhaust internal remedies.

69. The Tribunal finds this position convincing. Moreover, through emails from the VP dated 22 July 2017, the Applicant in fact received clear instructions regarding her FY18 work program and that she would be re-mapped. The Tribunal is of the view that she had 120 days from this date for her claim to be timely before PRS.

70. As the Tribunal has held with respect to the statutory requirement to exhaust internal remedies, "[t]o the extent such remedies are subject to time requirements, failure to seek them in a timely fashion is equivalent to failure to use them, and thus a jurisdictionally fatal failure of exhaustion." *Sharpston*, Decision No. 251 [2001], para. 26. *See also FM (Preliminary Objection)*

[2020], paras. 85–86. In the Tribunal’s view, PRS correctly dismissed as untimely the Applicant’s claims pertaining to her FY18 assignments and work program. The Applicant’s failure to adhere to the time limits for submitting her claims to PRS constitutes a failure to exhaust internal remedies as required by Tribunal Statute, Article II. *See also Moss*, Decision No. 571 [2017], paras. 55–56. Accordingly, the Tribunal concludes that the Applicant’s claims pertaining to her FY18 assignments and work program are inadmissible.

DUE PROCESS CLAIM

71. The Applicant makes various allegations of violations of her due process rights by PRS, including with respect to timeliness and delays, and the cancellation of a hearing in her case. The IFC contests the admissibility of the Applicant’s claims of due process violations by PRS, on the basis that such claims are “outside the Tribunal’s jurisdiction *ratione materiae* according to Article II(1) of the Tribunal’s Statute.”

72. The Tribunal’s jurisprudence has established that it “is not an appellate body reviewing the proceedings, findings and recommendations of the Appeals Committee [now PRS]” (*Lewin*, Decision No. 152 [1996], para. 44) and that it “does not micromanage the activities of such a body” (*Yoon (No. 11)*, Decision No. 433 [2010], para. 16).

73. The PRS Panel’s decision memorandum dismissing the Applicant’s Request for Review indicates that the Applicant’s claims have been duly considered, with conclusions as well as rationale provided for each of the “Key Items” raised by the Applicant in her Request for Review. Additionally, the Panel requested additional documentation in the course of its review and replaced two Panel Members at the Applicant’s request. Further, while Staff Rule 9.03, paragraph 11.05, states that “[t]he peer review process shall generally include a hearing [...],” paragraph 11.06 goes on to explain,

The Panel may issue a recommendation based on the written submissions without a hearing when: (i) the Requesting Staff Member so requests; (ii) it appears based upon review of the written submissions that there are no genuine issues of material fact; (iii) the Requesting Staff Member has failed to make himself/herself available

for a hearing within 90 days after the Responding Manager submits his/her Response; or (iv) the Panel determines that it is not feasible to conduct a hearing.

Under Staff Rule 9.03, therefore, the PRS Panel may proceed without a hearing and on the basis of written submissions.

74. Accordingly, the Tribunal finds that the record does not indicate that there has been any violation of the Applicant's fundamental due process rights for which the Tribunal's intervention would be necessary. The Tribunal remains reluctant to opine on how PRS should administer its internal processes, and reiterates that "it is not for the Tribunal to review challenges to procedural decisions made by PRS." *DK (Preliminary Objection)*, Decision No. 537 [2016], para. 76. The Tribunal concludes that the Applicant's claims of due process violations by PRS are inadmissible considering the circumstances of the present case.

CAREER MISMANAGEMENT CLAIM

75. The IFC contends that the Applicant presents her claim of career mismanagement in two different formulations, both of which are nonetheless inadmissible before the Tribunal. First, the IFC contends that, if the Applicant's claim is "a distinct claim of *continued* career mismanagement over the period FY16–FY19," then she has failed to exhaust internal remedies because she did not bring this specific claim to PRS in her Request for Review No. 459 but, rather, focused on career mismanagement stemming from FY18. (Emphasis in original.) For her part, the Applicant contends that her "claims before PRS have been arbitrarily reframed to her detriment" and that "the Panel completely skipped the holistic review of patterns of practices regarding the substance of [the] Applicant's work program and performance evaluations across three consecutive performance cycles, i.e., FY16/17/18 as agreed with the PRS Secretary and in-house counsel during the February 2019 intake meeting [...]."

76. In this respect, the Tribunal recalls the Applicant's Request for Review. As the "Disputed Employment Matter(s)," the Applicant stated, "Continued career mismanagement stemming from the design of objectives and work program, breach of due process during the Mid-Year Review,

unfair Mid-Year review comments, and unfair annual FY18 evaluation.” Further, the Applicant explained in her Request for Review:

I refer to continued career mismanagement because my career prospects and professional reputation have been irremediably damaged by decisions made by members of MAS management throughout the past three performance cycles, starting in FY16. A first claim of career mismanagement was submitted to and partially examined by PRS in 2016/17. In December 2018, I filed with the Administrative Tribunal claims concerning my FY17 performance evaluation and the mismanagement of my career throughout FY16/17. This Peer Review submission focuses on the mismanagement of my career during the FY18 performance cycle. (Emphasis in original.)

77. Given the Applicant’s own language – “This Peer Review submission focuses on the mismanagement of my career during the FY18 performance cycle” – the Tribunal concludes that the Applicant has not made a distinct claim of continued career mismanagement before PRS. And, in this regard, the PRS Panel decision memorandum noted, “[The Applicant] indicated that by this [Request for Review], she specifically challenged the alleged mismanagement of her career in the FY18 performance cycle.” The Tribunal concludes that the Applicant’s distinct claim of continued career mismanagement is now inadmissible for failure to exhaust internal remedies.

78. Second, the IFC contends that, if the Applicant’s career mismanagement claim is understood by the Tribunal to relate to specific acts which occurred during FY16 to FY19, such a claim is inadmissible as *res judicata*, for failure to timely exhaust internal remedies, or due to untimeliness. The specific acts which the IFC contends are inadmissible are the Applicant’s claim pertaining to the alleged failure to align quantitative objectives with adequate assignments as *res judicata*; the Applicant’s claim regarding her reassignment in FY18, for failure to timely exhaust internal remedies; the Applicant’s claim regarding underrating her strengths in FY17 as *res judicata*; the Applicant’s claim regarding underrating her strengths in FY18 as untimely; the Applicant’s claim regarding undue criticism of her in FY18 as untimely; the Applicant’s claim concerning access to her Talent Review ratings and assessments as *res judicata*; and the Applicant’s claim pertaining to her FY19 work program and FY19 performance evaluation process, for failure to exhaust internal remedies.

79. The IFC’s contentions on these claims have already been discussed in respect of timeliness and failure to exhaust internal remedies.

80. With respect to the principle of *res judicata*, the Tribunal emphasizes that, pursuant to Article XI(1) of the Tribunal’s Statute, “Judgments shall be final and without appeal.” As stated in *Mpoy-Kamulayi (No. 7)*, Decision No. 477 [2013], para. 27, “[o]nce the Tribunal has spoken, that must end the matter; no one must be allowed to look back to search for grounds for further litigation.” Thus, the Tribunal’s judgments are final, and the Tribunal has repeatedly held that claims which have been previously adjudicated are “irreceivable under the principle of *res judicata*.” *Andriamilamina (No. 2)* [2019], para. 97, citing *Madabushi*, Order No. 2002-10 [2002], para. 4. See also *González Flavell (Nos. 5 and 7) (Preliminary Objection)*, Decision No. 603 [2019], para. 94.

81. The Tribunal has explained that two conditions must be met for the application of *res judicata* – “that the parties are the same in both cases and that the substance of the claim is essentially the same in both applications.” *González Flavell (No. 4) (Preliminary Objection)*, Decision No. 597 [2018], para. 40, citing *B (No. 2)*, Decision No. 336 [2005], para. 39. In *Andriamilamina (No. 2)* [2019], the Tribunal found that the Applicant’s claim of career mismanagement as it related to and was based on facts that had been addressed by the Tribunal in *EQ (Merits)* [2018] was irreceivable under the principle of *res judicata*, and the Tribunal noted that it “will therefore not entertain any attempt by the Applicant to have this claim reexamined.” *Andriamilamina (No. 2)* [2019], para. 98. The Tribunal further noted in para. 99

that it has also “rejected the notion that incidents inadmissible as claims may be incorporated into present proceedings as ‘background evidence’” (*Sekabaraga*, Decision No. 494 [2014], para. 36); or to prove a “pa[t]tern of injustice and unfair dealing” (*EE*, Decision No. 148 [1996], paras. 34–35). For this additional reason, the [a]pplicant’s claim of career mismanagement as it relates to and is based on facts that have been addressed by the Tribunal in its previous judgment in the [a]pplicant’s case will not be reviewed by the Tribunal.

82. The Tribunal has previously considered claims relating to the Applicant’s FY16 work program and allegations of wrongful reassignment, claims regarding her FY16 performance evaluation, claims regarding the Applicant’s FY17 performance cycle and FY17 performance

evaluation, and allegations of career mismanagement, as well as requests by the Applicant for access to her Talent Review ratings and assessments for FYs 15, 16, 17, and 18. *See EQ (Preliminary Objection)* [2018]; *EQ (Merits)* [2018]; *Andriamilamina (No. 2)* [2019]. The Tribunal upholds the IFC’s assertions that these claims are indeed irreceivable under the principle of *res judicata*.

83. The Tribunal will consider the issue of legal fees and costs at the merits stage of the proceedings.

DECISION

- (1) The IFC’s preliminary objections pertaining to the Applicant’s claims regarding FY18 performance management–related decisions, FY18 assignments and work program, career mismanagement, and violations of due process by PRS are upheld; and
- (2) The Tribunal will address on the merits the Applicant’s claim regarding the “decision to make her employment redundant, as per Notice of Redundancy dated May 29, 2019 and received by [the] Applicant June 5, 2019.”

/S/ Andrew Burgess

Andrew Burgess

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 7 June 2021

* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.