



World Bank Administrative Tribunal

2020

Decision No. 643

**FM,
Applicant**

v.

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

(Merits)

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

**FM,
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 Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 3 September 2019. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges, *inter alia*, (i) the Bank's failure to implement its agreement to pay the Applicant in U.S. dollars (USD) in a timely manner; (ii) the placement of the Applicant on Short-Term Disability (STD); (iii) the non-confirmation of the Applicant's employment and the extension of her probationary period; (iv) the alleged mismanagement of the Applicant's career resulting in her constructive discharge; and (v) the decision of the Workers' Compensation Administrative Review Panel (ARP) to deny the Applicant's application for workers' compensation.

FACTUAL BACKGROUND

4. The Applicant is an Italian national who worked at the Bank from 2002 to 2006 on various Short-Term Consultant appointments. Prior to her most recent employment at the Bank, the Applicant had established herself as a health and nutrition specialist in international development, having worked for several international agencies and international development organizations, and in tropical countries such as Zambia, Pakistan, Haiti, Ethiopia, and Sierra Leone, where she worked for a year between 2009 and 2010. The Applicant has degrees in International Relations,

Emergency and Development, and Public Health, as well as certificates in Emergency Health, Epidemiology, and Biostatistics.

5. On 28 July 2015, the Bank posted the position of Health Specialist for a three-year term appointment in Freetown, Sierra Leone. The job posting notes “N” next to the words “International Hire,” denoting that the position was not for “International Hire.” The Applicant applied for the position.

6. On 1 October 2015, the then Practice Manager of the Health, Nutrition, and Population (HNP) Global Practice offered the Applicant the position after she had undergone a competitive selection process. The Applicant replied by email the following day that she would be happy to accept but that she needed more information regarding the employment conditions before proceeding. The Applicant claims that the Practice Manager told her that the salary for the position would be approximately \$75,000.00 but did not mention in what currency the salary would be paid.

7. On 24 November 2015, the Applicant received a letter from a Human Resources (HR) Business Partner that stated that the Bank “intends to offer” her the Health Specialist position. The proposed salary was listed as Sierra Leonean Leones (SLL) 164,600,000 per year. The Applicant claims that at the time this amount was equal to approximately \$40,000.00. The letter also stated that the Applicant was eligible for Localization Plus benefits plus 50% of her annual net salary as a Scarce Skills Premium (SSP). The offer included a probationary period of one year.

8. In January 2016, the Applicant exchanged emails and telephone calls with HR and the Health and Safety Directorate (HSD). On 15 and 17 January 2016, the Applicant emailed HR Operations to inquire about the relocation process from Zambia, where she had been working, to Freetown, Sierra Leone, as well as about a retirement pension, residential security, and hazard or hardship allowances. She stated in the email of 17 January 2016 that she was “worried because of the local recruitment status instead of international.”

9. On 25 January 2016, the Applicant received a Letter of Appointment dated 22 January 2016 for a three-year term appointment as a Health Specialist, Level GF, with the HNP Global Practice, to be based in Freetown, Sierra Leone. The letter stated that the Applicant's appointment would be effective as of 17 March 2016 and would be subject to local recruitment for a probationary period of one year, which could be extended by one additional year. The letter listed her initial salary as SLL 164,600,000 per year.

10. Also on 25 January 2016, the Applicant received a Memorandum of Indefinite Assignment (Assignment Memo) to Freetown, Sierra Leone. On 28 January 2016, HR sent the Applicant a revised Assignment Memo. This Memo was further revised on 26 May 2016 to change the date the Applicant entered into service and the SSP amount of her first quarter. The Assignment Memo specified that all allowances and benefits would be paid to the Applicant in the currency of her salary. The Assignment Memo also listed certain benefits and allowances the Applicant would receive. These included relocation benefits, which comprised a subsistence grant for a pre-assignment visit, a grant for the travel costs associated with the relocation, and either payment and handling of shipping costs for the shipping of household goods or an optional removal grant for the Applicant to make her own shipping arrangements. The Applicant was also eligible to receive a lump sum relocation grant, a temporary living allowance, education benefits, home country travel benefits, and a rental allowance.

11. The Applicant continued to exchange emails with HR at the end of January 2016 with regard to the salary and benefits that were offered to her. By an email of 26 January 2016, she asked about information regarding her SSP, Localization Plus benefits, and Mobility Allowance. On 28 January 2016, HR informed the Applicant that the Assignment Memo addressed her Localization Plus benefits. On 29 January 2016, HR informed the Applicant by email that she was entitled to an SSP of SLL 82,300,000 per year, and that this would be communicated to her in a separate letter. The Applicant again inquired about a Mobility Allowance of \$15,900.00 on 31 January 2016. HR responded to the Applicant on 1 February 2016 and stated that the Mobility Allowance component was an erroneous repetition on HR's part of the Applicant's rental allowance. On 2 February 2016, HR emailed the Applicant and informed her that the Bank had

exceptionally decided to grant her an SSP equivalent to 100% of her annual salary, rather than 50%.

12. On 2 February 2016, the Applicant electronically signed the Letter of Appointment.

13. On 8 February 2016, the Applicant received an addendum to her Assignment Memo that addressed the SSP (SSP Memorandum). The SSP Memorandum stated that the SSP would be paid on a quarterly basis in an amount of SLL 41,150,000 per quarter. The SSP Memorandum also clarified that, since the SSP was not part of the Applicant's net annual salary, it would not be included in any benefit calculations. The Applicant signed the SSP Memorandum on the same day.

14. On 28 February 2016, the Applicant left Zambia and arrived in Freetown, Sierra Leone, on 1 March 2016 for a pre-assignment visit that was paid for by the Bank.

15. On 17 March 2016, the Applicant joined her duty station in Freetown. The Bank paid for her travel and the shipment of her goods. The Bank's Country Office in Freetown provided transportation service to all its staff for meetings until 30 June 2016. In an email on 8 April 2016 sent to the Applicant from a Bank Resource Management Analyst, the termination of transportation services was explained as follows:

The current vehicle usage (which was stipulated on an exceptional basis due to the interregnum of the EBOLA outbreak) will come to an end in June 30, 2016 and starting July 1, 2017 [*sic*], we would revert back to the Bank['s] vehicle policy as usual whereby CO [Country Office] vehicles are only used for the Bank related jobs during working hours. All personal vehicular movement will be the staff sole responsibility except otherwise on exceptional basis (as may [be] approved by the Country Manager) CO vehicle may be used for personal activities such as on medical grounds only. There will be no staff pick up and drop off after June 30, 2016.

16. The Applicant describes the conditions in Freetown, and particularly her residence in Freetown, as follows. The Applicant emphasizes the difference between the official exchange rate published on reputable currency exchange websites and the actual exchange rates at commercial banks or with street dealers in Freetown. She claims that the actual exchange rate was much worse

and deteriorated over time, which led to her salary being less than she expected. The Applicant also claims that she faced difficulties opening a bank account, and this affected her ability to receive her salary in Freetown for five months due to a freeze on opening new bank accounts in Sierra Leone. The Applicant contends that she faced economic hardship as a result and that she therefore had trouble finding an affordable place to live.

17. The Applicant eventually found an apartment, but she claims that the apartment had “structural problems,” such as collapsing roofs, as well as constraints on access to the road. The Applicant states that she was unable to afford a car with her salary, and that the Bank denied her requests for the use of an official car. She states that she “was therefore forced to take taxis that were ‘heavily infested with mosquitoes’ to go to and from her numerous work meetings during the day which were always located far from the World Bank offices.”

18. In April 2016, the Applicant was authorized to travel to Washington, D.C., for a period of one month. While in Washington, D.C., the Applicant went to the HSD and met with a Field Health Specialist, who provided the Applicant with information about the medical services available at the Bank.

19. Throughout April and May 2016, the Applicant exchanged emails with a Resource Management Analyst about the question of whether her salary would be paid to her in USD or SLL. The Resource Management Analyst requested the Applicant’s banking information multiple times so that her salary could be deposited into her account in SLL. In an email of 26 April 2016, the Resource Management Analyst told HNP’s Practice Manager, “Payroll forwarded the payments to be made early this month (April 5, 2016) but rather staff refused to accept payment in Sierra Leone Leones.” The Applicant responded that she had not refused to accept payments but rather was contesting the amounts of the payments and pointing out that certain payments were not included. A Senior HR Business Partner clarified to the Resource Management Analyst by email on 13 May 2016 that HR Compensation and Benefits and Payroll had approved the benefit payments to be made to the Applicant as a one-time exception in USD. She further clarified that salary, the rental allowance, and the SSP were to be paid in local currency, while all other benefit payments could be disbursed in USD.

20. The Applicant returned to Freetown on 17 May 2016. On 26 May 2016, she became ill. She underwent hematological tests in Freetown, and she was diagnosed with malaria. On 3 June 2016, she underwent further testing after completing the travel pack of anti-malaria prophylaxis that she had received from the Bank, and she claims that she was then declared malaria-free.

21. On 29 June 2016, the Bank provided clearance for the Applicant's benefits to be paid in USD on an exceptional basis. The Applicant continued to have trouble setting up a local bank account in Freetown through July 2016, due to local restrictions on opening up new bank accounts.

22. On 30 August 2016, the Applicant left Sierra Leone and traveled to her home country of Italy on annual leave. On 9 September 2016, she claims to have fallen "violently ill." The Applicant was subsequently hospitalized in an intensive care unit and was diagnosed with malaria, hemorrhagic fever due to dengue infection, and other medical complications, including Disseminated Intravascular Coagulation.

23. On 9 September 2016, the Applicant went on STD while she was still in Italy.

24. The Applicant was discharged from the hospital in Italy on 19 September 2016.

25. On 9 October 2016, the Applicant traveled on mission to Washington, D.C., to attend a work meeting. While there, she fell ill again. On 17 October 2016, the Applicant sought medical assistance from HSD which referred to her to a hematology specialist at George Washington University Hospital.

26. The Applicant's Bank-sponsored health insurance provider initially refused to cover her costs for the hospital stay in Washington, D.C., because the costs were incurred outside her duty country and she was locally recruited. However, a Field Health Specialist at the HSD intervened to assist the Applicant. The Field Health Specialist told the Applicant to proceed to the emergency room at George Washington University Hospital and created a medical evacuation travel request for her, which allowed the insurer to guarantee coverage of the Applicant's full costs during her D.C. hospital stay.

27. While at George Washington University Hospital, the Applicant was diagnosed with and treated for malaria. After she was stabilized and cleared for travel, she traveled back to Italy via medical evacuation on 30 October 2016.

28. On 4 November 2016, the Bank implemented a Special Compensation Measure (SCM) for Sierra Leone. This was implemented due to the currency depreciation in Sierra Leone, and it allowed the Bank to pay staff members in Sierra Leone an additional percentage of their salary per month until the rate of currency depreciation lessened.

29. On 21 November 2016, the Applicant filed a workers' compensation claim.

30. On 30 November 2016, the Bank's Disability Insurance Program Administrator, the Reed Group, told the Applicant that she was declared medically fit to return to work on 1 December 2016 on a reduced schedule of four hours per day and with telecommuting. However, the Applicant's physician stated that she was fit to return to work "in a suitable duty station in non-tropical areas."

31. On 20 December 2016, the Reed Group informed the Applicant, "Your medical recommendation for modified duty does not meet the business needs of the unit and has been declined. You will be continued on short term disability." The Applicant made further requests for a "reasonable work accommodation," and one was denied on 15 February 2017.

32. On 2 February 2017, the Applicant filed a request for mediation with Mediation Services.

33. On 3 February 2017, the Reed Group informed the Applicant that her claim for workers' compensation benefits had been denied, "as it does not fall within the Workers' Compensation guidelines. Based upon our review we found that your illness did not arise as a direct result of your employment." The Applicant was told that she had ninety days from the receipt of that communication to "file for reconsideration for Workers' Compensation benefits."

34. The Bank claims that, on 22 February 2017, the Applicant's Manager held a mid-year performance discussion with her, during which he communicated his decision to extend her probationary period for another six months. The Applicant requested to work from home or undertake mission travel, but the Manager denied her requests.
35. On 24 February 2017, an HR Specialist, Compensation and Benefits, emailed the Applicant's Manager, asking whether the Applicant's SSP should be suspended while she was on STD.
36. On 27 February 2017, the Manager sent the Applicant an email confirming his decision to extend her probationary period.
37. On 3 March 2017, the Applicant's Manager who was also the new Practice Manager of HNP told the HR Specialist to continue paying the SSP to the Applicant until the end of her STD period.
38. On 8 March 2017, the Applicant's Manager told the Applicant by a memorandum that her appointment would not be confirmed at the end of her first year but rather that she would stay on probation for another six months until 18 September 2017. The Applicant's Manager further told the Applicant that, since she had performed only six months of work during her current probationary period, there was not enough information to decide whether her appointment would be confirmed.
39. On 9 March 2017, the Applicant was informed by Payroll that a correction to the SCM calculation would be introduced in March due to her STD.
40. The Applicant claims that the Bank stopped paying the Applicant's SSP in March 2017.
41. In April 2017, the Bank accepted on an exceptional basis that the Applicant's salary would be paid to her in USD.

42. On 5 April 2017, Mediation Services closed the mediation as the parties could not reach an agreement on the issues.

43. On 20 April 2017, a Senior Occupational Health Specialist with HSD informed the Applicant by email that return to work accommodations are at the discretion of the unit based on business needs and that, as such, there was no available job for the Applicant in HNP other than the posting in Sierra Leone. The Senior Occupational Health Specialist encouraged the Applicant to seek an opportunity in a position that would meet her needs.

44. Throughout April and May 2017, the Applicant contested certain deductions in payments that she had received from the Bank. An HR Analyst, Compensation and Benefits, confirmed to the Applicant by email on 21 April 2017 that there was an inconsistency with the calculation for her Staff Retirement Plan contribution, but that Payroll was looking into it. The Applicant continued to raise issues regarding the amounts that she received.

45. On 2 May 2017, the Applicant submitted to the Reed Group her request for reconsideration of the denial of her workers' compensation claim.

46. On the same day, the Applicant reiterated her request to her Manager for a work accommodation and noted that the "Independent Medical Examination confirmed illnesses on the job and recommended work in a non-tropical area, in accordance with WB [World Bank] policy."

47. In the meantime, on 12 May 2017, a position in HNP of a Senior Health Specialist, Level GG, was posted as an international appointment by the Bank. The Applicant applied for that position, as well as other positions at the Bank for health or nutrition specialists in Washington, D.C. She was not selected for any of the positions.

48. The Applicant claims that she filed a second mediation request on 22 May 2017. The Bank claims that this mediation was requested on 20 June 2017.

49. On 27 May 2017, the Applicant's Manager responded to the Applicant's 2 May 2017 email:

Per our discussions, including at midyear conversation, we concluded that obviously there is no business case for me to define a work program to replace the ToRs [Terms of Reference] that have justified the recruitment you went through. The GP [Global Practice] has to ensure that the tasks are completed in Sierra Leone while you are on STD. And so far, this is what I am focusing on.

50. On 30 May 2017, the Reed Group upheld the denial of the Applicant's workers' compensation claim for the period of 9 September 2016 onward because the Applicant was considered a local resident of Sierra Leone and was not on mission travel at the time she was hired by the Bank. The decision of the Reed Group stated that the Applicant "would have been exposed to the organisms that caused [her] medical conditions whether [she was] a staff member of the World Bank or not." The Applicant was informed that she could "request administrative review of the decision from The World Bank Workers' Compensation Administrative Review Panel."

51. On 30 June 2017, the Applicant filed a request for review with Peer Review Services (PRS) challenging violations of Staff Principles 2.1, 2.1(b), 2.1(e), and 6.2(f); her constructive discharge; and the mismanagement of her career. She specifically contested, among other things, (i) the extension of her probationary period; (ii) the decision to continue her on STD and reject her request for reasonable work accommodation in a non-tropical area; (iii) the denial of reimbursement for certain medical expenses incurred for emergency and post-emergency care; (iv) the rejection of her request to convert her payments into USD, which was originally approved in June 2016; and (v) the non-payment of certain outstanding payroll items.

52. On 18 July 2017, PRS partially dismissed the Applicant's claims regarding medical, disability, and workers' compensation benefits as PRS did not have jurisdiction to review those claims. PRS accepted review of the Applicant's constructive discharge claim, as well as her claims regarding non-payment matters and career mismanagement, to the extent that those claims were timely.

53. On 28 August 2017, the Applicant submitted a request for administrative review to the ARP challenging the Reed Group's denial of her workers' compensation claim.

54. On 6 September 2017, the second mediation was closed because the parties could not reach an agreement on the issues.

55. On 14 November 2017, PRS sent the Applicant a further decision in an Office Memorandum. The PRS Panel determined that the Applicant's claim regarding the extension of her probationary period was filed in a timely manner. The PRS Panel also determined that, with regard to her claims about the alleged non-payment matters and career mismanagement, the PRS Panel would consider allegations supporting those claims to the extent that they were timely. The PRS Panel further concluded that the Applicant's claim regarding her request for return to work accommodations was not filed in a timely manner.

56. On 18 January 2018, the PRS Panel issued its recommendations in Request for Review No. 390. The PRS Panel found that management acted consistently with the Applicant's contract of employment and terms of appointment when it made the decision to extend her probationary period and the decisions regarding the alleged non-payment matters. The PRS Panel did not find that the Bank had mismanaged the Applicant's career with regard to those decisions. Specifically, the PRS Panel found that the reasons management provided for the decision to extend the Applicant's probationary period were credible and objective, and that a proper process had been followed in making the decision. The PRS Panel further concluded that there was no basis for the Applicant's claims of non-payment of her salary and benefits. The PRS Panel recommended that the Applicant's requests for relief be denied.

57. On 25 January 2018, the Vice President of Human Development accepted the PRS Panel's recommendations.

58. On 14 February 2018, the Applicant informed the Practice Manager by email of her resignation effective 16 February 2018.

59. On 16 February 2018, the Practice Manager accepted her resignation effective on the same date and waived the applicable notice requirements.

60. On 1 June 2018, the Reed Group submitted to the ARP a response to the Applicant's request for administrative review of her workers' compensation claim. The Reed Group stated, "Due to her already established residence in an African country (Zambia), where [m]alaria is prevalent, Reed Group has determined that [the Applicant's] disability/illness did not definitively arise out of and in the course of employment with World Bank and thus [the Applicant] is ineligible for benefits." The Reed Group further stated that it was unable to confirm that the Applicant's exposure to malaria occurred after she was stationed in Sierra Leone. The Reed Group stated that it "continues to uphold its denial of [the Applicant's] Workers' Compensation Claim Request due to ineligibility under Staff Rule 6.11, Section 2.01."

61. On 26 July 2018, the Applicant submitted to the ARP her "Reply in Support of Request for Administrative Review."

62. On 28 February 2019, the ARP issued its decision on the Applicant's workers' compensation claim. The ARP affirmed the denial of the Applicant's claim by the Reed Group. The ARP observed:

In cases involving exposure to contagious diseases, we recognize that it may be impossible to definitively state the exact moment and location where the Claimant contracted the infectious disease in order for her to prove that she contracted the disease at a particular place and time relative to her employment activities. These type[s] of cases are instead viewed under what is known as the "increased risk" test, and involve a review of the facts at issue to determine whether the Claimant's employment places her at a much higher proportionate risk of infection, when compared to the risk associated with other residents of the area.

63. According to the ARP, the Applicant "failed to set forth facts which indicate either that the contraction of the disease was a direct result of her employment, or that she had an increased risk when compared to the general population of the area." The ARP stated:

It is important to note that because her contract was subject to local, as opposed to international recruitment, she must be treated in a manner consistent with other locally recruited staff, and, by analogy, the local population. This is true even though the Claimant contends that the Bank "re-located" her to Sierra Leone for employment, because the Claimant was hired to a three year term appointment, which was subject to local recruitment. She did not travel to Sierra Leone on

mission and instead agreed to reside in Sierra Leone as a condition of accepting the contract. The Claimant's status as described by her employment contract requires that she be treated as a resident of Sierra Leone for purposes of this analysis. Because the condition at issue was common to the area, the sole question at issue here is whether the Claimant's work-related activities exposed her to an increased risk of infection as opposed to the general risk borne by other members of the general public living in Sierra Leone.

64. The ARP concluded that the Applicant had failed to provide any factual information that her employment created an increased risk of exposure and, rather, had pointed to multiple instances of potential exposure in her personal, non-working environment. The ARP noted:

The factual information provided by the Claimant clearly indicates that any risk she would have been exposed to as a result of her employment was not of greater significance than the risk posed to general members of the local population. For example, the Claimant notes that once in Freetown, she was exposed to dangerous living conditions and that she routinely traveled to and from the office in local taxis that were heavily infested with mosquitos. She also makes note of substandard living conditions she experienced during her time living in Freetown. It is settled law that for purposes of workers' compensation coverage, ordinary hazards, such as those mentioned by Claimant, when encountered by a member of the local population would not be compensable under workers' compensation. To find otherwise would be to essentially bind the World Bank Group for any hazard encountered by any staff worldwide for any hazard they encountered either in their home, or during a daily commute to or from the office.

65. Finally, the ARP recognized that the risk of exposure to malaria and dengue is inherent to living in Sierra Leone. To the ARP, the Applicant failed "to produce any evidence that it is more likely than not that she contracted these infectious diseases due to an increased risk of infection caused by her employment with the World Bank Group. The Claimant has failed to meet her burden of proving the causal relationship between her employment and her illnesses."

66. On 3 September 2019, the Applicant filed her Application with the Tribunal. She contests the following: (i) the Bank's failure to provide the Applicant with medical support or information; (ii) the Bank's failure to provide the Applicant with a reasonable work accommodation to a non-tropical area; (iii) the non-confirmation of the Applicant's employment and the extension of her probationary period; (iv) the Bank's failure to implement its agreement to pay the Applicant in USD in a timely manner; (v) the Bank's failure to make certain payments to the Applicant,

including her salary, her SSP, the SCM, benefits, and her resettlement costs at the time of the termination of her appointment; (vi) mismanagement of the Applicant's career; (vii) "[u]nfair and discriminatory treatment, resulting in constructive discharge"; and (viii) the denial of the Applicant's workers' compensation benefits.

67. On 16 October 2019, the Bank filed preliminary objections with the Tribunal.

68. On 30 May 2020, in *FM (Preliminary Objection)*, Decision No. 631 [2020], the Tribunal determined that the following claims were admissible: (i) the non-confirmation of the Applicant's employment and the extension of her probationary period; (ii) the Bank's alleged failure to implement its agreement to pay the Applicant in USD in a timely manner; (iii) the alleged mismanagement of the Applicant's career only between the period of 2 March 2017 and 30 June 2017; (iv) the Applicant's constructive discharge claim; (v) the ARP's decision to deny the Applicant's workers' compensation benefits; and (vi) the placement of the Applicant on STD. These claims have been merged as appropriate below to indicate the chronology of the impugned decisions and the arguments of the parties.

69. The Applicant requests the following remedies:

- 1) coverage under the Bank's Workers' Compensation policy retroactively and prospectively, for all medical costs arising from her injuries incurred as a result of her work on behalf of the World Bank in Sierra Leone;
- 2) the difference between the salary and benefits for Internationally Recruited staff and the salary and benefits paid to the Applicant under her local recruitment contract;
- 3) the difference between the Applicant's salary paid in SLL and what the salary would have been if paid in USD, using actual exchange rates between June 2016 and April 2017;
- 4) the difference between the Applicant's SSP paid in SLL and what those amounts would have been if paid in USD, using actual exchange rates between June 2016 and March 2017;
- 5) the amount of the SSP that should have been paid to the Applicant between March 2017 and 14 February 2018, to be paid in USD;

- 6) the amount of the Special Compensation Measure that should have been paid to the Applicant through the end of her employment on 14 February 2018, to be paid in USD;
- 7) the increase in the lump sum benefit amount paid to the Applicant at time of the termination of her employment, if her contributions to the pension plan had been calculated on a USD salary instead of an SLL salary;
- 8) payment of 30% of the Applicant's salary between 9 September 2016 and 14 February 2018 that was deducted when she was on STD;
- 9) payment of remaining monies owed to the Applicant, including but not limited to her rental allowance between April and June 2016;
- 10) payment of the cost of the Applicant's travel to Washington, D.C. in November 2017 for the hearing in PRS Request for Review No. 390;
- 11) payment of the costs associated with the Applicant's repatriation from Sierra Leone to Italy, including \$10,941.75 for the shipment of her household goods, \$1,712.00 for travel, and a Relocation Grant of \$5,000.00;
- 12) payment of any remaining denied or unpaid medical claims;
- 13) compensation for the Applicant's pain and suffering in an amount of no less than two years' salary; and
- 14) legal fees and costs, for expenses incurred after the jurisdictional phase of this case in the amount of \$6,975.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Main Contention No. 1

The Bank failed to implement its agreement to pay the Applicant in USD and failed to make certain payments to the Applicant either at all or in USD

70. The Applicant alleges that she suffered substantial monetary losses on account of the ten-month delay in converting her payments to USD. The Applicant further asserts that in June 2016 she was promised that her salary and SSP would be paid in USD. She contends that the Bank required her to sign her contract before she received information on the terms of the SSP. As a

result, at the time of signing her contract, she did not understand that the SSP was only paid quarterly, “a fact that magnifie[d] the effect of currency depreciations.”

71. The Applicant further maintains that the Bank eventually recognized that the depreciation of the Sierra Leone currency created intolerable conditions for local staff and agreed to pay monthly lump sums instituted by the Sierra Leone SCM. However, these payments did not apply retroactively to the Applicant’s payments from March through September 2016. Moreover, the amount of the lump sum varied from month to month depending on the exchange rate, making it difficult to predict. The Applicant asserts that, by the time the SCM was established, she was recovering from her illness in Italy and had no access to these payments which were made to her local bank in Sierra Leone.

72. In addition, the Applicant asserts that she was entitled to payments toward her rent but that, because of the complicated formula and disputed exchange rates, payment for rental allowance “still remains unsolved.” The Applicant claims that the extreme complexity of the methodology, the impact of the currency depreciation, and the lack of clear investigation and responsiveness by the relevant Bank personnel were contributing factors. She asserts that, though the Bank’s management finally came up with what it claimed was a comprehensive explanation of at least some of the monies owed, there was no testimony or verification of the numbers produced.

73. Finally, the Applicant asserts that, once she was “constructively discharged” from the Bank’s employment, the Bank made no attempt to assist her with her repatriation by covering the costs of shipment of her household goods. The Applicant claims that she had to pay \$10,941.75 out of her personal funds for shipment.

The Bank’s Response

The Bank paid the Applicant’s salary and benefits, and did not make any promise to pay her salary in USD

74. The Bank first asserts that no promise was made or could be inferred to disburse the Applicant’s payments in USD. The Bank maintains that it did not make any unequivocal promise

to pay the Applicant's salary and benefits in USD as of June 2016. According to the Bank, the Applicant's terms of appointment clearly established that her salary, benefits, and SSP were to be paid in Sierra Leone local currency, SLL, as other locally hired staff members are paid. The Bank maintains that the Applicant was a "Third Country National" hired in a Country Office as local staff consistent with the job description and advertisement. To the Bank, the Applicant was treated the same as other "Third Country Nationals" hired locally in Country Offices and paid in the currency of the duty station. The Bank further asserts that the Applicant accepted and signed her terms of appointment in February 2016 but continued to ask for "special treatment," whether it was to be paid in USD or an SSP or asking for a job in a different country.

75. The Bank claims that the Applicant knew that the SSP was an *ad hoc* benefit issued at the discretion of HR as shown by her receipt and acceptance of the SSP Memorandum. Furthermore, the Bank asserts that it "paid in full and explained multiple times to [the] Applicant the basis for its calculations," which included no responsibility to pay for the shipment of her household goods after the termination of her appointment.

The Applicant's Main Contention No. 2

The Applicant should not have been placed on STD, and the Bank refused to provide a reasonable work accommodation

76. The Applicant asserts that she should not have been on STD since she was fit to work but could not do so due to the Bank's refusal to provide her with a reasonable work accommodation. The Applicant claims that the Reed Group certified her as medically fit to return to work as of 1 December 2016 on a reduced schedule and with telecommuting. The Applicant's personal physician also certified her as fit to return to work, but only in a "suitable duty station in non-tropical areas." Additionally, the Applicant contends that the doctor who performed the Independent Medical Examination stated that "[t]here is no contra-indication to return to work except to remote areas with no access to advanced medical care." However, the Reed Group informed the Applicant that her request for work accommodation in a non-tropical duty station "did not meet the business needs of the unit and has been declined," and therefore continued her on STD.

77. The Applicant claims that, instead of acknowledging her ability to work or providing alternative work accommodations, the Bank “merely wrote her off as disabled.”

The Bank’s Response

The Bank acted consistently and followed a fair and proper process, and the Staff Rules, when placing the Applicant on STD

78. The Bank maintains that Staff Rule 6.22 explicitly provides that, if a staff member is unable to perform her “material duties” for 20 days or more, the Disability Administrator is authorized to determine that the staff member is eligible for STD benefits. The Bank further contends that, if the staff member is not eligible for STD, then he or she is placed on leave without pay or may take annual leave. The Bank asserts that the Applicant is alleging that she should not have been placed on disability, but rather that she should have been “provided with some other option.”

79. The Bank asserts that, despite the clear provisions of the Staff Rules, management made extraordinary efforts to assist the Applicant so that she would not be without a salary during this “20-day elimination period.” The Bank claims that, even though efforts were taken to ensure the Applicant’s salary during STD, once a staff member is on STD, all decisions regarding his or her fitness for duty are made by the Disability Administrator, in coordination with licensed medical professionals. The Bank asserts that the Applicant’s request for work accommodation had to be denied because “[i]t [was] clear that the type of work and close dialogue in Sierra Leone could not be accommodated from a telecommuting arrangement or short-term missions in Sierra Leone.” The Bank maintains that it acted consistently and followed a fair and proper process while the Applicant was on STD.

The Applicant's Main Contention No. 3

The Bank did not act consistently with the Applicant's contract of employment and terms of appointment when it made the decision to extend her probationary period instead of confirming her appointment

80. The Applicant asserts that the Bank used her lack of work as purported justification not to confirm her appointment and, instead, to extend her probationary period. The Applicant asserts that the Bank failed to accommodate her demonstrated medical need for reassignment, failed to find alternative methods for moving her to a new position, and left her trapped in a disability program. To the Applicant, the Bank denied her the opportunity to “work or demonstrate her performance for confirmation or accumulate professional experience or maintain a positive employment record.”

The Bank's Response

There was no abuse of discretion in extending the Applicant's probationary period

81. The Bank maintains that, pursuant to Staff Rule 4.02, paragraph 2.01, it has the managerial discretion to decide whether or not to extend the probationary period for up to two years. To the Bank, the Applicant's Letter of Appointment affirms this as it states, “Your appointment will be subject to a probationary period of one year, which may be extended for up to one additional year.” The Bank contends that management acted properly in extending the Applicant's probationary period because it lacked sufficient information to assess the Applicant's work. The Bank notes that the Applicant worked for less than six months before going on STD, one month of which was spent participating in onboarding sessions in Washington, D.C., and not at her duty station in Sierra Leone. To the Bank, the Applicant's Manager was “unable to make an informed assessment regarding the Applicant's performance.”

82. Furthermore, the Bank asserts that granting the Applicant a probationary period afforded her a fair and reasonable opportunity to demonstrate her skills. The Bank asserts that, prior to extending the Applicant's probationary period, her Manager requested feedback on the Applicant's

performance to determine what action to take while the Applicant was on STD. To the Bank, this further demonstrated that it acted with fairness and followed proper process.

The Applicant's Main Contention No. 4

The Bank mismanaged the Applicant's career, resulting in her constructive discharge

83. The Applicant alleges that the Bank mismanaged her career in violation of Principle 2.1 of the Principles of Staff Employment. She asserts that Bank management failed to alert her to the mismatch between the contractual terms and economic realities in Sierra Leone, such as a discrepancy in official and actual exchange rates, currency depreciation, and how the local economy actually operated. These circumstances created “extremely difficult and unsafe working conditions” in which management later failed to provide the requisite health and financial support once the economic realities became clear.

84. According to the Applicant, she received “[u]nfair and discriminatory treatment, resulting in constructive discharge.” She claims specifically that she was constructively discharged because she was kept by the Bank on STD despite being willing to work and was not given a reasonable work accommodation by the Bank. The Applicant avers that factors such as management’s reluctance to provide a reasonable work accommodation in a non-tropical area, the discontinued SSP, and other “mounting financial damages and harm to her professional career from the lack of work” led to her resignation due to the “totally untenable circumstances.”

The Bank's Response

The management of the Applicant's career was reasonable

85. The Bank asserts that its management of the Applicant’s career was reasonable without any abuse of discretion. The Bank maintains that the Applicant was informed in writing about the decision to extend her probationary period, the reasons for the extension, and why her requests for telecommuting or alternative work programs could not be accommodated. The Bank further asserts that all decisions made were respectful of the Applicant’s illness, “balancing those circumstances with its manner of treatment of other staff members on STD under Staff Rule 6.22.” The Bank

asserts that it did not extend the SSP because it was only put in place for one year and it was clearly stated in the SSP Memorandum that it was a temporary measure subject to annual review.

86. The Bank asserts that the Applicant voluntarily and independently resigned and that her employment was not terminated. The Bank claims that, if the Applicant believed that her employment was terminated on 16 February 2018, she could have gone directly to the Tribunal, but she did not, and that her resignation did not amount to constructive discharge or dismissal. To the Bank, the Applicant resigned because she decided for personal reasons that the position at the Bank was “not a good fit for her.” The Bank asserts that the Applicant’s change of mind did not constitute a violation of the Applicant’s terms of appointment, nor did it create an obligation for the Bank to find alternative positions.

87. The Bank states that, though other internationally recruited positions became available during the period the Applicant sought a new position, other candidates were competitively selected in accordance with selection procedures consistent with Staff Rules. The Bank avers that nothing in the Applicant’s terms of appointment established an obligation on the Bank to create a new position, select the Applicant for a different job, or change the Applicant’s duties and accountabilities to accommodate her in a country other than Sierra Leone that was not tropical. Moreover, the Bank maintains that the job posting and terms of reference for the position for which the Applicant was selected required field visits and hands-on support and that, though the Applicant eventually found the position unsuitable, there was no discrimination by the Bank in maintaining its decision on business needs for staffing in Sierra Leone.

The Applicant’s Main Contention No. 5

The Applicant should receive workers’ compensation because the ARP erred when denying her workers’ compensation claim

88. The Applicant requests the Tribunal to reconsider its standard of review for workers’ compensation cases. She asserts that she has clearly demonstrated that her illnesses arose during the course of her employment with the Bank that required her to work in Sierra Leone and to travel outside her office to medical facilities in the field. The Applicant refers to the Code of the District

of Columbia which she states applies in part to the workers' compensation rules of the World Bank. According to the Applicant, the Code contains a "presumption of compensability" when claims are made for workers' compensation coverage.

89. The Applicant further states that because she is an Italian national, and not a local resident of Sierra Leone, she did not develop partial immunity to malaria and had an increased likelihood of developing severe complications. The Applicant claims that, during the course of her work, she developed malaria symptoms and should have been provided with emergency medical treatment and monitored carefully. To the Applicant, because she was a "nonimmune Italian" national she had a much greater risk than a local resident of Sierra Leone for the serious consequences of malaria, which were all ultimately a direct result of her World Bank employment.

90. The Applicant further contends that she was at a greater risk for dengue fever than others living in Sierra Leone and that the ARP erred when it concluded otherwise. The Applicant avers that, because she could not afford to own a car, she was required to travel by taxi in order to go to meetings, workshops, and field visits in health facilities and their surrounding grounds where dengue mosquitos were prevalent. According to the Applicant, her travel outside of the office put her at a greater risk. The Applicant maintains that the ARP decision cannot be sustained because the ARP erred in concluding that the realities of her position did not put her at greater risk for her illness.

91. The Applicant also challenges the ARP's decision on the grounds that it would re-write Staff Rule 6.11 and would deprive non-local staff hired for "local" appointments of the protections of the Workers' Compensation program. The Applicant asserts that the ARP's decision relies entirely on the fact that she was hired under the terms of a "local" contract. The Applicant contends that, although she was recruited as a local appointment, the Bank did not treat her as a local hire for any other purposes because she received many international benefits. Furthermore, the Applicant declares that her recruitment under a local contract does not change the medical risks associated with a foreigner working in Sierra Leone and did not deprive her of the right to workers' compensation on the same terms as all other World Bank staff.

92. The Applicant avers that to extend her “so-called local” status *vis-à-vis* workers’ compensation would be a grave injustice and completely contrary to the fair treatment required by Principles 2.1 and 9.1 of the Principles of Staff Employment. Further, the Applicant alleges that extending her “so-called local” status would also be contrary to the way the Bank itself treated her in other contexts and would create an entirely new limitation on workers’ compensation that is not reflected in the Staff Rules. To the Applicant, this would be “grossly discriminatory.”

The Bank’s Response

The workers’ compensation rules were reasonable and not arbitrary

93. The Bank asserts that, in accordance with Staff Rule 6.11, the burden falls on the Applicant to prove that her illness was directly caused by her employment. The Bank further states that the Workers’ Compensation program is not designed to cover staff members who, “for example, might contract illnesses from water provided throughout the city whether at their homes or at work. Such illnesses are not caused by or due to work.”

94. The Bank further asserts that the Applicant did not receive workers’ compensation because there was no causal link between the disease she contracted and her work in Sierra Leone, which is a necessary criterion in order to be eligible for compensation under the Workers’ Compensation program. The Bank observes that the standard to prove that the illness was caused by her employment is based on the medical diagnosis from a medical professional. The Bank maintains that the Applicant’s illness was determined by medical professionals to have no causal relationship between her employment and her illness.

The Staff Association’s Amicus Curiae Brief

95. The Staff Association submitted an *amicus curiae* brief in support of the Applicant’s contention that the Bank failed to “provide essential institutional support or to exercise its basic duty of care with respect to the Applicant’s medical and financial hardships while employed by the Bank.” The Staff Association also supports the Applicant’s contention that she is eligible for workers’ compensation for the illness she suffered during her Bank service. According to the Staff

Association, the only factors that are necessary to determine whether this illness was work-related are that the Applicant contracted the illness while in Sierra Leone and that she was in Sierra Leone for work. The Staff Association contends that there is “no logical reason to apply a different analysis simply because her contract defines her as ‘local.’”

96. The Staff Association asserts that the Bank’s failure to pay the Applicant in USD instead of the local currency, “even after the Legal Department approved her being paid in U.S. dollars,” amounted to “nothing less than negligence.” Finally, the Staff Association submits that the Bank has a duty to meet a basic standard of care for its employees and that “its failure to provide even the most basic supports and protections to the Applicant on the fictitious ground that she was a ‘local’ hire constitutes negligence.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE BANK FAILED TO IMPLEMENT ITS AGREEMENT TO PAY THE APPLICANT IN USD AND FAILED TO MAKE CERTAIN PAYMENTS TO THE APPLICANT EITHER AT ALL OR IN USD

97. It is the Applicant’s main contention that the Bank promised to pay her salary and SSP in USD from June 2016. The Bank asserts that it did not make such a promise and that the Applicant only requested payment of her salary in USD in March 2017. The Tribunal has held that evidence that a promise was made would “have to be proven unequivocally.” *Chavakula*, Decision No. 277 [2002], para. 15. *See also EM*, Decision No. 578 [2018], para. 61. “At the same time, in the absence of such an unequivocal statement, there may be circumstances which lead to the inference of a promise.” *EM* [2018], para. 62.

98. Having reviewed the record, the Tribunal finds no evidence of an unequivocal statement from the Bank to pay the Applicant’s salary and SSP in USD from June 2016. The record shows that the Applicant sent an email to the Sierra Leone Country Manager on 6 April 2016 with a table on “conditions of employment, underlying issues and proposed solutions.” In the second line item the Applicant identifies payment in SLL as an “issue” and notes “[p]ayment in USD” as the solution. Pursuant to a series of email exchanges between the Applicant, HR, and a Resource

Management Analyst regarding payment of her benefits on arrival, on 13 May 2016, HR informed the Resource Management Analyst that “HR Compensation and Benefits and Payroll approved that benefits payments as a one-time exception can be paid in USD. [...] Please note that salary, rental and Scarce Skills premium are paid in local currency, while all other benefit payments can be disbursed in USD.” Thus, in May 2016 the Applicant received approval for the payment in USD of the benefits on assignment, with the exception of the automobile grant and excess baggage allowance that had already been paid to the Applicant.

99. The record further shows that, on 20 July 2016, the Applicant sent HR a message concerning the housing/rental allowance. In that message the Applicant also acknowledged receipt of the payment of benefits on assignment. In a subsequent message on the same day, the Applicant specifically requested the payment of her rental allowance in USD, stating:

Currency: Grateful if possible to receive the Rental Allowance in USD. I am concerned about loss due to: (i) the penalizing exchange rate from USD to SLL; (ii) significant SLL currency depreciation over time; (ii[i]) multiple banking transactions costs. FYI my contract states that “all allowances and benefits paid in the currency of the salary unless specified in the staff rules and procedures on indefinite assignments.” Form F200020 Rental Advance Request Form, guideline 3.01 states “Rental Advances disbursed in a currency other than staff’s salary plan currency will be subject to currency exchange rate fluctuations. Staff is responsible for costs incurred due to exchange rate fluctuations as these will not be reimbursed by WBG.”

100. The record contains email exchanges between the Applicant, HR, and Payroll concerning the Applicant’s rental allowance, implications of the exchange rate on the rental allowance, discrepancies in the amount paid, and whether the Applicant could receive her rental allowance in USD. The series of emails culminated in an approval by Payroll following guidance by the Legal Department. The Applicant was thus approved to receive her rental allowance in USD. The record contains no mention, at this time, of Payroll’s approval for the Applicant’s salary and SSP to be disbursed to her in USD.

101. When the matter of the currency of the Applicant’s salary arose directly before Payroll, the record is clear that Payroll did not approve retroactive payment of the Applicant’s salary in USD. On 6 April 2017, the Applicant was informed by a Senior HR Business Partner that approval had

been received to “exceptionally make the above payments in USD to you going forward in line with earlier discussions and exchanges.” The Applicant was informed that several levels of approval were required to approve payment of her salary in USD. When the Applicant reiterated that her salary was to be paid in USD retroactively, the Payroll Officer clearly informed the Applicant that there was no such agreement and that she had only raised her specific request to Payroll for payment of her salary in USD in April 2017.

102. The Applicant refers to email exchanges in June 2016 between the Legal Department and HR to which she was not a party and from which she cannot derive a promise. The Applicant has therefore failed to substantiate her claim that the Bank made an unequivocal promise to pay her salary in USD retroactively from June 2016, and there are no circumstances demonstrated by the record that could lead to an inference of such a promise.

103. Regarding the Applicant’s other claims of non-payment or underpayment of sums owed to her, the Tribunal takes note of the following explanation and accounting provided by the Applicant’s Practice Manager to PRS:

[Rental Allowance]

For the months of Apr 2016, May 2016 and Jun 2016, wrong SAP exchange rate was claimed. We have checked the rates that were used in calculation and confirmed that these rates are from the CDS (general WBG source of FX exchange rates used for translation of foreign currencies into USD). We further checked these rates to Reuters and confirmed that there was no difference between them. For the month of Apr 17, [the Applicant] claimed that incorrect adjustment to the rental allowance for the staff share was applied. The claim is correct and the rental allowance for the month of Apr 2017 was underpaid by SLL 2.1m (the amount of SLL 5m was paid instead of SLL 7.1m). However, this error was rectified in the subsequent pay period when the rental allowance of SLL 9.2m was paid instead of the regular monthly amount of SLL 7.1m.

[...]

Lastly, I did mention in the previous email that the rental allowance amounts vary between the months. There is the explication to why: Rental allowance amounts are calculated as follows: i) HR establishes rental ceiling for a particular country once a year (for Sierra Leon[e], the applicable ceilings were \$970.5 up to June 30, 2016 and \$1,122.92 onwards; no changes to the ceiling were made in 2017) ii) From the

established ceiling the amount of 20% of staff salary converted in USD or 33% of the ceiling is deducted as staff share (whichever is lower). iii) The balance from ii) above is paid to the staff as rental allowance in local currency by converting the amount calculated in USD using the available CDS rate on the first day of a month. Due to frequent changes in circumstances (PAF updates, short term disability), individual paystubs also include retroactive payments and collections related to rental allowance.

The overall rental allowance account has been reconciled from the start of employment to Dec 15, 2017 and shows that there is a very small overpayment of about \$31 over the period, which is not material.

104. Regarding the SSP and SCM, the Applicant's Practice Manager provided documentation to demonstrate that "[t]here is no unpaid amount due to [the Applicant]." Upon review of the documents, the PRS Panel found that the Applicant has received the sums owed to her.

105. The Applicant has not provided any calculations to demonstrate that specific payments were underpaid or not received at all. As a result, the Tribunal finds that the Applicant has not substantiated her claims that she did not receive all payments owed to her.

106. Finally, the Applicant contends that the Bank failed to assist her with repatriation following her resignation from the Bank. The Applicant states that she was required to pay \$10,941.75 out of her own personal funds for the shipment of her household goods from Sierra Leone to Italy. As the Applicant was on an indefinite assignment to Sierra Leone, the rules pertaining to repatriation following ending of employment are stipulated in the Bank's Procedure on Global Mobility Support for Indefinite Assignments:

2.08 In lieu of the provisions of Section III, Sub-section 02, Relocation and Transportation Benefits of this Procedure, Staff Rule 7.02 will apply if a staff member terminates Bank Group employment directly from an Indefinite Assignment.

107. Staff Rule 7.02 concerns the benefits staff receive upon the ending of their employment with the Bank. Staff Rule 7.02, paragraph 2.01, notes the following with respect to eligibility for such benefits:

Upon termination of employment with the Bank Group, a staff member holding a position subject to international recruitment at the time of appointment, or who receives an Indefinite or Temporary Assignment on or after January 1, 2016 in a position subject to local recruitment, will be eligible for resettlement benefits under Section 3 of this Rule *after 2 years of service or at the end of an appointment of limited duration, whichever is earlier.* (Emphasis added.)

108. The Applicant was thus ineligible for repatriation benefits given that at the time of her resignation the duration of her employment at the Bank was less than two years.

WHETHER THE APPLICANT SHOULD HAVE BEEN PLACED ON STD AND WHETHER THE BANK
REFUSED TO PROVIDE HER WITH A REASONABLE WORK ACCOMMODATION

109. It is the Applicant's assertion that she should not have been placed on STD as she was fit to work, albeit not in her duty station. The Tribunal observes that the initial decision to place the Applicant on STD was consistent with Staff Rule 6.22, paragraph 5.01, which provides:

If a staff member has an injury or illness that results in or is expected to result in an absence from duty of more than 20 working days, an application for Short-Term Disability must be filed with the Disability Administrator by the staff member, or a person designated by the staff member, pursuant to Procedure, "Disability Insurance Program – Claims Procedure," paragraphs 3.01–3.04, "Submission/Receipt of Initial Claim."

110. Staff Rule 6.22, paragraph 5.02, specifies that the "elimination period," or trigger period, for STD is "20 working days of continuous absence due to illness or injury." An absence is nevertheless "also treated as continuous if the staff member returns to work for 7 working days or less during the elimination period."

111. The record shows that the Applicant became ill on 9 September 2016, resulting in her hospitalization. The Applicant was discharged from the hospital on 19 September 2016. On 28 September 2016, the Applicant emailed her then Practice Manager requesting an advance of her sick leave as she was exceeding her sick leave balance. The Applicant stated that she was advised to request to "'borrow' some sick days so [she] may have total 20 days of Sick Leave, starting September 9 and ending October 7." The Applicant's Practice Manager agreed, and the Applicant

was thus continuously absent due to illness effective 9 September 2016. On 9 October 2016, the Applicant travelled on mission to Washington, D.C., where she fell ill again.

112. The Tribunal finds that the decision to place the Applicant on STD was reasonable and was triggered by the provisions of the Staff Rules following the Applicant's express request.

113. The Tribunal notes that the Reed Group declared that the Applicant was medically fit to return to work as of 1 December 2016, albeit on a limited work schedule and with telecommuting. The Applicant requested telecommuting but was informed by the Reed Group on 20 December 2016 that "medical recommendation for modified duty does not meet the business needs of the unit and [was] declined. [She was to] be continued on short term disability." This was confirmed by the Applicant's Practice Manager who informed her in March 2017 that the type of work needed in Sierra Leone could not be accommodated with a telecommuting arrangement or short missions.

114. The Tribunal held in *Courtney (No. 2)*, Decision No. 153 [1996], para. 35, that "the Bank is not under an obligation to offer alternative positions to staff members affected by a given disability, if no such position is available or if the circumstances of the case do not allow for such an offer to be made." Hence, the Bank is "not required to accommodate an employee by creating a new position or by transferring another employee out of his or her job." *BY (No. 2)*, Decision No. 481 [2013], para. 53. Furthermore, the Bank's obligation to provide a reasonable accommodation should be "based on medical need, not on the employee's personal preference." *Id.*, para. 63. However, the Bank is required to act with fairness and follow a proper process in its interactions with staff members, as required by Principle 2.1 of the Principles of Staff Employment. Staff members have a corresponding right to fair treatment, per Principle 9.1.

115. The Tribunal has held that reasonableness would be assessed on a case-by-case basis. *BY (No. 2)* [2013], para. 63. The Bank states that it could not accommodate the Applicant's request to telework within her unit due to the unit's business needs. Indeed, the Applicant's job description provides, "The Health Specialist will be responsible for working closely with the Government of Sierra Leone (GoSL), the World Bank country teams, and other implementing and development partners as needed." Thus, it is reasonable that, at a time when a global pandemic necessitating a

change in working conditions did not exist, teleworking might not have been considered feasible by the Applicant's Practice Manager.

116. However, the obligation to provide reasonable accommodation to a staff member with a disability cannot be discharged by simply claiming that the unit management of that staff member has looked into a particular proposal, in this case telecommuting, and that, since telecommuting does not meet the business need of that particular unit, the obligation is fulfilled and no other steps are necessary. Indeed, the obligation is broader. In *BY (No. 2)* [2013], para. 39, the Tribunal noted:

The Bank has also produced a "Disability Toolkit," a document published by the Bank's Human Resources Vice Presidency on the Bank's intranet. This states that the Bank follows the ADA [Americans with Disabilities Act] definition of reasonable accommodation; that a "reasonable accommodation is a modification or adjustment to a job, the application process, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity and benefits and privileges of employment"; and that a "modification or adjustment is 'reasonable' if it seems reasonable on its face, meaning feasible or plausible." One example of a reasonable accommodation mentioned in the Disability Toolkit is "reassignment to a vacant position."

117. Therefore, as part of ensuring that there is an equal opportunity for staff with disabilities, the Bank must explore various options. In this respect in *BY (No. 2)* [2013], para. 54, the Tribunal noted, "The Bank accepts that it was required to engage in a good faith interactive process with the [a]pplicant designed to identify reasonable accommodations for the [a]pplicant's disability and to help the [a]pplicant identify possible vacant positions." Ultimately, the Tribunal in that case was satisfied that the Bank discharged its obligation for two main reasons. First, the Bank "engaged in an interactive process" with the applicant as there were numerous discussions among the applicant, Dr. B of HSD, the Vice President, and the Lead Specialist of HR Corporate Operations (who was responsible for arranging reasonable accommodation for staff with disability) in efforts to find a reasonable accommodation. *Id.* Second, in that case, the doctors concluded that the applicant would be able to return to work so long as he could be reassigned to a different management team, and the Tribunal found that the Bank indeed twice offered the applicant "a newly created position" that "would substantially eliminate the [a]pplicant's contact with his previous supervisors." *Id.*, para. 63.

118. The Bank was not required to simply place the Applicant in vacant positions as she contends. Nevertheless, the Bank had a duty to engage in good faith with the Applicant in order to identify reasonable accommodations, such as a graduated return to work, greater cross support, or a temporary telework dispensation. Such measures might have permitted the Applicant to carry out modified duties for a period of time, which might have allowed her to recover or to succeed in finding alternate employment. They would also have afforded her the dignity of performing work notwithstanding her health restrictions as part of equal employment opportunity. On the whole, the Tribunal is of the view that the Bank could have done more to reasonably accommodate the Applicant's health restrictions. In failing to do so, the Bank did not treat the Applicant fairly as required by Principles 2.1 and 9.1 of the Principles of Staff Employment.

WHETHER THE BANK ACTED CONSISTENTLY WITH THE APPLICANT'S CONTRACT OF EMPLOYMENT
AND TERMS OF APPOINTMENT WHEN IT EXTENDED THE APPLICANT'S PROBATIONARY PERIOD
INSTEAD OF CONFIRMING HER APPOINTMENT

119. In defining the scope and extent of its review of non-confirmation decisions, the Tribunal stated in *McNeill*, Decision No. 157 [1997], para. 30:

The scope and extent of the review by the Tribunal of the Bank's decisions concerning confirmation or non-confirmation of appointment during or at the end of the probationary period rest on the basic idea that the purpose of probation is "the determination whether the employee concerned satisfies the conditions required for confirmation" (*Buranavanichkit*, Decision No. 7 [1982], para. 26), that is to say, in the language of Staff Rule 4.02, the determination whether the probationer is "suitable for continued employment with the Bank Group." The probationer has no right to tenure; pending confirmation his situation is essentially provisional and his future with the Bank depends on his suitability for permanent employment. The assessment of his suitability is a matter of managerial discretion, as the Tribunal has ruled in *Salle* (Decision No. 10 [1982]):

It is of the essence of probation that the organization be vested with the power both to define its own needs, requirements and interests, and to decide whether, judging by the staff member's performance during the probationary period, he does or does not qualify for permanent Bank employment. These determinations necessarily lie within the responsibility and discretion of the Respondent... (para. 27).

[...]

It is also for the Bank to determine, at the end of the probation or at any time during the probation, whether the probationer has proven either suitable or unsuitable for Bank employment and to terminate his employment whenever it concludes that he is unsuitable. As the Tribunal has repeatedly stated, it will not review the exercise by the Respondent of its managerial discretion unless the decision constitutes an abuse of discretion, is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

120. The Tribunal further held at para. 36 that

it is not for the Tribunal to pass judgment upon the assessment made by the Respondent of the [a]pplicant's suitability for Bank employment [...]. It is, however, for the Tribunal to review whether these decisions constituted an abuse of discretion because, even if resting on proper motives, they nevertheless were based on facts which did not exist, or were based on a manifestly erroneous appreciation of the facts, or were tainted by *détournement de pouvoir*.

121. The Tribunal has held that a staff member on probation enjoys procedural guarantees for fair treatment and must be given adequate warnings about criticisms or deficiencies in the probationer's work and adequate opportunities to defend himself. *See Zwaga*, Decision No. 225 [2000], para. 37. Furthermore, a staff member on probation has the right to receive adequate guidance and training (*see Rossini*, Decision No. 31 [1987], para. 25), and the Bank is required to provide adequate guidance and supervision (*see Salle* [1982], para. 32).

122. The Tribunal observes that there were no criticisms of the Applicant's work, nor does the Applicant assert that her supervisors failed to provide her with adequate guidance and training. The Applicant also does not raise any due process violations. Rather, it is the Applicant's assertion that the Bank used her lack of work as a justification for not confirming her position. The Tribunal holds a different view. As stated in the memorandum documenting the decision to extend the Applicant's probation for six months, the Applicant "performed only 6 months during the current period." The Tribunal finds that it was reasonable of the Applicant's Practice Manager to extend the Applicant's probation rather than reach a hasty decision whether to confirm the Applicant's employment based on insufficient information on her performance *vis-à-vis* the Terms of Reference.

123. Pursuant to Staff Rule 4.02, paragraph 3.01, a decision to confirm a staff member's employment is "based on a written assessment of the staff member's performance, technical qualifications and professional behaviors." Having been on STD for almost two months, the Applicant was declared fit to return to work on 1 December 2016 on a reduced schedule of four hours per day and with telecommuting. Had the Applicant commenced work on that date, she would still have performed her responsibilities for only a limited period prior to the end of her probation, and a decision on her employment might not have been in her favor. The Tribunal finds that the Applicant's Practice Manager acted reasonably in extending the Applicant's probation for an additional six months to ensure he had sufficient information to make the important decision on confirming or not confirming the Applicant's employment at the Bank.

124. Furthermore, the Tribunal observes that an extension of the Applicant's probation for an additional six months was not only within the terms of her Letter of Appointment, which makes express provision for the extension of the probationary period for an additional year, but also consistent with Staff Rule 4.02, paragraph 2.01, which provides:

The length of probation shall normally be one year. The probationary period may be extended by the staff member's Manager in consultation with the next-in-line Manager. The maximum probationary period shall not exceed two years.

125. The Tribunal finds that, in extending the Applicant's probation for an additional six months, the Applicant's Practice Manager acted consistently with the terms of her employment and Staff Rule 4.02, paragraph 2.01, and that the exercise of his managerial discretion was neither arbitrary nor discriminatory.

WHETHER THE BANK MISMANAGED THE APPLICANT'S CAREER, RESULTING IN A CONSTRUCTIVE
DISCHARGE

126. The Applicant alleges that the Bank failed to alert her to the mismatch between the contractual terms and the economic realities in Sierra Leone, such as a discrepancy in official and actual exchange rates, currency depreciation, and how the local economy actually operated. To the Applicant, these conditions created "extremely difficult and unsafe working conditions" in which

management later failed to provide the requisite health and financial support once the economic realities became clear.” The Applicant also asserts that she was constructively discharged because she was kept by the Bank on STD despite being willing to work and was not given a reasonable work accommodation by the Bank or placed in a more suitable position.

127. The difficulties the Applicant faced during her brief career as a Health Specialist in Sierra Leone are undisputed. Still, the Tribunal is not convinced that the Bank is responsible for economic matters beyond its control. The facts remain that exceptions to the rules and policies were made to accommodate the Applicant’s request for payments in USD once she raised the difficulties she faced. Furthermore, to address the currency depreciation, the Bank implemented a measure for all staff in Sierra Leone. The Applicant has not demonstrated that the Bank treated her any differently from “Third Country Nationals” who were similarly situated.

128. With respect to the Applicant’s constructive discharge claim, the Tribunal recalls the following description of constructive dismissal by the Administrative Tribunal of the International Labour Organization (ILOAT):

“Constructive dismissal” is a phrase used to signify that an organisation has breached the terms of a staff member’s contract in such a way as to indicate that it will no longer be bound by that contract. A staff member may treat that as constituting constructive dismissal with all the legal consequences that flow from an unlawful termination of the contract, even if he/she has resigned. Harassment, which goes unchecked, is a breach of those fundamental principles requiring an organisation to treat its staff members with dignity, to observe the principle of equality and to provide a safe and secure workplace. It follows that the complainant’s claim of constructive dismissal is dependent upon the outcome of his claim of harassment. Only if his claim of harassment is sustained, can his request to be relieved of his post be treated as constructive dismissal. (Judgment 2745 under 13.)

129. The United Nations Appeals Tribunal made the following ruling with regard to constructive dismissal in *Koda v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-130, paras. 35–36:

This is a question of fact, but the facts must be considered under the proper legal standard. The UNDT [United Nations Dispute Tribunal] set the standard thus, “[a]

constructive dismissal occurs when the employer engages in a scheme of action which, in effect, makes it so difficult for the employee to continue with his or her work, that the latter has no realistic option but to resign.”

[...]

We hold that, in a case of alleged constructive termination, the actions of the employer must be such that a reasonable person would believe that the employer was “marching them to the door.”

130. The Tribunal finds that the actions of the employer as a whole must be considered to determine whether a particular case has risen to the level of constructive discharge.

131. The record in this case does not show that the Bank breached the terms of the Applicant’s contract in such a way as to indicate that it would no longer be bound by that contract. Furthermore, there is no evidence of harassment by the Bank or its staff, or of a hostile work environment for the Applicant, or of any other actions by the Bank that could reasonably be interpreted as making the working conditions intolerable for the Applicant.

132. The Tribunal notes that the living conditions and economic challenges in Sierra Leone were not unique to the Applicant and that the Bank did not create them. The record shows that, as the Applicant made various requests, the Bank made efforts in addressing them in accordance with its policy and practice. The Bank, of course, did not accept the Applicant’s request to telecommute as the Bank insisted that return to her duty station was necessary for the business need of the unit. In this regard, the Tribunal has already noted that the Bank could have done more to explore a reasonable accommodation for the Applicant. However, looking at the actions of the Bank as a whole, the Tribunal is not convinced that the Bank was “marching [the Applicant] to the door.”

WHETHER THE ARP ERRED IN DENYING THE APPLICANT’S WORKERS’ COMPENSATION CLAIM

133. The Tribunal’s scope of review of workers’ compensation claims was aptly stated in *Chhabra (No. 2)*, Decision No. 193 [1998], para. 7:

The task of this Tribunal is limited to reviewing the decision of the Review Panel [ARP], by reference to the evidence before that body, with a view to determining

whether the conclusion reached by the Review Panel could be reasonably sustained on the basis of that evidence and also whether the Review Panel has acted in accordance with the relevant legal rules and procedural requirements.

134. Staff Rule 6.11 contains the provisions on the Bank Group's Workers' Compensation program. Pursuant to Staff Rule 6.11, paragraph 1.01, staff members are provided with "compensation and other benefits in the event of illness, injury or death arising out of and in the course of employment with the Bank Group." Staff Rule 6.11, paragraph 3.01, provides that

the Claims Administrator will determine whether an injury, illness or death arises out of and in the course of employment and otherwise administer the workers' compensation program in accordance with the provisions of the D.C. Act specified in this Rule, except that where the provisions of this Rule differ from the provisions of the D.C. Act specified, the provisions of this Rule will govern. Provisions of the D.C. Act not specified in this Rule will not apply.

135. The Tribunal notes the Applicant's request that it apply the "presumption of compensability" codified in D.C. Workers' Compensation law. However, even under D.C. law in situations such as the Applicant's, where there is an environmental hazard or communicable disease circulating in the community, "the issue turns on whether the conditions of employment created an increased or aggravated risk of contracting the disease under particular conditions or in a particular place that the employment took the claimant." *See Public Sector Workers' Compensation Claims Arising out of the 2019 Novel Coronavirus (COVID-19) [PSWCP 2020-01]*. Pursuant to the aforementioned document,

[i]f an employee has an increased or aggravated risk of exposure to an infectious or communicable disease while at work, resulting directly from the duties and obligations of employment, contracting the disease has been found to have arisen out of the employment rather than as a result of exposure in the community at large.

136. Thus, the Applicant is still required to demonstrate that contraction of malaria and dengue fever arose out of and in the course of her employment and not as a result of general exposure to hazards prevalent in her duty station. This standard is consistent with that applied by the ARP. The Tribunal will now assess whether the conclusion reached by the ARP could be reasonably sustained on the basis of the evidence before it.

137. At the outset, the Tribunal makes clear that there is no provision within Staff Rule 6.11 that distinguishes between internationally and locally recruited staff. In fact, regarding the applicability of this Rule, Staff Rule 6.11, paragraph 1.02, states, “This Rule applies to the Staff of the Institutions of the World Bank Group except where otherwise specified.” No specific exception is mentioned for certain appointment types in this Rule. The Tribunal notes that the ARP based its reasoning on, among others, the fact that the Applicant’s contract was “subject to local, as opposed to international recruitment” without further explanation of if or how the “increased risk” test applied in such circumstances. Such a statement caused needless confusion and appears, on the face of it, incongruent with Staff Rule 6.11. There are no grounds for distinguishing staff members requesting workers’ compensation because of the nature of their recruitment. As noted in *J*, Decision No. 349 [2006], para. 28, “[t]he first principal legal issue involved in this claim is whether the [a]pplicant’s condition arises ‘out of and in the course of employment,’ an essential element required by Staff Rule 6.11 for a claim to be compensable.” It is this legal issue that is appropriately the subject of review, and the Applicant bears the burden of proof.

138. The record shows that the Applicant became ill with mosquito-borne illnesses endemic to Sierra Leone. It is the Applicant’s assertion that she was exposed when she travelled on field visits “and took mosquito infested taxis to meetings (because she could not afford her own car).” The Tribunal is aware that the Bank’s Country Office in Freetown provided transportation service to all its staff for meetings until 30 June 2016 and that subsequently Country Office vehicles were available for use for “Bank related jobs during working hours.” The Applicant’s first diagnosis of malaria was in May 2016 before the Country Office transportation service was terminated on 30 June 2016 and the Country Office reverted to the Bank’s policy whereby Country Office vehicles were used only for Bank-related jobs during working hours. There is no information on whether the Applicant availed herself of the transportation services or whether the requests for transportation she claimed were denied pertained to “Bank related jobs during working hours.”

139. In cases of communal risk, it is reasonable to apply, as the ARP did, an “increased risk” test, namely, to assess whether the Applicant’s employment placed her at a “much higher proportionate risk of infection, when compared to the risk associated with other residents of the area.” The Tribunal adds that “residents of the area” include “Third Country Nationals” – like the

Applicant – who inhabit the area. In other words, the matter is not whether the Applicant is compared with indigenous communities that may or may not have partial immunity to mosquito-borne illnesses. Rather, the question is whether the evidence shows that the nature of the Applicant’s work exposed her at a higher risk to infected areas when compared with others in the general populace. Having reviewed the record, the Tribunal finds that the ARP was reasonable to conclude that it did not.

140. The Tribunal recalls a case of the Hearing and Adjudication Section of the District of Columbia Office of Employment Services concerning the causal link between an infectious disease in the community – influenza – and the staff member’s employment, *Neil v. D.C. Dep’t of Fire and Emergency Med. Servs*, OHA No. PBL 97-48 OBA No. 365594 Dir. Dkt. No. 98-22. Although this case is not of binding authority before the Tribunal, it is nevertheless of interest since Staff Rule 6.11 references the D.C. Act. In that case the Hearing and Appeals Examiner noted that, although the employee may have “exhibited symptoms of influenza, this condition was unrelated to the duties and responsibilities of a paramedic. Further, assuming, arguendo, the influenza may have aggravated or accelerated decedent’s hypertension [...] said events certainly would have to be corroborated since any individual in the general populace might become infected by those germs; to place such a burden upon an employer would be both onerous and unfair.” *Id.*, paras. 12–13. The endemic nature of malaria and dengue fever in Sierra Leone is generally known and is such that the general populace is at risk of contracting these illnesses as a result of its mere presence in the country. The Applicant states that her serious illnesses were “a result of the Bank sending her to Sierra Leone for work and exposing her to disease vectors.” The fact that the Applicant was employed in such a duty station does not establish the necessary causal link, as she is required to demonstrate that the illness arose out of and in the course of her employment at the Bank.

141. The question is whether the Bank has exercised its obligation of reasonable care to ensure the safety of its staff in the course of their employment. In Judgment 402, considerations 1 and 2, the ILOAT stated:

It is a fundamental principle of every contract of employment that the employer will not require the employee to work in a place which he knows or ought to know to be unsafe. Staff Regulation 1.2, which provides that all staff members are subject

to assignment by the Director-General to any of the activities or offices of the Organization, is to be read subject to this principle. If there is doubt about the safety of a place of work, it is the duty of the employer to make the necessary inquiries and to arrive at a reasonable and careful judgment, and the employee is entitled to rely upon his judgment. It is unnecessary in this case to consider whether and in what circumstances an employee may refuse to accept an order to work in an unsafe place. It is sufficient to say that, if he accepts the order, as *prima facie* he is bound to do, and the employer has failed to exercise due skill and care in arriving at his judgment, the employee is, subject to any contrary provision in the contract, entitled to be indemnified in full against the consequences of the misjudgment.

This principle is to be applied with due regard to the nature of the employment. In some employments there are unavoidable risks. A doctor may have to risk infection and a soldier or a policeman to risk bombs. The question in each case is whether the risk is abnormal having regard to the nature of the employment. In a case such as the present a reasonable test (though this is only one possible criterion) might be to consider whether an insurance company could, because of the civil war in East Pakistan (as Bangladesh then was), properly demand an additional premium for cover against the risk of injury in Dacca.

142. Furthermore, the Administrative Tribunal of the Asian Development Bank in *Bares v. Asian Development Bank* (1995), Decision No. 5, para. 24, has observed:

The Tribunal has no reason to question the existence of a general obligation of this nature [“obligation to protect its staff”]. But that is not the same thing as saying that that obligation is absolute, so as to make the organization the insurer of the staff member even if no failure of reasonable care can be attributed to the organization itself. Indeed, the [a]pplicants appear to accept this limitation upon the Bank’s responsibility, for much of their case is aimed at establishing that the Bank has in fact been negligent.

143. The Tribunal is not convinced that the Bank acted negligently toward the Applicant or otherwise breached its duty of care in this regard. Mosquito-related illnesses are a known risk of living in Sierra Leone. While such a risk cannot be entirely avoided, the question is whether the Bank was required to take specific measures, in conjunction with a reasonable exercise of its general duty of care to staff, to mitigate those risks. It is noted that the Applicant does not contend that she contracted the illnesses on Bank premises and that she does not aver that the Bank failed to take reasonable steps to ensure that its Country Office in Freetown was not infested with mosquitos. In addition, the record shows that the Bank provided transportation for staff members at least until June 2016. Although the general provision of transportation was an exceptional

measure put in place to respond to the Ebola outbreak, the Bank vehicle policy was such that Country Office vehicles were “used for the Bank related jobs during working hours.” As stated above, there is no information on the record to suggest that the Applicant requested, but was denied, access to Country Office vehicles for her Bank-related field trips during working hours. The Applicant has also not indicated the time period in which she states she was denied use of the Bank vehicles.

144. Based on the evidence on the record, the Tribunal is satisfied that the conclusion reached by the ARP could be reasonably sustained. The Tribunal finds that the ARP acted in accordance with the relevant rules and procedural requirements.

CONCLUDING REMARKS

145. The Applicant encountered several difficulties from the commencement of her employment. The difficulties the Applicant faced were compounded by the unfortunate illnesses she contracted. While the Tribunal does not find that the ARP erred in its review of the Claims Administrator on workers’ compensation, the Tribunal is convinced that, upon the Applicant being declared medically fit to work with limitations, the Bank could have done more to provide a reasonable accommodation for the Applicant to return to work. In light of this finding, some compensation is merited to the Applicant.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of \$28,000.00;
- (2) The Bank shall contribute to the Applicant’s legal fees and costs in the amount of \$4,000.00; and
- (3) All other claims are dismissed.

/S/ Andrew Burgess
Andrew Burgess
President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C.,* 16 November 2020

* 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.