



**World Bank Administrative Tribunal**

**2020**

**Decision No. 639**

**FR,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

**(Preliminary Objection)**

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

**FR,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal’s Statute, and composed of Judges Andrew Burgess (President), Janice Bellace, Seward Cooper, and Lynne Charbonneau.

2. The Application was received on 5 May 2020. The Applicant was represented by Nat N. Polito of The Law Offices of Nat N. Polito, P.C. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency. The Applicant’s request for anonymity was granted on 30 October 2020.

3. The Applicant challenges “the process for the selection of the person to lead the Coordination Unit, his non-selection to lead the Coordination Unit, as well as his demotion and removal from leadership.”

4. On 27 May 2020, the IFC submitted a preliminary objection challenging the admissibility of some of the Applicant’s claims. This judgment addresses the IFC’s preliminary objection.

#### **FACTUAL BACKGROUND**

5. The Applicant joined the IFC on 29 November 2004, as a Grade Level G2, Senior Financial Officer. In 2007, the Applicant was promoted to Principal Financial Officer, Grade Level GH Tier 1 (GH-1), and, on 1 July 2015, the Applicant became the head of a client solutions unit.

6. In 2017, the IFC decided to reorganize the Vice Presidential Unit (VPU) in which the Applicant worked. This reorganization resulted in the dissolution of the client solutions unit and the creation of a Coordination Unit.

7. In July 2017, the Applicant's immediate director (Director) informed the Applicant that the client solutions unit he headed would be dissolved to allow for the creation of the Coordination Unit which would be headed by Mr. X, a Level G2 Treasury Officer based in London. According to the Applicant, upon hearing the news, he raised the following concerns with his Director:

- (a) why was he not considered to lead the CU [Coordination Unit];
- (b) what was the timing for the creation of the CU;
- (c) what was his role and job within [the] IFC Treasury going to be going forward;
- (d) why was he tasked with helping to create and staff a CU that would require the abolition of his own Unit;
- (e) was there going to be a process of considering these issues and some form of competitive selection; and
- (f) what was the status of his leadership role within [the] IFC [VPU].

8. In September 2017, at a VPU leadership retreat, the IFC Vice President and Treasurer (VP) announced the organizational changes in the VPU. To the Applicant, it appeared that his concerns remained unresolved and ignored, and he considered the dissolution of his unit a demotion which was "announced in public at the [r]etreat without his input, knowledge or consent."

9. In September 2017, the Applicant met with the then IFC Director of Syndications regarding his role within the VPU in light of the VP's decisions. According to the Applicant, he was informed that his Director had corresponded with senior management about his concerns. The Applicant did not receive a response to his concerns.

10. On 19 October 2017, the Applicant received an email confirming the earlier communication that Mr. X would lead the Coordination Unit. The email also confirmed that a significant portion of the Applicant's team would be transferred to the Coordination Unit.

11. In or around late November 2017, the Applicant was informed by his Director that the Coordination Unit would be established in January 2018. According to the Applicant, this was an earlier date than was initially communicated to him.

12. On 3 December 2017, the Applicant submitted his resignation to the VPU senior leadership.

13. On 4 December 2017, the Applicant met with the VP who, according to the Applicant, declined to accept the Applicant's resignation. The IFC states that the VP asked the Applicant to reconsider his resignation.

14. On 11 December 2017, the Applicant formally rescinded his resignation after meeting with the VP. According to the Applicant, the VP promised to recommend the Applicant for progression to Level GH Tier 2 (GH-2) at the next promotion cycle in summer 2018, and that the Applicant would remain a member of the VPU leadership team. The IFC claims that there is no evidence of any such promise by the VP who, according to the IFC, has "stated that he only asked [the] Applicant to reconsider his resignation."

15. On the same day, the VP announced the reorganization of the Treasury and Syndications Vice Presidency in an email to the VPU. The VP stated that the position of Head of the Coordination Unit would soon be advertised; however, in the interim, his advisor would serve as acting Head of the Coordination Unit.

16. In early 2018, the position of Head of the Coordination Unit was advertised. The Applicant did not apply for the Head of the Coordination Unit position. According to the Applicant, he did not apply for the position because he "knew that the position had already been effectively filled and that the job posting was a mere formality." The Applicant states that he did not want "to jeopardize the agreement that [he] had with the VP and feared additional career damage if [he] were to be judged by him as challenging his plan."

17. On 11 June 2018, Mr. X was appointed as the Head of the Coordination Unit.

18. On 26 June 2018, according to the Applicant, the Applicant's Director informed him that the VP had decided to remove the Applicant from the VPU leadership team and that he would not be proposed for progression to Grade Level GH-2. The Applicant was subsequently removed from calendar invitations for future leadership team meetings, and he was no longer invited to attend VPU leadership retreats.

19. On 17 July 2018, the Applicant filed Request for Review No. 434 before Peer Review Services (PRS). According to the PRS Panel Report, the Applicant challenged the following actions and decisions by management in Fiscal Year 2018 (FY18):

- (i) Removal from the [VPU] leadership team (Removal from Leadership Team Decision);
- (ii) Not to propose him for progression to Chief Officer, Level GH Tier 2 (GH-2) despite an alleged promise to do so (Progression Decision);
- (iii) Transfer of a substantial portion of his responsibilities and staff to a new unit (Transfer of Responsibilities Decision); and
- (iv) Realignment of units based on the feedback from unit staff in the Staff Engagement Survey (Realignment Decision).

20. On 1 August 2018, the PRS Secretariat informed the Applicant that PRS did not have "jurisdiction to review all of the claims" the Applicant set forth in his request for review. PRS found that the Applicant "ought reasonably to have been aware of the transfer of responsibility and realignment of [his] unit at the latest by December 3, 2017, when [he] resigned." The Applicant was informed that he filed his request for review on 17 July 2018, which was more than 120 calendar days since he became aware of the above decisions. Accordingly, the Applicant was informed by the PRS Secretariat that "these claims appear to be untimely and PRS has no jurisdiction to review these claims."

21. On 4 December 2018, the Applicant filed another request for review with PRS, Request for Review No. 449. According to the PRS Panel Report, the Applicant challenged the following actions by management:

- (i) Retaliation in the form of facing a more rigorous nomination process for the IFC “Top 30 for IFC 3.0 Individuals Award Category” in FY18 (Corporate Award Decision);
- (ii) Retaliation in the form of being “dropped” from a [VPU] planned trip to New York City to meet with Columbia University officials (Visit to Columbia University Decision); and
- (iii) “[I]nconsistent rules under which matters involving issues (discrimination, retaliation, among others) under the purview of EBC [Office of Ethics and Business Conduct] interact with the PRS process, particularly in regards to the timeliness requirements of each” (Claim regarding Inconsistent Rules).

22. On 20 December 2019, PRS issued the Panel’s Report in Consolidated Requests for Review Nos. 434 and 449. The PRS Panel found that the IFC acted consistently with the Applicant’s contract of employment and terms of appointment regarding the challenged decisions. It also found that management provided a reasonable and observable basis for the decisions, followed a fair and proper process, and acted in good faith. The Applicant’s requests were dismissed, and the Panel recommended that no relief or compensation be granted.

23. On 21 January 2020, the IFC Chief Executive Officer accepted the PRS Panel’s recommendation.

24. On 5 May 2020, the Applicant filed this Application before the Tribunal. The Applicant is contesting “the process for the selection of the person to lead the Coordination Unit, his non-selection to lead the Coordination Unit, as well as his demotion and removal from leadership.” The Applicant requests specific performance in the form of

a finding that he should have been reasonably considered to lead the Coordination Unit. There should have been a fair, transparent and competitive process for the selection of the person to lead the Coordination Unit. He further seeks a finding that his demotion and removal from leadership lacked a reasonable basis or failed to follow a reasonable process. He also seeks to be nominated for progression and be restored to his leadership role and functions within the VPU.

25. The Applicant requests damages for lost career opportunity, reputational damage, inconvenience, and physical and mental stress assessed at two years' net salary, as well as any other relief the Tribunal deems just and appropriate under the circumstances.

26. On 27 May 2020, the IFC submitted a preliminary objection challenging the admissibility of some of the Applicant's claims.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The IFC's Contentions*

27. According to the IFC, the disputed employment matter is the decision to reorganize the Applicant's VPU and create the Coordination Unit. The IFC contends that this decision was made in 2017 and that the Applicant failed to challenge it before PRS in a timely manner. The IFC contends that PRS "correctly dismissed his claims as untimely to the extent they related to the creation of the Coordination Unit and the transfer of responsibilities from [the] Applicant to the Coordination Unit."

28. The IFC also states that the Applicant raises claims before the Tribunal that he did not raise before PRS and that he has failed to exhaust internal remedies on those claims. To the IFC, the Applicant "expands his claims to cover both the process and his non-selection to lead the Coordination Unit." The IFC contends that none of those claims was timely brought before PRS. Specifically, the IFC states that the Applicant did not challenge Mr. X's selection before PRS. The IFC contends that the record shows the decisions the Applicant challenged before PRS and that there was no mention of a challenge to Mr. X's selection and the Applicant's non-selection.

29. The IFC challenges the Applicant's position that all the claims are intertwined and his argument that the IFC would not be prejudiced by the admission of all his claims before the Tribunal. On the former, the IFC posits that the claims are not intertwined and that PRS was able to decide on the Applicant's timely claims without regard to those which were untimely. On the latter point, the IFC contends that it would be prejudiced by the admission of untimely claims.

According to the IFC, the Applicant failed to exhaust internal remedies on those claims, which means that “management has not had an opportunity to review and respond to his claims before PRS.”

30. Finally, the IFC states that the Applicant has not proffered evidence of exceptional circumstances that would justify the failure to meet the requirements to exhaust internal remedies and to do so in a timely manner. Consequently, the IFC contends that the Applicant’s claims regarding the reorganization, the process for selection of the person to lead the Coordination Unit, and the Applicant’s non-selection are inadmissible. To the IFC, the only claims properly before the Tribunal are the claims arising out of the alleged promise by the VP, notably the Applicant’s removal from the Treasury and Syndications Vice Presidency leadership team and the non-proposal of the Applicant for progression to Chief Officer, Grade Level GH-2.

### *The Applicant’s Contentions*

31. The Applicant asserts that (i) his requests for review before PRS included a challenge to Mr. X’s selection and this claim is timely; (ii) his non-selection claim may not be separated from the demotion claim and “in any event the ‘delay’ in filing of the claims resulted from [the Applicant’s] reasonable reliance on the representations and promises of the then [VP]”; and (iii) admission of all his claims would not prejudice the IFC.

32. To the Applicant, the IFC incorrectly categorizes the disputed employment matter. The Applicant contends that he is not challenging the creation of the Coordination Unit. Rather, he is disputing the selection of Mr. X as the Head of the Coordination Unit. The Applicant notes that he submitted his request for review to PRS a little over thirty days after Mr. X commenced his employment as the Head of the Coordination Unit. According to the Applicant, it would have been unreasonable for him to file a claim with PRS before Mr. X assumed the role. Even still, the Applicant asserts that he reasonably relied on the VP’s promises that he would recommend the Applicant for progression to Grade Level GH-2 and that the Applicant would remain a member of the leadership team. In reliance on those promises, the Applicant states that he rescinded his resignation and acted with the reasonable expectation that the promises would be kept. He asserts

that, once he was informed of the decision to drop him from the leadership team and that he would not be proposed for progression, he immediately submitted a request for review to PRS. The Applicant states that the time for filing was triggered when Mr. X became the Head of the Coordination Unit. Once this occurred, he timely filed his claim with PRS.

33. According to the Applicant, PRS was on notice of his challenge to Mr. X's selection. The Applicant contends that in his first claim to PRS he requested review of "[t]he basis for the transfer of a substantial portion of [his] responsibilities and staff to a new unit." In providing the relevant facts, the Applicant stated that he "was informed that the [VP] intended to disband [his] unit and form a new Coordination Unit to be led by an individual already pre-identified." The Applicant states that he also raised this fact in his second request for review to PRS. The Applicant contends that, while PRS chose to ignore the non-selection claim, this claim is part of the pattern of "arbitrary and capricious conduct at issue" and shares a "factual nexus with [the Applicant's] claims regarding removal from leadership and non-proposal for progression; therefore, the parties will have to brief these issues for the Tribunal."

34. The Applicant further contends that his non-selection was part of a pattern of demotion actions that should not be viewed discretely or challenged separately. To the Applicant, in light of the promises made to him, it was reasonable for him to wait before filing a request for review before PRS.

35. Finally, the Applicant avers that there is no prejudice to the IFC if the Tribunal considers the merits of the non-selection claim. To the Applicant, the interests of justice and equity dictate that his non-selection claim and the IFC's justification for selecting Mr. X be brought to light "because the [non-selection] claim is inextricably linked to [the Applicant's] removal from the Treasury and Syndication[s] Vice Presidency leadership role and the non-proposal for progression." The Applicant states that it was widely known that Mr. X was pre-determined to lead the Coordination Unit well before the job selection process was initiated. This, to the Applicant, only underscores the impropriety of the selection process and the need for the Tribunal's scrutiny.

36. The Applicant requests the amount of \$25,469.00 as legal fees and costs for the preliminary objection phase of the proceedings.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

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

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

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

38. The Tribunal has emphasized that the prescribed time limits are very "important for a smooth functioning of both the Bank and the Tribunal." *See Alrayes (Preliminary Objection)*, Decision No. 520 [2015], para. 56; *Tanner*, Decision No. 478 [2013], para. 45; *Agerschou*, Decision No. 114 [1992], para. 42.

39. It is the IFC's contention that the Applicant failed to raise his claim concerning Mr. X's selection before PRS and has thus failed to exhaust internal remedies in a timely manner. The Applicant, by contrast, maintains that this claim formed part and parcel of his requests for review before PRS and that he submitted this claim "a little over thirty (30) days" after Mr. X commenced as the Head of the Coordination Unit. To the Applicant, the time to file a claim before PRS could not have begun to run prior to Mr. X's formal appointment. The Applicant further claims that PRS

was on notice from his submissions that he was challenging Mr. X's selection and his own non-selection but that PRS chose not to address the claim. According to the Applicant, Mr. X's selection was inseparably tied to the Applicant's "non-selection, demotion and other improper conduct of the [VP]. They are two sides of the same coin."

40. As evidence that the Applicant did not submit a claim on the selection of the Head of the Coordination Unit to PRS, the IFC relies on the summation of the Applicant's claims in the PRS Panel Report on the consolidated Requests for Review Nos. 434 and 449. The Panel Report summarized the Applicant's Request for Review No. 434 as challenging managerial decisions concerning the following:

[...]

- (v) Removal from the [VPU] leadership team (Removal from Leadership Team Decision);
- (vi) Not to propose him for progression to Chief Officer, Level GH Tier 2 (GH-2) despite an alleged promise to do so (Progression Decision);
- (vii) Transfer of a substantial portion of his responsibilities and staff to a new unit (Transfer of Responsibilities Decision); and
- (viii) Realignment of units based on the feedback from unit staff in the Staff Engagement Survey (Realignment Decision).

41. With respect to Request for Review No. 449, the Panel Report summarized the Applicant's challenges as follows:

- (i) Retaliation in the form of facing a more rigorous nomination process for the IFC "Top 30 for IFC 3.0 Individuals Award Category" in FY18 (Corporate Award Decision);
- (ii) Retaliation in the form of being "dropped" from a [VPU] planned trip to New York City to meet with Columbia University officials (Visit to Columbia University Decision); and
- (iii) "[I]nconsistent rules under which matters involving issues (discrimination, retaliation, among others) under the purview of EBC [Office of Ethics and Business Conduct] interact with the PRS process, particularly in regards to the timeliness requirements of each" (Claim regarding Inconsistent Rules).

42. The record contains copies of the Applicant's requests for review. In Request for Review No. 434, the Applicant provided a descriptive narrative of the disputed matter. Of relevance, the Applicant requested PRS to review:

1/ The recent notification to me that I would be removed from the [VPU] leadership team effective July 1, 2018 despite the aforementioned repeated assurances from senior management of the VPU, and the [VP] in December 2017, that I would remain a member regardless of internal unit realignments. I have been a member of the leadership team the past three fiscal years. This action has had the effect of stripping me of my authority and diminishing my reputation among my peers and subordinates;

[...]

3/ The basis for the transfer of a substantial portion of my responsibilities and staff to a new unit despite my maintaining responsibility and active involvement in the delivery of several key responsibilities of the new unit for months after the transfer occurred on January 1, 2018.

43. In section 4 of the Request for Review document, which requires a "brief statement of the relevant facts leading up to the Disputed Employment Matter(s)," the Applicant stated:

Notwithstanding my and my unit's notable achievements, I was very soon informed that the [VP] intended to disband my unit and form a new Coordination Unit *to be led by an individual already preidentified.*

[...]

In subsequent weeks, I came to learn that the unit would not be formally established on July 1, 2018 as was originally represented to me, *but rather in January 2018, with the [VP's] advisor as acting head. I was never given a reason for this change.* (Emphasis added.)

44. The Applicant submitted Request for Review No. 449 as an additional filing related to his initial filing. The Applicant stated that the "reason for the additional filing is my submission to EBC on October 12, 2018 of a request to examine what I believe to be possible instances of discriminatory and retaliatory conduct by the [VP]." Notably, the Applicant requested a review of item 3 in Request for Review No. 434, and he requested PRS to:

A/ Reconsider the finding that PRS has no jurisdiction regarding items 3 and 4 from the RfR [Request for Review] #434 in light of the referral to PRS of my complaint of discriminatory and retaliatory behavior to the Office of Ethics & Business Conduct (EBC).

45. Specifically, the Applicant requested:

[...]

C/ Based on the EBC referral to PRS of my contention of discriminatory conduct by the [VP], review the circumstances and details of *the process by which my unit was dismantled in order to allow for the creation of a new internal Coordination Unit.* (Emphasis added.)

46. In section 4 of the document, which requires a brief statement of the relevant facts leading to the disputed employment matter, the Applicant stated:

In summation, I was effectively demoted, my unit was eliminated, the scope of my responsibilities was dramatically reduced, I was dismissed from the leadership team, I suffered the loss of supervisory and budgetary approval authority for several staff, and my stature within the VPU among my leadership peers and other staff was severely diminished. *All of this was done to accommodate the elevation of a part II colleague with no record of leadership responsibility.* (Emphasis added.)

[...]

Although the World Bank Group is given greater leeway with respect to the recruitment and advancement of certain nationality, gender, and ethnic groups than is permitted under a number of stakeholder national laws in the interest of creating an internationally diverse workforce, this flexibility is not understood to be without limits. The removal of career impediments, addressing issues of both conscious and unconscious bias, mentoring/coaching of promising underrepresented candidates even to the point of granting them preferences in a job selection process in competition with other qualified candidates are all forms of support to the aspiration of building a diverse and inclusive workforce that have gained widespread support across the institution and its stakeholders.

When these efforts are extended, however, to members of a favored class of staff at the direct expense of the status, responsibilities, and career of a non-favored, but well-performing individual staff member - in effect advancing one person at the direct expense of another's career and position within the institution - the very legitimacy of the WBG's [World Bank Group's] Diversity & Inclusion agenda is brought into question. In this case, there is an unusually direct and clear line of causation between the need to dismantle my unit in order to create a new one, the

transfer of a significant portion of my specific responsibilities and staff on the one hand, and the work program and staff of the new unit on the other, and my dismissal from the VPU leadership team contemporaneous with the elevation of someone with the same title and rank within the VPU, but with no prior leadership experience. My position within the VPU and IFC overall was severely degraded to accommodate the [VP's] desire to elevate this particular individual and to address what he clearly had indicated were shortcomings in the VPU's D&I [Diversity & Inclusion] metrics.

47. Responding to section 5 on why he was challenging the disputed employment matter, the Applicant responded in part:

The [VP's] desire to find a way to elevate the individual who eventually [became] the [H]ead of the new Coordination Unit was well-known throughout the VPU leadership. As it could only be achieved by removing me from leadership of its predecessor unit, this is the path he chose, and it came at my direct expense. Rarely can one track the elevation of one individual so directly at the sole expense of another individual.

48. The record shows that, although the Applicant did not mention Mr. X by name in either Request for Review No. 434 or Request for Review No. 449, he challenged, and raised concerns about, the selection of the Head of the new Coordination Unit because he believed it was connected to his alleged demotion and removal from a position of authority. Having reviewed the Applicant's submissions to PRS, the Tribunal finds that a challenge to Mr. X's selection was part and parcel of his requests for review of certain managerial decisions affecting him. The Applicant was challenging both the process through which Mr. X was selected (alleging that Mr. X was pre-selected for the position) and Mr. X's qualifications, believing that he, the Applicant, was more qualified for the position. This argument was made more explicitly in Request for Review No. 449. The record shows that the Applicant challenged managerial decisions including the selection of Mr. X to lead the Coordination Unit in his requests for review to PRS but that this specific matter was not addressed by the PRS Panel. While the Applicant could have structured his requests to PRS more clearly, he did raise his concerns about the selection of the new Head of the Coordination Unit in his requests for review in addition to his concerns about the creation of the Coordination Unit in the first place. The latter claim was found to be untimely, but the former claim was not addressed by the PRS Panel. The Tribunal finds that the evidence does not support the IFC's contention that the Applicant did not raise his claim before PRS.

49. On the question of whether the Applicant submitted this claim in a timely manner, the Applicant maintains that he could not have submitted a request for review challenging Mr. X's selection prior to Mr. X's formal appointment to the role since Mr. X was not pre-selected through a competitive process. The IFC did not submit contentions on the question of when the Applicant should have submitted this specific claim precisely because the IFC does not believe that the Applicant raised the claim before PRS. The IFC does contend that the Applicant should be barred from tacking numerous old and time-barred claims onto timely claims.

50. The Tribunal recently held in *FL (Preliminary Objection)*, Decision No. 630 [2020], para. 38, that the time limit for the pursuit of internal remedies is triggered on the "date on which the Applicant had notice, or ought reasonably to have known, of the disputed employment matter." See also *Motabar*, Decision No. 346 [2006], para. 16, citing *Thomas*, Decision No. 232 [2000], paras. 29, 31. See also *Prescott*, Decision No. 234 [2000], para. 28. Additionally, in *Al-Muthaffar (Preliminary Objection)*, Decision No. 502 [2014], para. 40, the Tribunal stated:

[W]hat is a timely manner is delimited by the time limit stipulated in the Staff Rules for the pursuit of internal remedies which, in this case, was triggered at the time at which the Bank's decision [...] was first notified to the Applicant. That is the *dies a quo* and it is not changed by assertion of a subsequent discovery of circumstances or allegedly false reasons given for the Bank's decision.

51. The Applicant states that he was notified of the decision to select Mr. X when it was announced that Mr. X was the new Head of the Coordination Unit on 11 June 2018. At the same time the record contains instances which suggest that the Applicant was aware that Mr. X had been "pre-selected," as he contends, for the position. In his Declaration annexed to his Application, the Applicant stated that he was informed in July 2017 by his Director that the then VP "had already decided that [Mr. X] was chosen to lead the Coordination Unit. [Mr. X], then a G2 Treasury Officer, was working as a staff member of the [...] team based in London." The Applicant stated that he raised his concerns to his Director as to "why [the Applicant] was [...] not considered to head the Coordination Unit."

52. On 3 December 2017, the Applicant submitted his resignation. This resignation was rescinded following his 11 December 2017 meeting with the VP who, according to the Applicant,

made several promises including that the Applicant would remain on the VPU leadership team and be proposed for progression to Grade Level GH-2. The Applicant states that, “even though [he] was not satisfied with the pre-determined selection of [Mr. X] and the removal of [his] functions and staff, [he] conveyed [his] decision to rescind [his] resignation based on the promises made by [the VP] on December 4.” According to the Applicant, once the promises were unfulfilled and Mr. X was formally appointed to the position, he submitted his request for review to PRS.

53. The record shows that the Applicant was aware of Mr. X’s “pre-selection” to head the upcoming Coordination Unit as early as July 2017 and that he had concerns about Mr. X’s perceived elevation over him. However, Mr. X was not formally appointed and the Coordination Unit itself did not exist at that time. The Applicant could not have challenged Mr. X’s “pre-selection” in 2017 since there was no formal decision to challenge. As noted above, it was only in January 2018 that the Coordination Unit was created under an acting head and the Head of the Coordination Unit position was posted. Mr. X was formally appointed to the role of the Head of the Coordination Unit on 11 June 2018.

54. Furthermore, it is the Applicant’s assertion that, in exchange for the alleged promise to propose him for progression to Grade Level GH-2 and keep him as a member of the VPU leadership team, the Applicant did not challenge Mr. X’s selection initially. According to the Applicant, because of these promises, he did not apply for the position of Head of the Coordination Unit when it was advertised in early 2018 as he “did not wish to jeopardize the agreement that [he] had with the VP and feared additional career damage if [he] were to be judged by [the VP] as challenging his plan.” These alleged promises, the Applicant asserts, went unfulfilled, and the Applicant was informed on 26 June 2018 that the VP had decided to remove him from the VPU leadership team and that he would not be proposed for progression to Grade Level GH-2. The Applicant submitted Request for Review No. 434 on 17 July 2018, within 120 days of Mr. X’s formal appointment as the Head of the Coordination Unit.

55. The Tribunal observes that it is uncontroversial that both the alleged promises and the alleged agreement the Applicant had with the VP formed the basis for claims which are admissible before the Tribunal for review on the merits.

56. According to Staff Rule 9.03, paragraph 8.02, which governs proceedings before PRS, “[a] Staff Member receives ‘notice’ of a disputed employment matter when s/he receives written notice or ought reasonably to have been aware that the disputed employment matter occurred.” The Tribunal notes that there was no disputed employment matter for the Applicant to challenge before PRS until 11 June 2018 when Mr. X was formally appointed as the Head of the Coordination Unit and 26 June 2018 when the Applicant was informed, as he claims, that he would be removed from the VPU leadership team and would not be proposed for progression. On the latter date the Applicant perceived that the alleged promises the VP made to him were reneged upon. The Applicant had from 11 June 2018 to submit a claim only on Mr. X’s formal appointment as the Head of the Coordination Unit, and certainly from 26 June 2018 to challenge the collective impugned managerial decisions including the selection of Mr. X in connection with the Applicant’s allegation that the VP reneged upon promises made to him. The record shows that the Applicant submitted Request for Review No. 434 on 17 July 2018. Accordingly, his claim was submitted to PRS in a timely manner.

57. The Tribunal notes the IFC’s contention that the Applicant’s claims are not intertwined. The IFC refers to the Tribunal’s decision in *CR (No. 2)*, Decision No. 582 [2018], para. 50, where the Tribunal reiterated that “its jurisprudence, as articulated in *O*, Decision No. 323 [2004], *Malekpour*, Decision No. 320 [2004], and *[EE]*, Decision No. 148 [1996], does not allow an applicant to ‘tack’ numerous old and time-barred claims onto timely claims by means of a ‘one ball of wax’ theory or by alleging a ‘pattern’ of unfairness.’ See *L (No. 2)*, Decision No. 379 [2008], para. 22.” To the IFC, the Applicant’s argument of inseparable claims and a “pattern of demotion actions” should be rejected.

58. Indeed, in *Malekpour* [2004], para. 21, the Tribunal rejected what it considered to be a strategy of that applicant to link a series of untimely claims as an “indirect way of avoiding the requirement of exhaustion of internal remedies.” In *L (No. 2)* [2008], para. 11, the Tribunal held that, “if an applicant’s claims arose out of different events, involved different persons and occurred at different times, then the timeliness requirements must be satisfied with respect to each claim.”

59. It is apparent that the Applicant's claims did not arise out of different events, did not involve different persons, and did not occur at different times. The record shows that it was the VP who made the decision to dissolve the Applicant's unit, create the Coordination Unit, and allegedly pre-select and eventually appoint Mr. X. It was also the VP who, the Applicant alleges, made promises to the Applicant which resulted in the Applicant not challenging Mr. X's selection and not applying for the Head of the Coordination Unit position. The record shows that it was only after the Applicant was informed that the alleged promises would not be kept that he submitted a request for review to PRS. As noted above, the Applicant's submission of a request for review on 17 July 2018 was well within the 120-day limit from the date Mr. X was formally appointed to head the Coordination Unit. Thus, even if reviewed separately, the Applicant's claim challenging Mr. X's appointment was not untimely.

60. The Tribunal therefore dismisses the IFC's preliminary objection and accepts jurisdiction over all of the Applicant's claims and will consider on the merits the claims challenging "the process for the selection of the person to lead the Coordination Unit, [the Applicant's] non-selection to lead the Coordination Unit, as well as his demotion and removal from leadership."

#### DECISION

- (1) The IFC's preliminary objection is dismissed; and
- (2) The IFC shall pay the Applicant's legal fees and costs in the amount of \$10,000.00 for the preliminary objection phase of the proceedings.

/S/ Andrew Burgess

Andrew Burgess

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

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

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\* 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.