



World Bank Administrative Tribunal

2021

Decision No. 655

**GA,
Applicant**

v.

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

(Preliminary Objection)

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

**GA,
Applicant**

v.

**International Bank for Reconstruction and Development,
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 Mahnoush H. Arsanjani (Vice-President), Janice Bellace, Seward Cooper, and Lynne Charbonneau.

2. The Application was received on 1 September 2020. The Applicant was represented by Tom Cummins of Washington Global Law Group, PLLC. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 26 May 2021.

3. The Applicant challenges the decision to shorten the duration of her Short-Term Temporary (STT) contract.

4. On 23 September 2020, the Bank submitted preliminary objections challenging the timeliness of the Application. This judgment addresses the Bank's preliminary objections.

FACTUAL BACKGROUND

5. The Applicant is a Bank retiree who worked as a full-time staff member from 1980 to 2001. According to the Applicant, she began accepting short-term appointments at the Bank starting in 2018 to assist with its managed programs.

6. On 26 October 2019, the Applicant signed a Letter of Appointment (LOA) accepting an STT position and assignment with "the WBG [World Bank Group] Managed Programs." The LOA stated that the Applicant's services were expected to be needed for about 850 hours and would begin on 1 November 2019 and terminate on 30 June 2020. According to the STT contract, the

Applicant's designated Task Team Leader (TTL) was the manager of the Applicant's unit. The STT contract designated the Office Manager as the individual who would be handling the administration associated with the assignment and to whom the Applicant should provide her bank account information.

7. According to the Applicant, her STT assignment was to assist the 1818 Society. The 1818 Society, also known as the World Bank Group Alumni Association, was formed in 1978 as an organization of World Bank Group retirees.

8. According to the Applicant, she fell and injured her left knee on 24 November 2019 after tripping over a sign in a construction area outside of the Bank's premises. The Applicant adds that she did not believe the injury, although painful, required immediate medical attention and that she continued to go to work.

9. The Applicant states that, during her assignment at the 1818 Society, she felt that she was being subjected to harassment and a hostile work environment.

10. On 3 December 2019, according to the Applicant, she reported the harassment and hostile work environment to her TTL, who suggested that she report the matter to the World Bank's Ethics and Business Conduct Department (EBC). The Applicant states that she reported the matter to EBC and was directed to a Senior Counsel within EBC.

11. On 9 December 2019, according to the Applicant, she met with the Senior Counsel. The Applicant states that her TTL was present for the first hour of the meeting. The Applicant states that, following a mid-day break, the Senior Counsel brought EBC's Anti-Harassment Coordinator into the meeting "to hear [the Applicant's] report."

12. The Applicant states that, on 10 December 2019, she met with the President of the 1818 Society. She further states that she informed him about the report she had made to EBC and expressed to him that "she would like" him to meet with EBC. According to the Applicant, the

President of the 1818 Society “opposed this” and expressed to her that he did not think that she should ask EBC to investigate the issue because to him “this was not an ethics issue.”

13. Shortly after her meeting with the President of the 1818 Society, according to the Applicant, she informed the Office Manager of her report to EBC.

14. The Applicant states that, on 19 December 2019, the last day the office was open before closing for the holidays, she saw the President of the 1818 Society. According to the Applicant, the President of the 1818 Society said that it was good to see her, smiled, and stated that she “should not pay attention to those sons of bitches.”

15. On 21 December 2019, the Applicant observed that her knee injury had worsened. She sought immediate medical attention at the emergency room of the Johns Hopkins Sibley Memorial Hospital. There, x-rays revealed that she had broken her left kneecap. According to the Applicant, the emergency room doctor issued her a large knee brace and told her that her injury “would likely take 6–8 weeks to heal.” The Applicant was discharged that same day.

16. According to the Applicant, she texted the Office Manager while still at the hospital to inform her that she had been diagnosed with a broken kneecap and that her injury would take approximately six to eight weeks to heal. According to the Applicant, the Office Manager responded by texting back “health is priority,” which the Applicant “understood to mean that [the Office Manager] was indicating that [the Applicant] should follow her doctor’s directions and take the time necessary to heal.”

17. The Applicant recalls that the Office Manager had broken her foot two years earlier and had been obliged to convalesce out of the office for six months. The Applicant states that during that period of time “the World Bank assigned someone to fill in for [the Office Manager].”

18. According to the Applicant, based on the Office Manager’s “health is priority” text message and the manner in which the Office Manager’s convalescence was handled, the Applicant

“reasonably understood that this would happen for her as well.” According to the Applicant, “at no point did anyone from the World Bank inform her otherwise.”

19. Furthermore, the Applicant states that she “proceeded under the reasonable belief that her upcoming absence during her convalescence had been approved by [the Office Manager],” who was both the “Office Manager” and person responsible for “handling the administration associated with [her] appointment.”

20. The Applicant states that on the next day, 22 December 2019, she received a text message from the President of the 1818 Society saying to “rest up.”

21. According to the Applicant, she turned off her cell phone on 1 January 2020 and did not turn it back on until almost two weeks later on 13 January 2020.

22. According to the Applicant, the office reopened on 6 January 2020, but she stayed home to continue her convalescence. The Applicant states that the Office Manager called her home telephone number on that day but “did not leave a message.”

23. The Applicant states that, following the office’s reopening, she continued her convalescence and did not attend work.

24. The Applicant states that, on 10 January 2020, additional x-rays of her knee confirmed the broken kneecap diagnosis. The final medical report, issued on that same date, stated, “She has pain when she tries to walk.”

25. The Applicant states that, also on 10 January 2020, she had a follow-up meeting with the Senior Counsel in EBC “about her report of harassment.” According to the Applicant, at the conclusion of the meeting she asked whether EBC would investigate her report and the Senior Counsel responded, “Let us take care of it.”

26. On 15 January 2020, the President of the 1818 Society wrote a letter to the Applicant. He expressed concern for her well-being, noting that their “last communication was on December 25.” He stated, “We have tried to contact you then through text messages, telephone calls and emails but you have not responded.” The letter further stated:

I understand that you may be coping with the personal challenges that you had previously discussed with me and seem unable to commit reliably for work. For that reason, we have decided to close the remainder of your contract and hire someone to replace you to meet the continuing needs and requirements of the office.

27. The President of the 1818 Society’s letter went on to say that the Applicant “was a good worker and colleague,” and he expressed hope that the Applicant would “stay in touch and stop by to see us when you have recovered sufficiently from whatever challenges you are dealing with.” The letter was copied to the Applicant’s TTL, the TTL’s manager, and a Senior Human Resources (HR) Business Partner.

28. The Applicant states that she received the President of the 1818 Society’s letter on 16 January 2020. That same day, according to the Applicant, she went to the 1818 Society office where she found the Office Manager working alone. The Applicant states that she told the Office Manager that she had received the President of the 1818 Society’s letter and that she had not reported to work because her knee hurt and that she needed to rest. According to the Applicant, the Office Manager told her that she and another colleague had tried to reach the Applicant several times but she did not answer her phone.

29. On 22 January 2020, according to the Applicant, she delivered a response letter addressed to the President of the 1818 Society that “identified material factual inaccuracies in his termination letter.” The Applicant’s TTL, the TTL’s manager, and the Senior HR Business Partner were copied on the letter.

30. The Applicant’s letter, dated 18 January 2020, addressed various issues including (i) the Applicant’s knee injury, (ii) the “Sibley Hospital Emergency,” (iii) communications with the 1818 Society, (iv) the Applicant’s 16 January 2020 visit to the 1818 Society office, (v) the content of the President of the 1818 Society’s 15 January 2020 letter, and (vi) the Applicant’s purported

“personal challenges” that the President of the 1818 Society mentioned in his 15 January 2020 letter.

31. In the Applicant’s letter, she stated that the reason she had missed calls and text messages from the 1818 Society was that she had turned her cell phone off from 1 to 13 January 2020. According to the Applicant, she found only one missed text message from the office when she turned her cell phone back on – a message from the Office Manager on 3 January 2020 stating, “How are you?” The Applicant also stated that she received a text message from another colleague on 13 January 2020 after she turned on her phone, which stated, “Hi, [the Applicant] – How are you?”

32. On the issue of missed calls and text messages, the Applicant’s letter further stated:

I don’t use my personal computer to read my emails. I turn off my cell phone, so I don’t read emails or text messages. But the 1818 Society can always reach me by mail, which you could have [done] when you sent me your letter of January 15 [2020].

33. With regard to the content of the President of the 1818 Society’s letter, the Applicant’s letter stated, “I was surprised by the content of your letter.” The Applicant stated that she had worked at the 1818 Society office every day until 19 December 2019, the last day before the office closed for the holidays, “even though I was in pain.” The letter added:

At no time [did] you or [the Office Manager] [inform] me [that] I seemed “unable to commit reliably for work.” As far as I know, because I was not told otherwise, I was scheduled to come back to work on January 6 [2020], when the office re-open[ed], had it not been for my broken [kneecap], which I found out on December 21 [2019] during my holiday vacation.

34. With regard to the “personal challenges” mentioned in the President of the 1818 Society’s 15 January 2020 letter, the Applicant’s letter addressed them as follows:

The personal challenge I am coping with currently is to recover from my knee injury, as the 1818 Society office knows well. I am attaching all medical records the Sibley Hospital staff gave me upon my release.

35. According to the Applicant, she unsuccessfully tried to deliver a copy of her response letter to the Senior Counsel in EBC on the same day. She states that she left a message with his assistant but he never returned her call.

36. According to the Applicant, she never received a response to her 18 January 2020 letter: “Not from [the President of the 1818 Society, her TTL, her TTL’s manager, or the Senior HR Business Partner]. Nor from anyone else at the World Bank. (Nor, as noted, from [the Senior Counsel in EBC].)”

37. On 27 July 2020, the Applicant emailed the Senior Counsel in EBC to inform him of the President of the 1818 Society’s “termination letter” and requested to speak with him. She added, “As you know, my computer is hacked and my phone is tapped.” The Senior Counsel wrote back providing available times to schedule a call.

38. On 27 July 2020, the Applicant also emailed the Tribunal Secretariat, stating:

My name is [the Applicant] and I am a former World Bank staff member. I have a question regarding the timing for filing a case. Does the Tribunal take into account the exceptional circumstances due to the Coronavirus and the 2-month lockdown? Is the Administrative Tribunal office open on the World Bank premises?

39. On 28 July 2020, the Tribunal Secretariat responded by providing general information on the time limits for filing an application per Article II of the Tribunal’s Statute, extensions, and COVID-19 protocols.

40. On 29 July 2020, the Applicant responded to the Senior Counsel in EBC confirming their meeting time. She added:

As you know, my phone is tapped, by the people associated with the case. They listen and report back, so I will ask that our conversation be limited. My computer is hacked, also by people associated with this case.

41. On 2 August 2020, the Applicant replied to the Tribunal Secretariat stating that she needed additional time to file her Application and asking for clarification on how to do so. The next day,

on 3 August 2020, the Tribunal Secretariat responded by providing additional information on the process.

42. On 3 August 2020, the Applicant emailed the Tribunal Secretariat stating that she was “challenging [the President of the 1818 Society’s] wrongful termination of her contract” and formally requesting that the Tribunal grant her an extension to file her Application. She stated various reasons for her request for extension, for example, the COVID-19 pandemic resulting in difficulties obtaining legal counsel. She added that she had “started the process of hiring a lawyer” for her wrongful termination claim on 1 June 2020 “when the city lifted some of the restrictions.” The Applicant also mentioned that her communications with EBC and prospective lawyers were disrupted “by the hacking of my computer and the tapping of my phone” which made her reluctant and “uncomfortable to send emails or discuss my case over the phone with the lawyers.”

43. Following an email exchange on that same date (3 August 2020) wherein the Tribunal Secretariat asked the Applicant to specify the length of time of the requested extension, the Applicant formally requested the Tribunal to grant her a “one-month extension to either find a lawyer or file the application myself.”

44. By letter dated 3 August 2020, the Tribunal granted the Applicant’s request for extension, allowing her until 2 September 2020 to file her Application. In the letter, the Tribunal added, “Please note that the extension of time is without prejudice to the position of the Bank with respect to any defenses or objections of any nature.”

45. On 7 August 2020, according to the Applicant, she retained legal counsel.

46. On 1 September 2020, the Applicant filed her Application against the Bank on the following grounds: (i) “breach of contract,” (ii) “lack of fair notice and due process,” and (iii) “lack of proper justification for termination.”

47. The Applicant requested that the Tribunal award her the following: (i) “Full payment of the eight-month term of [the Applicant’s] wrongfully terminated employment contract (i.e., US

\$20,850.50”); (ii) “Moral damages in an amount equal to two years of lost wages [under] her contract rate (i.e., US \$62,551.50”); (iii) “Deletion from [the Applicant’s] personnel records of any information that would adversely affect her ability to secure future appointments”; and (iv) “Any other relief deemed fair and appropriate by the Tribunal.”

48. The Applicant further claims legal fees and costs in the amount of \$43,225.05.

49. On 23 September 2020, the Bank submitted preliminary objections requesting that the Application be dismissed in its entirety and that the relief requested be denied.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank’s Contentions

50. According to the Bank, the Applicant failed to file her Application with the Tribunal in a timely manner and therefore the Application should be dismissed.

51. The Bank contends that notice was given on 16 January 2020 when the Applicant received a letter in the mail from the President of the 1818 Society advising her that the remainder of her STT contract was being closed. The President of the 1818 Society’s letter, which the Bank considers “notice,” was dated 15 January 2020. The Bank states that, in order for the Applicant’s claims to be admissible before the Tribunal, she was required to file her Application (or request for extension) by 15 May 2020 – 120 days after receiving notice per Article II(2)(ii) of the Tribunal’s Statute. The Bank avers that the Applicant failed to do so. The Bank states that the Applicant only filed a request for extension on 3 August 2020, 200 days after receiving notice. The Bank further states that, even if the Tribunal were to accept the Applicant’s 27 July 2020 email to the Tribunal Secretariat seeking clarification on the timing for filing an application as a valid request for extension, which the Bank refutes, the Application would still be untimely because it occurred after the 120-day time limit.

52. The Bank further contends that the Applicant has failed to sufficiently demonstrate “exceptional circumstances” as prescribed by Article II(2)(ii) of the Tribunal’s Statute and articulated in the Tribunal’s jurisprudence to justify a waiver of the 120-day time limit. The Bank states that the Applicant’s assertion that the COVID-19 pandemic and resulting lockdown period caused her difficulties in hiring a lawyer is insufficient because (i) the Applicant acknowledged that she “started the process of hiring a lawyer” on 1 June 2020, approximately two weeks after the 15 May 2020 deadline to file her Application or request for extension; (ii) the Tribunal’s Statute does not require applicants to engage attorneys to file their applications; and (iii) the inability to retain counsel does not constitute an “exceptional circumstance” which would excuse applicants from filing their applications within the prescribed time limits.

53. According to the Bank, evidence of the Applicant’s electronic communications with prospective attorneys after 15 May 2020 further demonstrates that the COVID-19 pandemic did not impede her ability to file the Application on time because “all communication with counsel was conducted electronically and could just as easily have been done prior to the prescribed time limit.” The Bank states that the lack of action from the notice date of 16 January 2020 to the application deadline of 15 May 2020 “is inexcusable,” particularly because the Applicant “had previously been employed by [the Bank] for over two decades” and, as such, was “required to know, and respect, the deadlines imposed by the Tribunal Rules.”

54. With regard to the Applicant’s 27 July 2020 email to the Tribunal seeking clarification on the timing for filing an application, the Bank asserts that “unawareness of the rules” is not an exceptional circumstance. The Bank adds that an applicant’s failure to take appropriate actions to safeguard her rights cannot be excused by exceptional circumstances.

55. The Bank dismisses the evidence offered by the Applicant showing the pandemic’s disruptive effect on her ability to retain legal counsel. To this point, the Bank states that the “Applicant offers no evidence” that “any and all communication systems were [...] inoperable [...] that would have impeded [the] Applicant from reaching out to the Tribunal or counsel.”

56. While acknowledging the “unprecedented” nature of the COVID-19 pandemic, the Bank avers that “the World Bank remained opened for business throughout the pandemic” despite the physical closure of its buildings in Washington, D.C. The Bank cites accommodations made by the Tribunal “to allow for electronic filings of submissions rather than filing hard copies,” refuting the Applicant’s assertion that exceptional circumstances created a “real and serious impediment” to her ability to file her Application on time.

57. Finally, the Bank rejects the Applicant’s claim that the President of the Tribunal’s grant of an extension to file her Application cured the timeliness issue and in effect resulted in a waiver of the 120-day time limit. In refuting this claim, the Bank states:

The final paragraph of the Tribunal’s letter of August 3, 2020, states, “Please note that the extension of time is **without prejudice** to the position of the Bank with respect to any defenses or **objections of any nature.**” (emphasis added). This paragraph specifically reserves [the Bank’s] right to raise any preliminary objections, such as the timeliness of the Application.

58. The Bank asserts that there is no legal rationale to argue that the Tribunal’s “mere granting of an extension cures [the] Applicant’s failure to timely file her Application.”

The Applicant’s Response

59. According to the Applicant, the Tribunal should dismiss the Bank’s preliminary objections to the timeliness of the Application on two grounds: (i) the Tribunal’s letter granting the Applicant an extension to file her Application cured the timeliness issue and (ii) “even if the President [of the Tribunal] had not already decided this issue,” the lockdowns and closures resulting from the COVID-19 pandemic created exceptional circumstances necessitating a waiver of the 120-day time limit.

60. First, the Applicant contends that the President of the Tribunal’s grant of an extension to file her Application cured the timeliness issue and effectuated a waiver of the 120-day time limit. The Applicant states that “the timeliness issue has already been weighed – and fairly, justly, and rightly decided – by the President of the Tribunal.” The Applicant states that, in the absence of

express “Tribunal Rules” addressing extensions of time for filing applications, “extensions may be granted by the President of the Tribunal on a case-by-case basis, if the President determines the request to be reasonable.” In this matter, the Applicant avers that the President of the Tribunal decided that her request for extension was reasonable “in light of the exceptional circumstances” resulting from the COVID-19 pandemic, particularly because the Applicant is an “elderly woman with underlying health conditions” and demanding that she “search out and find legal counsel and file an application” while the region remained under lockdown would be “plainly unreasonable.”

61. The Applicant disputes the Bank’s assertion that the Tribunal expressly reserved the Bank’s rights in its 3 August 2020 letter granting her request for extension to file her Application, by stating, “The Bank’s attack on the [President of the Tribunal’s] decision should be rejected.”

62. Second, the Applicant contends that, “even if the President [of the Tribunal] had not already decided” the timeliness issue by granting the extension to file her Application, the “exceptional circumstances presented by the unprecedented ongoing public health emergency and its impact” should lead the Tribunal to dismiss the Bank’s preliminary objections. The Applicant states that, in determining what constitutes “exceptional circumstances,” the Tribunal takes several factors into account, including “the extent of the delay and the nature of the excuse invoked by the [a]pplicant,” and that the circumstances must result in “real and serious impediments” and not be a “[m]ere inconvenience.”

63. The Applicant avers that exceptional circumstances are present in this matter. The Applicant asserts that the extent of the delay in filing was *de minimus* as the Bank was not prejudiced and, in its pleadings, “does not dispute, and thus concedes, that it has experienced no adverse consequences” from the timing of the filing. The Applicant also asserts that the “excuse was profound” – an unprecedented and ongoing public health emergency and crisis that resulted in lockdowns and closures that brought Washington, D.C., to a “standstill.” In support of this point, the Applicant cites the Bank’s pleadings wherein the Bank “acknowledges that the COVID-19 pandemic is unprecedented.” The Applicant also cites a World Bank COVID-19 crisis response factsheet stating, “The COVID-19 pandemic’s toll is enormous” and a World Bank crisis response paper observing that the “associated lockdowns [...] have upended normal life.”

64. The Applicant contends that the circumstances resulting from the COVID-19 crisis have been “exceptional” and created “real and serious” impediments to the Applicant personally, including “her ability to file her Application within 120 days of her wrongful termination.” In refuting the Bank’s position that the COVID-19 pandemic did not impede her ability to file her Application within the prescribed time limits, the Applicant states,

Demanding that an elderly woman with underlying health conditions search out and find legal counsel and file an application during an unprecedented health emergency while the region remained under literal lockdown would be plainly unreasonable.

65. The Applicant asserts that she diligently sought to overcome the “real and serious impediments to finding legal representation and filing her Application.” The Applicant states that, once the Washington, D.C., government partially lifted its mandatory stay-at-home order on 29 May 2020, she promptly sought out several law firms throughout June and July 2020.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

66. The Tribunal addresses two legal issues raised in the Bank’s preliminary objections: (i) whether the Applicant filed her Application in a timely manner and (ii) if not, whether there were exceptional circumstances to excuse the late filing of the Application.

WHETHER THE APPLICANT FILED HER APPLICATION IN A TIMELY MANNER

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

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

[...]

(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.

68. In its jurisprudence, the Tribunal has emphasized the importance of the time limits prescribed by Article II(2)(ii). In *Agerschou*, Decision No. 114 [1992], para. 42, the Tribunal explained that the prescribed time limits are “important for a smooth functioning of both the Bank and the Tribunal.” See also *Tanner*, Decision No. 478 [2013], para. 45. The Tribunal has also observed that the “long-delayed resolution of staff claims could be seriously complicated by the absence of important witnesses or documents, and would in any event result in instability and unpredictability in the ongoing employment relationships between staff members and the Bank.” *Mitra*, Decision No. 230 [2000], para. 11.

69. Pursuant to Article II of the Tribunal’s Statute, the Applicant had 120 days from the date of the “occurrence of the event giving rise to the application” to file an application. The Applicant received the notice of termination of her STT contract from the President of the 1818 Society on 16 January 2020. The Applicant does not dispute the Bank’s contention that she filed her request for extension out of time. On the contrary, the Applicant expressly admits to filing her Application late, stating, “Moreover, the extent of the delay in filing the Application was *de minimus*, while the nature of the excuse was profound.” Hence, the Applicant admits that the time for submission of her Application started to run from 16 January 2020.

70. Therefore, the Applicant should have filed her Application or request for extension by 15 May 2020, 120 days after receiving notice. She did not do so. Instead, the Applicant filed a request for extension on 3 August 2020, 200 days after receiving notice. Based on these facts, the Applicant filed her Application out of time.

71. The Applicant points out that her 3 August 2020 request for extension was duly granted by the Tribunal. The Applicant asserts that the grant of the extension, and the subsequent filing of her

Application before the extension expired, settled the issue. The Tribunal notes, however, that the grant of the extension was given with the express reservation that it was “without prejudice to the position of the Bank with respect to any defenses or objections of any nature.” The Tribunal observed in *BI (No. 4) (Preliminary Objection)*, Decision No. 540 [2016], para. 39,

This reservation unmistakably conveyed that the extension granted by the Tribunal did not affect [the Bank’s] right to make a preliminary objection that the [a]pplicant’s [a]pplication was not filed in a timely manner but was filed in contravention of Article II(2).

72. Based on the foregoing, the Tribunal finds that the Applicant did not file her Application in a timely manner.

WHETHER THERE WERE EXCEPTIONAL CIRCUMSTANCES TO EXCUSE THE LATE FILING OF THE
APPLICATION

73. Article II(2) provides an exception to the late filing of an application on the basis of “exceptional circumstances.” In *BI (No. 4) (Preliminary Objection)* [2016], para. 41, the Tribunal stated,

Article II(2) of the Tribunal’s Statute allows the Tribunal to render a claim or application admissible even if it was not filed in a timely manner, if the Tribunal decides that there were exceptional circumstances justifying the late filing.

74. Given that the record supports a finding that the Applicant did not file her Application in a timely manner, the next question to address is “whether there existed in the instant case exceptional circumstances under Article II, paragraph 2(ii), of the Statute of the Tribunal.” *Guya*, Decision No. 174 [1997], para. 4.

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

The jurisprudence of the Tribunal is well-established regarding the treatment of exceptional circumstances. In all such cases the Tribunal has followed a strict approach so as to prevent the undermining of statutory limitations. Exceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent “contemporaneous proof.”

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

77. In the present case, the Applicant alleges that there were exceptional circumstances, based largely on the COVID-19 pandemic. The Applicant asserts that the nature of her excuse for the untimely filing “was profound” – an unprecedented public health emergency and crisis that brought Washington, D.C., and the world to a “standstill.” The Applicant avers that the closures and lockdown resulting from the pandemic created “real and serious impediments” to finding legal representation and the “ability to file her Application within 120 days of her wrongful termination.” She states that “demanding that an elderly woman with underlying health conditions” search for legal counsel and file an application during the lockdown would be “plainly unreasonable.”

78. First, as a threshold issue, the Applicant’s assertion that her inability to retain counsel was an exceptional circumstance lacks merit. The Tribunal has long held that an applicant’s “inability to engage an attorney in due time” does not constitute an exceptional circumstance under Article II of the Tribunal’s Statute. *Yousufzi* [1996], para. 29. In *Yousufzi* [1996], para. 29, the Tribunal stated:

In *Kavoukas and Parham* (Decision No. 3 [1981]) the Tribunal did not consider inability to retain counsel an exceptional circumstance which excused the [a]pplicant who had not filed within the [120 days] as required by the Statute. The

Statute does not require applicants to engage attorneys to file their applications nor does it impose any charges for filing applications.

79. Second, based on the evidence presented in the record, the closures and lockdown resulting from the COVID-19 pandemic cannot be considered an “exceptional circumstance” to excuse the late filing of the Application. In the record, the Applicant describes in detail the timeline of the pandemic, including the physical closure of the World Bank Group offices at headquarters and closing of the metro and rail systems in the Washington, D.C., metro area; but these are “allegations of a general kind.” Crucially, the Applicant offers no pertinent “contemporaneous proof” to demonstrate exactly how the lockdown imposed “real and serious impediments” to her filing her Application on time or simply asking for an extension of time in a timely manner.

80. In fact, despite the physical closures of its buildings in Washington, D.C., the World Bank Group remained open for business throughout the pandemic and instituted measures to accommodate home-based work.

81. On 12 March 2020, the Tribunal Secretariat issued a directive on its website stating that it would adhere to the World Bank Group’s home-based work advisory from 13 March 2020 and allow for electronic filing of submissions “until further notice.” Therefore, despite the lockdown, the Applicant at all times had access to the Tribunal after receiving notice of her termination on 16 January 2020. At no point was she expected or required to contravene the stay-at-home order to file her Application. Before the closures and lockdown, the Applicant could have seasonably filed her Application in person at the Tribunal Secretariat’s office or via mail, yet she failed to do so. Similarly, after the closures and lockdown, the Applicant could have seasonably filed her Application electronically by the 15 May 2020 deadline but also failed to do so. At the very least, she could have requested an extension of time if circumstances prevented her from filing an electronic submission.

82. The Applicant offers no pertinent “contemporaneous proof” to excuse her failure to file her Application within the 120-day limit. For example, she offers no evidence that any and all communications systems were inoperable in any manner that would have impeded her from contacting the Tribunal Secretariat or counsel. Nor does she offer evidence that she did not have

access to a computer or Wi-Fi connection that would have impeded her from filing her Application electronically. The Applicant also does not refer to any specific instance where she tried to contact the Tribunal Secretariat or file her Application electronically but was denied access. Nor does she offer any convincing medical-related reasons to excuse the late filing.

83. The Applicant states that, following the partial lifting of the “stay-at-home” order in Washington, D.C., on 29 May 2020, she started the process of hiring a lawyer. She produced copies of her email and text message correspondence with various prospective attorneys in June and July 2020. Notwithstanding her admission that she started the process of retaining an attorney almost two weeks after the expiration of the 120-day deadline of 15 May 2020, these electronic communications undermine her assertion that the pandemic impeded her ability to file her Application within the 120-day time limit. These electronic communications presumably could have just as easily been conducted prior to the expiration of the prescribed time limit to file her Application with the Tribunal.

84. Under the circumstances of this case, the Applicant’s lack of action between the time she received notice, 16 January 2020, and the 15 May 2020 deadline is inexcusable. The Applicant’s failure to take timely actions to safeguard her rights cannot be excused by the circumstances invoked by the Applicant. As the Tribunal observed in *Guya*, [1997], para. 11,

The Tribunal cannot regard a delay due to the [a]pplicant’s “own casual treatment of the relevant legal requirements” (*Agerschou*, Decision No. 114 [1992], para. 45) as excused by exceptional circumstances under Article II of the Statute.

85. In view of the foregoing, the Tribunal finds that there are no exceptional circumstances that excuse the late filing of the Application.

DECISION

The Application is dismissed.

/S/ Mahnoush H. Arsanjani

Mahnoush H. Arsanjani

Vice-President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

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

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