



# The Bench

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## The President of the Bank Issues *The Essential Governing and Operating Rules Relating to the Tribunal*



**“The World Bank Group is committed to ensuring that the Tribunal’s independence is guaranteed and respected, as required by its Statute.”**

**- Statement by WBG President David Malpass**

Following the establishment of the World Bank Administrative Tribunal by the Board of Governors in 1980, certain governing rules have been put in place to ensure that the Tribunal operates as a truly independent judicial body.

The President of the Bank has recently issued *The Essential Governing and Operating Rules Relating to the Tribunal*. President Malpass explained that this document “compiles the various governing and operating rules relating to the Tribunal for ease of reference and compliance, and once more it makes clear the Tribunal’s status as independent.” President Malpass stated further, “The independence of the Tribunal, the only judicial body in the Bank Group, is entrenched in the first Article of the Tribunal’s Statute. The World Bank Group is committed to ensuring that the Tribunal’s independence is guaranteed and respected, as required by its Statute.”

In her statement on the document, Judge Mahnoush H. Arsanjani, the President of the Tribunal, remarked, “The independence of the Tribunal, rooted in the first Article of the Tribunal’s Statute, is an unwavering commitment of all the judges on the Tribunal. The Tribunal must be independent and be seen to be independent to have the confidence of the parties who rely upon it for the resolution of employment disputes.”

*The Essential Governing and Operating Rules Relating to the Tribunal* articulates nine articles relating to the Tribunal’s independence for management, budget, unique status as a judicial body, application of the general rules of the Bank Group, and the Office of the Executive Secretary.



**“The Tribunal must be independent and be seen to be independent to have the confidence of the parties who rely upon it for**

**the resolution of employment disputes.”**

**- Statement by Tribunal President Mahnoush H. Arsanjani**

Notable provisions include Article 4, which states that the “Tribunal does not fall within any administrative unit within the Bank Group, including the Conflict Resolution System or Internal Justice Services or any other group. The Tribunal does not report to the Board of Executive Directors administratively, but it could provide reports to the Board, separately from reporting by Management.”

Further, Article 5 provides that the “Tribunal shall receive administrative assistance from the Office of the Vice President and Corporate Secretary. The Tribunal could be administratively linked with that Office or any other unit that is not part of the Senior Management Team. The provision of administrative assistance or administrative linkage with any unit does not create a reporting line nor does the Tribunal become part of that unit.”

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# Tribunal awards substantial amount of compensation for selection process marred by many defects

Noting “serious irregularities” in the selection process for a Senior Operations Officer position, the Tribunal reiterated the Bank’s responsibility “to follow a proper and fair process in its relations with staff members.”

In *GO v. IBRD*, the applicant contested the Bank’s decision not to select him for an advertised position, claiming the decision was unfair, unreasonable, and made in bad faith. Claiming also that the non-selection decision and communications related to it could harm his reputation and career, he requested compensation in addition to that already awarded.

The Tribunal recalled that it has long held that “selection decisions are discretionary decisions of the Bank” and that “no staff member has a right to be selected to a particular position.” It has also held, however, that it may overturn selection decisions made unfairly, arbitrarily, unreasonably, or without proper procedure.

The applicant in this case applied and was shortlisted for a position advertised by the Bank, but ultimately was not selected. Afterward, the applicant, as part of an internal email list, received a copy of the selection committee’s final interview report along with information about the selected candidate. Objecting to the report’s inaccuracies about his application and references, the applicant filed a request for review with Peer Review Services (PRS). He also challenged what he saw as the lack of transparency in the selection process, shown in part by the late addition of a new candidate to an already approved shortlist.

PRS found that the Bank’s decision did not follow a fair or transparent process. In addition, it found that the misleading and untrue statements in the interview report meant the decision lacked a reasonable or observable basis. PRS awarded the applicant three months’ salary, ordered that he receive an apology letter, and referred the matter of the untrue statements to the Office of Ethics and Business Conduct, which eventually closed its investigation for lack of evidence.

“Only fair and transparent processes can provide every candidate with a fair and equal opportunity to compete for positions, which is essential for workplace morale and staff’s confidence in the Bank.”  
- *GO*, Decision No. 668

“A selection process marred by so many defects undermines the Bank’s commitment to recruiting ‘staff of the highest caliber.’”  
- *GO*, Decision No. 668

The Tribunal declined to make a determination on the issue of bad faith, but agreed with the PRS Panel’s findings that the non-selection decision (i) lacked a reasonable and observable basis and (ii) the Bank did not follow a fair and proper process. In particular, the Tribunal pointed out the “numerous serious defects” in the selection process—among them the lack of documentation, confusion about which selection committee members were present at different interviews, and the inclusion of false and misleading statements in the interview report.

“A selection process marred by so many defects undermines the Bank’s commitment to recruiting ‘staff of the highest caliber,’” the Tribunal explained. It continued, “Only fair and transparent processes can provide every candidate with a fair and equal opportunity to compete for positions, which is essential for workplace morale and staff’s confidence in the Bank.”

In determining additional compensation, the Tribunal noted that its precedent shows that “compensation may be awarded for procedural violations alone” and may be higher if the “decision is also flawed.” In this case, the Tribunal considered that the Bank’s failures, “viewed collectively, constituted an egregious want of fairness towards the [a]pplicant.” It ordered the Bank to pay the applicant one and a half years’ salary and a portion of his legal fees.

“The Tribunal considers it imperative that a transparent and open competitive process must occur and be seen to occur.”  
- *GO*, Decision No. 668



## Integrity and ethical standards highlighted in two Tribunal decisions

Two applicants separately challenged findings of misconduct and sanctions imposed by the Bank. In *GN v. IBRD*, a former hiring manager responsible for sourcing staff from vendor companies disputed findings that he violated the Bank's procurement policy and conflict of interest rules, misused Bank funds, and received kickbacks. He also claimed that the resulting sanctions, including termination and ineligibility for future employment, were out of proportion to the offense.

The applicant in *GR v. IBRD*, a former country manager, contested findings that she harassed staff members, created a hostile work environment, and misused Bank resources. Like the applicant in *GN*, she challenged the disciplinary measures imposed on her, which included demotion from a managerial position and written censure to remain in her HR record for three years.

In both cases, the Tribunal recalled that the Bank bears the burden of proof and requires substantial evidence to find misconduct. Following its well-established scope of review, the Tribunal reviewed the facts and whether they amounted to misconduct, considered the legality and proportionality of the sanctions, and decided whether the Bank had observed the requirements of due process. As the Tribunal noted in *GN*, staff members must "receive an adequate opportunity to respond to allegations made against them and to put forward their own evidence."

After careful review, the Tribunal found in *GN* that the applicant's "admissions and the well-developed evidentiary record, which consists of strong testimonial and documentary materials," showed that he engaged in prohibited communication with vendors, failed to disclose real or potential conflicts of interest, behaved in a way that was "inconsistent with the general obligations of professional conduct," and interfered with the awarding of Bank contracts. Noting the "nature and persistence of the misconduct," the Tribunal found the sanctions appropriate. It also found that the Bank had observed the requirements of due process.

In its conclusions to *GN*, the Tribunal stressed that "the Bank's mission, to alleviate poverty and build prosperity, demands that it be a model of integrity, transparency, competition, and value in its procurement activities" and that the Bank "can demand no less of its own staff."

**“The Tribunal finds that the Applicant’s admitted behaviors, in view of the Applicant’s position of power and authority over the staff, could reasonably have been perceived to be offensive or intimidating, whether or not they were intended to be so.”**  
- *GR*, Decision No. 671

**“Each of the acts of misconduct considered here entails a lack of integrity, a lack of concern for the interests of the Bank, and situations that may reflect adversely on the Bank. Each compromises the Bank’s operations and leads to real or apparent conflicts of interest. Each involves a failure to observe generally applicable norms of prudent professional conduct.”**  
- *GN*, Decision No. 667

In *GR*, the Tribunal found that "the record and established facts" showed that the applicant's behavior, including routinely asking staff to perform personal tasks for her, did not meet the Bank Group's standards of "professional and ethical conduct," especially because she held "a position of power and authority over local country staff." In confirming the finding that she engaged in harassment, the Tribunal pointed out that the Bank Group's "Guidance on Anti-Harassment provides concrete examples of the types of behaviors that constitute harassment or unprofessional behavior." Although noting the applicant's "impressive career trajectory with the Bank" and subsequent "stellar reviews," the Tribunal found that the disciplinary measures were reasonable. It also determined that the Bank had not violated the applicant's due process rights. The Tribunal dismissed both applications.

# Judgments Address Pension Benefits, Judgment Implementation, Non-Progression, Among Other Issues

The World Bank Administrative Tribunal heard 12 cases in its June 2022 session. Five cases involved preliminary objections, *GS v. IBRD*, *GT v. IBRD*, *GU v. IBRD*, *FH (No. 2) v. IBRD*, and *GP v. IBRD*. In three of the cases, *GT*, *GU*, and *GP*, the Bank's preliminary objections were upheld and the applications were dismissed. In *GS* and *FH (No. 2)*, the Bank's preliminary objections were partially and fully dismissed, respectively, and the cases will proceed to the merits phase during the Tribunal's next session.

The Tribunal heard two cases on matters of pension benefits. In *Rofman v. IBRD*, the applicant contended that the methodology used to incorporate Depreciation Special Compensation Measures into the Defined Benefit Pension failed to treat the Special Compensation Measures as fully pensionable. The Tribunal determined that the Bank did not abuse its discretion in the development of the methodology and concluded that the Pension Benefits Administration Committee properly interpreted the Staff Retirement Plan when it denied the applicant's challenge to the methodology. In *Fitchie v. IBRD*, the applicant challenged the denial of his request modify the quantum of his Optional Survivor Annuity Pension election. The Tribunal dismissed the application, finding that there was no ambiguity in Section 11.3(a)(i) of the Staff Retirement Plan and concluding that the Pension Benefits Administration Committee was entirely reasonable in its finding that the Plan prohibited any modification of the Optional Survivor Annuity Pension election once it became effective.

In *EO (No. 3) v. IFC*, the Tribunal considered whether there was an unreasonable manner of or delay in the implementation of the Tribunal's judgment in *EO (No. 2) (Merits) v. IFC*. While recognizing the complexity of operationalizing payments in a large institution when some calculations and adjustments are complicated, the Tribunal noted that the judgment was not fully implemented until close to a year after it was received by the parties and therefore could not say that the IFC fully implemented the judgment within a reasonable time and in a reasonable manner.

In *GL v. IBRD*, the Tribunal dismissed the applicant's challenge to a Non-Progression Decision, finding that there was a reasonable and observable basis for the Decision, that management followed a fair and proper process in making the Decision, and that there was insufficient evidence to support a finding that the Decision was based on retaliation.

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

## Upcoming Tribunal Session

The Tribunal's next session will begin on November 14, 2022. Decisions will be posted on the Judgments and Orders tab of the Tribunal's [website](#).

## Essential Features of the Tribunal

- Judicial body established by the Board of Governors
- Composed of seven judges appointed by the Executive Directors
- Functions independently of management of the Bank Group
- Does not fall within any administrative unit of the Bank and is not part of the Internal Justice Services (IJS)
- The Executive Secretary is answerable solely to the Tribunal Judges, specifically, to the President of the Tribunal
- Tribunal judgments are final, binding, and public