THE ADMINISTRATIVE TRIBUNAL OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Case EBRDAT 2019/AT/01

Appellant

vs

European Bank of Reconstruction and Development

DECISION

by a Panel of the Administrative Tribunal composed of

Chris de Cooker (Chair of the Panel)
Giuditta Cordero-Moss
Spyridon Flogaitis

XX June 2019

I. Procedural Background

1. On 22 April 2019, the Administrative Tribunal of the European Bank of Reconstruction and Development ("Tribunal") received a Statement of Appeal with supporting documents from Appellant. The appeal is challenging the decision of the President of the Bank, communicated to Appellant on 25 January 2019, holding that Appellant's 4 January 2019 Request for Review of an Administrative Decision to declare Appellant's request that the Bank recognizes his medical illness as being service-incurred, was filed outside of the required time limits and therefore inadmissible.

2. The Appeal was forwarded to the European Bank for Reconstruction and Development ("Bank" or "Respondent") on 25 April 2019.

3. The Bank submitted its Response on 24 May 2019.

4. On 27 May 2019 Appellant requested the Tribunal to grant permission to submit a further pleading and to respond to the Bank's Response. He, amongst other things, observed that both parties referred to a 5 October 2018 Request for Review of an Administrative Decision under Section 6.3 of the Directive on Administrative Review Process, without, however, annexing it.

5. On 4 June 2019 the Tribunal asked both parties to submit copy of this 5 October 2018 Request. They both met with this request.

II. Factual Background

6. Appellant submits that the present case is related to a number of other cases that are currently in the pre-litigation process and he makes several references to them. It is, however, appropriate to limit the facts to those that are relevant for this case only. They may be summarized as follows.

7. Appellant commenced his employment with the Bank in 2007.

8. Appellant was in early June 2018 informed by the medical insurance company Cigna ("Cigna") that he had reached the established limit of GBP 2,000 per insurance year (from 1 July 2017 – 30 June 2018) for the reimbursement of costs related to Appellant's medical condition. When Appellant was informed that the rate of reimbursement would be increased from 80% to 100% and the GBP 2,000 per year limit removed in case of medical expenses resulting from service-incurred or work related illness, he requested the Bank on 11 June 2018 to inform Cigna that his illness was service related.

9. The Bank's Human Resources ("HR") department replied on 14 June 2018 that they would get in contact with the Cigna medical board.

10. On 10 July 2018, HR informed Appellant, which was reiterated on 30 July 2018, that it could not opine on the cause of Appellant's illness as this was a matter for the medical profession. It was added that staff members need to obtain the opinion of their treating physician on whether the injury or illness was service-incurred. HR then refers the staff member to the Occupational Health ("OH") service for obtaining their view. Upon this the Bank forwards these opinions/reports to Cigna for their consideration.

11. On 10 August 2018, and further to Appellant's phone call, Cigna advised Appellant that the medical board had concluded that the report of 13 July 2018 submitted by Appellant's medical advisers did not contain sufficient additional information to link the health issues to his working situation. It added that, if other (medical) information was available, which might influence this decision, Appellant was invited to send it to the medical team.

12. On 28 August 2018, Appellant wrote to HR to have been informed by Cigna that they did not recognize his illness as service incurred. This was in his opinion a very unfair decision. He added that Cigna refused to provide justification for the decision as well as full terms and conditions of the policy with the Bank. He asked HR to provide this.

13. HR replied the following day saying that it was looking into the matter and would come back in due course. In order to be sure to be looking into the right matter, Appellant was asked to confirm what exactly he wanted the Bank to provide, the justification, the policy for employees, or the contract between Cigna and the Bank.

14. On 29 August 2018, Appellant wrote to HR saying that HR was well aware of the causes of his medical condition and that it should advise Cigna accordingly. He would like the Bank to explain why it believes that the illness was not work related. He also asked for a copy of the policy between the Bank and Cigna.

15. HR replied on 31 August 2018 saying that it would contact Cigna again. It also repeated that the cause of Appellant's illness was not something that HR or the Bank can opine on, as this was a matter for the medical profession.

16. On 12 September 2018, Appellant advised HR that he was contacted by Health Management to have another appointment with them at the end of September or early October. He asked for the reason for this request and whether indeed the Bank again wanted him to attend this appointment. He asked to note that he was still awaiting any information from the Bank and Cigna on the cause of his illness, in response to his request of 10 August 2018. He added that, if the Bank and Cigna did not believe that the cause of his medical condition was service incurred, he would appreciate the Bank and Cigna to explain what they believe was the cause of his medical condition, as both medical documentation as well as his attendance record prior to March 2017 confirmed that his illness was caused by the situation at work starting in March - April 2017.

17. On 19 September 2018, Appellant received an email message from Cigna, asking him to note that the decision was not made entirely by Cigna's medical board, as the case is also assessed by EBRD's HR department, meaning that the decision is made between these two departments.

18. On 24 September 2018, HR replied after having received input from Cigna. Cigna had, based on the OH reports provided and the subsequent information that

Appellant had sent, rejected Appellant's claim that his illness was service incurred. They had not stated the cause of the illness, but only that it is not service incurred. HR recalled that the cause of Appellant's illness was not something that HR or the Bank can opine on, as that was a matter for medical professionals. HR understood that Appellant disagreed with Cigna's decision. To make any further considerations Cigna had stated that they would need further medical information from OH. The occupational health reports so far did not contain a view by the OH doctors as to whether the illness could be service incurred or not. Rather they often stated Appellant's opinion that he continued to believe that his current health status was due to the situation at work. HR, in order to progress the situation, proposed that Appellant visit OH for another appointment specifically for them to provide their view on this point. This report would then be shared with Cigna for further review. If Cigna still believed that the illness was not service incurred, there was an appeals process where an independent doctor is appointed who would make a final decision.

19. In another e-mail of 26 September 2018, HR informed Appellant to have spoken with Cigna and asked them to note that the HR Department is categorically not party to a decision on whether a staff member's medical condition is or is not service incurred. This is simply on the basis that none of the HR team members are medical professionals qualified to make such a decision. Once the OH advisor has opined on whether the medical condition might have been service incurred, the Bank would share that opinion with Cigna for their determination.

20. On 5 October 2018, Appellant wrote to the Managing Director of HR ("MDHR") reiterating the history since June 2018 and requesting the MDHR that the Bank recognize his medical illness as being service incurred.

21. On 10 October 2018, and following an appointment on 5 October 2018, the Bank's OH issued a report to the Bank, stating that it was likely that Appellant's health issues were the result of issues within his EBRD working environment.

22. On 23 October 2018, MDHR answered Appellant's e-mail of 5 October, and a further one of 19 October 2018, saying that it appeared from correspondence that Appellant had been provided incorrect information by Cigna about the role of the

Bank. It was repeated that the Bank had no decision making role in the process of determining whether Appellant was eligible to receive additional cover for medical costs associated with a medical condition. The latest OH report, dated 10 October 2018, which Appellant referred to, was sent by the Bank to Cigna for consideration and Appellant should expect to hear from them shortly. She explained that the OH referrals in themselves are a means of support the Bank provides to its employees in that the OH reports set out recommendations to the employee concerned and the Bank on how best manage a particular health situation in the workplace. She believed that the Bank had followed the OH recommendations in respect to Appellant's condition so far and reassured him that this approach would continue for as long as it was necessary.

23. On 24 October 2018, and with reference to the 23 October 2018 e-mail, Appellant in a further e-mail to HR wished to clarify his request. It was his understanding from Cigna, whilst it was ultimately Cigna's decision which medical costs to cover, that Cigna, in order for them to consider whether an illness or an accident was service incurred, needed to be informed by HR. This, he submitted, was stated in the insurance policy. This meant in his opinion that, if HR did not believe that the illness or accident was service incurred, Cigna would automatically not consider it as service incurred.

24. He continued by saying that he understood that HR were not medical practitioners and could not opine on the cause of the illness. This was the reason why HR asked its OH medical adviser to opine, who clearly stated that in his professional view and given the medical history and how the situation had evolved, the cause of the illness was service incurred. HR was well aware of his medical history and absence record. He was now awaiting Cigna's decision on the removal of the hard cap for his condition. If Cigna did not consider opinions of three doctors plus OH as valid, he would deal with Cigna separately via available channels as he could not continue proper treatment. However, in addition to Cigna's decision, he was looking for HR's decision to recognize his illness as service incurred, regardless of Cigna's decision. He said that that was the purpose of his letter to MDHR.

25. In the same time-frame Appellant and HR exchanged e-mails preparing an

agreement for mediation in another case that was pending before the Administrative Review Committee. When asked, on 25 October 2018, by HR whether there were any other issues to be discussed in addition to the draft agreement, Appellant gave the same day a list of items, including the Bank's view on whether his medical condition was service incurred as per his request to MDHR on 5 October 2018. HR replied immediately that these items would be added to the agreement. The mediation agreement was handed to Appellant for signature on 30 October 2018, at the start of the mediation. The mediation ended inconclusively on 2 November 2018.

26. Also in early November Appellant kept asking HR when he could expect a reply to his 5 October 2018 request.

27. On 1 November 2018, HR wrote regarding one of the points discussed during the mediation, namely the correspondence with Cigna, to have received a response from Cigna stating unequivocally that the information from the medical team sent to Appellant contained the decision together with the reason for it. They also confirmed that they had previously provided him the procedure for contesting Cigna's decision.

28. On 4 November 2018, Appellant wrote to HR saying that Cigna's decision was communicated in one sentence without explanation, justification or signature of any doctor. It was provided by email, in one statement, even without the name of the person who sent the "decision". He found it odd. He also found the reasoning very odd and in contrast with medical reports, OH reports and the OH professional opinion provided to the Bank. Given the fact that Cigna had already misled him on three separate occasions, which gave rise to his filing yet another request for review by MDHR sent on 5 October 2018, he was very confused by the situation. The request was filed after Cigna had informed him that the decision was made between Cigna and HR, and not just by Cigna. He suggested continuing the mediation.

29. Later that day he again wrote to HR mentioning that on 5 October 2018, he had requested a decision by MDHR to recognize his illness as service incurred as confirmed in the latest OH report submitted to the Bank. This was after Cigna on three separate occasions in September 2018 had informed him that the decision not to recognize illness as service incurred was a joint decision between Cigna and HR, and

not entirely Cigna's decision. As he did not have insurance terms and conditions, the policy not being published and both Cigna and the Bank refusing to provide one, he was puzzled by this situation. A staff member should have access to such information. All he knew from the Cigna booklet was that in order for Cigna to recognize illness as service incurred, HR needed to inform them. His understanding was that according to the ARP, MDHR had to provide her decision on his request within 20 days, i.e. by 2 November 2018. He contended not to have received the decision and asked HR to clarify whether he should expect a MDHR decision or whether the lack of response on the request itself meant that he should treat it as a decision not to respond as per section 6.3(b) of the Administrative Review Process. Given the fact that the Bank and Appellant were in mediation and the service incurred illness was one of the issues subject to mediation, he wondered whether he should assume that the process was stayed due to mediation, which would explain the lack of response by MDHR. He asked the Bank to clarify.

30. On 5 November 2018, HR wrote, as per MDHR's email of 23 October, that it appeared that Appellant had been provided incorrect information as the Bank had no decision making role in the process of determining whether he was eligible to receive additional cover for medical costs associated with a medical condition. HR understood that Cigna had also clarified this position with Appellant. For this reason the decision was entirely Cigna's and the Bank was not going to opine on the cause of the illness.

31. Appellant replied the same day saying to be very concerned that he was provided incorrect information on a number of occasions since last year, which lead him to ask MDHR to review various matters and filing requests. All he was trying to do at that stage was to recover from his service-incurred illness and to continue his service with the Bank in a new team. Constant mistakes and incorrect information were really disturbing and hindering such recovery and effective performance. He did, for example, not understand how Cigna determines whether illness is service incurred and what the options for appeals are - for this, he needed to see the insurance policy, which Cigna refused to provide. He requested HR to ask Cigna to provide it or that HR provides one please. He was not asking the Bank to determine on the additional cover for medical costs. He was not asking the Bank to opine on the cause

of his illness - that opinion had already been provided to the Bank by the Bank's occupational health adviser as per the Bank's request in October 2018. He was simply asking the Bank to recognize his illness as service incurred, irrespective of the Cigna's decision on medical costs. Cigna's decision only related to the coverage under the medical insurance plan. The Bank's recognition of his illness as caused by the situation at work was a separate matter. He asked, based on HR's response, whether he understood correctly that there would be no decision by MDHR on the request of 5 October 2018, entailing that the decision of 2 November 2018 was not an unintentional oversight due to mediation, but MDHR's decision not to respond.

32. On 7 November 2018, there were a number of e-mail exchanges between HR and Appellant.

33. In the first one, HR advised Appellant that the question of Appellant's correspondence with Cigna regarding their decision on recognizing his medical condition as service-incurred for the purposes of medical insurance cover had now been addressed by the Bank on multiple occasions. If Appellant wished to contest Cigna's decision, he had confirmed to have received from Cigna the procedure on how to proceed. Questions how to go about an actual or perceived administrative decision under the ARP were best referred to the Staff legal advisor.

34. Appellant then wrote to HR on advice of the Staff Legal Adviser, who had informed him that the Bank should provide him with a full insurance policy / terms and conditions so that he could decide which action to take and to understand the process to have his illness recognized as service-incurred. In his view, without fully understanding the process of how the service-incurred illness was determined and the appeal options (Cigna's mentioned appeal process via independent doctor being just one of the options), a staff member could not take proper action to defend his rights. He found this very unfair as per the Staff Regulations. He mentioned not to be able to operate without seeing the terms of the policy to understand his rights. He asked why the Bank could not share the policy with him if the insurance cover was one of the benefits.

35. HR answered recalling that the recognition of the service-incurred nature of

the medical condition by the Bank was not part of the mediation process, since, and as explained on a number of occasions, it was not a Bank's decision. In any case, and as previously agreed by the mediation agreement, any outcome of the mediation should have been confirmed before the deadline of the stay of proceedings, i.e. 2 November 2018. It was added that no further extension of stay was possible. As a consequence, there was no opportunity to continue with mediation under the current mediation agreement.

36. In another e-mail HR replied explaining that the Bank's contract with Cigna was not a public document as it contained details of commercial arrangements. However, the relevant extracts from the text of the contract were added which should address Appellant's questions. Links to information already available to staff on the medical insurance cover were also added.

37. On 4 January 2019, Appellant submitted the Request for Review of an Administrative Decision ("RRAD") to the President of the Bank. Appellant contended that he was on 9 August 2018 informed by Cigna that his request to recognize his illness as work-related or service-incurred had been denied. He added that on 19 September 2018 Cigna advised him that this was a joint decision between Cigna and the Bank.

38. He continued that he then, on 5 October 2018, within the 40 working day time limit as per Section 6.1(a) of the Directive on Administrative Review Process ("ARP Directive"), requested the Managing Director, Human Resources ("MDHR") to recognize his medical condition as being work related / service-incurred. This would require the Bank to inform Cigna accordingly as per terms and conditions of the insurance plan between Cigna and the Bank, and for Cigna to take the Bank's opinion in due consideration.

39. He alleged not to have received any decision from MDHR by 2 November 2018. He then referred to Section 6.3(b) of the ARP Directive, which provides that if the Managing Director responsible for Human Resources does not respond within the prescribed time limit, the Staff Member may seek further review by the President as

per Section 6.4.

40. He made it clear that the administrative decision subject to review was the lack of a decision by MDHR as per stage 1 of the ARP to recognize his medical condition as work-related or service-incurred and to inform Cigna accordingly as requested by the Staff Member on 5 October 2018.

41. He further submitted that his request was made within the applicable time limits. 2 November 2018 being the final date for MDHR to issue her decision and also the final date of the mediation period, the request was made on the 40th working day at HQ, as per the ARP Directive.

42. He added that in the meantime the Bank and himself had attempted mediation on a number of issues, including the recognition of his work-related or service-incurred illness. The mediation broke off on 2 November 2018 and on 5 November 2018 he asked clarifications from the HR department on the reasons why MDHR failed to issue her decision by the deadline of 2 November 2018. He said that on 7 November 2018, the Bank's HR team responded that questions how to go about an actual or perceived administrative decision under the ARP were best referred to the Staff legal advisor.

43. He requested the President of the Bank to recognize his medical condition as being work-related or service-incurred and to inform the Bank's insurance provider, Cigna, accordingly.

44. The President of the Bank replied on 25 January 2019. He noted that Appellant had requested the review of the decision taken by Cigna on 10 August 2018 not to recognize his medical condition as service-incurred. He noted that, contrary to Appellant's contention, MDHR had responded to his request on 23 October 2018. In her response, MDHR had explained that the Bank had no decision making role in the process of determining whether an illness is service incurred and therefore attracting 100% coverage of medical expenses, and that such determination is made by Cigna. MDHR had also informed Appellant that the latest report on his medical condition received from the Bank's medical adviser had been sent to Cigna for consideration.

Following consideration of the last medical report Cigna had confirmed its final decision on 26 October 2018.

45. He added that if Appellant did not agree with the response of the MDHR dated 23 October 2018, he had the possibility pursuant to Sections 6.41 (a) and (b) to submit a request for review within 40 working days of being notified of the response of the MDHR, i.e. by 18 December 2018. The request for review was submitted on 4 January 2019 and thus not within the applicable time limits. Accordingly, in application of Section 6.4.1.(d)(iv) of the Directive, he had ascertained that the request was time-barred and therefore inadmissible.

46. He used this opportunity to reiterate, as he understood had already been communicated to Appellant by the HR Department and Cigna that decisions made by Cigna in relation to medical insurance coverage may be challenged by staff members directly with Cigna through the specific recourse mechanism put in place for this purpose. Should Appellant require more information regarding that process, he should contact his HR Business Partner.

47. The President concluded by saying that this response constituted his Administrative Decision under Section IV, paragraph 6.4.1(e) of the Directive and was subject to Appeal under the Bank's Appeals Procedure.

48. On 30 January 2019, Appellant wrote an e-mail to the President. He observed that he had requested on 4 January 2019 that the Bank recognize his medical condition as service-incurred, irrespective of Cigna's decision on reimbursement of medical bills. It appeared to him based on the President's response that there was confusion and misunderstanding on both dates and merits of his submission and that it appeared that the President's advisers had misread his request for review of 4 January 2019. He noted that the President considered that the RRAD was not submitted on time, because the latter considered MDHR's e-mail of 23 October 2018 to be an administrative decision on his request of 5 October 2018. He noted that the 23 October 2018 e-mal dealt with several matters, but did not issue a decision on his specific request for review to recognize his illness as service-incurred and did not state that it was an administrative decision. He repeated that the issue was part of the

mediation, which had ended on 2 November 2018. He had then been seeking clarifications from HR. He had followed the Bank's advice and had contacted the Staff legal advisor, who had confirmed to him that the lack of decision by MDHR on 2 November 2018 was a decision not to issue an administrative decision and could be challenged before the President within 40 business days, commencing on the next business day after 2 November 2018 (this being 5 November 2018). On this basis, the RRAD was submitted on the 40th business day and within the applicable time limits as per the Directive.

49. On 22 April 2019 Appellant lodged the present appeal.

III. Statement of Appeal – Appellant's Position and remedies sought

50. Appellant is of the opinion that the time limits to submit the RRAD did not start to run until 5 November 2018, i.e. the first working day after 2 November 2018, and that the last day to file the RRAD with the President of the Bank was 4 January 2019.

51. Appellant contends that the decision of the President of the Bank on admissibility is unlawful, unfair, arbitrary and/or is inconsistent with, or not taken in accordance with, Appellant's terms and conditions of employment and thereby constitutes a breach of the terms and conditions of Appellant's contract of employment.

52. Appellant contends that the email message of 23 October 2018 is not an initial administrative decision in relation to Appellant's 5 October 2018 request for review, does not directly respond to Appellant's request and does not satisfy the definition of "administrative decision" as defined in the internal law of the Bank. As a result, the 23 October 2018 message could not start the time limits. The time limits to submit the RARD should have started running on Monday, 5 November 2018, on the next business day following the MDHR's failure to issue the initial administrative decision by cob Friday, 2 November 2018 deadline.

53. Alternatively, he submits that should the Tribunal determine that the 23 October 2018 email message meets the definition of an administrative decision in relation to Appellant's 5 October 2018 request for review, the time limits to file the RRAD should still not have started running on 24 October 2018, because Appellant did not regard the 23 October 2018 email message as the administrative decision and had never been told by HR (although he directly asked why the MDHR had failed to issue her decision) that the Bank considered the 23 October 2018 email as the administrative decision. Appellant should, in his view, not be penalized in such circumstances for allegedly delayed filing of the RRAD. Therefore, the time limits to file the RARD should have started running on 5 November 2018 only, which was the next working day at HQ following both i) the 2 November 2018 deadline for the MDHR to issue her decision and ii) the last day of the mediation period / termination of settlement discussions on 2 November 2018.

54. Appellant request the Tribunal to:

- set aside the President's decision and pursuant to the internal law of the Bank,
- refer the RRAD to the Chair of the Administrative Review Committee for examination on the merits,
- award of reasonable expenses and legal costs in preparing and presenting the appeal,
- award moral damages at the discretion of the Tribunal should the Tribunal determine them as appropriate.

IV. Bank's Response to Appeal – Respondent's Position

55. Respondent contends that Appellant could not ignore that the MDHR had answered to his Request for review on 23 October 2018 and that the Mediation process was conducted on other outstanding matters. Appellant had clearly been informed that the recognition by the Bank of the service-incurred nature of his medical condition was not part of the mediation process.

56. As regards the first argument, MDHR had made explicit reference to the request of 5 October 2018, and clearly stated that contrary to what had been said to

the Appellant by Cigna (and subsequently rectified by them), the Bank had no decision-making role in the process in which the Appellant and Cigna were engaged. MDHR further confirmed that the Bank was meeting its obligations by referring the new OH report received on 10 October 2018 to Cigna in order to allow a new assessment. Respondent underlines that, when asked by the Appellant on 5 November 2018, HRBP directed him towards MDHR's response of 23 October 2018. HR-ER also confirmed this position by two e-mails of 7 November 2018 referring to the fact that the Bank had addressed this question on multiple occasions. There was therefore no silence of the organization. In the case of disagreement with the MDHR answer Appellant had the possibility to submit a request within 40 days, i.e. by 18 December 2018. He had failed to do so.

57. As far as the Mediation process is concerned, Respondent notes that Appellant did try to obtain the Bank's view on whether [his] medical condition was service-incurred as one of the items subject to Mediation. It observes that Appellant admitted in the appeal that the Mediation agreement signed by the Appellant and the Bank on 30 October 2018 did not include such matter.

58. Respondent observes that the President did not misunderstand the Request for review of 5 October 2018 and did not err when he concluded that Appellant had requested the review of the decision taken by Cigna on 10 August 2018. Respondent cannot accept Appellant's point of view that he had requested the Bank to recognize his medical illness as being service-incurred. Respondent argues that, should the Tribunal consider that the "Request for review" was in fact a request for an Administrative Decision of MDHR, as the Staff Member now contends, the admissibility assessment would come to the same result. Moreover, any such determination by MDHR could not even be qualified as an "Administrative Decision" for the reason that such decision would not allegedly alter, in an adverse manner, or allegedly be in breach of, the terms and conditions of employment of a Staff Member in force immediately before such Administrative Decision is taken, since it would not impact on the terms and conditions of employment of Appellant and not even on the reimbursement of his medical expenses. Lastly, while the remedy sought by Appellant on 5 October 2018 was indeed the recognition by the Bank of the service incurred nature of his medical condition, such request was made within the context of a

Request for review of Cigna's decision of 10 August 2018.

59. Respondent added that it did not breach the principle of good faith nor any alleged promise made to the staff member.

60. Respondent further observes that to the best of its knowledge the Appellant initiated, in early 2019, the specific arbitration process in order to challenge Cigna's determination and this process is still ongoing.

V. Oral Hearing

61. Both Appellant and Respondent have confirmed not to request an oral hearing.

VI. Anonymity

62. In light of the highly confidential private medical information contained in the submission, Appellant requests full anonymity. He requests the Tribunal that his name will not be made public and that his medical condition or any facts, which may identify the Appellant, are not mentioned. Respondent did not object to the request for anonymity. The Tribunal grants the request.

VII. Considerations

63. The Tribunal observes at the outset that the only issue before it is the legality of the decision of the President of the Bank to hold the RRAD time barred and thus inadmissible. The Tribunal will thus not dwell on the question of who determines whether an illness is service-incurred.

64. On 27 May 2019 Appellant requested the Tribunal to grant permission to submit a further pleading and to respond to the Bank's Response. The Tribunal is of the view that it has sufficient written elements before it to adjudicate the case and that

it is not in the interest of the parties in the present case to have a protracted written procedure. On the contrary, it is in the parties' interest to have an expeditious resolution of the matter.

65. The facts as presented *supra* show an unnecessarily lengthy, repetitive and sometimes contradictory exchange between the parties during the period from June until November 2018, where both parties repeated arguments, which often lacked the precision that is required in particular in sensitive matters as the present one.

66. Appellant had during this period the following interfaces in HR: the MDHR, the HR Head of Employee Relations and an HR Business partner. They were generally all in copy of respective correspondences, which were all by e-mail.

67. On 5 October 2018, Appellant wrote an e-mail to MDHR requesting that the Bank recognizes his illness as being service-incurred. It is important to note that Appellant did not at that time mention to be making a Request for review of an administrative decision under Section 6.3 of the Directive, nor did MDHR mention this in her reply of 23 October 2018. Only in subsequent exchanges did both parties use the term Request for review of an administrative decision to describe that exchange.

68. Appellant requested on 5 October 2018 that a decision be taken. In other words, he did not challenge an existing decision. The response that was given on 23 October 2018 was not formulated as an administrative decision. It did not stipulate that this was an official and final position that might be further challenged, as the President, for example, did in his decision of 25 January 2019 (*cf.* paragraph 47 *supra*). It was a response, which may well be considered by some as an interim response and it is understandable that Appellant so did. The Tribunal concludes that the 23 October 2018 mail cannot be considered an administrative decision. MDHR had until 2 November 2018 the possibility to take one. Correspondence between 24 October 2018 and 7 November 2018 shows that Appellant had not understood that Respondent considered the 23 October 2018 mail an administrative decision and that he had further queries. HR did not adequately draw Appellant's attention to the legal situation, as it saw it, and the consequences thereof, for example, in terms of time

limits.

69. It should not be forgotten that, at the moment the 23 October 2018 answer was given, HR and Appellant were in a dialogue preparing for mediation, which, it is understood, essentially concerned different matters. On 25 October 2018, HR forwarded the draft mediation agreement to Appellant asking whether there were any other issues to be discussed in addition to the draft agreement and Appellant gave the same day a list of items, including the Bank's view on whether his medical condition was service incurred as per his request to MDHR on 5 October 2018. HR then replied immediately that these items would be added to the agreement. The mediation agreement was handed to Appellant for signature on 30 October 2018, at the start of the mediation. For reasons unknown to the Tribunal Respondent considers, in footnote 14 of its Response, the mediation agreement of such a highly confidential nature that it cannot be shared with the Tribunal, whereas both parties do have it. The Tribunal regrets this, but notes that Appellant in his Statement of Appeal observes that the agreement included an item "the Staff Member's correspondence with Cigna regarding reimbursement of medical expenses."

70. Respondent did not take issue with this quote from the agreement. It concludes, on the other hand, from it that Appellant knew that the item as he had formulated it was not included. The Tribunal cannot share this conclusion of the Bank. Appellant was on 25 October 2018 assured that the item was included. He was thus entitled to expect that the overall item, whatever its formulation, was on the mediation table, and thus subject to the stay of the time limits. Admittedly, the item is formulated differently in the agreement. If this was intentional, Respondent had the duty to promptly and adequately inform Appellant thereof. It is to be underlined that Appellant was shown the agreement for signature the day the mediation commenced, i.e. five days later. During that interval Respondent could have sent a clear message to Appellant on this point in order to avoid further misunderstandings. In addition, one cannot undertake to put an item on the agenda and two weeks later assert that it was never there. This is not good administration.

71. The situation was confusing and both parties carry responsibility for this continued confusion, which lasted far too long. The responsibility is, however, not

shared in equal parts. It was overridingly the responsibility of HR to provide unequivocal statements and answers, in particular in view of Appellant's medical condition.

72. The Tribunal concludes that the time limit started to run on 5 November 2018, i.e. the first working day after 2 November 2018, the day by which MDHR had failed to take a decision as well as the day on which the stay of time-limits under mediation ceased. It is not disputed that the 40th working day for the submission of the RRAD after 5 November 2018 was 4 January 2019. The RRAD was therefore lodged within the time limits.

73. The 25 January 2019 decision of the President must consequently be annulled.

74. Appellant further requests the Tribunal to refer the RRAD to the Chair of the Administrative Review Committee for examination on the merits. The Tribunal does not have the power to do so. As Respondent correctly observed, the legal consequence of an annulment decision is that the President is required to refer Appellant's Request for Review to the Chair of the Administrative Review Committee, unless, of course, the matter has become moot in the meantime.

75. Appellant additionally requests the Tribunal to award moral damages at the discretion of the Tribunal should the Tribunal determine them as appropriate. The Tribunal considers the annulment of the impugned decision sufficient remedy and does not deem it necessary to award further damages.

VIII. Costs

76. Appellant request the Tribunal to award compensation of reasonable expenses, but none were qualified or quantified. He also requests compensation of legal costs in preparing and presenting the appeal. Appellant, by his own admission, being self-represented, no legal costs are due.

IX. Decision

77. For these reasons, the decision of the President, dated 25 January 2019, holding Appellant's Request for Review of an Administrative Decision time-barred and therefore inadmissible, is annulled.

17 June 2019
For the Administrative Tribunal

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Chris de Cooker
Chair of the Panel