

THE ADMINISTRATIVE TRIBUNAL
OF THE
EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Case No. 2024/AT/16

Appellant

vs.

European Bank for Reconstruction and Development

DECISION

by a Panel of the Administrative Tribunal comprised of

Thomas Laker (Chair)

Chris de Cooker

Joan Powers

19 February 2025

I. Introduction

1. With the present Appeal, the Appellant contests the decision of the President of the European Bank for Reconstruction and Development (“Bank”) finding her Request for Administrative Review (“RARD”) inadmissible on the grounds that it had been filed out of time.

II. Facts and procedural background

2. The Appellant joined the Bank in 2012. In 2017 she was appointed as an Executive Assistant to a Member State’s Constituency Office. While on maternity leave, in December 2023 a potential transfer of the Appellant to a different position was discussed. Despite the Appellant’s disagreement, this transfer was implemented by decision of 28 March 2024.

3. On 14 May 2024, the Appellant submitted a RARD (Stage 1). After unsuccessful efforts of mediation, this request was rejected by a decision notified to the Appellant on 25 July 2024.

4. On Monday, 23 September 2024, the Appellant submitted a RARD (Stage 2) to the Bank’s President, asking for a waiver of the deadline. On 11 October 2024, the President rejected the request as inadmissible, finding that the request had not been submitted within the time-lines of the Bank’s internal law. In addition, the President considered that the Appellant’s personal and professional circumstances did not amount to exceptional circumstances that prevented her from meeting the applicable deadline.

5. On 7 November 2024, the Appellant submitted the present appeal. The Bank submitted a response on 19 December 2024.

6. In response to the Tribunal’s request, on 6 January 2025 the Bank informed the Tribunal that to date, the President had not exercised the authority to grant a deviation to the time limit for filing a RARD (Stage 2) or to any other provision of the Directive on Administrative Review Process (“ARP Directive”), DIR/2022/1.

III. The Appellant’s position

7. In the Appellant’s view, her appeal is admissible because the President abused her discretion by denying a modest extension of the deadline by only 2 working days. The Appellant

deemed herself unable to meet the deadline due to extremely challenging professional and personal circumstances. In this respect, the Appellant emphasizes that the transfer to a new position upon her return from maternity leave had been very traumatic and had caused her significant stress. At the same time, she was trying to transition into the new role as well as dealing with her obligations as the mother of a (second) small child at home.

8. In particular, the Appellant states that at the time of being notified of the decision at stake, she was unable to consult with the Staff Legal Adviser since the latter was on leave during the first weeks of August 2024. Further, while on leave from 7 to 16 August 2024, the Appellant needed to try and reduce stress and focus on her family. August and September 2024 then turned out to be extremely difficult months for her. Finally, during the last week of the deadline, she had been called to her elder son's school and had to bring him to the Emergency Room of a hospital.

9. The Appellant requests the Tribunal to reverse the President's decision on admissibility and remand the case for initiation of the administrative review process. Also, the Appellant requests anonymity, including her roles within the Bank.

IV. The Respondent's position

10. The Bank argues that the Appellant has not shown any exceptional or compelling circumstances to justify a waiver of the applicable time limits. In the Bank's view, none of the factors upon which the Appellant relies amount to exceptional circumstances. In particular, the Bank emphasizes that the Appellant had sufficient time to send an email to the Bank's First Vice President with further examples of what she considered to be unacceptable behaviour of a supervisor on the very last day of the time limit, thus undermining the contention that there were circumstances beyond her control to file the RARD (Stage 2) timely.

11. In light of these assumptions, the Bank considers that the President's decision to find the (Stage 2) filing inadmissible was entirely reasonable and based on a correct application of the law with regard to time limits. The Bank also emphasizes that there has been no unequal treatment.

12. The Bank requests the Tribunal to refuse the Appeal, confirm the President's decision and deny any remedies to the Appellant.

V. The Tribunal's evaluation

13. At the outset, the Tribunal reiterates the established and generally accepted limitations of every judicial review of discretionary decisions. As recognized under the Tribunal's established jurisprudence, based on principles of international administrative law, the use of the word "may" in the regulatory framework for staff employment indicates that the designated official enjoys broad discretion in exercising his or her authority, such as the authority to approve a deviation or waiver from the rule. Accordingly, the scope for judicial review in such cases is limited, and the Tribunal will not substitute its views for discretionary decisions properly taken (see case No. 2019/AT/08). The Tribunal will generally defer to a discretionary decision so long as it falls within the bounds of reasonableness, is based on a thorough review of the available relevant facts, is not tainted by improper motives or procedures and is consistent with Bank law and international administrative law (see case No. 2021/AT/04 (preliminary decision), para. 73). In this regard, it is not relevant whether the Tribunal would or would not have taken the same decision as the Bank did in the present case, as differing views concerning a discretionary decision may still fall within the bounds of reasonableness.

1. Applicable law

Bank's Internal Law

14. Section IV, paragraph 3.02 of the Appeals Directive provides as follows: "In considering an Appeal, the Tribunal shall base its decision on the provisions of the Staff Member's contract of employment, the internal law of the Bank and generally recognised principles of international administrative law. [...]" Section IV, paragraph 3.03(b) of the Appeals Directive specifies that: "When the Administrative Decision complained of is a Decision of a Discretionary Nature, the Tribunal shall uphold the Appeal only if it finds that the decision was arbitrary, or discriminated in an improper manner against the Staff Member or the class of staff members to which the Staff Member belongs, or was carried out in violation of the applicable procedure."

15. Section IV, paragraph 6.4.1(b) of the ARP Directive, sets out the following: "(b) A request for review by the President must be submitted by the Staff Member within 40 days of the date

when the response of the Managing Director, Human Resources & Organisational Development was notified to the Staff Member ... ”.

16. Section V of the ARP Directive provides that the “President may grant a deviation from a requirement of this Directive.”

Generally Recognized Principles of International Administrative Law

17. The Tribunal has affirmed the importance of time limits to effective administration, stressing it as a matter of public policy:

“The Tribunal agrees with the view that maintaining procedural time limits is consistent with international administrative law and widely recognized by international tribunals and courts. Procedures and time limits are very important in administrative law since its inception. This is because the administration works and acts in the public interest and if anyone having sufficient interest is of the opinion that the administration acted illegally, he or she should act quickly and imperatively within the time limit so that the matter is brought as soon as possible before a grievance system and finds the appropriate answer so that the regular work of the administration is not disrupted. This is the reason time limits in administrative law are of public order and short, in comparison with any other. And, this is the reason that they must be observed and, if they have not been observed, there is no remedy to the situation caused. Unless a time limit is extended under the law regulating it before the time limit ends, there is no possibility of reviving it at a later stage. This is a principle transcending the administrative law systems of national or international organizations and has become a general principle of administrative law, as an expression of inherent characteristics of administrative law. Thus, for instance, the EU Court of Justice ruled that the periods prescribed for instituting proceedings are a matter of public policy and are not subjected to the discretion of the parties or of the Court. This also applies to the periods for lodging complaints which, from the procedural point of view, precede them and are of the same nature since they both contribute, with the objective of ensuring legal certainty, to the regulation of the same remedy” (see case No. 2017/AT/03, para. 4.10).

18. Further, the Tribunal emphasized the importance of adhering to time limits: “The Tribunal observes that ‘justifiable grounds for the delay’ must be genuinely extraordinary. They must be serious and beyond Applicant’s control, in other words they should have prevented Applicant from acting (cf. UNDT/2010/202).” (see case No. 2020/AT/03, para. 51)

19. With respect to a 90-day time limit, the World Bank Administrative Tribunal (“WBAT”) has held that such prescriptions are “important for a smooth functioning of both the [World Bank] and the Tribunal (...)”. The WBAT declined to excuse an applicant for his failure to observe a legal time limit even where the applicant had suffered from a paranoid breakdown for 2-3 weeks and insisted on the continuing character and severity of his mental illness and on his difficulty in working. The WBAT ruled that the legal time limits for filing an appeal must be observed notwithstanding the severity of the applicant's mental and physical weakness (see Setia, WBAT Decision No. 134, paragraphs 29-32, *quoting* Agerschou, WBAT Decision No.114, para. 42).

20. Other international administrative tribunals have also recognized the importance of adherence to time limits and the very limited circumstances in which they may exceptionally be set aside. For example, the Administrative Tribunal of the International Labour Organization (“ILOAT”) has pronounced that “time limits are an objective matter of fact and strict adherence to them is necessary to ensure the stability of the parties’ legal relations [citations omitted].” In its Judgment 4811, the ILOAT agreed with the findings and recommendation of the internal appeals body that an appeal be dismissed because it was filed three days after the applicable time limit:

“the fact that an appeal lodged by a complainant was out of time renders her or his complaint irreceivable for failure to exhaust the internal means of redress, which cannot be deemed to have been exhausted unless recourse has been had to them in compliance with the formal requirements and within the prescribed time limit [citations omitted]. As the complainant’s appeal . . . was lodged late, the present complaint is clearly irreceivable.” (consideration 7)

21. The ILOAT has narrowly defined the very limited circumstances in which an exception may be made to the rule of strict adherence to the relevant time limit. The circumstances identified in the case law are: “where the complainant has been prevented by vis major from learning of the impugned decision in good time or where the organisation, by misleading the complainant or

concealing some paper from him or her so as to do him or her harm, has deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith”. (see ILOAT Judgment 3405, consideration 17)

2. Conclusion

22. Since the Appellant was notified of the decision regarding her RARD (Stage 1) on 25 July 2024, the 40 day deadline to submit her RARD (Stage 2) expired on 20 September 2024. The Tribunal notes that the Appellant missed this deadline by not filing it until 23 September 2024. Thus, the RARD (Stage 2) was not filed within the timelines as established by Section IV, paragraph 6.4.1(b) of the ARP Directive.

23. Further, the Tribunal notes that, pursuant to Section V of the ARP Directive, the “President may grant a deviation from a requirement of this Directive.” The use of the word “may” indicates that such decision lies within the discretion of the President.

24. It follows from the above that the Tribunal’s competence in the present case is limited to a review whether the President’s decision at stake falls within the bounds of reasonableness, is based on a thorough review of the available relevant facts, is not tainted by improper motives or procedures and is consistent with Bank law and international administrative law (see above para. 13). Applying these criteria to the case at hand, the Tribunal does not find any legal error.

25. Firstly, it is clear from the contested decision that the President was fully aware of the relevant facts of the Appellant’s situation and took them into consideration.

26. Further, the President’s view that there were no “exceptional circumstances” was consistent with the general principles articulated by various international administrative tribunals, and thus fell within the bounds of the President’s discretionary authority.

27. The Tribunal accepts that the Appellant’s overall personal and professional circumstances at the material time were difficult. However, none of them – whether individually or taken together – amounted to a situation which prevented her effectively from filing the RARD (Stage 2) within the prescribed time-limit. Neither the return from maternity leave into a new position nor the exigencies of motherhood establish exceptional circumstances within the meaning of the quoted

jurisprudence. In addition, the fact that the Appellant was able to comment on the RARD (Stage 1) decision by an email on the last day of the deadline indicates that the Appellant had sufficient opportunity to focus on the matter at stake. Therefore, the Tribunal finds no grounds to overturn the President's decision concerning the absence of exceptional circumstances in the present case.

28. Finally, no other relevant errors can be found. In particular, the Appellant was not exposed to unequal treatment. Based on the Bank's information, the Tribunal understands that the President has not to date used her competence to grant deviations to the rules of the ARP Directive. The fact that the decision on her RARD (Stage 1) regrettably was rendered with delay does not imply that the Appellant should also be granted a waiver from the time-limits.

VI. Request for anonymity

29. The Appellant requests to remain anonymous, and the Bank does not oppose this request. The Tribunal grants this request, recalling that it is inherent to an appeal process that certain facts and opinions become known, both inside and outside the Bank. This being said, it is the Tribunal's established approach to limit to the maximum extent possible, *inter alia*, the exposure of facts or descriptions that may identify participants in the process.

VII. Costs

30. Paragraph 8.06 (a) of the Appeals Directive provides:

If it upholds an Appeal, in whole or in part, the Tribunal may order that the respondent reimburse the appellant for such reasonable expenses, including reasonable legal costs, the appellant has incurred in presenting the Appeal. Exceptionally, the Tribunal may order that the respondent pay all or some part of the appellant's legal costs where the Appeal has not succeeded.

31. As the Appellant was not represented by counsel and has not requested the Tribunal to provide reimbursement, it is not necessary to consider

VIII. Decision

32. The Tribunal rejects the Appeal in its entirety.

For the Administrative Tribunal

A handwritten signature in dark ink, appearing to read "Thomas Laker", written over a light blue horizontal line.

**Thomas Laker
Chair of the Panel
19 February 2025**