IN THE APPEAL BEFORE THE
EBRD ADMINSTRATIVE TRIBUNAL

Mr A.

v.

European Bank for Reconstruction and Development

Decision by the Administrative Tribunal

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8 August 2017

1. Procedural history

1. On 15 June 2017 Mr A. (the "Appellant") filed, under the Appeals Procedures established pursuant to Resolution No. 102 of the Board of Governors and Section 10 of the Staff Regulations (the "Appeals Procedures"), an Application to the EBRD Administrative Tribunal for an Appeal (the "Statement of Appeal") against the European Bank for Reconstruction and Development (the "Respondent" or the "Bank"), complaining potential financial harm caused to him by virtue of allegedly erroneous actions on the part of the Human Resources Department and the Office of the General Counsel of the Bank in relation to payouts from the Bank's Money Purchase Plan and the Final Salary Plan ("MPP/FSP"). More specifically, he alleged that the Bank improperly restricted his ability to file revised tax documents called "Waivers", and that it improperly rejected his request concerning the form and timing of payments of his MPP/FSP funds. On 17 July 2017 the Respondent filed a Response to the Statement of Appeal (the "Response") denying all contentions of the Appellant.

2. The matter was previously considered in the course of the grievance procedure GC/16/2015, initiated by the Appellant with a Request for an Administrative Review Decision filed on 21 August 2015 (the "RARD"). Due to the sickness of the Chairperson of the Grievance Committee, Ms B., the Grievance Committee issued a Report and Recommendation to the President only on 1 March 2017 (the "Grievance Committee's Report"). The President of the Bank considered the Report and Recommendation and on 20 March 2017 rendered the President's Administrative Review Decision (the "PARD"), accepting all recommendations made in the Grievance Committee's Report. The appeal in front of this Administrative Tribunal (the "Tribunal") is the Appellant's Statement of Appeal against the PARD.

3. On 24 April 2017 the Appellant submitted to Ms B. of the Grievance Committee additional documents concerning his payment of taxes which were not filed with his original RARD and requested the Grievance Committee to change its recommendations to the President of the Bank. A number of exchanges of correspondence took place between the Appellant and members of the Grievances Committee which did not result in an amendment of the PARD appealed before this Tribunal.

4. Neither of the Parties requested an oral hearing. According to Rule 7.02 (a) of the Appeals Procedures, an oral hearing is to be held only in exceptional cases. The Tribunal decided that it was not necessary to hold an oral hearing.

5. On 7 June 2017, prior to the submission of his Statement of Appeal, the Appellant requested the President of the EBRD Administrative Tribunal ("the EBRD AT") Professor Cordero-Moss to grant an extension for filing of his Statement of Appeal for the reason that he filed a complaint against

the Respondent with OCCO (EBRD's Office of the Chief Compliance Officer). The President of the EBRD AT did not grant such an extension.

6. In the same communication of 7 June 2017, the Appellant alleged that since the Chairperson of the Grievance Committee Ms B. served at the Administrative Tribunal of another bank "she is a colleague. Therefore, it would be inappropriate for me to ask the EBRD AT to rule on whether this Grievance Committee has acted with honesty and integrity". This contention of the Appellant shall be considered by the Tribunal in Section 5 of this Decision below.

7. The Statement of Appeal was considered in accordance with Agreement Establishing the Bank, the Staff Regulations in force on 14 July 2015 (date on which the Appellant believes the erroneous administrative decision laid in foundation of his RARD was taken) and the Grievance Procedures adopted on 15 March 2011, as revised on 25 May 2011, 19 December 2013 and 1 April 2014.

2. The dispute

8. The Grievance Committee's Report indicates that the Appellant was retained by the Bank on 28 August 2002. During 2013, the Appellant and the Bank had a dispute which involved a mediation in July of that year and negotiations which resulted in execution of the Deed of Settlement dated 16 August 2013 (the "Deed"). The Deed provided that the Appellant's last contractual date of work for the Bank would be 31 October 2014, with his duties and attendance being waived until that date. It was agreed in the Deed that "Withdrawals from the MPP shall be subject to the applicable Rules of the MPP". In November 2013, the Appellant contacted the HR and received confirmation that his Retirement Plan benefits would be paid to him within 60 days of his last contractual date, i.e. before the end of 2014. The Grievance Committee's Report indicates that the Deed was negotiated and signed by the Appellant being represented by the counsel, however the RARD was filed by the Appellant without the use of any professional legal advice.

9. In his RARD the Appellant submitted that terms and conditions of his employment and in particular the Bank's duty under Section 3(a) of the Staff Regulations to treat staff with fairness and impartiality were infringed by the Respondent which declined to grant his request for the change of form and timing of payments from his MPP/FSP funds under the Deed. The Appellant claimed that the amount of extra tax paid by him was $_____, although the final amount might change slightly (RARD, page 4) and alleged that had he been able to spread out MPP/FSP payments out over several years, his tax burden would have been $0 or close to it. He also claimed that he had been denied the "Normal Administrative Process" and a separate mediation on the tax issues which mediation was specifically requested by him.

10. The Bank contended that the Appellant in fact sought an unjust enrichment at the expense of the Respondent and none of his rights were in fact violated.

11. The Grievance Committee's Report indicated that the Appellant had signed in 2009 a document entitled "Waiver" which meant that he had to take all his MPP benefits within 60 days of leaving the Bank, and it had the same effect for his FSP benefits. Moreover, the Grievance Committee's Report concluded, that, contrary to his allegation at the RARD, when signing the Deed the Appellant (assisted by a legal counsel) "was under no compulsion to accept a deal that entailed the risk of high tax liability of which he was clearly aware at that time" (page 8 of the Grievance Committee's Report). The Grievance Committee also did not detect any of the Appellant's rights for "Normal Administrative Process" and mediation to be violated. The Grievance Committee's Report concluded that the Appellant was not entitled to any relief, which conclusion was later supported by the PARD.

12. In the Statement of Appeal, the Appellant challenged the PARD supporting recommendation of the Grievance Committee's Report in several respects: (i) the Appellant alleged that the Grievance Committee's Report was based on manifest errors in fact findings; (ii) his Memorandum of 9 June 2016 was overlooked by the Grievances Committee in the course of preparation of the Grievance Committee's Report; and (iii) the conclusions of the Grievance Committee's Report were not fair. He requested that the Tribunal "suspend[s] the PARD" and (i) support[s his] request for formal mediation; and/or (ii) [renders a decision for] formation of a new GC to undertake a full and fair review of the evidence; and/or (iii) proceed[s] directly to resolution [of the dispute]", which in opinion of the Appellant should result in the Bank obtaining an independent US tax advice to review the Appellant's 2014 US tax return "to determine exactly what could have been deferred and therefore the potential tax liability" (paragraphs 6 and 84 of the Statement of Appeal).

13. The Appellant did not request any payment of interest on the compensation sought (which he promised to spend for charity), neither he moved for reimbursement of moral damages and legal costs.

14. In the Response, the Respondent argued that the Appellant's requests for remedies sought should be rejected in their entirety, since he was aware of his potential tax liabilities before entering the Deed; the Bank did not breach the Appellant's terms and conditions of employment and treated him with fairness and impartiality and did not make any misrepresentations; and the Appellant's tax burden is not recoverable from the Respondent in accordance with the Agreement Establishing the Bank.

15. On 19 July, the Tribunal received a new submission from the Appellant which contained a number of new arguments and remedies being sought by him (the "Letter of 19 July 2017").

16. The Parties' respective arguments are summarized below.

3. Summary of the Appellants' position

17. The basic ground upon which the Appellant challenged the PARD was that the Grievance Committee's Report was based on manifest errors in fact findings.

18. The Appellant believed that the dispute was resulted by miscommunication between him and the Bank which occurred in 2014, later he was refused mediation which could have resolved the problem. He submitted that the full amount of MPP/FSP funds was paid to him in December 2014 contrary to his "stated wishes" and the matter is not about any "tax reimbursement" as it was qualified by the Respondent in the course of the grievance procedure, but rather about "reimbursement of excess taxes resulting from the Bank's administrative error" (paragraphs 12 to 17 of the Statement of Appeal).

19. The Appellant submitted that PARD was unlawful for the reasons that (i) the Grievance Committee's Report was rendered with an 18-month delay; (ii) no transcript of deliberations of the Grievance Committee was released to the Appellant and (iii) the Grievance Committee's Report contains manifest errors (paragraphs 23 to 35 of the Statement of Appeal).

20. The Appellant alleged that Grievance Committee's Report ignored his Memorandum of 9 July 2016 being duly submitted in the course of the Grievances Procedures. The Appellant also complained that he has not been given a chance to review the draft of the Grievance Committee's Report and the transcripts of meetings of the Grievance Committee considering his matter (paragraphs 39 to 42 and 50 of the Statement of Appeal).

21. The Appellant insisted that his correspondence with the Bank of 2012 concerning payment of US taxes is irrelevant to this dispute since it "occurred prior to signing the Deed of Separation" (paragraph 51 of the Statement of Appeal). In the opinion of the Appellant, his knowledge of the potential tax liability prior to execution of the Deed was not material for this dispute. He further contested lawfulness of submission of the Deed to the Grievance Committee by the Bank and insisted that such submission "was designed to influence the GC's opinion against me" (paragraph 48 of the Statement of Appeal).

22. The Appellant admitted that information about the factual tax payments made by him to US authorities was submitted by him "subsequently", on 8

March 2017 and 24 April 2017, i.e. after the Grievance Committee's Report was completed (paragraph 49 of the Statement of Appeal and Attachments 5 and 7 to it).

23. The Appellant insisted that the Bank's policy with regard to waivers of the US taxpayers was wrong in 2012 and 2013 and it was changed in 2014 after the Appellant has brought the issue to attention of the Respondent. The Deed was discussed and executed on the basis of the 2012 and 2013 practice. The Bank, in the opinion of the Appellant, could have allowed him to submit "an Annex 2 Waiver between signing of the [Deed] and 31 October 2013", and even "should have been helping [the Appellant] to do so" (paragraphs 51 to 60 of the Statement of Appeal).

24. At paragraph 17 of the Statement of Appeal, the Appellant submitted that "[t]he Bank imposed rules that were not consistent with US IRS 409A rules. Against my stated wishes, HR paid out the full amount of my MPP/FSP in December 2014" which resulted in payment of U.S. taxes at a higher rate in comparison to a scenario in which the payments were deferred for a longer period of time.

25. The Appellant also submitted that he did not file a proper tax form in 2013 because he was misled by the Bank on US tax issues, and having "clarified any misunderstanding", the Bank should have agreed to meet and/or mediate with him (paragraphs 62 to 66 of the Statement of Appeal).

26. The Appellant believed that "misrepresentation" in tax matters on behalf of the Bank constituted a breach of his rights, and the conclusions of the Grievance Committee's Report that no "employment rights" of the Appellant were violated was a mistake (paragraph 68 of the Statement of Appeal).

27. The Appellant further repeated that he claimed not "reimbursement of legitimate US taxes, only reimbursement for excess taxes [he] was forced to pay as a result of the Bank's mismanagement" (paragraph 70 of the Statement of Appeal).

28. The Appellant also complained that he was refused mediation despite he applied for it following filing of the RARD (paragraphs 73 to 77 of the Statement of Appeal). He believed that the matter should have been returned to the Grievance Committee for re-hearing (Paragraph 84 of the Statement of Appeal).

29. In his Letter of 19 July 2017, the Appellant contended that (i) the Grievance Committee by itself has to address his accusations in commitment of manifest errors for the reason that it is independent from the Bank; (ii) the Grievance Committee should itself explain the reason for its delay in production of the Grievance Committee's Report; (iii) to extent the Tribunal rules there were no manifest errors committed in the

Grievance Committee's Report, the Appellant should be provided extra time for addressing "new argumentation and new evidence" contained in the Response; and (iv) submitted a new argument that since he was the author of the RARD, he should have been provided with an opportunity to "suspend" it and submit the matter for mediation.

4. Summary of the Respondent's position

30. The Respondent submitted that the Grievance Committee's Report did not contain any manifest errors. Specifically, the Respondent indicated that the tax issue was raised and settled in the course of execution and performance of the Deed (page 8, 5th paragraph of the Grievance Committee's Report), and even the Statement of Appeal at its paragraph 55 admitted that (paragraphs 5.4 and 5.5 of the Response). The Respondent insisted that the Deed specifically prevented submission of any subsequent claims emanating from the issues raised in the course of preparation of the Deed (paragraph 5.6 of the Response and clauses 4.1 and 4.2 of the Deed) and the Tribunal should not allow the Appellant to circumvent the Deed (paragraph 5.21 of the Response).

31. The Respondent also indicated that "the Appellant negotiated for a higher gross settlement amount, with the knowledge that his net would be reduced by taxes he would owe to the U.S. Government" (paragraph 5.12 of the Response). The Grievance Committee's Report correctly concluded that "the Appellant was under no compulsion to accept the deal that entailed the risk of high tax liability of which he was clearly aware at that time [of negotiation of the Deed]" (page 8, 5th paragraph of the Grievance Committee's Report).

32. The Respondent insisted that in accordance with Clause 9.2 of the Deed the Appellant waived any and all remedies based on potential misrepresentation on behalf of the Bank in tax issues and had to obtain an independent tax advice or to indicate specifically in the Clause 8 of the Deed that the corresponding representations of the Bank could not be verified independently and the Deed was concluded by the Appellant on the basis of reliance on such unverified representations. No wording that the Deed was concluded on the basis of any Bank's representations which remained unverified by the Appellant was included in the Clause 8 of the Deed (paragraphs 5.16 and 5.17 of the Response). The Appellant is also precluded from filing of the tax claim by virtue of the wording of Clause 8.3 repeated at paragraph 5.20 of the Response, which wording contains a representation and warranty of the Staff Member that there exist no matters "which could give rise to a Potential Claim."

33. The Respondent specifically explained that the Grievance Committee's Report was correct to conclude that no terms and conditions of employment of the Appellant were violated, he was treated fairly and at all times was free to seek his own tax advice and was specifically

recommended to take such advice by the very wording of the Waiver documents of the Bank (cited at paragraph 5.24 of the Response).

34. The Respondent contended that the Bank was not responsible for the Appellant's tax affairs and for the circumstance that Waiver documents were signed by the Appellant without the benefit of seeking of independent tax advice (paragraphs 5.27 and 5.28 of the Response), and that no misrepresentation on behalf of the Bank was proven by the Appellant, which was confirmed by the Grievance Committee's Report (page 10, 3rd paragraph).

35. The Respondent agreed with the Grievance Committee's Report conclusion that "the Bank could not reimburse the Staff Member for the national tax paid" (page 11, 6th paragraph), which conclusion is based on EBRD AT decision 2014/AT/01 and Articles 53(6) and (7) of the Agreement Establishing the Bank (paragraphs 5.32 and 5. 33 of the Response). The Respondent believed the Appellant had no standing to claim recovery of his U.S. taxes (which he calls "the excess tax"), which was not possible either under the jurisprudence of the EBRD AT cited above, or as a matter of the wording of the Waiver Agreement which clearly exempts the Bank from any liability with regard to payment of U.S. taxes owned from the Appellant (paragraph 5.36 of the Response).

36. The Respondent also contended that no procedural flaws were committed in the course of consideration of the RARD and no conflict of interests of the Bank's Human Resources and Office of General Counsel was proven by the Appellant (paragraphs 5.37 to 5.40 of the Response). In the opinion of the Respondent, the Appellant submitted his formal request for mediation only on 27 August 2015, already after filing of his RARD, i.e. not in time. The Respondent believed that there remained no room for mediation in this case since the Deed represented the final and binding settlement document which was not open for introduction of any amendments by means of mediation (paragraph 5.42 of the Response).

37. The Respondent submitted that the Appellant's Memorandum of 9 June 2016 was not overlooked by the Grievance Committee and was not specifically mentioned in the Grievance Committee's Report because it just repeats the arguments of the RARD, with the exception of the matter of the 2013 exchange of the Appellant with the HR, which was considered by the Grievance Committee (paragraphs 5.45 to 5.49 of the Response).

38. In the opinion of the Respondent, the length of Administrative Review between the RARD and the PARD does not constitute a "flaw in the process", and is partly explained by a reasonable challenge to jurisdiction of the Grievance Committee filed by the Bank, and partly explained by "unforeseen factors beyond its control" (paragraphs 5.50 to 5.56 of the Response).

39. The Respondent reiterated that the Grievance Committee was not obliged to transcribe its deliberations and in any case such deliberations are confidential, hence no rights of the Appellant were violated (paragraphs 5.57 to 5.59 of the Response).

40. The Respondent complained that the remedies sought by the Appellant were "not immediately clear" and believed that "the Administrative Review process in this matter has been appropriately exhausted by the President's Decision and should not be reopened" (paragraphs 6.1 to 6.4 of the Response). In particular, the Respondent believed that there existed no grounds for re-opening of administrative review in this matter in accordance with Section 6.01 of the Appeals Procedures, since no substantively new ground of appeal or information was included to the Statement of Appeal in comparison to grounds laid in foundation of the RARD and information submitted to the Grievance Committee when it dealt with this matter.

41. The Respondent believed that no award of "excess taxes" could be justified, and in any event to the extent any amount of taxes should be awarded, such award should take into account the Appellant's failure to take proper tax advice in due course, and the amount to be paid has to be finally determined by an independent tax expert whose determination should not be subject to any appeal at any forum (paragraphs 6.5 to 6.8 of the Response).

5. The Tribunal's evaluation

42. First of all, the Tribunal does not believe that there is any conflict of interests for the reason that the Chairperson of the Grievance Committee Ms B. served at the Administrative Tribunal of another bank as it was contended by the Appellant in his communication of 7 June 2017. Neither the EBRD AT in general nor any of its members deciding this case had any contacts with Ms B. or the Administrative Tribunal of that bank and, accordingly, the Appellant's allegations of bias are entirely without merits.

43. Secondly, the Tribunal believes it has no standing and qualification to consider the issues of payment of US taxes. It is indisputable that the Appellant as a taxpayer was responsible for doing it by himself, and the Bank had no legal obligation to assist him in doing that. Moreover, the Bank in its standard Waiver documents and correspondence with the Appellant several times advised the Appellant to take a proper professional advice (see quotations from the Waiver documentation at paragraph 5.24 of the Response and letter of Ms C. of 24 October 2014 in Exhibit 6 to the Bank's Reply to the RARD), and the amounts being paid by the Bank to the Appellant were obviously sufficient for the Appellant to afford such professional advice (since the amount of allegedly overpaid taxes exceeds quite a substantive amount of money). The Tribunal's duty under Article 2.01(b) of the Appeals Procedure is to consider, whether the

PARD "alters, in a material adverse manner, or allegedly is in breach of, [the Appellant's] Terms and Conditions of Employment in force immediately before the [PARD] was taken" and hence the Bank's duty under Section 3(a) of the Staff Regulations to treat staff with fairness and impartiality has been violated, rather than to study, how Appellant's tax duties could have been mitigated with the help of the Bank.

44. Thirdly, the Tribunal specifically explains that it was by no means influenced by the reasons that led to the conclusion of the Deed (including any potential actions of the Appellant which could have resulted in his resignation from the Bank), and this dispute was considered by it solely on the basis of analysis of actions of the Parties connected with payment of taxes from the standards of international administrative law. The entire text of the Deed was not presented to the Tribunal by either of the Parties, so it relies only on quotations from it contained in the Grievance Committee's Report and the Response believing such quotations to be accurate. The Letter of 19 July 2017 does not indicate that the Appellant believes any quotations from the Deed were erroneous.

45. Moving to the merits of the case, the Tribunal believes that it has to resolve the dispute, rather than to send it back for a new grievance procedure or mediation. The matter is now outstanding for more than 2 years, and in the opinion of the Tribunal no new fact finding is necessary for taking the proper decision. The Parties had reasonable opportunities to develop their arguments and present their positions.

46. The Tribunal concludes that no employment rights of the Appellant were violated by the Bank in the course of its correspondence with the Appellant with regard to the issue of payment of US taxes. The Appellant was a highly ranked and highly qualified employee. He knew his duty to pay his US taxes by himself and he took proper legal advice when he was negotiating and signing the Deed. All Bank's duties under the Deed were properly performed by the Bank, there is no evidence to the contrary on the file. Basically, having considered all lengthy correspondence between the Parties in this matter, the Tribunal agrees with the Bank's attestation of this claim: "The Appellant got what he bargained for under the … Deed. He subsequently realized that he might arguable have been able to get more and is seeking to undo the agreement reached in the … Deed" (paragraph 5.21 of the Response). Accordingly, the Tribunal does not believe that the Appellant is eligible for any relief sought by him with regard to alleged payment of his "excess taxes".

47. The Tribunal failed to understand the legal relevance of the Appellant's argument that he claimed not "reimbursement of legitimate US taxes, only reimbursement for excess taxes [he] was forced to pay as a result of the Bank's mismanagement" (paragraph 70 of the Statement of Appeal). In opinion of the Tribunal reimbursement of "excess" taxes is still a reimbursement of taxes not being possible for the Bank under Articles 53(6) and (7) of the Agreement Establishing the Bank (paragraphs 5.32

and 5. 33 of the Response). Accordingly, no such reimbursement is possible, either as a reimbursement of taxes or excess taxes.

48. The Appellant believes that due to certain "misrepresentations" on behalf of the Bank's officers which took place prior to execution of the Deed he was eligible for some help of the Bank which could have minimized his tax burden. The Tribunal does not agree with that logic. When signing the Deed (and when receiving money from the Bank under that Deed) the Appellant should have considered his tax responsibilities well in advance. In fact, deferral of payments under the Deed could not have taken place without formal amendment of that Deed, and the Appellant did not demonstrate that any of the Bank's alleged "misrepresentations" have indeed affected his decision-making in the process of negotiation of the Deed. Neither he demonstrated that he was eligible to require the Bank to amend the Deed after it was executed and fully performed by the Bank. Finally, he himself submits at paragraph 51 of his Statement of Appeal that the correspondence between him and the Bank which took place prior to signing of the Deed is covered by that Deed and "<u>therefore not in dispute</u>" (underlined by the Appellant). Accordingly, whatever misrepresentations were allegedly made by the Bank's officers prior to execution of the Deed, those misrepresentations could no longer be contested by the Appellant following execution of the Deed which had finally settled all his existing disputes with the Bank, including those which concerned the Waiver documentation.

49. In the opinion of the Tribunal, the Appellant did not have any legal standing to require the Bank to amend the Deed, which Deed was a final legal obligation of the Bank vis-à-vis the Appellant. Performance of Appellant's obligations to pay US taxes was not (and could not) be an object of settlement between the Parties, as it is clearly proven by EBRD AT decision 2014/AT/01 and Articles 53(6) and (7) of the Agreement Establishing the Bank (paragraphs 5.32 and 5. 33 of the Response).

50. The Tribunal did not find any evidence supporting the Appellant's contention at paragraph 17 of the Statement of Appeal that the monies payable to him under the Deed were paid "[a]gainst [his] stated wishes". In fact, if it were true, he should have returned the funds to the Bank which never happened. Accordingly, accepting the substantive payments from the Bank the Appellant should have been prepared to pay the corresponding taxes, and there was submitted no legal argument, why Bank's failure to co-operate with the Appellant with the aim of minimization of his tax burden constituted a breach of employment rights of the Appellant.

51. The Tribunal agrees with the Appellant that the period during which the Grievance Committee's Report was under preparation was too long. In the opinion of the Tribunal the Grievance Committee had to inform the Appellant about the delay in preparation of its report caused by illness of its Chairperson. However, that fact does not prove the Appellant's

contentions of denial of "normal administrative process". Unreasonably long time used by the Grievance Committee does not equate to denial of due process, since delay in preparation of the Grievance Committee's Report did not create any new employment problems for the Appellant who was no longer working for the Bank as of the moment of submission of his RARD. The Appellant could have sought some pecuniary remedies due to that delay, but he opted not to do that.

52. The Tribunal agrees with the Respondent that the Appellant's Memorandum of 9 June 2016 was not overlooked by the Grievance Committee. The Bank's explanation that this memorandum was not specifically mentioned in the Grievance Committee's Report because it just repeats the arguments of the RARD, with the exception of the matter of 2013 exchange of the Appellant with the HR, which matter was considered by the Grievance Committee (paragraphs 5.45 to 5.49 of the Response), is supported by comparison of that memorandum and original RARD. The Tribunal observes that the Appellant did not provide any legal arguments requiring the Grievance Committee to refer specifically to every piece of correspondence with the Appellant.

53. As far as it concerns mediation, the Appellant did not demonstrate that there exists any norm of international administrative law, which requires the Bank to hold a second set of mediation with him (since the Deed was in fact a result of a mediation process between the Parties), especially after he had already initiated the grievance procedures having submitted his RARD. In the opinion of the Tribunal, no legal arguments were submitted supporting contention of the Appellant that following submission of his RARD he was allowed to "suspend" it and to require the dispute to be returned to the mediation stage.

54. The Tribunal took note of the difference between the Parties' positions with regard to formal request for mediation filed by the Appellant. The Bank believes that since the formal request for mediation was filed by the Appellant only on 27 August 2015, i.e. after the RARD was submitted on 21 August 2015, there existed "no obligation under the Grievance Procedures for the Respondent to consider a mediation request at such point" (paragraph 5.42 of the Response). The Appellant believes that since his formal request for mediation of 27 August 2015 was not formally reported to the Grievance Committee for some reasons, the Grievance Committee's Report at Section 7(e) dealing with the issue of mediation was wrong (which is explained in his letter to Ms B. of 24 April 2017).

55. Although the Tribunal agrees that there exists a question, whether or not the knowledge of the 27 August 2015 request could have influenced the Grievance Committee Report's fact findings, it is more important that the Report formulated at the same at Section 7(e) the following legal conclusion: "Mediation under the Grievance Procedures does not create an absolute right. This is because mediation, which is designed to avoid a

grievance, has a chance to achieve a mutually acceptable result only when both parties are willing to engage in it. The Bank was not willing to do so because it had already settled this issue with the Staff Member. He has not made out a case for holding the Bank liable for failing to engage in mediation of his newly asserted claims." The Tribunal agrees with this conclusion of the Grievance Committee. Under the given circumstances the Bank was not obliged to mediate with the Appellant, no matter whether the formal request for such mediation was filed prior or after submission of the RARD. The Tribunal also observes that as a matter of legal proceedings the formal request for mediation should be filed before, rather than after, submission of the RARD to the Grievance Committee.

56. The Tribunal agrees with the Bank that the Grievance Committee was not obliged to transcribe its deliberations and in any case such deliberations are confidential, hence no rights of the Appellant were violated (paragraphs 5.57 to 5.59 of the Response). It is the understanding of the Tribunal that the Appellant should be provided with transcript of the proceedings before the Grievance Committee only with respect to an oral hearing with his participation, which never took place in the course of consideration of this dispute. The Tribunal also does not see any legal grounds supporting the Appellant's contention that he should have been provided with a draft of the Grievance Committee's Report for his review prior to its completion.

57. The Tribunal agrees with the Respondent that the Appellant's references to Section 6.01 of the Appeals Procedures allowing the Tribunal to re-open the process of administrative review (paragraph 6.3 of the Response) are not applicable to this dispute, and, accordingly, there exist no reasons for the Tribunal to send the matter back for consideration of the Grievance Committee.

58. The Tribunal agrees with the Respondent that the remedies sought by the Appellant were not immediately clear, and also considers it to be prudent to comment that the Appellant's arguments are repetitive and often inconsistent. It is clear that for some reasons the Appellant decided not to take legal advice in the course of these proceedings (by contrast to him being assisted by a counsel in the process of negotiation of the Deed), which fact created additional problems for the Tribunal in understanding arguments and logic of the Statement of Appeal. It is a pity that he has not retained a lawyer to explain to him that every procedure of dispute resolution is aimed at final and prompt consideration of the parties' arguments, and having seen the Bank's Response the Appellant does not automatically obtain an opportunity to file new arguments and pleas in support or alteration of his earlier position.

59. It is clear for the Tribunal that the Appellant believes that the Appeals Procedures are not a set of defined formal rules for final resolution of legal disputes, but rather a ground for endless submissions of new procedural and substantive arguments. This is further confirmed by his

Letter of 19 July 2017 in which the Appellant submitted new arguments listed in Section 3 of this Decision above. The Tribunal observes that although this is not specifically spelled out in the Appeals Procedures, this document does not allow the Parties to amend and/or supplement their positions after their respective arguments were filed before the EBRD AT without the Tribunal's specific permission, and in this particular case the Tribunal does not see any reasons why the Appellant should be granted a specific permission to file new arguments after he studied the Response.

60. Foregoing notwithstanding, the Tribunal considered the merits of the Letter of 19 July 2017 and believes that the contentions of that letter to be entirely groundless. The Bank's Response properly addressed the issues contained in the Statement of Appeal, there was no need to resend any of them back to the Grievance Committee, neither for the reason of its independence from the Bank (which is true), nor for any other, and, moreover, the Appellant did not provide any procedural explanation, how the matter submitted in the Statement of Appeal could have been returned to the Grievance Committee after the PARD was rendered. Moreover, the Statement of Appeal in fact invites the Tribunal "to proceed directly to resolution" (at paragraph 6), so it is unclear, on which procedural grounds the Grievance Committee could interfere at this stage of the dispute.

61. In the opinion of the Tribunal, the Response does not contain any "new evidence" which has to be specifically considered by the Appellant in new submissions to the Tribunal. In fact the Bank has submitted a very concise Response having no new documents being exhibited thereto, accordingly the plea of the Letter of 19 July 2017 for new submissions should be rejected.

6. Decision

On the basis of the foregoing, the Tribunal, acting by a panel composed of Judges Boris Karabelnikov (Chair), Giuditta Cordero-Moss and Stanisław Sołtysiński, hereby decides as follows:

The remedies sought by the Appellant, Mr A., are dismissed in their entirety.

For the EBRD Administrative Tribunal

Boris Karabelnikov