



**World Bank Administrative Tribunal**

**2010**

**No. 435**

**BH,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

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

**BH,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Stephen M. Schwebel, President, and Judges Florentino P. Feliciano and Ahmed El-Kosheri.

2. The Application was received on 4 September 2009. The Applicant was represented by Stephen C. Schott, Schott Law Associates, LLP. The Respondent was represented by David Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 17 May 2010.

3. The Applicant claims that the Respondent improperly denied him a position at the International Finance Corporation ("IFC"), failed to assist him in his job search, and terminated his employment improperly.

#### FACTUAL BACKGROUND

4. The Applicant joined IFC in 1991 as an Investment Officer at grade 21 (equivalent to the current level GF). IFC promoted him steadily – in January 1993 to grade 22; in January 1994 to grade 23; and in June 1996 to grade 24.

5. In September 1999 IFC relocated the Applicant to its office in Nepal. In 2000 he was promoted to Principal Investment Officer, grade GH. In July 2001 IFC reassigned the Applicant to its office in New Delhi, India to head the Portfolio Unit. The Applicant

remained in that position through July 2003. He resided with his wife and family in New Delhi during that time.

6. For personal reasons, the Applicant went on Leave Without Pay (“LWOP”) for a two-year period (August 2003 to July 2005), during which, for administrative purposes, he remained in his current unit and his duty station remained New Delhi. His LWOP agreement with IFC dated 12 June 2003 provides *inter alia* that:

At the conclusion of your LWOP, you may return to a position at Level GH, in the Global Manufacturing and Services Department. You will report to IFC New Delhi at which time the Global Manufacturing and Services Department will provide for relocation travel to Washington, DC for you and your immediate family members to take up a new assignment.

7. In mid-2005 the Applicant requested a two-year extension to his leave of absence. In June 2005 IFC granted his request. The terms of this new agreement were memorialized in a memorandum dated 20 June 2005. The memorandum states in relevant part as follows:

[Y]our Leave Without Pay (LWOP) has been extended through July 31, 2007 as requested.

At the conclusion of your LWOP, the General Manufacturing Department will provide a conditional re-entry for a period of up to six months. However, if you are unable to find suitable employment in the Bank Group within that period, your appointment with the Bank will terminate without any severance payments.

All other terms and conditions in your LWOP memorandum dated June 12, 2003 remain the same.

8. Two years later, in July 2007, as his LWOP was coming to an end, the Applicant commenced exploring suitable opportunities in IFC. The Applicant preferred to find a position in New Delhi for family reasons. To that end, in July 2007, the Applicant met with the Manager of the Infrastructure Department, South Asia, in New Delhi. The

Manager told the Applicant that there were no job openings in the infrastructure sector in South Asia and suggested that the Applicant explore opportunities in Washington, DC.

9. As stated in LWOP, the Applicant re-entered IFC on 1 August 2007 and reported for duty at IFC's New Delhi office and requested to be relocated to Washington, DC. He had six months from the date of re-entry to find a position, failing which his employment would come to an end.

10. While his G-4 visa, which would allow him to return to work in Washington, DC, was being processed, he continued to report to IFC's New Delhi office. There the Applicant met with the Senior Human Resources ("HR") Officer, New Delhi, to discuss job opportunities in the New Delhi office. The HR Officer told the Applicant that she was not aware of any suitable position at the New Delhi office and suggested that he explore opportunities in other regions or at IFC's Headquarters.

11. On 3 September 2007 the Applicant met with the Director of the South Asia Department in New Delhi. According to the Respondent, at that meeting the Applicant asked for the Director's advice concerning his return to IFC. The Director told the Applicant that there were no positions available for him in New Delhi. He advised the Applicant to take a position in IFC's Headquarters, because (i) that was his place of re-entry; and (ii) he had to get up to speed with the new procedures and the myriad of changes that had taken place since he left IFC. However, the Applicant provides a different account of the meeting:

[The Applicant] expressed a desire to have an opportunity to work in India. [The Director of the South Asia Department] expressed his reluctance in having him work out of India because he believed Applicant to be Indian and he claimed not to want Indians in India as international hires. Applicant pointed out to him that he was in fact [from a different country in South Asia]. [The Director of the South Asia Department] then stated he

preferred not to have South Asians as expatriate hires. When reminded that it was not IFC policy to exclude nationals of the regions from country offices, [the Director of the South Asia Department] said that even if he wanted to offer Applicant a position he had budget constraints.

12. On 19 September 2007 the Applicant returned to Washington, DC, after obtaining his G-4 visa. He then met the Director of the Infrastructure Department and they discussed an opportunity for the Applicant to work in a project known as the “Infraventures Project” based in New Delhi. The Director of the Infrastructure Department sent an e-mail message in October 2007 about this project to the Director of the South Asia Department, as the proposed position would be based in the South Asia Region. Both Directors also discussed this matter over the telephone in November 2007. The Director of the South Asia Department told the Director of the Infrastructure Department that “South Asia had no interest in changing the previously agreed portfolio structure for infrastructure and/or in creating an expatriate position.”

13. On 26 November 2007 the Applicant met with the Director of the South Asia Department in New Delhi. According to the Applicant, during the meeting the Director advised that he had decided not to accept the request of the Infrastructure Department to locate the Applicant in New Delhi because of unspecified issues – which, according to the Applicant, the Director referred to as “ghosts from the past” – relating to the way the Applicant had handled clients during his previous assignment in New Delhi. The Applicant adds that he was surprised and asked the Director for specific details of this reference, but the Director was unable to provide any.

14. The Director, however, recalls the exchange at the 26 November meeting differently. According to the Director, he started the meeting by telling the Applicant that he did not know his personal work record, but had heard mostly good things about him

from various colleagues in Washington, DC, and some other less positive things from his colleagues in the South Asia Region. The Director recalls that he further told the Applicant that there were no infrastructure positions in New Delhi and that all infrastructure-related functions reported to the Manager of the Infrastructure Department in New Delhi. The Director adds that he also informed the Applicant that the Manager had her own vision of how the Infraventures and portfolio activities should be run, and that it was her preference to strengthen the infrastructure team through a local hire. The Director further recalls that when the Applicant inquired whether his past performance had played any role in his inability to secure a position, the Director clarified that it played no role, and that no offer could be made because there were no positions available.

15. On 10 December 2007 the Applicant sent an e-mail message to the Director of the South Asia Department recalling their meeting of 26 November and asking the Director to let him know “on what basis [has he] made a decision to deny [him] an opportunity to work with the Infrastructure Department based out of New Delhi?”

16. On 14 December 2007 the Director of the South Asia Department responded as follows:

I have a quite different recollection of my only two short interactions [I] ever had with you and although I understand from your e-mail your frustration, I would like to confirm that South Asia cannot accommodate your desire to be based in the region or offer you any position.

17. In the meantime, on 11 December 2007, the South Asia Department posted a job advertisement on the Bank’s intranet for a level “GG-GH (Preferred Grade GH) Principal Investment Officer” position based in Mumbai. The Applicant states that he considered applying for the position but decided against it in view of the Director’s response of 14 December 2007.

18. On 4 January 2008 the Applicant sent an e-mail message to IFC's Vice President for Human Resources and to IFC's Vice President for Asia, Latin America, Middle East and North Africa. In that e-mail he stated *inter alia*: "I would like to seek your help in getting specific details on which [the Director of the South Asia Department] has based his allegations and as a result destroyed my career in IFC without any regard to fairness or transparency."

19. On 7 January 2008 IFC's Vice President for Human Resources responded by stating:

I cannot speak to your question as to what [the Director of the South Asia Department] meant by the words he used with you. However, I think it would be appropriate for me to set the organizational context for how IFC determines whether a headquarters staff member (with an international appointment) should be posted in a field location.

First, as you've outlined, the decision is joint between the regional director and the industry director.

Second, two directors need to agree on the operational model for the staff deployment. In the example you cite, I think there are basic business model questions that need to be asked. For example, I'm not sure there is a compelling case for sending an expatriate to work on infrastructures out of New Delhi. (This is not a question about whether you should move to Delhi, but a more general question, as to whether the program should be run out of Washington with an expatriate in the field.) IFC has [a Manager of the Infrastructure Department, South Asia] covering the South Asia region, and a more cost effective staffing alternative might be to have a locally-recruited IO head up the infrastructures business under [the Manager's] leadership. I'm not sure it makes sense for the program to be run out of Washington with an expatriate who reports to headquarters, when IFC has the expertise to run it out of the regional hub. Moreover, a Washington-centric approach does not strengthen the development of global staff. IFC has an imperative to find challenging career development opportunities for locally-recruited staff, and opening the program out of Delhi would provide locally-recruited staff the opportunity to gain leadership experience, as well as project experience outside his/her home country.

...

I will consult with [the Vice President for Asia, Latin America, Middle East and North Africa], [the Director of the Infrastructure Department], and [the Director of the South Asia Department], and will ask the [the Director of the South Department] to respond to you directly on your specific questions.

20. On 15 January 2008 the Director of the South Asia Department wrote to the Applicant:

As I had indicated earlier, South Asia does not require an expatriate position in India for Infraventures. The idea is to develop this initiative locally under the leadership of [the Manager of the Infrastructure Department, South Asia] who is our sector leader for Infrastructure. She will either use current resources or hire someone locally and will be responsible for co-ordinating with the Infrastructure Department on this. Therefore for now, we do not have a suitable position for you.

21. On 31 January 2008 the Applicant's six-month job search ended without success. His employment with the Respondent ended on that day consistent with, according to the Respondent, the terms of his LWOP arrangements.

22. On 30 January 2008 the Applicant filed an Appeal with the Appeals Committee challenging the Respondent's decisions: (i) to deny him in November 2007 the opportunity to work with IFC's Infrastructure Department in a position based in New Delhi; (ii) to refuse in December 2007 to accommodate his desire to work in IFC's South Asia Region; and (iii) to rely upon, and to repeat to other managers, false and unsubstantiated allegations regarding his past performance.

23. After a hearing, the Appeals Committee issued its report in February 2009 dismissing the Applicant's Appeal and recommending that all his requests for relief be denied. The Vice President of Human Resources accepted the recommendation and so informed the Applicant on 26 March 2009.

24. The Applicant filed his Application with the Tribunal on 4 September 2009 stating that he is "contesting his termination, unfairness in consideration for a position on his



return from leave and wrongful conduct by manager in evaluating Applicant for and obstructing his search for a position.” As relief he requests the following: (i) that the termination of his employment be recorded in his personnel record as resignation effective 31 January 2008; (ii) written assurance that there is no bar in his personnel record against rehire; (iii) compensation in the amount of three years’ net salary; and (iv) costs.

#### SUMMARY OF THE PARTIES’ CONTENTIONS

##### *The Applicant’s contentions*

25. The Applicant contends that the Director of the South Asia Department improperly denied him a position in the New Delhi office and in the South Asia Region. He asserts that the Director excluded him from consideration for a position based on unsubstantiated allegations about his performance. He also contends that the Director’s action was discriminatory.

26. In addition, he contends that the Respondent improperly changed the re-entry guarantee in his LWOP from “unconditional” to “conditional.” He also asserts that the Respondent failed to provide assistance in his job search and improperly terminated his employment.

##### *The Respondent’s contentions*

27. The Respondent contends that: the Applicant’s claims lack a proper basis; he had no entitlement to be placed in a job or location of his choosing; while he blames the Respondent for his unsuccessful job search, the record makes it clear that it was his own conduct – in particular, his failure to apply for any openings – that ensured his failure to find another job; his unsupported allegations of unfairness and discrimination are entirely

without merit. The Respondent submits that the Application should be dismissed and all claims for relief denied.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

##### *Alleged failure to give the Applicant a position in New Delhi and in the South Asia Region*

28. The Applicant claims that the Director of the South Asia Department improperly denied him a position in the New Delhi office and in the South Asia Region. The Applicant adds that he had an opportunity to work in the Infrastructure Department on Infraventures project based in New Delhi but the Director of the South Asia Department denied him that opportunity. The Applicant states that the Director's was based on unfounded allegations about his performance. The Applicant also claims that the Director discriminated against him. In the Applicant's view, the Director's actions amounted to an "unreasonable refusal to accommodate Applicant's expectation that he would reintegrate [into] IFC in the office and region that he had left, i.e. New Delhi, South Asia."

29. The Tribunal finds that the Applicant was neither expected, nor should he have expected, to be reintegrated into the New Delhi office. His LWOP agreement with IFC stated that he would be relocated to Washington, DC, during his conditional re-entry period. The Applicant clearly understood this term of the LWOP as he confirms in his Application that "on August 1, 2007 Applicant rejoined the GMS Department which was the department that authorized the leave and he requested to be relocated to Headquarters in Washington as per the terms of his LWOP." Accordingly, just as the Applicant had no basis to expect to be reintegrated into the New Delhi office, the Respondent did not have any obligation to reintegrate him into that office or any other office in the South Asia Region under the terms of the LWOP.

30. The next question is whether the Respondent, specifically the Director of the South Asia Department, improperly denied the Applicant a position in the New Delhi office. The Tribunal in *Riddell*, Decision No. 255 [2001], para. 23, stated that “no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position. The decision to select an applicant for a particular position, or to include him or her in a list of candidates, is discretionary and the Tribunal will not overturn such a decision unless it finds that it is tainted by bias or abuse of discretion.”

31. The Director of the South Asia Department explains that he did not, and could not, offer the Applicant a position in the New Delhi office in 2007 because there were no infrastructure-related positions or any other positions suitable for the Applicant. This postulation by the Director has been consistent and is supported by the record. In July 2007 the Manager of the Infrastructure Department, South Asia, told the Applicant that there were no job openings in the infrastructure sector in South Asia at the time and that he should explore opportunities in Washington, DC. In August 2007 when the Applicant discussed his job opportunities with the Senior HR Officer, New Delhi, the Senior HR Officer told the Applicant that there was no suitable position for him in New Delhi and suggested that he explore opportunities in other regions or at Headquarters. In his two meetings with the Applicant in September and November 2007, the Director of the South Asia Department stated in clear terms that there were no positions available for the Applicant in the New Delhi office. The Tribunal finds that the assertion by the Director is consistent with the circumstances presented in the record and has not been rebutted by the Applicant. There is no evidence in the record to suggest that IFC offered a position in the

New Delhi office to any individual with a comparable background to the Applicant during the relevant period.

32. The Applicant claims that the Director of the South Asia Department arbitrarily denied him the opportunity to work on the Infraventures project based in New Delhi, a “position” he claims was “suited to his long term career development objectives.”

33. The Director of the South Asia Department explains that, in the discussion with the Director of the Infrastructure Department on how to develop the Infraventures project, it was agreed that IFC would look for local staff to support such projects in South Asia. IFC management concluded that it made business sense to hire someone at the local level rather than an international staff member, such as the Applicant.

34. The Tribunal does not pass judgment upon this type of business decision unless it can be shown that the decision is arbitrary. The Applicant has not demonstrated that the decision made by management that the incumbent for the project should be a local hire was arbitrary. The record supports the view of the Director of the South Asia Department that management agreed to appoint someone locally to work on the Infraventures project. The Director of the Infrastructure Department, who discussed the Infraventures project with the Applicant, testified before the Appeals Committee as follows:

[The Appeals Committee Panel Chair]: So, that position [relating to Infraventures project] was actually a physical position or was an idea then?

[The Director of the Infrastructure Department]: No, it was, again, very early stage, preliminary. As I said, the Board had just approved. We were formula[ting] our plans. And for Infraventures it would be mostly locally based. Exactly where, how many positions, what kind of positions, it was a very early stage.

And somewhat the same on the portfolio side. We had a very few people outside of Washington doing that work and wanted to expand. So, we didn't have a specific position, budgeted and everything at that point.

35. The Applicant refers to an e-mail message of 25 October 2007 from the Director of the Infrastructure Department to the Director of the South Asia Department (copied to the Manager of the Infrastructure Department, South Asia), in which the Director of the Infrastructure Department sought their “views” on having the Applicant work in the New Delhi office. The Applicant states that this e-mail message shows that the Director of the Infrastructure Department told him that “a position would be available for him on Infraventures.” The Director of the Infrastructure Department, however, testified before the Appeals Committee to the effect that he was in no position to commit to creating such a position for the Applicant, and made no such commitment to the Applicant.

36. The Manager of the Infrastructure Department, South Asia, testified before the Appeals Committee that:

[The Director of the Infrastructure Department] was inquiring about [the Applicant] working with the Infrastructure team in New Delhi. And what I told him was that we had already a team built up and he then asked me about the possibility about the Infraventures position and what I said to him was that ... it would make more sense to have a local hire because we were looking at developing projects in the Region and that it would be good to have someone who knows the market very well ... therefore we were looking at a more regional hire from the local market, and also from a cost point of view.

37. Moreover, IFC’s Vice President for Human Resources, in her e-mail message of 7 January 2008, also stated that it made business sense to hire someone locally for the Infraventures project. Most importantly, the record confirms that IFC New Delhi office offered a locally-recruited staff member the opportunity to work on Infraventures matters.

38. In sum, based on the record before it, the Tribunal does not find that the Director of the South Asia Department arbitrarily denied the Applicant a position in the New Delhi office. The Applicant wished to find a position in New Delhi. But the Respondent had no obligation to offer him one or create a position for him to work there.

39. The Applicant also claims that the Director of the South Asia Department denied him an opportunity to work as a Principal Investment Officer based in Mumbai. The Applicant adds that on 11 December 2007 the South Asia Department posted a job advertisement on the Bank's intranet for an international hire at grade GG-GH, Principal Investment Officer, based in Mumbai. The Applicant states that in an e-mail message dated 14 December 2007, the Director advised him that "South Asia cannot accommodate your desire to be based in the region or offer you any position." In the Applicant's view, given this statement "it did not make sense for [him] to apply for the Mumbai position." Accordingly, he claims that the Director of the South Asia Department "summarily eliminated any possibility of his applying for the job listed in Mumbai ... thus denying him an opportunity to present his case and demonstrate his suitability for the job."

40. The Tribunal considers that the Director's 14 December 2007 e-mail message must be read in proper context. Since his re-entry to IFC in August 2007 the Applicant was looking for opportunities in New Delhi and to that end he met with the Director of the South Asia Department in September and November 2007. The Director told him that there were no suitable positions for him in New Delhi. On 10 December 2007 the Applicant sent an e-mail message to the Director stating:

I have heard from [the Director of the Infrastructure Department] that you have conveyed to him your decision to not allow the Infrastructure Department to offer me any positions in New Delhi. Once again I was dismayed and disappointed. I was under the impression that you were going to bring out these "ghosts" and give me specifics of any issues to allow me to refute any insinuations made at my professional or personal character.

Therefore I would like to know on what basis have you made a decision to deny me an opportunity to work with Infrastructure Department based out of New Delhi?

41. On 14 December 2007 the Director replied:

I have a quite different recollection of my only two short interactions [I] ever had with you and although I understand from your e-mail your frustration, I would like to confirm that South Asia cannot accommodate your desire to be based in the region or offer you any position.

42. The Director testified before the Appeals Committee to the effect that the above e-mail message was sent in the context of the Applicant's search for a position in New Delhi, and was not sent to deter the Applicant from applying for the Mumbai position or any other position advertised subsequently in the South Asia Department. The Director explained that he could not prevent anyone from applying for an advertised position because IFC has an established procedure for the handling of advertised positions. He explained that the Director, like him, could not influence the applications at such an early stage because the Directors only get involved in the final stages of recruitment.

43. The Tribunal finds that the Applicant never expressed any interest in the Mumbai position to the Director or any one in management. Nor did he express any such interest to the hiring manager for the Mumbai position whom he knew personally and had met with during his job search. He never approached anyone in HR about this position. He took no steps to apply for this position. Accordingly, the Tribunal cannot find that the Director improperly prevented the Applicant from pursuing the Mumbai position. The Applicant claims that, by virtue of the e-mail message of 14 December 2007, the Director also excluded him "from any existing or new position in the entire region which included Nepal, Bangladesh and Sri Lanka." But the record lacks evidence suggesting that he had applied for such positions or even that he was interested in such positions. He cannot blame the Director for his decision not to pursue those opportunities.

44. The Applicant also claims that the Director of the South Asia Department refused to consider the Applicant for a position on the basis of unverified "corridor talk," and

wrongfully harmed his professional reputation in IFC. The Applicant adds that the Director had decided not to accept the Infrastructure Department's proposal to locate the Applicant in New Delhi to work on Infraventures because of certain unspecified issues, described as "ghosts from the past," a reference to the Applicant's handling of clients during his previous assignment in New Delhi. The Applicant complains that the Director refused to specify to the Applicant the issues relating to his past performance and thus denied him an opportunity to dispel these preconceptions.

45. The Tribunal does not find any compelling evidence demonstrating that the Director of the South Asia Department did not find the Applicant a position in New Delhi or elsewhere in South Asia because of "ghosts from the past" relating to the Applicant's performance. The Appeals Committee found:

[T]here is no evidence in the record which shows that [the Director of the South Asia Department] discussed the Applicant's past performance with other managers or relied on it in any way when determining if there were opportunities for the [Applicant] to work in New Delhi or more generally in South Asia. During the hearing, [a senior manager in IFC who was the Applicant's supervisor while the Applicant worked in Delhi] confirmed that during his conversations with [the Director of the South Asia Department], they never discussed the [Applicant's] performance. He further stated that in conversations with [the Director of the South Asia Department], the Director stated that he only wanted to help the [Applicant]. [IFC Vice President for Human Resources] also testified that she never heard [the Director of the South Asia Department] say any derogatory comments regarding [the Applicant] or his performance. Rather [the Director of the South Asia Department] stated that "[senior management] ought to be able to find something for the [Applicant] within IFC." [IFC Vice President for Human Resources'] observations were that [the Director of the South Asia Department] only wanted to help the [the Applicant].

Similarly, [the Senior Human Resources Officer], [the Manager of the Infrastructure Department, South Asia], and [the Director of the Infrastructure Department] testified that in their conversations with [the Director of the South Asia Department], [Director of the South Asia Department] never said any disparaging comments or remarks about the Applicant. [The Manager of the Infrastructure Department, South Asia] and [the Director of the Infrastructure Department] further testified that [the



Director of the South Asia Department] only stated that he wanted to help [the Applicant]. ... [The Director of the Infrastructure Department] was of the opinion that the decision not create an Infrastructure position in Delhi was not based on what happened in the past. ...

The Panel also found that [the Director of the South Asia Department] neither relied upon nor repeated allegations regarding the [Applicant's] past performance to others. Rather, the evidence shows that he genuinely tried to assist [the Applicant] in his job search.

46. The Tribunal has reviewed the record before it and is not persuaded that the Director of the South Asia Department improperly relied on the Applicant's past performance in reaching his decision that there were no positions available for the Applicant or wrongfully sullied the Applicant's reputation.

47. Finally, the Applicant claims that the Director of the South Asia Department discriminated against him on the basis of his national origin. In *AI*, Decision No. 402 [2010], paras. 39-42, the Tribunal stated that:

This Tribunal unhesitatingly invalidates discretionary decisions if the evidence shows that the decision was discriminatory based on race, gender, or other prohibited grounds. Equally, however, as the Tribunal observed in *Njovens*, Decision No. 294 [2003], para. 16, that:

Just as the Tribunal is prepared to be firm on any question of racial discrimination supported by the evidence, so too it is prepared to dismiss outright any unfounded allegation in this context.

...

The first question then is whether the Applicant has established a *prima facie* case of ... discrimination. There is no magic test; the proof needed to establish a *prima facie* case will vary from case to case, depending on the facts and circumstances of each case. But as indicated by the Tribunal in *Bertrand*, the Applicant must at least provide "detailed allegations and factual support" for his claim of racial discrimination. Applicants make *prima facie* cases of racial discrimination if they adduce evidence from which the Tribunal can reasonably infer such discrimination.

48. In this case the Applicant's discrimination complaint lacks "detailed allegations and factual support" for the Tribunal to infer that such discrimination occurred. The Tribunal notes that the Appeals Committee also reviewed this complaint and it concluded that "there is no evidence to support [the Applicant's] claims of discrimination." The record before the Tribunal does not lead to a different conclusion.

49. In sum, the Tribunal is not convinced that the Director of the South Asia Department improperly denied the Applicant a position in the New Delhi office or in the South Asia Region.

*Alleged impropriety with regard to the conditional re-entry, failure to assist in job search and improper termination of employment*

50. The Applicant claims that the Respondent improperly changed the terms of his LWOP from an unconditional re-entry guarantee to a conditional re-entry. The Applicant states that "he was misled on this point, but does not deny that he accepted the extension in the knowledge that re-entry was conditioned on a position being available."

51. The Tribunal sees no basis for this complaint. When the Applicant sought a two-year extension of his LWOP for personal reasons, in 2005, he agreed to a term that his re-entry to IFC would be conditional for a period of up to six months. He voluntarily accepted this term and he acknowledges that he understood the implications of his conditional re-entry. If he believed this term was improper he should have challenged it in a timely manner. It is now too late to challenge this aspect of the LWOP and, in any event, the Tribunal finds no impropriety in this regard.

52. The Applicant next complains that the Respondent, particularly HR, failed to provide him proper assistance in his job search upon his return to IFC. The Applicant states that the New Delhi office had an obligation to be pro-active on his behalf. The

Applicant adds that the Tribunal's jurisprudence in redundancy cases dictates that the Respondent has a duty to assist a staff member in his or her job search. He claims that, although he was never made redundant, he was in an analogous situation.

53. The Tribunal notes that the Applicant fails to cite any Staff Rule or written HR policy that imposes an obligation on the Respondent to assist him in his job search. Neither does the LWOP agreement impose such an obligation on the Respondent. The Staff Rules and the Tribunal's jurisprudence relating to redundancy do not apply to the Applicant's case. The Tribunal agrees with the Respondent that: "As someone who voluntarily requested LWOP for personal reasons, not once but twice for a total of four years, [the Applicant] was in an entirely different position from that of a staff member faced with an involuntary, unplanned and unexpected redundancy."

54. The record before the Tribunal does not compel it to conclude that the Respondent failed to provide reasonable support for the Applicant's job search. From management's side, the Manager of the Infrastructure Department, South Asia, the Director of the South Asia Department, and the Director of the Infrastructure Department all met with the Applicant as part of his job search and gave their suggestions and advice. Both Directors explored the possibility of finding the Applicant a position but ultimately they were unable to do so.

55. The Senior HR Officer in the New Delhi office also met with the Applicant and provided him with assistance. She testified before the Appeals Committee:

And just like any other staff member who would return after a long leave without pay kind of arrangement, being the HR Account Manager for South Asia, I met with him and I updated him on key organizational changes that had occurred while he was way on leave and any other information that I thought would help him and support him in the job search period.

So, for example, I told him that we had a Director change since he left – in fact, two Director changes since he left, and basic organizational structure of the South Asia Region and how the office was structured at that time. And also some advice with names of people that he could contact ....

So, there was some basic important information pertaining to facts that I had discussed with him. And I also encouraged him to meet with ... a senior HR Manager, and I understand that he met her twice in D.C.

56. The Applicant's correspondence with HR officials in Headquarters also shows that HR did provide him with assistance. For example, in an e-mail message the HR Account Manager in Washington, DC, wrote to the Applicant:

Thanks for getting in touch and I look forward to meeting you once you are in DC. In the meantime, I would encourage you to look at Job World and apply for those positions that interest you and where you meet the qualifications. If you let me know when you have applied, if you think it would be useful I am happy to get in touch with my HR colleagues to see if I can at the very least, where feasible ... get you shortlisted so you can be interviewed. ... [My colleague] may also be able to advise on bank resources that can help you with job search generally, i.e. preparation of your CV etc.

57. The Applicant cannot deny that HR officials in New Delhi and in Washington, DC, offered advice and support for his job search. He fails to cite even one example of a request he made for particular support that was ignored by HR. True, he was not successful in his job search. But the Tribunal cannot conclude that this was due to HR's failure to comply with an obligation in the Staff Rules to provide support to the Applicant.

58. Finally, the Applicant claims that the termination of his employment was improper. The Tribunal notes that the Applicant's LWOP agreement with IFC states that "if you are unable to find suitable employment in the Bank Group within [the conditional re-entry] period, your appointment with the Bank will terminate without any severance payments." The Applicant acknowledges that he understood the implications of this term – if he is unable to find a position, his appointment ends after the conditional re-entry period. He

failed to find a new position and accordingly his appointment ended. The Applicant has failed to demonstrate how the termination of his employment was arbitrary.

59. Accordingly, the Tribunal finds no violations of the Applicant's rights by the Respondent.

#### DECISION

For the reasons given above, the Tribunal dismisses the Application.

/S/ Stephen M. Schwebel  
Stephen M. Schwebel  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Paris, France, 29 October 2010