



**World Bank Administrative Tribunal**

**2011**

**No. 452**

**BK (No. 2),  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

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

**BK (No. 2),  
Applicant**

v.

**International Bank for Reconstruction  
and Development,  
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, composed of Stephen M. Schwebel (President of the Tribunal) as President, Mónica Pinto (a Vice-President of the Tribunal), Francis M. Ssekandi and Ahmed Al-Kosheri, Judges.

2. The Application was received on 16 August 2010. The Applicant was represented by Veronika Nippe-Johnson, Schott Law Associates, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges the Bank's decisions not to select him for two Grade H ("level GH") positions for which he was interviewed in 2009, one being the position of Country Program Coordinator in the Francophone Western Africa Region ("CPC Position"), and the other the position of Lead Economist (Trade and Regional Integration) in the Office of the Sector Director in the Africa Region ("Lead Economist Position").

**FACTUAL BACKGROUND**

4. This is the Applicant's second application. In his first application he challenged the Bank's decisions not to include him on the shortlists for three level GH positions for which he had applied in 2008. The Tribunal found that the shortcomings in the Bank's

shortlisting process did not require rescission of the impugned decisions but were sufficiently significant to warrant compensation in the amount of nine months' salary plus costs. *See BK*, Decision No. 444 [2010].

5. The Applicant joined the Bank in 1986. Until June 2005 he worked in various positions primarily in the Africa Region. In 2004 he was nominated by his manager for a promotion to level GH, but his nomination was not approved apparently due to the Applicant's lack of multi-regional experience. He subsequently secured a transfer to the World Bank Institute ("WBI") from where he applied for a number of level GH positions.

6. His current Application is about the two positions for which he was shortlisted and interviewed, but not selected. The Applicant challenged these decisions before the Peer Review Services ("PRS") on the bases that the decisions were arbitrary and discriminatory and that the Bank mismanaged his career. A PRS hearing was held on 15 December 2009.

7. For the CPC Position, as posted in JobWorld, the competencies and skills required, in addition to the subject-matter expertise, included strong and proactive leadership, the ability to think strategically, outstanding verbal communications skills and excellent inter-personal and diplomatic skills. At the conclusion of the interviews, the Applicant was ranked third out of the four candidates. The members of the interview panel noted amongst other things that while the Applicant "had a lot of experience [and] was well prepared for the interview ... [h]is answers were lacking in concreteness and specificity, notably on strategy and selectivity."

8. For the Lead Economist Position, in addition to the subject-matter expertise, the relevant selection criteria included high quality analytical work, excellent judgment,

superb interpersonal skills and excellent oral communications. The Applicant's strengths, as noted in the Interview Summary prepared by the interview panel following his interview, included his "extensive experience on trade and regional integration issues," but he was also described as being "non-strategic ... rambling, overly detailed and unstructured in responses to specific questions."

9. During the hearing before PRS, several points were made about the hiring process at the Bank, in general, and the Applicant's performance during his interviews, specifically. For the most part, the members of the interview panels for the CPC and Lead Economist Positions agreed that he had a strong substantive background. He was not, however, selected for the positions due to his performance during the interviews, which both interview panels viewed unfavorably. On 19 February 2010 PRS issued its recommendation to deny the Applicant's claims. The Vice President of Human Resources accepted the recommendation of PRS on 14 April 2010.

10. In the present Application, the Applicant challenges the Bank's decisions not to select him for the CPC and Lead Economist Positions and seeks, as relief, promotion to level GH, the equivalent of three years' salary (or \$476,560) and costs.

#### THE PARTIES' CONTENTIONS

##### I. THE APPLICANT'S CONTENTIONS

###### *The Bank's decisions were arbitrary*

11. The Applicant's main argument is that the Bank's interviews were not conducted according to a proper process. He argues that there was no apparent numerical ranking comparing candidates against the advertised selection criteria. Specifically, the Applicant claims that the Bank did not properly document its assessment of the candidates and failed to produce a matrix comparing the candidates vis-à-vis the selection criteria. He

contends that the Interview Summary and Interview Report prepared following the interviews only represented the panels' impressions of the candidates and lacked specificity. They consisted only of conclusions without any explanation about how they were reached, and did not provide a "meaningful comparison of the interviewed candidates against the specific selection criteria of the advertized positions." He argues that the comments "focused on shallow criteria [regarding the candidates'] behavioral and personal characteristics," and that, although HR provided the hiring manager with a chart to fill out during the interviews and the Bank's guidelines suggest the use of a comparative report (loosely referred to as a "matrix" by the parties), neither were used, in violation of his due process rights. He explains that the use of such a matrix would have provided for a systematic and fair evaluation. He concludes that there was no transparency or coherence in the process, especially in view of the fact that, with respect to the CPC Position, the selected candidate had not been shortlisted initially, and was already "Acting CPC," making her the preferred candidate and resulting in a process that was not truly competitive.

12. The Applicant claims that "it is not only the end result or the conclusions of the assessment that are important but the decision making process [which] must be objective, transparent and reviewable and must be documented accordingly." He contends that the decision was not transparent and therefore was arbitrary.

13. The Applicant refers to *BK*, Decision No. 444 [2010], para. 56, where the Tribunal found that the Bank did not "follow a consistent and uniform practice with respect to its shortlisting of candidates," and needed to have a "guarantee of a transparent, sound and fair recruitment process." The Applicant adds that the Tribunal in *K. Singh*,

Decision No. 188 [1998], para. 21, and *Hitch*, Decision No. 344 [2005], para. 69, held that “Staff Rules are not written for the sake of formality alone, and procedures are set in order to ensure that fairness and impartiality are respected.”

14. The Applicant also relies on *Perea*, Decision No. 326 [2004], para. 57, where the Tribunal found that “there was a lack of coherence and transparency in regard to the selection process” due to the lack of a written evaluation comparing the candidates to each other with respect to the job assessment criteria.

15. The Applicant also claims that the interview panels should have looked at his whole record – not only the interviews – for he was, in view of the selection criteria for the positions, far more qualified for the positions than the selected candidates.

16. He claims that the Bank did not take into consideration all of his achievements. He complains that while he was judged on the basis of the interview only, other candidates appeared to have been judged on the basis of their complete record, i.e., their interview, their Overall Performance Evaluations (“OPEs”), and their work experience, thus resulting in two different standards. He asserts that the record was not clear about how the interviewers reached their decisions, and that the interviewers’ impression of his past work was not substantiated by his record.

17. With respect to the interviewers’ remarks that he was “overselling himself,” the Applicant argues that it was necessary for him to highlight his earlier operational experience, which he believed was most relevant to the positions for which he applied. He explains that in the first 19 years of his career at the Bank, he worked on operations and trade, but he spent the most recent five years at WBI gaining regional experience, which, he argues, resulted in his inability to obtain another position in operations. He

claims that he had previously been told that he lacked “recent operational and trade experience” and he sought to respond in the interview to such potential concerns.

18. In response to the conclusion of one of the interview panels that he exaggerated his qualifications, the Applicant argues that the panel did not try to confirm the veracity of his statements.

19. The Applicant alleges that he had the most extensive relevant experience of all the candidates for the positions, excellent OPEs and good interpersonal skills. However, he continues, he was not selected on the basis of interviews during which he allegedly did not show his skills. As a result, the Applicant asks that the Tribunal set aside the decisions of the interview panels as arbitrary.

*Mismanagement of career and discrimination*

20. The Applicant contends that when he secured a transfer from the Africa Region to WBI, there was an institutional understanding that he would return to the Africa Region after 24 months to a level GH position. He explains that he was told that he qualified for a level GH position but needed some “extra regional experience” for about 18-24 months, following which he could return to his original department; that did not happen and his position at WBI was ultimately declared redundant. He continues that, although he followed his managers’ advice and secured a transfer to WBI, whenever he applied for positions for which he was qualified, he was told that he had been out of the field for too long. He contends that hiring managers began to wonder why he was unable to obtain any other position, which created what he calls a “corridor reputation.”

21. The Applicant also contends that other Bank managers, including one of his early managers, were also puzzled that someone with his qualifications was unable to secure a promotion. He alleges that Francophone Africans like himself were sometimes

discriminated against but adds that under the standards established by the Tribunal it would be difficult to show such discrimination. He asks the Tribunal to look at the Bank's record which, he argues, demonstrates that statistically very few Africans reach upper management positions.

## II. THE BANK'S CONTENTIONS

22. The Bank asserts that it "properly and appropriately decided not to select" him for the positions for which he applied, and that it "acted with fairness and impartiality and followed proper processes" in dealing with the Applicant. The Bank argues that its decisions were made on a reasonable and observable basis.

23. The Bank contends that, consistent with the Tribunal's judgment in *Riddell*, Decision No. 255 [2001], para. 23, the "decision to select an applicant for a particular position ... is discretionary" and the Tribunal should "not overturn such a decision unless it finds that it is tainted by bias or abuse of discretion."

### *Fairness, impartiality and proper process*

24. The Bank claims that, contrary to the Applicant's assertions, it conducted the selection processes in accordance with the principles laid out in *Perea*. As is the practice in the Africa Region, the Bank explains that (i) both positions were advertized and open to all interested candidates, (ii) there were no preferred candidates for either position, (iii) a shortlisting committee for each position made initial recommendations, (iv) the Country Services Panel and Economic Sector Board, respectively, finalized the shortlist of candidates for each position, and (v) candidates on the shortlist were interviewed. The Bank states that each interview was conducted by a panel of individuals familiar with the substantive and qualitative requirements of the respective positions, and the Applicant



was allowed to state his case for each position, following which a report was prepared summarizing the performance and qualifications of each of the candidates and ranking them against each other. The Bank distinguishes its conduct here from the conduct at issue in *Perea* where it had not produced any decision-making records.

25. The Bank explains that it reached its decisions after comparing the Applicant's qualifications to those of the other candidates for each of the positions, taking into consideration the selection criteria. The Bank argues he was justifiably not selected for either position.

26. In response to the Applicant's argument that he needed to inform the interview panels of his past experience in detail, the Bank argues that the purpose of the interview is to determine the Applicant's ability to communicate and relate to others, and he did not make a good impression during the interviews.

*Mismanagement of career and discrimination*

27. The Bank argues that the evidence does not support the Applicant's allegations of discrimination. The Bank contends that while the Applicant alleges that the Bank discriminates against staff from Francophone Africa and his former supervisor testified to that effect, he has not submitted any additional evidence to support his argument. The Bank argues that his national origin was in fact considered a benefit for the position for which he applied. Having been employed by the Bank for over 20 years, the Bank argues that the Applicant should have been able to "adapt his communication style, as other Bank staff who came from divergent countries of the world have managed to do."

28. The Bank further contends that the record shows that it did not mismanage the Applicant's career; on the contrary, it was supportive of him throughout his career. The Bank explains that he was promoted over the years to level GG, he was given responsible

positions (such as Resident Representative in Central Africa), he was supported in obtaining a Masters' of Science Degree in Finance and he was nominated by his Sector Manager for promotion to level GH. The Bank claims that his "career challenges" began when he was not able to secure a level GH position and, instead of learning from his mistakes in interviews, he challenged the comments he received. The Bank contends that, consistent with the Tribunal's jurisprudence, his good reviews and performance in his prior positions do not necessarily translate into a promotion.

29. Finally, the Bank claims that the Applicant's allegations that he was promised a level GH promotion after he moved to WBI are unsubstantiated by the record.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

##### *The decisions not to select the Applicant*

30. The Tribunal previously held in *Jassal*, Decision No. 100 [1991], para. 37:

It is not for the Tribunal, in assessing the validity of the selection or non-selection of a staff member, to undertake its own examination of that staff member's record, or a criterion-by-criterion assessment of his or her qualifications. That is for the Bank to do in the first instance, subject to review by the Tribunal only for abuse of discretion. But the Tribunal is charged with determining whether the Bank's decision was the product of bias, prejudice, arbitrariness, manifest unreasonableness, or unfair or improper procedure.

31. With respect to the CPC Position, the record shows that the Applicant was ranked third out of four candidates. The members of the interview panel noted that the Applicant "was engaging and motivated ... had a lot of experience"; was "well-rounded ... and was well prepared for the interview," and "at times oversold himself and [the panel] questioned whether he would listen enough to colleagues. His answers were lacking in concreteness and specificity, notably on strategy and selectivity." In contrast, the panel wrote of the selected candidate: "delivered a strong interview ... analytical, well-

organized and systematic approach to solving issues ... sometimes opinionated ... stronger on organization than on strategy.” Regarding the candidate ranked second, the panel wrote: “solid answers on strategic priorities ... thoughtful and analytical ... good answers ... less responsive on sectorial and operational questions ... a bit academic in her answers ... left us uncertain as to her proactivity.”

32. As to the Lead Economist Position, the Applicant was ranked third out of the three candidates interviewed. He was described in the Interview Report as a “seasoned Bank staff member with extensive experience on trade and regional integration issues in [the Africa Region] ... strong interest ... native French speaker who is also fluent in English.” But he was also noted as being “non-strategic in approach ... rambling, overly detailed and unstructured in responses to specific questions ... taking too much credit for achievements and accomplishments.” In contrast, the selected candidate was noted for his “depth of knowledge ... well-demonstrated analytical skills ... strong strategic sense with an ability to set priorities ... articulate and persuasive” with the only weakness being his limited knowledge of French in respect of which he was “willing to invest in immersion training.” The candidate rated second was also described as “articulate” with “demonstrated technical and analytical skills ... global experience and recognized expertise as a researcher” but was described as lacking a “track record on policy-oriented work ... limited knowledge of and experience in Sub-Saharan Africa.” In a meeting with the members of the interview panel, it appears that the Applicant was told that, although he was well qualified, “the final decision was based on the interview where the selected person came on top” and that “during the interview the length of [his] answers was not well perceived.”

33. The Tribunal notes that the Bank provided a clear record of its conclusions in the extensive testimony before PRS, in the Interview Summary and the Interview Report. The transcripts of the hearing before PRS indicate that the Applicant did not demonstrate sufficiently the qualities that the panels thought were necessary for the positions. For example, one witness testified that the Applicant “came across ... as ... overstating the work that he had ... done in the Region ... in a way that didn’t ... help establish that he would be a credible ‘voice on the issue.’” The panel members believed that the position for which the Applicant was interviewed required someone who could “influence, get ownership of, create demand for this type of work, without ... having any kind of tools other than ... persuasion [and the] ability to ... come across as a ... credible person with very sound judgment who is able to ... create demand” for that type of work.

34. Having been shortlisted for both positions, the Applicant’s qualifications - like those of the other shortlisted candidates - are not at issue here. The record includes the Applicant’s OPEs which indicate that his performance over the years was rated primarily as superior, with a few “outstanding” and “fully successful” ratings, and his curriculum vitae (“CV”) outlining his achievements during his career at the Bank. The record also includes a CV for each of the selected candidates for the two positions. The record however does not include any evidence of bias or abuse of discretion on the part of the Bank.

35. The Tribunal concludes that, in view of the Interview Summary and Interview Report, both of which clearly delineated the qualifications and skills of the interviewed candidates, the explanations provided in the record about the reasoning of the interview

panel members, and the full record of the candidates' qualifications, the Bank's decisions to select candidates other than the Applicant were not unreasonable.

*The process followed by the Bank*

36. Both parties rely on the Tribunal's judgment in *Perea*, Decision No. 326 [2004]. The Applicant alleges that the Bank did not follow a proper process because it did not keep a proper record of its interviews as required in *Perea*. He claims that the panels did not compare each candidate against the selection criteria listed for the positions and that the interview reports only provided summaries of the interviewers' "subjective" impressions of the candidates. Accordingly, the Applicant concludes that the Bank's decisions were not made on a reasonable and observable basis as required by the Tribunal. The Bank disagrees and asserts that the interview reports provided sufficient comparative information, consistent with the Tribunal's findings in *Perea*.

37. In *Perea*, para. 72, the Tribunal noted the "absence of *any interview/evaluation report* indicating why the [a]pplicant was considered less qualified for the position than the other candidate," and found that "there is *no interview report* for him or for the successful candidate to indicate how the different criteria were assessed." (Emphasis added.) It concluded at para. 74 that "[t]his significant disregard of the advertised criteria, and *the lack of any written evaluation* of the skills of each candidate, lead the Tribunal to conclude that the selection process was lacking in transparency, and was arbitrary and an abuse of discretion." (Emphasis added.)

38. Based on extensive testimony before PRS and the record in the pleadings, the Tribunal finds that the interview panels followed a proper process.

39. Both panels consisted of a diverse group of staff and managers from within and outside the hiring unit, as well as an HR representative, as required in the Bank's interview procedures. The members of both panels were well aware of the procedures. They testified that: they were provided with the candidates' applications for the position as well as their CVs; they met before the interviews to discuss the questions that would be posed to each of the candidates on the basis of the skills and competencies listed in the job description, and to determine who would ask them; some of them took notes during the interview (although such notes are not in the record before the Tribunal); following each of the interviews they discussed the candidate's qualifications; and at the conclusion of all of the interviews for each of the positions, the panel members discussed each of the candidates and assessed how well each met the requirements for the position as described in the job description and made a final decision. An Interview Summary or Report was prepared for each position and the Applicant was ranked third for both positions.

40. With respect to the reports prepared following each interview, while the HR officer responsible for setting up the interview panel for both positions suggested the use of a matrix for comparing the candidates, and the procedures on the Bank's Intranet provide samples that could be used, the panels did not use such suggested reports but instead prepared their own. The Interview Summary and Interview Report did not consist of a matrix or chart comparing the candidates for each selection criterion. They consisted instead of a narrative comparing the candidates' skills and competencies primarily on the basis of the interviews, and recorded an overall ranking for each candidate.

41. The question is whether the failure to use the reports suggested in the procedures undermined the process. On the one hand, it may be argued that the spirit of the process

was implemented; the Interview Summary and Interview Report, both of which constitute a report comparing the interviews, provided sufficient information to justify the final decision. On the other hand, it may be argued that the process was not fully followed because the reports prepared by the interview panels did not use the exact format that was suggested in the Bank's procedures. The question may be answered on the basis of the Tribunal's holding in *BK*, paras. 56 and 57, even though that case related to shortlisting and not interviews:

The principles of "objectivity," "transparency," "rigor," and "diversity" cannot be implemented unless the [shortlisting committee] is composed of staff members from more than one unit in addition to an HR Officer. These objectives in recruitment are realized if the Bank makes its shortlisting process uniform with clear guidelines and when the composition of a shortlisting committee is diverse. Furthermore, staff members' confidence in the shortlisting process will be enhanced by the Bank's proper and contemporaneous documentation of the deliberations of the [shortlisting committee] *in as much detail as practicable*. Contemporaneous and detailed documentation of [shortlisting committee] deliberations is also a guarantee of a transparent, sound and fair recruitment process. (Emphasis added.)

42. The Tribunal finds that these same criteria may be applied to the interview process. The Bank's process requires, at a minimum, that a report of the results of the panel interviews should be prepared and should "clearly document the Panel's findings and identify the top candidates..." In the present case, the record demonstrates that there was contemporaneous and detailed documentation of the deliberations of the interview panels, and the Interview Summary and Interview Report provided a comparison of the candidates relative to the selection criteria. It is understood that the purpose of shortlisting process is to select the most qualified candidates and the purpose of the interview process is to select the best of those candidates. Typically, the qualifications and experience of the candidates would have been considered by the shortlisting

committee, and the interview offers the opportunity for the candidates to distinguish herself or himself from the other candidates during the interview. The Applicant had been shortlisted on the basis of his experience and qualifications, and the Interview Summaries indicate that the principal basis of the selection in both cases was the performance during the interview. On the basis of the record before it, the Tribunal concludes that the Bank's decisions were not the product of improper procedures.

*Alleged mismanagement of the Applicant's career*

43. The Applicant also argues that the Bank mismanaged his career by not honoring its promise to appoint him to a GH level position within the Africa Region. He argues that he was made to believe that if he spent 18 months outside his department working on another region he would be able to obtain a level GH position. He asserts that the Bank did not act on its promise. The Applicant claims that he was told orally that "the panel was wary and could not explain what happened to [his] career despite [his] background and long professional experience." The Bank denies making any such promises.

44. The record indicates that when the Applicant's name was submitted to the Poverty Reduction and Economic Management (Network) Sector Board for evaluation for a level GH position, he was rejected for a promotion. The Sector Board noted that he was not approved "because of a lack of multi-regional experience ... *[but if he was to] apply and get selected to a GH vacancy in another region, [he] would not have to undergo the GH due diligence all over again.*" (Emphasis added.)

45. The Sector Board also noted that it

recognized his sustained contribution to the development of the Bank's low-income clients, reflected in his work in countries facing particularly difficult circumstances. It also recognized his technical work on tariffs



and customs union issues for francophone CFA countries ... which had significant impact on the Bank's dialogue with those countries. ...

The Board noted that there were mixed reviews with respect to his recent work on the integrated framework program and as a trade coordinator, with positive reviews for his dynamism and exceptional leadership in moving the process forward and bring country teams on board, but with comparatively less positive reviews for his support on technical issues.

... The Board also encourages the Africa Region to provide him with further opportunities to carry out analytical work in order to enhance his competitiveness for Lead Economist positions.”

46. The Sector Board thus noted some weaknesses that the Applicant had to overcome in order to enhance his competitiveness for lead economist positions.

47. On the basis of the record, the Tribunal finds that the Applicant failed to establish that the Bank promised him a level GH position and failed to act on its promise; as his claim of mismanagement is based on this alleged misrepresentation, he has failed to establish that the Bank mismanaged his career.

48. The Applicant contends that, although witnesses at the hearing before PRS denied any discrimination based on the Applicant being a Francophone African, others testified that discrimination is prevalent at the Bank, and that numerous studies confirmed the Bank's discriminatory hiring and promotion practices. The Applicant further states that the Tribunal's standards to show discrimination are too high and make it “impossible for the Applicant to present specific proof that the non-selection decisions were taken with discriminatory motives.” The Applicant concludes that the “stark underrepresentation of black staff in higher-level positions shows that the Bank continuously fails to meet its own diversity targets” and the Applicant expects the Tribunal not to “turn a blind eye.” The Bank maintains that there was no adverse discrimination.

49. The Tribunal stated in *AI*, Decision No. 402 [2010], para. 39, that it “unhesitatingly invalidates discretionary decisions if the evidence shows that the decision was discriminatory based on race, gender, or other prohibited grounds.” The applicant has the burden of proof in such cases. In particular, the Tribunal stated in *AI*, paras. 41 and 42, that

the applicant carries the initial burden of establishing a *prima facie* case of racial discrimination. If the applicant meets this burden, the Bank then must provide a non-discriminatory business rationale for its decision. The applicant may then challenge the Bank’s stated rationale and provide evidence to show that the Bank’s stated reason was a pretext for a racially discriminatory decision.

... [T]he proof needed to establish a *prima facie* case will vary from case to case, depending on the facts and circumstances of each case. But ... 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.

50. The Tribunal also held that it was not enough to refer to a report alleging generalized discrimination; each individual had to submit evidence supporting his or her own case. (*See, for example, Hitch*, Decision No. 344 [2005], para. 43.)

51. In the instant case, the Applicant has not shown evidence of discrimination, and has not met his burden of proof. The Applicant refers to his own assertions and general statements about the existence of discrimination in the Bank made by some of the witnesses during testimony before PRS. However, the Applicant has not advanced proof of discrimination that bore on treatment of him.

#### DECISION

For the reasons stated above, the Tribunal dismisses the Applicant’s claims.

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

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, DC, 25 May 2011