



World Bank Administrative Tribunal

2010

No. 444

**BK,
Applicant**

v.

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

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

**BK,
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, and Judges Francis M. Ssekandi and Mónica Pinto.

2. The Application was received on 16 April 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. The Applicant's request for anonymity was granted on 18 October 2010.

3. The Applicant challenges the Bank's decisions not to include him on the short-lists for three Grade H ("GH") level positions he had applied for in 2008.

FACTUAL BACKGROUND

4. The Applicant joined the Bank through the Young Professionals Program in 1986. From 1988 to 1994, he worked as a level 22 Economist in the Africa Region. From 1994 to 1997, he served as the Resident Representative in a country in Africa. In 1996 he received a promotion to level 24 (Grade G ("GG") level equivalent). In August 1997 he returned to Washington, D.C. as a level GG Senior Economist in the Africa Region.

5. In 2004 the Applicant's Sector Manager nominated the Applicant for a promotion to level GH. Under the Bank's rules, the proposed promotion required the approval of the relevant

Sector Board on Economic Policy. The Sector Board considered the Applicant's promotion but did not approve it "[g]iven his lack of multi-regional experience."

6. In April 2005 the Applicant secured a transfer to the World Bank Institute holding the same title and grade, Senior Economist, GG.

7. In 2008 the Applicant applied for several GH-level positions, including the following three positions that are the subject-matter of the current Application:

- (i) Lead Economist, East Asia and Pacific Region (EASPR);
- (ii) Economic Advisor, Operations Policy and Country Services Vice Presidency (OPCS); and
- (iii) Lead Economist, Independent Evaluation Group (IEG).

8. To review the candidates for each position, the Bank set up three separate shortlisting committees ("SLC"), whose function was to "create a shortlist of candidates considered to be the best qualified to put forward for interviews."

9. The Applicant was not included on the short-list for any of the three positions. Disappointed, on 18 August 2008, he filed a Statement of Appeal with the Appeals Committee (now Peer Review Services ("PRS")) challenging the Bank's decisions not to include him on any of the short-lists.

10. After conducting a hearing, PRS issued its report on 22 September 2009. It concluded that the Bank had not abused its discretion by deciding not to include the Applicant on the short-lists for the three positions and accordingly recommended that the Applicant's requests for relief be denied. The Vice President of Human Resources accepted the recommendation of PRS and so informed the Applicant on 13 November 2009.

11. On 16 April 2010 the Applicant filed his Application with the Tribunal. As relief, he requests the following: rescission of the contested decisions and promotion to level GH, three years' salary net of taxes, and costs.

SUMMARY OF THE PARTIES' CONTENTIONS

The Applicant's contentions

12. The Applicant contends that the Bank's decisions not to include him on the short-lists for the three positions he had applied for were unfair, made in violation of the Principles of Staff Employment, and followed an improper procedure. He claims that the decisions should be rescinded and that he should be compensated for the following reasons. First, he argues that the documentation produced by the Bank in support of the decisions falls short of the requirements of a meaningful, transparent and fair comparison of the candidates against the advertised selection criteria. Second, he claims that the Bank's haphazard conclusions made after the fact regarding his qualifications for the three positions lacked support in factual evidence or reasonable inference. Third, he contends that there were serious procedural irregularities in the shortlisting process. He also claims that he should be compensated for the mismanagement of his career by the Bank.

The Bank's contentions

13. The Bank contends that the selection of a staff member for a particular position involves the exercise of managerial discretion. The Bank exercised proper discretion and acted in accordance with Tribunal precedents. The record demonstrates that the Bank followed the Bank's recruitment and Poverty Reduction and Economic Management ("PREM") Network guidelines to select the most qualified staff members for each position. Accordingly, the Application should be dismissed and the claims for relief denied.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

14. With respect to each of the recruitment processes in question, the Applicant raises three contentions. He contends that, first, there is no observable and reasonable basis for the Bank's decisions not to include him on the short-lists; second, the decisions were unfair and discriminatory; and third, the Bank did not follow its "Shortlisting Guidelines." The Bank answers that it properly exercised its discretion in these cases and followed the applicable procedure.

15. In *Riddell*, Decision No. 255 [2001], para. 23, the Tribunal stated that:

With regard to decisions to select staff members for positions, the Tribunal has held:

[A] decision by the Bank to select a staff member for a particular position rests within the Bank's discretion, and may be overturned by the Tribunal only when it concludes that this discretion has been abused. "The Administration's appraisal in that respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure." *Suntharalingam*, Decision No. 6 [1981], para. 24. The Tribunal will not set aside a decision by the Bank unless it was "reached in an arbitrary manner, involving, for example, unfairness, failure to allow the Applicant to state his case, or other departures from established procedures, bias, prejudice, the taking into consideration of irrelevant factors or manifest unreasonableness." *de Raet*, Decision No. 85 [1989], para. 67.

(*See also Jassal*, Decision No. 100 [1991], para. 30.) It is clear from the above jurisprudence, 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.

16. The Tribunal will review the contested decisions in accordance with these standards. It will consider first whether the Bank had a reasonable basis for its decisions and will then review the procedure followed in making these decisions.

BASIS OF THE BANK'S ASSESSMENT

Lead Economist, EASPR

17. In May 2008 the Bank issued a vacancy announcement for a Lead Economist position (level GH, three-year term). In the advertisement the Bank identified the following eight selection criteria:

- (i) Ph.D. in Economics with at least 12 years of relevant experience or Master's degree with at least 15 years of relevant experience;
- (ii) Demonstrated intellectual leadership and ability to integrate economic knowledge with broader operational strategies and policy objectives;
- (iii) Strong track record of building and managing economic teams and creating an enabling work environment;
- (iv) Strong track record of managing and leading complex policy dialogue, delivering other lending or non-lending work;
- (v) Demonstrated ability to effectively mentor/guide groups of economic staff;
- (vi) Excellent analytical and communications skills, including the ability to initiate and conduct effective policy discussions with government officials;
- (vii) Ability to operate in a matrix management setting, relying on teamwork within and across organizational boundaries; and
- (viii) Ability to deal sensitively in a multi-cultural environment and build effective working relations with clients and colleagues.

18. Some thirteen candidates, including the Applicant, applied for the position. The SLC for this position was composed of the following three individuals: (i) the Director, EASPR (the Hiring Manager); (ii) a Lead Economist, EASPR; and (iii) a Senior Human Resources ("HR") Officer. The SLC met on 10 June 2008 to review the applications. The SLC placed six out of the thirteen candidates on the short-list. Of the candidates shortlisted for the position, three were GH-level staff members, two were GG-level staff members, and one was an external candidate.

The SLC deemed that the seven candidates, including the Applicant, who were not placed on the short-list were not competitive. On 19 June 2008 the Applicant received a system-generated e-mail message from HR advising him that he had not been included on the short-list for the Lead Economist position.

19. The Tribunal has before it the transcript of the testimony before PRS of all three individuals (listed in paragraph 18 above) who reviewed the applications for the Lead Economist position. They all gave consistent testimony that they reviewed each candidate's application and curriculum vitae ("CV") and, for internal candidates, their Overall Performance Evaluations ("OPEs") for the last two or three years. They testified that they reviewed the suitability of each candidate against the criteria listed in the job advertisement. The Director, EASPR, testified that "a lot of [the candidates] were extremely well-qualified" and the SLC engaged in "comparing candidates, and seeing who was ... who we thought, given all the criteria [listed in the job description], was best qualified."

20. Based on the consistent testimony of all three members of the SLC, which has not been challenged persuasively by the Applicant, the Tribunal concludes that the SLC did consider the skills and expertise of each candidate against the criteria listed in the advertised job description. As the Tribunal has held, "[t]he identification and definition of specializations is a matter that comes within the managerial discretion of the Bank as does the evaluation of the corresponding skills to perform these tasks." *Garcia-Mujica*, Decision No. 192 [1998], para. 13.

21. The Applicant contends that the documentation provided by the Bank detailing the evaluation process undertaken by the SLC is inadequate. The Tribunal notes that the Bank's Guidelines on Shortlisting states that: "Shortlisting results must be documented." The Bank has produced before the Tribunal two documents relating to the SLC's deliberations. The first

document is the Senior HR Officer's handwritten notes on a table which contained each applicant's name, type, title, grade, headquarters/country office, education, sector-mapping, and comments. Regarding the Applicant, in the comment section, the Senior HR Officer wrote "not competitive." The second document is an e-mail message from HR to the PREM Sector Board with a table listing the names of shortlisted candidates and another table listing the names of the non-shortlisted candidates. Both tables have a comment section, in which those candidates that were placed on the short-list for the position had the following annotation: "Meets the criteria." Regarding those candidates that were not placed on the short-list, including the Applicant, the comments noted: "Not competitive enough compared to other applicants."

22. The basis for the SLC's decision emerges from these two documents and from the transcript of the testimony of the three members of the SLC before PRS. In *Desthuis-Francis*, Decision No. 315 [2004], para. 23, the Tribunal stated that in reviewing the basis for a decision of the Bank, testimony given before the Appeals Committee is relevant. The record shows that the SLC reviewed each candidate's suitability against the selection criteria listed in the vacancy announcement. A number of well-qualified candidates applied for the position. The SLC decided to limit the number of shortlisted candidates to six, and it determined that there were six candidates better qualified than the Applicant. The record also shows that the SLC concluded that what it saw as one of the Applicant's weaknesses was that he lacked recent operational experience.

23. Moreover, the Tribunal notes that the names and assessment of all the candidates were sent to the relevant Sector Board for its comments. The Sector Board raised no concerns with respect to the short-list. In addition, the Tribunal notes that PRS looked into the Applicant's complaints and found no arbitrariness in the Bank's decision.

24. In sum, the Tribunal is not persuaded that the Bank's decision not to include the Applicant on the short-list for the Lead Economist position lacked a reasonable basis.

25. The Applicant maintains that the decision not to place him on the short-list for the position was unfair and discriminatory. The Tribunal will set aside a discretionary decision of the Bank if it is unfair and discriminatory. In *AI*, Decision No. 402 [2010], para. 42, the Tribunal stated that:

The first question ... 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 ... discrimination. Applicants make *prima facie* cases of ... discrimination if they adduce evidence from which the Tribunal can reasonably infer such discrimination.

26. The Applicant in this case failed to produce "detailed allegations and factual support," as stated in *Bertrand*, Decision No. 81 [1989], para. 20, and repeated in *AI*, for his claims of unfairness and discrimination. PRS looked into the Applicant's claims of unfairness and discrimination but dismissed them. There is nothing in the record from which the Tribunal can infer unfairness and discrimination.

Economic Advisor, OPCS

27. In May 2008 the Bank issued a vacancy announcement for the position of Economic Advisor, OPCS (level GH, open-ended). In the advertisement the Bank listed the following nine selection criteria:

- (i) Ph.D. in economics preferred with a minimum of 12 years of relevant experience or Master degree in economics with a minimum of 15 years of relevant experience;
- (ii) Excellent technical skills, and established track record of excellence in analytical and operational work;

- (iii) Excellent written and verbal communication skills, to represent OPCCE and OPCS with internal and external partners. Demonstrated maturity and sound judgment, attention to detail, and ability to convey complex messages succinctly and diplomatically;
- (iv) Ability to navigate visible and complex policy issues with corporate significance;
- (v) Broad understanding of cross-sectoral issues; proven ability to identify and articulate policy issues, tradeoffs and priorities; and to provide technically and strategically sound policy advice;
- (vi) Strong knowledge of, and familiarity with, Country Assistance Strategies, Bank lending operations and related Bank policies; successful experience with quality assurance within the Bank, or equivalent experience;
- (vii) Excellent professional judgment and demonstrated capacity for strategic thinking, with an understanding of institutional priorities;
- (viii) Proven ability and flexibility to work simultaneously on a variety of tasks, meet deadlines and attend to details while maintaining an overview of unit priorities; and
- (ix) Proven ability to lead the production of high-quality reports or policy papers in a highly demanding environment.

28. Eight candidates, including the Applicant, applied for the position. The SLC was composed of the following two individuals: (i) the Manager, Country Economics Unit in OPCS (“OPCCE”); and (ii) a Senior HR Officer (the same HR Officer who served on the SLC for the Lead Economist position discussed above). The SLC met on 22 May 2008 to review the applications. The SLC placed four of the eight candidates on the short-list. Of these four candidates, two were already GH-level staff members and two were GG-level staff members. Of the four candidates not shortlisted for the position, one was a GH-level staff member, and the rest, including the Applicant, were GG-level staff members. On 23 May 2008 the Applicant received a system-generated e-mail message from HR that he had not been included on the short-list for the Economic Advisor position.

29. The Manager, OPCCE, testified before PRS to the following effect. First, the SLC reviewed each application and considered each candidate's suitability against the selection criteria stated in the job description. Second, the SLC considered each candidate's statement of interest, qualifications, experience, and the record of performance in making decisions. Third, the SLC preferred candidates who would be in a better position "to provide operational advice to teams on country assistance strategies ["CASs"] and on development policy lending ["DPL"]." The Senior HR Officer, who was part of the SLC, provided testimony consistent with that of the Manager, OPCCE.

30. With respect to the four candidates chosen for the short-list, the Manager, OPCCE, explained that:

There were four shortlisted candidates. Two had direct operational experience. Two were involved in reviewing CASs and DPLs from the corporate review perspectives, and therefore were, and had demonstrated familiarity with the new policy.

As for why the Applicant was not placed on the short-list, he explained that in the Applicant's case,

What I did not find was operational experience with the new DPL policy that was instituted in 2005, or with the CAS policy that was also instituted in 2005. Because at the time he had gone to WBI, and so he had been doing a slightly different job, and was not directly involved in operations since then.

31. The Tribunal held in *Garcia-Mujica*, Decision No. 192 [1998], para. 13, that "[t]he identification and definition of specializations is a matter that comes within the managerial discretion of the Bank as does the evaluation of the corresponding skills to perform these tasks." It is not the Tribunal's role to second-guess this type of evaluation. It will, however, set aside the decision if it is shown that the evaluation was arbitrary.

32. The Applicant contends that the documentation provided by the Bank recording the evaluation by the SLC for this position of Economic Advisor is inadequate. The Bank has

produced before the Tribunal two documents relating to the SLC's deliberations. The first document is the Senior HR Officer's handwritten notes on a table which contained each applicant's name, type, title, grade, headquarters/country office, education, sector mapping, and comments. Regarding the Applicant, she noted "limited regional operational experience (only AFR)." The second document is an e-mail message from HR to the Sector Board with a table listing the names of the candidates that were placed on the short-list and another table listing the names of those candidates who were not. Both tables have a comment section that for those candidates that were placed on the short-list stated in most cases: "Meets the criteria." Next to the Applicant's name, the comment stated: "Limited Operational Experience (Only in AFR)."

33. The basis for the SLC's decision emerges from these two documents and from the transcript of the testimony of the SLC members before PRS. Reviewing the record as a whole, the Tribunal is not convinced that the Bank's decision not to include that Applicant on the short-list was unsustainable. The record shows that the SLC reviewed each candidate's suitability against the selection criteria listed in the job advertisement. A number of well-qualified candidates applied. The SLC decided to limit the number of candidates on the short-list to four, and it determined that four candidates were better qualified than the Applicant, as they had direct operational experience and were more familiar with CAS and DPL policies. The Tribunal does not find that the Applicant has demonstrated that the SLC's decision was arbitrary or lacked a reasonable basis.

34. The Applicant also contends that the decision not to place him on the short-list for the Economic Advisor position was unfair and discriminatory. But the Applicant, in this case, failed to produce "detailed allegations and factual support" for his claims of unfairness and discrimination. Before PRS, the Manager, OPCCE, testified that:

My short-listed candidates ranged from a 55-year old gentleman from India, to a 54-year old lady from Mexico, to another lady from Mexico who was 50, and to a male from Brazil who was 45. So these were ... very experienced people, and, I believe, diverse.

35. PRS examined but did not uphold the Applicant's claim of unfairness and discrimination.

The record before the Tribunal does not suggest discrimination against the Applicant on the ground of race, sex, age or other prohibited grounds.

Lead Economist, IEG

36. In May 2008 the Bank issued a vacancy announcement for a Lead Economist position in IEG (level GH, open-ended). In the advertisement the Bank identified the following nine selection criteria:

- (i) Ph.D. in economics or closely related discipline and at least 12 years of relevant professional experience outside or inside the Bank (or a Masters degree with 15 years relevant experience), including experience leading complex multi-sectoral operations and policy dialogue on a broad range of development issues, and/or strength in financial sector analysis and operations;
- (ii) For Bank experience, experience in more than one region, or one region and an anchor or corporate group overseeing Bank operations is preferred;
- (iii) Familiarity with World Bank lending products in IDA countries, in particular Development Policy Lending and preferably also experience with sector specific policy dialogue and lending operations;
- (iv) Demonstrated ability to lead multi-faceted teams and to effectively carry out multi-disciplinary analyses;
- (v) Strong analytical skills, ability to think strategically and draw operationally relevant lessons from evaluations;
- (vi) Strong written and oral communication skills;
- (vii) Maturity and balanced judgment;
- (viii) Strong interpersonal skills and ability to work with colleagues inside and outside IEG. Ability to work effectively in teams, whether as leader or team member; and
- (ix) Knowledge of French and/or Spanish is desirable.

37. Some twenty-one candidates, including the Applicant, applied for the position. The SLC was composed of the following four persons: (i) a Senior Evaluation Officer, IEG (the SLC Chair); (ii) a Lead Economist, IEG; (iii) an Economist, IEG; and (iv) an HR Officer. The SLC met on 10 June 2008 to review the applications. Of the twenty-one candidates, six were shortlisted for the position. The Applicant was not placed on the short-list. On 23 June 2008 the Applicant received a system-generated e-mail message from HR advising him that he had not been included on the short-list for the Lead Economist position in IEG.

38. The Tribunal has before it the transcript of the testimony before PRS of the Hiring Manager for the Lead Economist position in IEG and two SLC members (the SLC Chair and the HR Officer). The Hiring Manager testified that, although he was not a member of the SLC, he briefed the SLC on what qualities he was looking for in the candidates. He testified to the effect that he briefed the SLC that the candidates “needed to have sharp, current and commanding skills in financial sector, or work on an innovative finance evaluation, and to have deep and current skills on adjustment lending – in particular PRSC [Poverty Reduction Support Credits] evaluations.”

39. The SLC Chair testified that the SLC came to the short-list by the following process:

We were each given a binder, with each of the applicants’ applications, CVs. I believe we had the OPEs, as well – the last two OPEs. And these were distributed to us ahead of time, so each of us looked at the materials ahead of time. ...

And we went over each of the applications. We read through, we took some time to go over each of the applications. ... We went over the job description, and the requirements of the position, what the person was needed for. And then, on the basis of that, we read through all of the applications, and then came to a short-list.

40. The HR Officer also provided consistent testimony that the SLC reviewed the suitability of each candidate against the criteria listed in the job advertisement.

41. Based on the consistent testimony of the Hiring Manager and the two members of the SLC, which has not been challenged persuasively by the Applicant, the Tribunal is satisfied that the SLC did weigh the skills and expertise of each candidate against the criteria listed in the advertised job description. The Tribunal is reluctant to second-guess this type of evaluation by an SLC composed of relevant experts. As the Tribunal has held, “[t]he identification and definition of specializations is a matter that comes within the managerial discretion of the Bank as does the evaluation of the corresponding skills to perform these tasks.” *Garcia-Mujica*, Decision No. 192 [1998], para. 13.

42. The Applicant contends that the documentation provided by the Bank recording the evaluation by the SLC for this position of Lead Economist in IEG is inadequate. The Bank has produced before the Tribunal two documents relating to the SLC’s deliberations. The first document is the HR Officer’s handwritten notes about most of the candidates. With respect to the Applicant, the handwritten notes state: “Very trade – Wrong match.” The second document is an e-mail message dated 11 June 2008 from the SLC Chair (copying other members of the SLC) to the Hiring Manager listing six candidates in two groups: Group One (Definite Recommendations for Short-list) consisted of three candidates and Group Two (Potential Candidates for Short-list). In the e-mail message the SLC Chair wrote:

We would like to recommend a two-tier short-list, with the first group comprising strong candidates who meet most if not all required criteria, and the second group composed of candidates who are promising but do not meet all recruitment criteria and are less experienced or proficient in the technical areas required for the position.

43. The basis for the SLC’s decision emerges from these two documents and from the transcript of the testimony of the Hiring Manager and two members of the SLC before PRS. The record shows that the SLC reviewed each candidate’s suitability against the selection criteria listed in the vacancy announcement. The Hiring Manager testified that “the financial

experience” was the most important criterion but the Applicant’s prominent strength was trade. The SLC Chair testified that the SLC focused on experience and knowledge in two technical areas: “financial management” and “PRSC.” The Chair testified that compared to the Applicant, “three people [in Group One] that we shortlisted had more experience ... in financial sector and PRSC.”

44. Based on the record as a whole, the Tribunal does not find that the Applicant has demonstrated that the SLC’s decision was arbitrary or lacked a reasonable basis.

45. The Applicant also contends that the decision not to place him on the short-list for the Lead Economist position in IEG was unfair and discriminatory. Considering the lack of “detailed allegations and factual support” for his claims of unfairness and discrimination, the testimony of the parties before PRS, the dismissal of similar claims by PRS, and the record as a whole, the Tribunal is not persuaded that the SLC’s decision was unfair and discriminatory.

THE PROCESS FOLLOWED BY THE BANK IN SHORTLISTING

46. Principle 4.1 of the Bank’s Principles of Staff Employment states that the purpose of the Bank’s “recruitment policy shall be to seek to attract staff members of the highest caliber appropriate to job requirements.” In this regard, the Tribunal notes that the Bank’s Shortlisting Guidelines state that the shortlisting process should be guided by principles such as “objectivity,” “transparency,” “rigor,” and “diversity.” The Guidelines also state that the objective is to:

Create a short-list of candidates considered to be the best qualified to put forward for interviews. Shortlisting is screening a long list of candidates against the selection criteria for the job. The short list of candidates should also represent the diversity and fungibility requirements of the sector. A Hiring Manager will typically convene a shortlisting committee (SLC) of up to 4 people, with at least one from outside the hiring unit. Shortlisting results must be documented.

47. The Tribunal will review the shortlisting process followed in relation to the three positions.

Lead Economist, EASPR

48. As stated above, the SLC for this position was composed of the following three individuals: (i) the Director, EASPR (the Hiring Manager); (ii) a Lead Economist, EASPR; and (iii) a Senior HR Officer. The Applicant contends that the Bank failed to follow its Shortlisting Guidelines in the following respects. First, the Hiring Manager participated in the shortlisting. Second, the SLC only consisted of two staff members. The HR Officer cannot be considered a proper member of the SLC because the HR Officer was not expected to evaluate a staff member's skills and expertise. Third, the SLC did not include any staff members from outside EASPR.

49. The Tribunal does not find that the participation of the Hiring Manager (Director, EASPR) in the shortlisting process was contrary to the Shortlisting Guidelines. The record indicates that, in practice, in some units of the Bank, hiring managers participate in the shortlisting stage as part of an SLC. The Tribunal finds nothing unusual in this regard.

50. With respect to the number of members that should make up an SLC, the Guidelines are not clear enough. In fact, the Guidelines state that an SLC "of up to 4 people, with at least one from outside the hiring unit" will be convened.

51. Regarding the role of the HR Officer, the Tribunal agrees with the Applicant that an HR Officer is not typically a full member of the SLC. The HR Officer in question actually confirmed before PRS that she participated in the shortlisting process

as an external witness, external witness – not a voting member, not a voting person. A witness and a sort of gatekeeper – for the process to be followed, some due process.

52. That being so, the HR Officer cannot be considered as "staff from a different unit." It thus appears that, contrary to the Guidelines, there were in reality only two persons, both of whom were from the hiring unit. Accordingly, the Tribunal finds that this does not meet the

terms of Principle 4.1 of the Principles of Staff Employment, and that, in respect of this position, the Bank did not comply with its own Guidelines, which require “objectivity,” “transparency,” “rigor,” and “diversity.”

Economic Advisor, OPCS

53. The SLC for this position was composed of the following two individuals: (i) the Manager, OPCCE; and (ii) a Senior HR Officer. The Applicant contends that the Bank failed to follow its Shortlisting Guidelines. The Manager, OPCCE, testified that the shortlisting was done in accordance with the prevailing practice in OPCS at that time.

54. The Tribunal finds that an SLC composed of one member of the hiring unit and an HR Officer falls short of the requirements of the Bank’s Shortlisting Guidelines. The fact that a hiring unit has pursued a deficient practice is not justification for the continued application of that practice. The unit’s repetition of a deficient practice does not cure the deficiency, especially where the deficiency is contrary to the Bank’s own Guidelines.

Lead Economist, IEG

55. The SLC for this position was composed of the following four persons: (i) a Senior Evaluation Officer, IEG (the SLC Chair); (ii) a Lead Economist, IEG; (iii) an Economist, IEG; and (iv) an HR Officer. The Applicant contends that the shortlisting for this position did not comply with the Bank’s Shortlisting Guidelines. The Tribunal is not convinced by this contention. The Applicant acknowledged that, consistent with sound application of the Guidelines, the SLC in this case consisted of four staff and included staff from outside the hiring unit. His contention here is that “there is no evidence to show that Respondent asked to see additional information about [him].” The Tribunal finds that the Applicant has not demonstrated

that this amounts to a violation of any Bank rules and procedures for which the Bank must be held accountable.

FINAL OBSERVATIONS

56. The record before the Tribunal indicates that the Bank does not follow a consistent and uniform practice with respect to the shortlisting of candidates. The principles of “objectivity,” “transparency,” “rigor,” and “diversity” cannot be implemented unless the SLC 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 SLC in as much detail as practicable. Contemporaneous and detailed documentation of SLC deliberations is also a guarantee of a transparent, sound and fair recruitment process.

57. The Tribunal concludes that the shortcomings in the process specified in this judgment do not amount to mismanagement of the Applicant’s career at the Bank, as the Applicant claims. At the same time, the Tribunal considers that these shortcomings, while not requiring rescission of the impugned decisions, are sufficiently significant to warrant compensation for the Applicant. In deciding the quantum of compensation, the Tribunal is mindful of a number of considerations. On the one hand, it is possible, but not certain, that the Applicant might not have brought this Application had the process not been deficient, i.e. had the SLC been constituted in accordance with the Bank’s Guidelines and an explanation of the basis for his non-selection been provided to the Applicant before he filed an appeal. On the other hand, in assessing the compensation for the Applicant’s loss of opportunities, it is not possible to conclude that, but for these shortcomings in

the process, there was a high likelihood that the Applicant would have been recruited for any of the positions in question. These considerations are reflected in the compensation awarded by the Tribunal.

DECISION

The Tribunal decides that:

- (i) the Bank shall pay compensation to the Applicant in the amount of nine months' salary, net of taxes;
- (ii) the Bank shall pay the Applicant's costs in the amount of \$24,000; and
- (iii) all other pleas are dismissed.

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

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Paris, France, 29 October 2010