



World Bank Administrative Tribunal

2011

No. 453

**BO,
Applicant**

v.

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

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

**BO,
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, Jan Paulsson, Zia Mody and Francis M. Ssekandi, Judges.
2. The Application was received on 24 September 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.
3. The Applicant claims that the Bank violated his rights as a staff member in the selection process for the Chief Economist position in the Middle East and North Africa Region ("MNA").

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 1989 as an Economist at level GF. From 1993 to 1998, he served as the Research Director of the African Economic Research Consortium while on External Service in Kenya. Upon his return to the Bank in 1998, he worked first as a Principal Economist, and since 2000 served as a Lead Economist, level GH, in the Africa Region.
5. In September 2007 the Bank posted the vacancy announcement for the GI-level position of the Chief Economist of MNA. The announcement stated that this was a new

position created by MNA. The announcement also stated that: “The Chief Economist is the principal economic advisor to the Regional Vice President and the regional management team with accountability for the quality and relevance of regional economic and strategic work, and analytical and advisory services.”

6. The selection criteria listed in the vacancy announcement included the following:

- (i) Ph.D. in Economics, or equivalent and a minimum of 12 years relevant experience;
- (ii) Recognized expert in the field of international and development economics, and a track record of intellectual leadership;
- (iii) Substantive senior level professional experience in a research and/or public/private sector organization with a sound publications record;
- (iv) Demonstrated ability to work with senior government officials to resolve complex economic policy problems and provide policy advice at the national level;
- (v) Ability and willingness to work in a team environment;
- (vi) Highly respected by peers, clients and staff as mentor, advisor, and guide;
- (vii) Outstanding ability to share knowledge and experience, and to identify and disseminate best practices;
- (viii) Strong communications ability;
- (ix) Familiarity with the political, economic, social and cultural context of the MNA region. Knowledge of Islamic finance modalities will be an advantage;
- (x) Language skills relevant to specific Region is highly desirable (French is required and Arabic is preferred).

7. The vacancy announcement noted that: “The World Bank Group is committed to achieving diversity in terms of gender, nationality, culture and educational background.”

8. On 20 September 2007 the Applicant applied for the position. The Bank formed an eight-member short-listing committee (“SLC”) to “create a shortlist of candidates

considered to be the best qualified to put forward for interviews.” The SLC completed its work sometime in December 2007 by arriving at a short-list of “5 candidates, 3 external and two internal [including the Applicant], all male, all former or current staff of the Bank/IMF.” On 10 December 2007 the Human Resources (“HR”) Chair of the SLC sent an e-mail message to one of the Bank’s Managing Directors seeking his approval of the short-list. The e-mail message stated *inter alia* that

the [SLC] has reached out extensively to external market to search for competitive candidates. The [SLC] is also very grateful to [the Vice President of MNA] and MNA management for making extraordinary efforts to make external connections and generate names of possible candidates. The [SLC] has also drawn investment made from the summer PREM rotation process in order to be consistent, and at the same time has done additional due diligence in order to reach solid judgments on and be fair to internal candidates. As for external candidates, please note that the [SLC] has done some due diligence (informal reference check with Bank/Fund colleagues in most cases), and obviously more comprehensive reference check will need to be carried out at later stage for top external candidates. The [SLC] was fully committed to reaching out for diverse candidates (in particular female candidates); however, we have not been able to secure interest of those we approached.

9. The Managing Director approved the short-list and the Bank invited four out of the five short-listed candidates for an interview, including the Applicant.

10. On 25 February 2008 the Applicant was interviewed by a three-member panel comprising the Director General of the Independent Evaluation Group, the Vice President of MNA, and the Director of MNA.

11. On 27 February 2008 the Vice President of MNA, who was also the hiring manager for the Chief Economist position, sent an e-mail message to the Managing Director of the Bank informing him that the interview panel had selected two top candidates for the position and proposing that the Managing Director interview them.

The e-mail message stated *inter alia* that:

This is to update on the selection process for the chief economist for the MNA region and to propose that you interview the top two candidates.

...

[The interview panel] concluded the following:

The top two candidates are [an external candidate] and [the Applicant]. (a) They have serious credentials as economists (b) They know the region very well (c) They are very credible in the region (d) Both were persuasive as team players and good listeners; but neither seemed a strong, energetic self-starter.

We concluded that either would be a good fit for the position, and recommend to invite [them] to follow-up interviews with you.

12. Separately (but related to) the developments in the Applicant's case, on 2 March 2008, the Bank sent an e-mail message to all Vice Presidents and HR Team Managers describing the protocol to be followed regarding senior management involvement in managerial appointments. The e-mail message stated as follows:

- (i) "This e-mail updates ... on the procedures to be followed regarding senior management involvement in managerial appointments. The objectives are to have an easy to use, transparent protocol which enables [the Bank] to follow a consistent approach;"
- (ii) "The majority of managerial positions will be advertized. ... The selection criteria in job descriptions need to be clear about what the hiring manager needs. ... Hiring managers should continue to ensure appropriate attention to diversity, including gender";
- (iii) for a position such as that of a Chief Economist, level GI, the tentative selection of a candidate requires a notification to the President of the Bank;

- (iv) the notification should be from the relevant Vice President to the President copied to certain other senior managers with a summary of the process and the rationale for the selection; and
- (v) “the President holds hiring managers accountable for selecting the best qualified and highest performing staff for its key positions. His intent is not to second-guess [their] decision-making but to be informed about selections for key positions.”

13. On 1 April 2008 a two-member panel, consisting of (i) the Managing Director and (ii) the Acting Senior Vice President and Chief Economist of the Bank, interviewed the Applicant and the other candidate as recommended in the 27 February 2008 e-mail message of the Vice President of MNA.

14. Based on the recommendation of this second panel, on 16 April 2008, the Vice President of MNA, as the hiring manager, recommended the selection of the Applicant to the President of the Bank noting that “both ... candidates would be appropriate for the position.” In her e-mail message to the President, the Vice President stated:

This is to request your concurrence with the selection of the MNA chief economist. In consultation with [the Managing Director and the Acting Senior Vice President and Chief Economist of the Bank] I recommend the selection of [the Applicant] to the position. ...

Following an extensive internal and external search by the shortlisting committee ... five candidates were identified and interviewed by a panel including [the Director General of the Independent Evaluation Group, the Director of MNA] and myself; the report of the interview panel is attached below for your information.

The panel recommended that [the Managing Director and the Acting Senior Vice President and Chief Economist of the Bank] interview the top two candidates, [the Applicant] and [the other external candidate]. [The Managing Director and the Acting Senior Vice President and Chief Economist of the Bank] concurred that both two candidates would be appropriate for the position. ...

On balance, [the Applicant] appeared to be the strongest of the two candidates as he was better able to articulate policy implications of research they conducted; [the other external candidate] came across as more academic in his approach. In addition, [the Applicant] knows the Bank and this can bring an advantage in terms of his ability to “hit the ground running.”

15. On 12 May 2008 the Vice President of MNA updated the Applicant as follows:

“Just to let you know that we are waiting for feedback from [the President of the Bank] [regarding] recruitment of the chief economist for the MNA region. Sorry for not getting in touch earlier, but I am not sure about the timing for his consideration. I hope you remain interested.” The Applicant replied to the Vice President on the next day stating “many thanks for the briefing, it is most appreciated. Regarding the feedback from [the President of the Bank], no problem I remain interested and looking forward to start working with you some time soon.”

16. On 19 May 2008 the Vice President of MNA met with the President to discuss this matter of selecting the Chief Economist of MNA. During the meeting the President requested that the Vice President of MNA expand the pool of candidates for the position, to include external candidates and female candidates. The President told her that “he was not uncomfortable with the specific recommendation, but wanted to try to do even better.”

17. The Vice President of MNA informed the Managing Director about the President’s position by sending him e-mail messages on 20 May and 4 June 2008. In her e-mail message of 4 June, the Vice President wrote to the Managing Director:

[The President] indicated that he has a strong preference for a female candidate, and that he is less concerned with knowledge of the region than with profile and intellect. ... I also think that he would like to use this recruitment as an opportunity to expand our talent pool through an external recruitment. He said explicitly that he did not object to the two candidates that we proposed, but wanted to try to do better if possible.

18. Around early June 2008, according to the Applicant, he met with the Vice President of MNA who told him that the President “had not yet made a final decision, but had asked her to look for additional candidates for the position ‘with a better name recognition’ in the MNA region.” According to the Bank, at this meeting, the Applicant was informed that: “(i) the decision regarding the selection for the Chief Economist position would be made by ... the President, (ii) the President had requested to broaden the search and identify more options, including candidates from outside the Bank as well as female candidates, and (iii) the President had no objection to him and had explicitly noted that the Applicant was to remain in the candidate pool.”

19. The Bank then engaged in an additional search including candidates who did not meet the selection criterion requiring “knowledge of the region.” For instance, in an e-mail message on 11 June 2008 to the President’s Chief of Staff, the Vice President of MNA wrote that “[the President] asked that we identify additional strong candidates, including women. ... I think that to generate strong women candidates it will be necessary to look at candidates that do not know the MNA region.” On 24 June 2008 the Vice President of MNA again wrote to the Chief of Staff that “we still have not identified female candidates with at least some knowledge of the region. At this stage, I would suggest engaging an external search firm, and focus the search on female candidates with strong development experience without requiring knowledge of the MNA region.”

20. On 1 July 2008 the Managing Director informed the Applicant by e-mail that: “the recruitment process is still ongoing and we expect it to be finalized in the near future. As I have mentioned to you during our meeting, you are considered to be one of the strongest candidates and I would like to thank you once again for your continued

interest in this position. We will keep you informed of the status of the process as it evolves.”

21. On the next day the Applicant responded to the Managing Director, stating “I would like to probe further with you on this issue by thanking you again for leading (with [the Vice President of MNA]) such a rigorous and transparent process for the [Chief Economist] recruitment. I would also greatly appreciate your support in expediting the clearance of my proposed appointment to this post.”

22. Around early August 2008 the Vice President of MNA met with the Applicant to discuss his concerns about the process. At that meeting, according to the Applicant, she told him that “the final decision rested with the President, and that she had no further control over the selection/appointment process.” The Applicant adds that: “That meeting was the last time [he] received any information about the selection process. In the following months, Applicant received no further updates about the appointment status, and he was never contacted again about the position and his candidacy by ... any ... official involved in the selection process.”

23. In the meantime, the Bank engaged an external search firm to identify additional candidates. The external firm concluded its search in September 2008 after “reach[ing] out to over 400 economics professionals in the private sector, multilaterals, public and government entities, and higher education around the world.” The firm identified an additional fourteen candidates who had expressed an interest. Out of the fourteen, only three were selected for further consideration. The same SLC (with the exception of one member) then reviewed the applications of the three candidates and concluded that only one candidate met the selection criteria.

24. On 29 September 2008 the Bank's HR sought the approval of the Managing Director to include this additional candidate on the short-list for an interview. The Managing Director approved the HR's request.

25. The same three-member interview panel (comprising the Director General of the Independent Evaluation Group, the Vice President of MNA, and the Director of MNA) interviewed this additional candidate but decided not to recommend him for further consideration.

26. On 4 November 2008 the Vice President of MNA updated the Managing Director about this new candidate by an e-mail message in which she stated that: "I very much regret that we have not been able to expand the talent pool and produce female candidates. ... I propose that we discuss other approaches when we meet next week."

27. The record indicates that neither the Managing Director nor the President took any further step with respect to this selection process.

28. On 13 January 2009 the Applicant wrote to the Vice President of HR stating that he was "no longer interested [in the Chief Economist] job because [he had] grave concerns about the process involved." The Applicant requested a meeting to share his concerns. On 22 January 2009 senior HR officials met with the Applicant.

29. Two weeks later, on 6 February 2009, the Applicant resigned from the Bank. On the same day he wrote a letter to the President stating that:

After almost 20 years at the Bank I have decided to take early retirement to join a research and policy institution in the Middle East. This decision was mostly in response to better opportunity but was also influenced by my disappointment at the process of the recruitment of the MNA Chief Economist, which I was involved in as a candidate for over a year.

The Applicant received no response.

30. On 30 April 2009 the Applicant filed a Statement of Appeal with the Appeals Committee challenging: “(i) the Respondent’s alleged decision ... not to select and/or appoint [the Applicant] for the position of Chief Economist, [MNA], or alternatively (ii) the Respondent’s failure to complete the selection and/or appointment process for the above-mentioned position in a reasonable timeframe and to keep [the Applicant] informed about the status of the process in a fair and transparent manner.”

31. Upon a jurisdictional objection by the Bank, the Appeals Committee decided to dismiss the Applicant’s claim challenging the non-selection decision for lack of competence under Staff Rule 9.03 because no decision had been made. The Committee, however, accepted jurisdiction to review the selection process claim.

32. After conducting a hearing on the issue of the selection process claim, the Appeals Committee (replaced by the Peer Review Services (“PRS”) effective July 2009) found in its report of 31 March 2010 that “the Respondent abused its discretion in handling the contested portion of the selection process and in the manner in which it informed [the Applicant] of the status of the process. The Panel finds that the Respondent lacked an observable and reasonable basis for its actions and failed to follow a proper and fair process.”

33. PRS recommended compensation in the amount of three months’ net salary and payment of attorney’s fees in the amount of \$5,000. The Bank accepted the recommendation and so informed the Applicant on 26 May 2010.

34. Unsatisfied, the Applicant filed his Application with the Tribunal on 24 September 2010. He states that he is challenging the Bank’s “decision not to select [him], [the] nominated candidate for the position of Chief Economist, MNA.”

Associated with this challenge, he raises three main claims before the Tribunal: (i) the President's intervention was unjustified, improper, and in violation of the Bank's own guidelines and procedures; (ii) the President's intervention and his non-selection of the Applicant to the position was discriminatory based on gender; and (iii) the selection process was seriously flawed. As remedies, the Applicant seeks: (i) compensation in the amount of three years' salary, net of taxes; and (ii) attorney's fees.

35. The Bank raised preliminary objections on 20 October 2010. By order dated 22 December 2010 the President of the Tribunal decided to join the Bank's preliminary objections to the merits.

SUMMARY OF THE PARTIES' CONTENTIONS ON THE PRELIMINARY OBJECTIONS

The Bank's contentions

36. The Bank argues that the Application is inadmissible because the Applicant lacks standing to challenge a selection process from which he withdrew voluntarily before its completion. There is no administrative decision which the Applicant has standing to challenge. His claims are premature and hypothetical. His Application fails to meet the requirements of Article II of the Tribunal's Statute. Having withdrawn from the selection process, of his free will, before the process was completed, the Applicant lacks standing to raise a non-observance claim. The Bank adds that even if the Applicant had not withdrawn his Application and a decision not to select him had been issued, he still would have no standing to challenge the Bank's decision as no obligation would have been breached.

The Applicant's contentions

37. The Applicant argues as follows. First, the Bank's jurisdictional challenge should be rejected because it was raised one day after the deadline to do so had passed. Second, the Bank disregards the fact that through its flawed process not to complete the selection by appointing the recommended candidate, it in fact took an action that can clearly be characterized as a decision not to select the Applicant. It is of no relevance that the Bank had not appointed a different candidate to the position. The harm to the Applicant, through his non-selection, is not hypothetical or premature. Third, under the Tribunal's jurisprudence, a failure to act is as much a decision within the meaning of "administrative decision" under the Bank's rules. Finally, there were serious flaws in the Bank's selection process which violated his staff rights, and which are subject to the Tribunal's review.

SUMMARY OF THE PARTIES' CONTENTIONS ON THE MERITS

The Applicant's contentions

38. First, the President's intervention in the selection process violated the Bank's own guidelines and procedures. The President's intervention in the selection process after MNA had already made a selection recommendation following a rigorous selection process in which every effort to ensure diversity had been made, was unprecedented. The intervention violated the Bank's rules such as the Protocol updated on 2 March 2008. In this case, the Protocol required the President only to be notified. He was not entitled to second-guess the selection decision of the Vice President of MNA.

39. Second, the President's intervention and the Applicant's non-selection to the position of Chief Economist were based on gender. The Applicant had established a *prima facie* case of gender discrimination. The Bank's gender diversity goals cannot

serve as a reasonable rationale for the President's intervention in the process which was unprecedented, unfair, discriminatory, and in violation of the Bank's own rules.

40. Third, the selection process was seriously flawed. The selection process continued for a long period of time. During this long delay the Applicant received few updates about the status, and when he did, "the information given to him was – as he knows now – less than complete and verging on misleading." The process was unfair, non-transparent and for months the Applicant was misled about the true reasons why his appointment was not forthcoming.

41. Finally, the Bank's actions have done serious harm to the Applicant, to his hard-earned career and to his professional reputation. During this delay in the selection process the Applicant turned down other opportunities while still believing from the false hope conveyed by the Bank that his appointment would materialize. In addition, the Bank's acts caused upset and distress for the Applicant on a personal level and for his family.

The Bank's contentions

42. First, the President's involvement in the selection process was consistent with the Bank's rules and policies. Under the Bank's policies, the President's participation was justified in respect of such a high-level position. Neither the President nor the Bank acted arbitrarily.

43. Second, the Bank's decision to expand the pool of candidates was not based solely on gender grounds. Under the Bank's rules, it has an obligation to promote diversity. If the President requested a larger pool of candidates, it was to promote diversity, from a gender as well as from a geographical perspective.

44. Third, the Applicant was duly informed about the selection process. Both the Vice President of MNA and the Managing Director met with the Applicant in this respect. The Bank provided reasonable, fair and transparent information to the Applicant, kept him informed of the delays and repeatedly indicated that the Applicant continued to be regarded as one of the strongest candidates for the position.

45. Finally, there is no objective basis to conclude that the Applicant suffered harm and reputational damage. He resigned from the Bank voluntarily to pursue what he saw as better opportunities.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

The preliminary objections

46. Article II of the Tribunal's Statute provides:

1. The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words "contract of employment" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.

2. No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

(i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal

47. The question arises whether the Applicant has exhausted internal remedies before coming to the Tribunal. It is not in dispute that the claims raised in the Application had been timely raised before PRS.

48. Working under the previous version of Staff Rule 9.03, PRS concluded that it did not have jurisdiction to review "the Respondent's alleged decision ... not to select and/or

appoint [the Applicant] for the position of Chief Economist.” Under the former version of Staff Rule 9.03, paragraph 4.01, the mandate of the Appeals Committee was to consider appeals against an “administrative decision.” PRS found that it lacked “competence (i.e., subject matter jurisdiction) to review the decision not to select him for the Chief Economist position because no decision has been made.” Notably, Staff Rule 9.03 (current version) has dropped the requirement of “administrative decision” from the jurisdictional clause of PRS. The current version of Staff Rule 9.03 expressly uses the term “Disputed Employment Matter,” which is defined in paragraph 2.01 as: “A managerial action, inaction, or decision that is the subject of a staff member’s Request for Review and that is reviewable under paragraph 6.01.” Under paragraph 6.01 of Staff Rule 9.03, apart from specific exceptions not relevant here, “a Panel may review any Request for Review in which a Requesting Staff Member alleges that a managerial action, inaction, or decision was not consistent with his or her contract of employment or terms of appointment.”

49. The rule governing the jurisdiction of PRS is aligned with Article II of the Tribunal’s Statute. The Tribunal’s subject-matter jurisdiction is not confined to an “administrative decision.” In *McKinney*, Decision No. 183 [1997], paras. 13-17, the Tribunal stated that:

The Tribunal’s jurisdiction in this case [under Article II, paragraph 1] turns, therefore, upon whether the Applicant has “alleged” a plausible claim of contract violation.

...

It is sufficient for the Tribunal to exercise jurisdiction that the Applicant has tenably “alleged” that there are circumstances that warrant an examination of the merits of his allegations.

Whether the Applicant can sustain his case is a matter to be determined at the next stage, at which the merits are addressed through the conventional exchange of pleadings. It would be premature and improper for the Tribunal, by declaring this application inadmissible on the ground of jurisdiction *ratione materiae*, to deprive the Applicant of an opportunity to make his case.

50. In his Application, the Applicant claims that: (i) the President's intervention in the selection process for the Chief Economist position was unjustified, improper, and in violation of the Bank's own guidelines and procedures; (ii) the President's intervention and his non-selection of the Applicant to the position was discriminatory based on gender; and (iii) the selection process was seriously flawed. He has alleged "a plausible claim of contract violation" or "has tenably 'alleged' that there are circumstances that warrant an examination of the merits of the allegations." Whether these claims are sustainable is not a jurisdictional question, but a matter for the merits.

51. The Bank argues that the Applicant lacks standing to challenge a selection process from which he withdrew voluntarily before its completion. The Tribunal is not persuaded. The Applicant is challenging the Bank's actions prior to his withdrawal that he alleges violated his rights. The withdrawal from the selection process does not bar him from raising violations that allegedly occurred prior to his withdrawal. The Bank also contends that there is no administrative decision which the Applicant has standing to challenge. In *Kehyaian (No. 3)*, Decision No. 204 [1998], para. 16, the Tribunal stated that:

The administrative decision challenged could be either in the form of an affirmative decision or in the form of a failure to act. As the Tribunal has ruled in the past, "claims of nonfeasance are as much within the Tribunal's jurisdiction as claims of improper affirmative decisions. Indeed, it is frequently illusory to make such a distinction, as the Bank's action ... can be viewed either as an affirmative decision or as a failure to decide."

52. The Tribunal accordingly rejects the Bank's preliminary objections and now proceeds to the merits.

Merits

53. The ultimate power of appointment in the Bank rests with the President. Article V, Section 5(b), of the Bank's Articles of Agreement states that:

The President shall be chief of the operating staff of the Bank and shall conduct, under the direction of the Executive Directors, the ordinary business of the Bank. Subject to the general control of the Executive Directors, he shall be responsible for the organization, appointment and dismissal of the officers and staff.

This authority is reiterated in Principle 1.01 of the Bank's Principles of Staff Employment, which provides that the "President is responsible for the organization, appointment and dismissal of officers and staff."

54. The appointment authority granted to the President is to be exercised in accordance with the Staff Rules of the Bank. The Tribunal has consistently held that it will not overturn an appointment decision of the President unless it is demonstrated that the exercise of discretion was tainted by bias or discrimination or other form of abuse of power. In *Riddell*, Decision No. 255 [2001], para. 23, the Tribunal 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.

55. The Applicant states that the selection process for the Chief Economist of MNA was handled in a proper manner until the President got involved. The crux of the Applicant's complaint is the fact of the President's involvement in the selection process, as well as the nature of that involvement, which he alleges was improper and in violation of the Bank's rules and procedures.

56. On the basis of Article V, Section 5(b), of the Bank's Articles of Agreement and Principle 1.01 of the Principles of Staff Employment, the President enjoys wide discretion in the appointment of staff, and while such power is mostly delegated, he retains authority to take part in recruitment decisions of senior officials. As indicated earlier, this power is to be exercised subject to the Staff Rules and the question is whether, in this case, the action of the President to request a larger pool of candidates for selection of the Chief Economist, including female candidates, transgressed the Staff Rules.

57. The controlling provisions for appointment of staff are to be found in Staff Rule 4.01. Paragraph 1.01 of this Rule provides that: "The Bank Group's recruitment policy is to recruit staff members of the highest caliber through a competitive selection process based on criteria determined by the needs of the Bank Group and the requirements of the position, paying due regard to the importance of recruiting staff on a diverse basis." An appointment or promotion is effective only when an offer is made by a letter of appointment and accepted by the selected candidate (*see* paragraphs 4.01 and 4.02 of Staff Rule 4.01). In the instant case, a competitive process was initiated but had not been completed as no offer of appointment was extended to the Applicant and no acceptance was solicited from him. Thus, the President still had a role to play during the selection process, including giving or withholding his approval of the recommended candidate.

58. Two important factors in this selection process must be taken into account in determining whether the President's involvement was reasonable. First, this was the first Chief Economist position in MNA. Second, this position is at the GI-level, and is a

senior position at the Bank. The President accordingly was entitled to take an active part in the appointment process.

59. The Bank's Human Resources Managerial Hiring Process sets forth the process for the "Interviewing & Selecting Stage" as follows:

- 3.1 The Hiring Manager organizes the interviews.
- 3.2 Interviews are conducted with all the short-listed candidates.
- 3.3 The Hiring Manager makes the hiring decision in consultation with the Hiring Manager's Manager. In the case of Directors and Country Managers, the President's input is sought.

60. The Vice President of MNA testified before PRS that her practice for every GI-level recruitment she made while in that position was to have an in-depth conversation with the President. She testified further that the President always asked specific questions regarding the recruitment and had a direct interest in the "trade-offs" involved in selecting a suitable candidate. HR's Recruitment Officer and the HR Director provided consistent testimony to the effect that the President's involvement in the selection process of this Chief Economist position, which is a high-level position, was not unusual or inconsistent with the Bank's practice.

61. The Management Appointments Protocol, updated on 2 March 2008, established that the appointment of a Chief Economist requires a notification from the relevant Vice President to the President, and that notification must include a "[s]ummary of process and rationale for selection." The Protocol also states that "the President holds hiring managers accountable for selecting the best qualified and highest performing staff for its key positions. His intent is not to second-guess [their] decision-making but to be informed about selections for key positions." The Applicant relies on the last sentence of the Protocol to argue that the involvement of the President was inconsistent with the

notion that he would hold the hiring managers accountable for the selection of the best and most qualified staff and his intent is not to second-guess their decision-making but to be informed about the selection for key positions. In the Tribunal's view, however, such reliance on the Protocol is unpersuasive because the statutory authority conferred on the President to make appointments is unimpaired. Recommendations are made to the President, but he retains the final authority to make the decision.

62. The Tribunal finds that the President's action did not violate any rules of the Bank and was consistent with its prevailing practice, especially with regard to appointment of staff at higher levels. As stated in *Conthe*, Decision No. 271 [2002], para. 98, "at ... [a high] level of a corporate hierarchy, a staff member ... simply must gain and retain the confidence of the highest leadership of the institution. Absent clear proof of arbitrariness or ill-will, or unwillingness to articulate the grounds of any dissatisfaction ... such a staff member is in no position to claim an entitlement to be confirmed in a position which by its nature demands the fullest subjective confidence."

63. The only issue that might be heard to arise is whether there was any abuse of power. There has, however, been no suggestion that the President's action was improperly motivated or tainted by ill-will. On 16 April 2008 the Vice President of MNA sought the President's "concurrence" by an e-mail message attaching the report of the interview panel. On 19 May 2008 she met with the President. At that meeting the President requested that she expand the pool of candidates for the position, to include external candidates and female candidates. The President told her that "he was not uncomfortable with the specific recommendation, but wanted to try to do even better." There is no evidence that the President had any particular person in mind. He sought

expansion of the pool of recommended candidates and he left the details to the Vice President of MNA and the Bank's HR. In requesting a further search for suitable candidates, there is no suggestion that the President eliminated the Applicant from consideration. On the contrary, the Applicant's name remained on the list under active consideration. In the end it was the Applicant who voluntarily removed himself from consideration and finally resigned from the Bank before the selection process was concluded. There is therefore no merit in the Applicant's contention that he was wrongly denied appointment to the Chief Economist position. An internal recommendation for appointment is not the same as an offer of appointment and until an appointment offer is made in a letter of appointment by the Bank and is accepted, a candidate acquires no claim to a post under the Staff Rules, specifically under Staff Rule 4.01.

64. The Applicant claims that he is a victim of gender discrimination. He states that he "has established a *prima facie* case that gender, as an extraneous factor, played a decisive role in [the President's] failure to concur to the Region's recommendation that Applicant be appointed to the position of [Chief] Economist, MNA and [the President's] instruction to continue the search for a candidate." The Bank states that gender did not play a role in the Bank's decision to expand the pool of candidates. The Bank adds that if "the President considered that a large pool of candidates, including women, was needed, it was to ensure that (i) the best qualified candidate was selected and that (ii) diversity from a gender as well as from a geographical perspective was observed."

65. The Tribunal observes that diversity in recruitment is one of the cornerstones of the Bank's recruitment policies. Principle 2.1 of the Principles of Staff Employment provides that the Bank "shall encourage diversity in staffing consistent with the nature

and objectives of the [Bank].” As a matter of Bank policy, diversity has been defined to include gender diversity. The issue has been of sufficient concern to the Board of Directors that management is required to report regularly on the progress achieved in gender equality. In this case, the vacancy announcement itself expressly stated that: “The World Bank Group is committed to achieving diversity in terms of gender, nationality, culture and educational background.”

66. The standard to be observed in promoting diversity in recruitment is ensuring that the process adheres to advancing the Bank’s paramount objective in recruitment, namely, to secure “the highest standards of efficiency and of technical competence,” as prescribed by Section 5(d) of Article V of the Articles of Agreement. Preferences for candidates based on geographical distribution or gender may be weighed for that matter, provided that, in compliance with the paramount objectives of the Articles of Agreement, a choice is made between candidates who are evenly matched in qualification, but not where there is a significant and relevant difference between the candidates (*see* ILOAT Judgment No. 2392 (2005)). As the Administrative Tribunal of the International Labour Organization (“ILOAT”) has stated that “there is nothing wrong in having a policy aimed at gender parity... But the bottom line must always be that the person best qualified should be appointed.” *In re Matthews*, ILOAT Judgment No. 2004 (2001).

67. In this case, the Applicant and another candidate were recommended as qualified for appointment to the Chief Economist position. The President, however, requested expansion of the pool of candidates to include female candidates. Ultimately, the Applicant himself, initially the favored candidate, withdrew from consideration. In these circumstances, the Applicant’s claim of discrimination is unfounded.

68. Although the Applicant had no “right to be selected to a particular position” in the Bank, it remains to be seen whether his entitlement to be treated fairly in the selection process was respected. Principle 2.1 of the Principles of Staff Employment states that the Bank “shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members.”

69. The record indicates that by November 2008 the Bank had completed consideration of additional candidates. On 4 November 2008 the Vice President of MNA updated the Managing Director stating: “I very much regret that we have not been able to expand the talent pool and produce female candidates. ... I propose that we discuss other approaches when we meet next week.” But the Bank temporized. At that time it took no further action without explanation. The record also shows that it “was the only position that remained unfilled after staying open for an unprecedented 762 days.” The position as then advertised was eventually closed in September 2009, without hiring at that juncture. The Tribunal thus agrees with the conclusion of PRS, when it stated that the Bank lacked an observable and reasonable basis for not taking any action after November 2008. PRS observed that “the Respondent could have either selected [the Applicant] for the Chief Economist position at that time or informed him that he was no longer a candidate under consideration. The Respondent could have filled the job posting or canceled the job posting and reposted a revised announcement on the Bank’s Job World.”

70. The Tribunal also finds that the Bank failed to inform the Applicant about the progress of the selection process adequately. For over four months, from August 2008 to January 2009, the Bank did not communicate any information to the Applicant about the selection process. HR only met with the Applicant on 22 January 2009 when he

requested a meeting. Even at that meeting HR failed to provide the Applicant complete information, to the extent it was practicable. The record does not show HR or anyone at the Bank gave the Applicant a transparent and adequate explanation for the delay in the selection process.

71. The ILOAT in *In re Giordimaina*, ILOAT Judgment No. 2116 (2002), concluded that the Food and Agricultural Organization (“FAO”) should have informed all applicants in writing immediately of its decision to withdraw the vacancy announcement and that a four-month delay in this regard was unacceptable. The ILOAT stated that:

[The FAO] was cavalier in the way in which it informed [the complainant] of what was to become of the selection process. For the complainant it was particularly important that she be informed promptly whether she could expect to be appointed, so that she could start to look for another job if need be. She contends, and the FAO does not demur, that she had the more reason to be optimistic as she had been told unofficially that of all the applicants, she stood the best chance of being appointed. In these circumstances, the FAO ought to have put her in the picture at once, or in any event as soon as it became clear from the review of the staffing structure in the Telecommunications Unit that reclassification was a serious possibility for the post in question. But it did not – or at least the FAO neither alleged nor established the contrary. Thereafter, when a decision was taken on 26 May 1997 to withdraw the vacancy announcement, the Organization should have informed the candidates immediately. According to the evidence, the complainant was so informed in writing only on 24 September 1997, in other words nearly four months later. Even if, as the Organization contends, she was informed by telephone on 10 June 1997 written notification was nonetheless an obligation.

The complainant’s personal interests have undoubtedly been harmed and some redress for the material and moral injury she suffered is warranted.

72. In this case, the Tribunal concludes that the Applicant was improperly inconvenienced by the long delays in concluding the recruitment process and in providing him with timely information on the state of the selection process.

73. The Applicant was paid compensation in the amount of three months' net salary and attorney's fees in the amount of \$5,000 on recommendation of PRS. The Tribunal concludes that no additional compensation is appropriate.

DECISION

The Tribunal decides that:

- (i) having regard to the compensation already paid, no further compensation is warranted; and
- (ii) all other pleas are dismissed.

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

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 25 May 2011