



World Bank Administrative Tribunal

2012

Decision No. 464

**BT,
Applicant**

v.

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

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

**BT,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Francis M. Ssekandi, and Ahmed El-Kosheri.
2. The Application was received on 25 August 2011. The Applicant was represented by Veronika Nippe-Johnson, Esq., Schott Johnson, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant's request for anonymity was granted on 17 January 2012. On 15 September 2011, the Tribunal granted the Applicant's request for provisional relief pursuant to Rule 13 of the Tribunal's Rules and ordered the Bank to suspend implementation of its decision to terminate her employment pending the Tribunal's judgment on the merits of the case.
4. The Applicant challenges: (i) the Bank's alleged failure to provide her with a work program; (ii) her Overall Performance Evaluation ("2010 OPE") and ratings covering the period of 1 April 2009 through 30 June 2010; and (iii) the Bank's decision of 27 January 2011 to declare her employment redundant.

FACTUAL BACKGROUND

5. The Applicant holds Bachelor's and Master's degrees in Food Engineering Technology and Food Biotechnology, respectively. She joined the Bank in September 2005 in the Young Professionals Program ("YPP"), where she spent two years. In November 2007, upon her graduation from the YPP, she took up an open-ended appointment as Rural Development Specialist in the Agriculture and Rural Development Unit ("ECSS1" or "ARD"), in the Europe and Central Asia Region, Sustainable Development Sector ("ECSSD").

6. The Applicant was never able to secure a full work program. Her idle time (excluding absences on leave) over three years was as follows: 19 weeks in FY08, 33 weeks in FY09 and 27 weeks in FY10. This degree of underemployment indicates a failure to meet the challenge of matching the Applicant's skills with the needs of the position she had taken, or of adapting her skills and methods to enhance her usefulness in the job. The issue now is whether along the way the Bank failed to respect her terms of employment in the manner she claims.

7. During the first year in her position, the Applicant's work program consisted mainly in providing incidental support to other units. The Sector Manager had left the department within a month of the Applicant's arrival. The Acting Sector Manager of ECSS1 assigned some tasks to her under his own supervision and also introduced her to technical teams and senior specialists in the unit, and the Applicant also made efforts to secure work.

8. On 1 December 2008, a new Sector Manager was appointed at ECSS1, and became the Applicant's manager. The Applicant asserts that the Sector Manager immediately asked her "to write a report on the unit's project portfolio" and that she (the Applicant) provided that report on 4 December. The record shows, in fact, that the report was compiled by three persons – the Applicant, the Acting Manager of ECSS1, and one other person. It seems fair to conclude that this assignment was designed to be a means for the Applicant to achieve a good acquaintance of the projects under way within ECSS1.

9. In early 2009, the Applicant continued to provide cross-support to other units, e.g. in the Middle East and North Africa Region ("MENA" or "MNA"). In late March and early April, she joined an ECSS1 mission to Tajikistan which resulted in some further work until September. Between April and June she also attended training "opportunities" in order, as she says, to expand her knowledge about agriculture and rural development issues, as well as to show her interest and initiatives.

10. Beginning at the end of September 2009, the Applicant participated in another mission to Tajikistan. Although the work was supervised by Mr. X, the same task Team Leader ("TTL") who had supervised the previous Tajikistan project, the Applicant complains about a "lack of communication" on his part, leaving her with a lack of clarity as to her assignment.

11. In the course of 2010, the Applicant appears to have been principally involved in piecemeal work, such as conducting background research and drafting topical notes. These tasks generated very little feedback by the TTLs in ECSS1. The projects which the Applicant later identified as being of interest to her, but which did not incorporate her, were, as her Sector Manager claims, either in terminal stages, or led by TTLs who were unconvinced that the Applicant could contribute to them. One problem seemed to be that her past specialty was in the area of nutrition, which was apparently not one for which there was high demand within ECSS1. However, her work was appreciated by TTLs in ECA's Human Development Sector Unit ("ECSHD"), where she provided cross-support.

12. On 3 September 2010, the Sector Director, ECSSD, sent an e-mail message to all ECSSD staff entitled "Measures to Address Our Projected Budget Deficit." The e-mail message stated that "preliminary budget projections for FY11 show[ed] a \$7 million overrun." Consequently, ECSSD would "need to implement a number of measures on both the expenditure and the revenue side to reduce this projected deficit," which included reduction of the use of short-term consultants and travel costs and increased cross-support to other Vice Presidential units and imposition of fees for services offered.

13. In an e-mail message to the Applicant dated 7 September 2010, in the context of discussing the Applicant's OPE, the Sector Manager told her that ECSSD would be willing to cover the cost of a Developmental Assignment in another unit, provided that the new unit would thereafter retain her; otherwise "we will have to go forward with separation arrangements from the Bank." Thereafter in September 2010, the ECSSD management review meeting took place. A number of ECSSD staff members, including the Applicant, were identified as working in areas in which they were not fully engaged.

14. On 5 October 2010, the Sector Director, ECSSD, sent another e-mail message to all ECSSD staff announcing, among other things, that ECSSD was "looking at a need to reduce expenditures in FY11 by almost \$7 million relative to [the previous year]" and that ECSSD's plan incorporated "a combination of short-term and medium to long-term measures." His e-mail message noted further that ECSSD's "medium to long term adjustment measures" included "actions to reduce our fixed costs, of which staff costs represent the largest portion." The e-mail message noted further that "this, in effect, means ... reducing the number of staff," and that ECSSD was "examining various means of achieving this," including voluntary departures supported by an "Early Out" separation

agreement or a Mutually Agreed Separation, which staff could discuss with their managers or the Sector Director.

15. Ultimately, the Applicant's position was one of several staff positions abolished pursuant to Staff Rule 7.01 ("Ending Employment"), paragraph 8.02(b).

16. On 24 November 2010 (at which time she had received only verbal notice of her redundancy), the Applicant requested peer review of the same claims that she continues to pursue here. After a hearing on 31 March 2011, at which six witnesses were heard, a Peer Review Services ("PRS") panel unanimously recommended that the Applicant's requests for relief be denied. In her Application to the Tribunal, the Applicant requests the Tribunal to order: (i) rescission of the Bank's redundancy decision as well as the Applicant's reinstatement to her prior position or a position similar to her prior position; (ii) submission of a meaningful work program upon her reinstatement and further training, if necessary; (iii) rescission of the 2010 OPE and revision of the OPE to reflect fairly the actual work environment in which the Applicant was forced to work during that period, e.g. without a Results Agreement and work program in place; (iv) payment of one year salary as compensation for the Applicant's moral injury and personal distress, as well as harm to professional and personal life and reputation due to the Bank's failures and due process violations; (v) any other relief deemed fair and appropriate by the Tribunal; and (vi) \$35,214.69 in legal fees and costs.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Inadequacy of the Applicant's Work Program

17. The Applicant contends that she did not have an adequate work program because of the Bank's lack of due care and proper managerial attention to her professional growth and development as a junior staff member.

18. The Bank responds, in essence, that the Applicant's difficulty in securing a good work program is attributable to her own performance problems.

19. While it is within the discretion of the Bank to decide upon a staff member's work program, this does not mean a series of haphazard *ad hoc* tasks. (*Visser*, Decision No. 217 [2000], paras. 47 and 54, *Barnes*, Decision No. 176 [1997], paras. 18-20, *Chhabra* (No. 3),

Decision No. 200 [1998], para. 16.) Failure to provide a work program promptly can leave staff without a clear understanding of their opportunities and responsibilities in the Bank. Therefore staff must be given appropriate guidance, commensurate with their seniority and experience. (*Barnes*, Decision No. 176 [1997], paras. 18, 20 and 29; *Visser*, paras. 47 and 54.)

20. In *Husain*, Decision No. 266 [2002], a case in which the staff member's position had also been abolished under Staff Rule 7.01, paragraph 8.02(b), the Tribunal held at para. 48 that

[h]aving created the position and invited the Applicant to apply for it, the Bank had an obligation to ensure that the position operated effectively and that the Applicant was assisted in developing an effective work program. ... If there were performance issues which prevented the position from working as intended, the Applicant ought to have been adequately informed of the problems and given an opportunity to deal with them. ... Even if the creation of the position had been a mistake, it was a mistake which ultimately left the Applicant without a job and which affected her career prospects.

21. In the present case, documents in evidence show that the following were consistently given as reasons for the Applicant's lack of a work program in ECSS1: the lack of a drive for results; presentation of an unsatisfactory level of drive for integration in the unit; a lack of initiative outside the primary area of her technical expertise; and a requirement for considerable hands-on supervision, support, and guidance with regard to tasks outside the area of nutrition, where she had previously developed expertise. The general perception was that the Applicant's performance and skills needed improvement in matters outside her area of technical expertise.

22. While the Bank has the duty of actively guiding staff members in the design of their work programs, this does not translate into a warrant of success. It is not the Bank's duty to expand the skills set of a staff member whose expertise is too narrow for the needs of the relevant unit. The duty of the Bank is to assist staff members in identifying and pursuing plausible opportunities. As the Tribunal put it in *Husain* (see paragraph 20 above), the Bank's obligation is to ensure that staff members are "assisted in developing an effective work program" – not to do it for them. In her written response before the PRS panel, the Sector Manager stated:

For more junior staff who are starting out, like [the Applicant], the Sector Manager's role is to help open doors for her to be able to join task teams and provide advice on how she can work effectively as a team member. A Manager can request TTLs to include particular staff into the team and offer suggestions, based on the junior staff's skills set, some tasks that they could help with. This I did for [the Applicant], enabling her to be included in four tasks managed by two TTLs: (i) supervision of the [Tajikistan Food Security and Seed Import Additional Financing Project ("EFSSIP")]; (ii) preparation of the additional financing for the TJ EFSSIP; (iii) preparation of the [Tajikistan Public Employment for Sustainable Agriculture and Water Management Project ("PAMP")], and (iv) [Europe and Central Asia Region ("ECA")] Food Safety [Analytic and Advisory Activities ("AAA")].

However, once [the Applicant] joined the team, it becomes her responsibility to agree with the TTL her deliverables. It is up to her to ensure that the output she produces meet TTL standards. As is the normal process in integrating into Bank work, my expectation was that [the Applicant] would become a valued and indispensable member of these teams and her work in these tasks will expand rapidly. Instead, she has faced difficulties in meeting the TTLs standards and her work program has diminished instead of expanding.

As I have explained to [the Applicant] on several occasions, as a Manager, I could not personally hand her work to do, but I could help create the environment for her to find work. Having 45 weeks of work is not an entitlement. It is up to the staff to put together a work program. As the Bank is a market place for services, she would need to compete for work in teams. In the end, the responsibility falls on her to agree with the TTL on her output and to deliver it to TTL expectations. Many opportunities were provided to her, but it is actually her inability to capitalize on these opportunities that is the source of her problems with her own work program.

23. Staff members have every incentive to be proactive in politely insisting on joint discussions with managers with respect to their work programs. In the present case, the Applicant relies on communications with her colleagues to show that she made requests for more extensive discussion of her work plan. For example, she relies on an e-mail message to one TTL, Mr. X, in March 2008 as evidence of her initiative in seeking to work in the Tajikistan EFSSIP, and making the point that this was long before the Sector Manager's arrival – whereas that e-mail message simply asked Mr. X to keep the Applicant informed, to which Mr. X merely responded "The new project idea is off." In fact, the Applicant was

not involved in EFSSIP until March 2009, that is to say *after* the Sector Manager's arrival on the scene.

24. On another occasion, the Applicant asserts that she "had been producing" a number of reports tracking trends in global food prices "since September 2008." The Applicant had in fact written only four of these reports, which had previously been written by another staff member until she retired in mid-January 2009. One of the Applicant's managers has written that the Applicant inexplicably, in March 2009, stopped working on these reports, which were said to be "a high profile, Bank-wide publication ... of great interest to ECSS1." The Applicant responds that a TTL "suggested" to her that food prices had been stabilized and that she might therefore discontinue the reports. In any case, no managers protested at the discontinuance of her reports.

25. It is true that the record shows that the Applicant wrote to different staff members, among them TTLs, enquiring about work possibilities in their teams, and that some other staff members and TTLs in other units expressed willingness to work with her and appreciation for her work in their teams and projects. However, in the view of the Tribunal the weight of the evidence does not support the Applicant's claim that the Bank's failure led to her inadequate work program. The Tribunal finds that the managers sought to assist her by taking steps to shore up her faltering portfolio of tasks, such as encouraging and facilitating the possibility of a nutrition-related assignment in the Human Development Sector, targeted career counseling, and the pursuit of Community Driven Development projects. The Applicant has argued that the assistance provided by her managers was neither adequate nor sincere, and that the Sector Manager did not want her to obtain the opportunities she deserved. The Tribunal is not convinced by her assertions. There is no legitimate basis on which to conclude that, although there was need for her services, managers and TTLs did not want to avail themselves of her contribution. The Applicant's claim is not well-founded.

The Applicant's 2010 OPE

26. The Applicant contends that her 2010 OPE was not fairly balanced; the "Partially Successful" ratings had no reasonable basis; no due process was followed as she was never directly or properly informed of perceptions of poor performance in any specific areas; nor was she given specific opportunities to improve.

27. The Bank responds that the Applicant's 2010 OPE had an objective and reasonable basis, was fair and balanced, and was respectful of due process.

28. The evaluation of a staff member's performance is in principle a matter within the Bank's discretion, subject to censure if it is arbitrary. The absence of a reasonable basis for adverse evaluation and performance ratings is evidence of arbitrariness. (*Desthuis-Francis*, Decision No. 315 [2004], paras. 19 and 23). The Tribunal has also found that "the failure of the Respondent to take into account a relevant fact which goes to the root of the assessment of the Applicant constitutes an abuse of discretion." (*Romain* (No. 2), Decision No. 164 [1997], para. 20); and that "a performance evaluation should deal with all relevant and significant facts, and should balance positive and negative factors in a manner which is fair to the person concerned. Positive aspects need to be given weight, and the weight given to factors must not be arbitrary or manifestly unreasonable." (*Lysy*, Decision No. 211 [1999], para. 68.)

29. The Applicant's 2010 OPE contained "Partially Successful" ratings for her "drive for results" and for two of her major key work program results, namely (i) the EFSSIP and PAMP projects and (ii) her "Support to Other Projects and Activities."

30. She received "Fully Successful" ratings regarding her remaining tasks and competencies. In her overall comments, after recognizing the Applicant's contribution to a Japan Social Development Fund ("JSDF") project and noting positive feedback of the team in relation to the Applicant's performance there, the Sector Manager made a series of unfavorable comments, as follows:

In working with these teams, [the Applicant,] however, faced significant difficulties in meeting the TTL's expectations in terms of the quality of assigned tasks. Because of the need for frequent multiple revisions of the work, the timeliness of the output was also adversely affected, often necessitating the need for another team member to complete the task. As a result, her work in these teams [has] concluded.

For the third year, [the Applicant] has faced difficulty in developing and sustaining a work program in the Unit in part due to the issues noted above. She has also not been as proactive as needed to develop a work program within and outside the Unit. In FY08 to FY10, her idle time amounted to 19 weeks, 33 weeks, and 27 weeks respectively. As this is not a sustainable work situation in the ARD unit, it will be important for [the Applicant] to actively explore employment opportunities in other regions

or other organizations where her interests and skills could be more fully utilized.

31. The Sector Manager has stated that she based her assessment of the Applicant's performance on the written comments of the feedback providers in the Applicant's OPE, combined with verbal feedback received during discussions with respective TTLs and other staff as well as her own review of the Applicant's performance. A review of the record shows that there was a combination of positive and negative feedback. The negative feedback which resulted in the "Partially Successful" ratings came mainly from the Applicant's TTLs in ECSS1 and acknowledged both the Applicant's issues of performance in relation to her operational work as well as the Applicant's tendency to focus on technical topics related to nutrition (a subject with which she was comfortable).

32. The record shows that other TTLs provided positive opinions of the Applicant's performance on the other tasks rated in the OPE, notably her contribution to ECSHD in the JSDF project, and the HD Regional Nutritional Report. In her overall comments in the OPE, the Sector Manager described both positive and negative aspects of the Applicant's performance. On the basis of the totality of the evidence in the record, the Tribunal finds that the less than positive evaluation of the Applicant's performance in her 2010 OPE had a reasonable and observable basis, and that the Sector Manager's substantive evaluations of the Applicant do not amount to an abuse of discretion.

33. However, the Tribunal considers that two procedural matters regarding the Applicant's 2010 OPE are worthy of comment. First, the Sector Manager based her evaluation of the Applicant's continuing difficulty in developing a work program for a period of three years in ECSS1 on negative aspects of performance that had been recorded only in the Applicant's 2010 OPE. The Applicant's previous OPEs had made no mention of the Applicant's failure to find a work program on the basis of performance. The Sector Manager's comment regarding the problems in the Applicant's career appears to have applied retroactively the Applicant's negative performance assessment noted in the 2010 OPE to earlier years when such an assessment had not been made. Viewed in isolation, this is contrary to the principles established in the Tribunal's jurisprudence. (*See, e.g., Prasad*, Decision No. 338 [2005], paras. 29-30, and *O*, Decision No. 337 [2005], para. 54.) Second, the record shows that completion of the Applicant's Results Agreement for the 2010 OPE was delayed. Paragraph 2.02(c) of Staff Rule 5.03 ("Performance Management Process") provides for the obligation of managers to establish, in consultation with a staff member,

the development priorities and results to be achieved by the staff member during the upcoming performance review period. In the Applicant's case, the preparation of such an agreement was first discussed in December 2009 (almost 9 months into the OPE year), but the record before the Tribunal shows that such agreement was not first established until March 2010 and formally finalized until June 2010 – for a performance review period that was to end on 30 June 2010. The Tribunal notes that while the Applicant had sent to the Sector Manager a draft of her work program, the Sector Manager responded with a one-month delay asking her to provide more details on her work output and more specific timetables for delivery of the tasks to the TTLs. Even if the Applicant's underemployment had contributed to this delay in completing the Results Agreement, as her Sector Manager alleged, it does not excuse the lack of responsiveness on the part of the Sector Manager on this issue. Any prejudice caused to the Applicant as a result of these deficiencies regarding the Applicant's 2010 OPE must, however, be viewed in the context of the Applicant's circumstances as set out in the record before the Tribunal.

The Redundancy Decision

34. The Applicant contends that the redundancy decision was flawed because it lacked a legal basis, did not serve any legitimate goal, and did not follow proper process.

35. The Bank responds that the redundancy decision was justified by a proper business rationale, served a legitimate goal and followed proper process.

36. The review of redundancy decisions by the Tribunal is limited to cases where there has been an abuse of discretion, such as where the decision is shown to be arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. Furthermore, redundancy decisions must be made in the interests of efficient administration. (*Harou*, Decision No. 273 [2002], para. 27, citing *Kahenzadeh*, Decision No. 166 [1997], para. 20; *Mahmoudi (No. 2)*, Decision No. 227 [2000], para. 24; *Yoon (No. 2)*, Decision No. 248 [2001], para. 28; *Husain*, Decision No. 266 [2002], para. 50.)

37. Staff Rule 7.01, paragraph 8.02(b) prescribes:

Employment may become redundant when the Bank Group determines in the interests of efficient administration, including the need to meet budgetary constraints, that ... [A] specific position or set of functions performed by an individual in an organizational unit must be abolished.

38. A draft of the Proposed Staff Severance dated 27 December 2010 provided the following reasons for the redundancy:

This is due to the limited work program of [the Applicant]. [She] joined the ECSSD ARD Unit in November 2007 and for the past three years, her work program has been limited in scope and volume; and there is limited room for expansion as there is already adequate coverage of ARD tasks by other ARD staff members at different levels. Currently, in HQ there are 2 Rural Development Specialists. [The Applicant] is one of them. The other Specialist has a recognized higher level of contribution; strong and broader technical skills; knowledge of EU [European Union] agricultural support policies and procedures; and serves as co-TTL for ARD projects and Implementation Completion and Results Reports (ICRs).

The Department's efforts to expand the use of [the Applicant's] narrow skills, such as in nutrition, in the work program in other Sector Units, have only generated about 4-6 weeks of cross support demand. As there is insufficient work to sustainably employ [the Applicant] as a full time Rural Development Specialist, the proposal is to abolish the position and, that the limited work be assumed by other Washington-based staff.

39. On 31 January 2011, the Applicant received a Notice of Redundancy dated 27 January 2011 from the Vice President of ECA informing her that the Applicant's employment had become redundant effective 1 February 2011. Ultimately, the key question in this case is whether the Applicant can show that her redundancy was illegitimate. If it was legitimate, the consequences of any shortcomings on the part of the Bank in assisting her in developing a work plan, or any unfairness in the assessments that went into her 2010 OPE, would be immaterial to the foreshortening of her career. Even truly able professionals face the unfortunate risk that their unit may no longer have the budget to maintain its contingent of posts, and that they therefore become victims of the hard fact of numbers. So even if the Applicant's work program had been more extensive, or if her OPE had been better, she was at risk – provided of course that the redundancy process was carried out properly.

40. Another preliminary observation is that the Applicant's complaint that the redundancy decision was improperly affected by perceptions of performance issues is misplaced. The Tribunal has clearly established the principle that the redundancy process cannot be used as a convenient substitute to terminate a staff member without giving him or her the benefit of the due process safeguards that apply to termination for defective

performance. In this case, however, the Applicant was not personally declared redundant in circumstances that suggest that she was individually targeted in this fashion. Rather, a number of posts were eliminated, and those identified for redundancy included her, notably in light of her level of inactivity. The idea that the Bank should somehow favor inactive staff members over active ones simply because the former's idleness has inevitably been observed, and prompted concerns about performance, would be perverse in an institution seeking to achieve cost-effectiveness in the accomplishment of its mission. While it is true that the Sector Manager at one point referred to the prospects of placing the Applicant on a Performance Improvement Plan, and the Bank has conceded that that remark was inappropriate, the Tribunal does not accept that this stray comment, in the context of a written summary of what appears to have been a constructive conversation about jointly developing a work program, could be viewed as a threat sufficient to suggest that the redundancy might be pretextual (as was the case, for example, in *Mahmoudi (No. 2)* and *Husain*). Certainly no such Plan was implemented, and the Tribunal does not consider that the redundancies of several positions in response to a severe budget cut can casually be viewed as an abuse of process intended to affect the particular case of the Applicant.

41. A final preliminary point concerns the applicability of paragraph 8.02(b). The Applicant contends that this paragraph should be understood as applying to reductions of single positions, whereas multiple redundancies should be dealt with under 8.02(d). This is incorrect; *Kahenzadeh*, Decision No. 166 [1997], *Yourougou*, Decision No. 367 [2007], and *Marshall*, Decision No. 226 [2000], for example, all involved multiple redundancies under 8.02(b). 8.02(d) relates to "reduction in the number of specific types or levels of positions," whereas in this case the budget cuts led to the elimination of a number of posts necessary to achieve the budget savings on the basis of relative lack of work programs and absence of prospects for future work *irrespective of category of positions*.

42. In sum, the redundancy decision cannot be viewed as having been devised to target the Applicant, nor to have been implemented on an improper factual basis. The only substantive issue is whether the process was in accordance with the Staff Rule.

43. In the current case, in view of the budget deficit in ECA, the Bank identified positions to be abolished on the basis of lack of current and future work programs and because the candidates' skills did not match the requirements of ECA. Posts were abolished under paragraph 8.02(b) above as specific functions performed by staff in their positions appeared to have diminished, thus resulting in lack of work programs. The

Tribunal finds that it has been shown that there was a legitimate rationale for the abolition of posts in ECSSD. As the Bank puts it, “no staff member in ECSSD – regardless of title, position, tenure or performance – was insulated from the difficult exercise.” The record is consistent with this assertion, and the Tribunal sees no evidence of improper motive against the Applicant in particular.

44. Nonetheless, the Applicant seeks to establish that the redundancy decision was abusive in that it occurred in a context where her personal performance was being put in doubt. The fact that a staff member has encountered performance issues does not prove that a redundancy process has been put in motion only to divert a performance problem onto an improper administrative track. Otherwise staff members with performance issues would, unsustainably, be given a privileged position whenever positions are eliminated.

45. It is true that the Tribunal has repeatedly held that the redundancy mechanism is not a tool that may be used to deal with performance problems, and has stated that “redundancy procedures are not appropriate mechanisms for addressing performance issues, as they do not provide procedural protection, nor enable staff to respond to accusations.” (*Husain*, para. 43; *de Raet*, Decision No. 85 [1989], para. 62.)

46. It is also true that performance issues were evidently not unconnected with the decision to abolish the Applicant’s post. The Sector Manager described the Applicant’s situation as follows:

She has been in the ARD unit for 3 years. Throughout this period, she faced considerable difficulty in finding work. Her recorded idle time amounted to 19 weeks in FY08, 33 weeks in FY09 and 27 weeks in FY10. These difficulties primarily stem from a skills mismatch and her inability to adapt and develop the skills needed in ARD operations.

The Applicant’s difficulty in finding a work program was tied to her “inability to adapt and develop the skills needed in ARD operations.”

47. The Sector Manager’s ratings of the Applicant’s performance, and her overall comments in the 2010 OPE, make it clear that the Applicant faced significant difficulties in meeting the expectations of TTLs in ECSS1, in terms of the assigned tasks and timeliness of output, which made them choose other team members to do the work. The Applicant’s

continuous underemployment was also explained by her performance problems; as a result, the option of separation and alternative employment was suggested in the OPE.

48. The essential principle established in the Tribunal's jurisprudence is that redundancy cannot be a cover for disregarding managerial responsibility to assist staff members in their career path or a pretext for denying staff the rights and protections afforded by the performance management process. In this case, the Applicant's obvious problem of underemployment clearly needed to be addressed, but that individual process was interrupted by the impersonal force of the broad budget cuts.

49. Finally, the Tribunal recalls that it ordered the Bank, over its strenuous objections, to allow the judges to verify the circumstances of the redundancy decisions by producing documentation of the process that led to the decision. Seeking to appraise her inferences by an *in camera* review of the records of internal management discussions leading to the decision, the Tribunal has found no evidence of anything but a general policy decision to deal with large budget deficits by reducing redundant staff in an objective and non-discriminatory manner.

50. On 7 September 2010, in an e-mail message to the Applicant, the Sector Manager discussed the possibility of separation from employment with the Bank, in light of the financial situation in the unit. On 29 October 2010, during a follow-up 2010 OPE discussion, the Sector Manager also suggested that in light of her proposed redundancy, the Applicant should review carefully the separation alternatives, including an "Early Out" or "Mutually Agreed Separation" package. On 11 November 2010, the ECSSD Sector Director sent an e-mail message to the Applicant explaining that unless she were able to secure a new position in the Bank, or accept the department's offer to fund a Development Assignment, separation would occur by 30 June 2011. He again discussed potential separation with the Applicant. At the end of November 2010, the Applicant found an opportunity to work for six months in the office of an Executive Director ("ED") of the Bank. Subsequently, an offer by the Sector Director, ECSSD, on 17 December 2010, to finance for six months the Applicant's work in the ED's office until 30 June 2011, during which the Applicant was expected to secure a permanent position in the ED's office or elsewhere in the Bank, was declined by the Applicant as it was clear that she would not be able to secure a permanent position in the ED's office.

51. Principle 7.1(b)(iii) of the Principles of Staff Employment provides that the Bank may terminate a staff member “when the [Bank] determine[s] that a position or positions are no longer necessary ... provided that no vacant position in the same type of appointment exists for which the [Bank] determine[s] that the staff member is eligible and has the required qualifications or for which he or she can be retrained in a reasonable period of time.” On 17 December 2010, Human Resources sent a formal proposal of redundancy for the Applicant’s position to the Human Resources Committee (“HRC”) of the ARD Sector Board along with the Applicant’s curriculum vitae and her last three OPEs. The HRC reviewed the Applicant’s proposed redundancy, and considered whether the Bank might have another position suitable for her, but did not find any available position in any of the regions or the anchor. Nor did the Health, Nutrition and Population Sector Board, which also reviewed the Applicant’s curriculum vitae succeed in this respect. The HRC cleared the position for redundancy on 22 December 2010. The proposal was then sent to the Severance Review Group for its review and approval. The ECA Vice President issued the Notice of Redundancy on 27 January 2011.

52. The Tribunal is satisfied that the process followed was in accordance with the applicable Staff Rules. The Applicant has not shown abuse of discretion on the part of the Bank at any stage of the process by which her position was selected for redundancy.

CONCLUDING DETERMINATION

53. The Tribunal finds that the Applicant’s claims that the Bank failed to meet its obligations regarding her work program, that the 2010 OPE was deficient in substance, and that the redundancy of her position was an abuse of discretion, are unsustainable. The Tribunal also finds that, in the circumstances of this case viewed as a whole, the procedural deficiencies noted in paragraph 33 above in the 2010 OPE are not of such consequence as to warrant the award of damages. The Tribunal will however order the Bank to contribute to the Applicant’s costs.

DECISION

1) The Bank shall contribute to the Applicant’s attorneys’ fees in the amount of \$15,000.

(2) All other claims are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Olufemi Elias

Olufemi Elias

Executive Secretary

At Washington, D.C., 1 October 2012