



**World Bank Administrative Tribunal**

**2013**

**Decision No. 475**

**CA,  
Applicant**

**v.**

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

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

**CA,  
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 20 August 2012. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 February 2013.
3. The Applicant challenges: (i) the Bank's 2011 decision not to select him for a Portfolio Manager position; (ii) the Bank's 2011 decision to renew his Term contract for only one year; and (iii) the Bank's 2012 decision not to renew his Term contract.

**FACTUAL BACKGROUND**

4. On 26 April 2006, the Bank offered the Applicant a two-year Term appointment as an Investment Analyst, Level GE. The Letter of Appointment stated, in relevant part:

Your appointment will terminate at the end of this two-year period unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of the appointment.
5. The Applicant accepted the appointment on 22 May 2006. On 10 July 2006, he began working in the Quantitative Strategies, Risk and Analytics Department ("QRA") of the Bank's Treasury Vice Presidency ("Treasury").
6. Although he was assigned to QRA, the Applicant also worked on projects involving other Treasury departments, such as the Investment Management Department ("IMD"), Capital

Markets Department (“CMD”), and Sovereign Investments Partnerships Department (“SIP”). A manager in QRA, and Mr. JG, the Director of QRA, served as the Applicant’s managers.

7. The Applicant’s managers were satisfied with the Applicant’s performance and in June 2007, at the end of his one-year probationary period, they confirmed his Term appointment. Given his good performance, they also promoted him to the position of Investment Officer, Level GF, effective 1 July 2007.

8. A year later, in May 2008, as the Applicant’s Term appointment approached its end, his managers extended his contract for two more years, i.e. until July 2010. According to Mr. JG, the Applicant’s “contract was extended for two years rather than converted to open-ended at the time because he was still in the process of learning the business and had not yet become a central part of the core strategic asset allocation work of the team.”

9. In September 2009, the Vice President of Treasury appointed Mr. JG as the Director of the Pension and Endowments Department (“PEN”). At the Vice President’s request, Mr. JG agreed to also serve as the Acting Director of QRA until a new director was appointed in that department.

10. The Applicant continued to work in QRA. According to the Bank, during much of the Applicant’s tenure, QRA increasingly focused on its asset allocation with external clients. The Applicant’s managers therefore advised him to be more involved in “QRA’s core strategic asset allocation work agenda, the unit for which he was hired.” Notwithstanding this, the Bank states that the Applicant wanted to be involved in other areas of work.

11. As the Applicant’s contract was coming to an end in summer 2010, Mr. JG, who had remained the Acting Director of QRA, extended his contract for one year, i.e. until July 2011. The Bank states that Mr. JG extended the contract for a year “because he wanted to give [the Applicant] some certainty about his position, while leaving the [incoming] QRA Director the flexibility to make business decisions about the direction of the team once the Director was on board.”

12. Effective May 2010, the Applicant’s title was changed to “Investment Strategist/Asset Allocation and Quantitative Strategies.” He remained assigned to QRA at Level GF. According to the Bank, the title change reflected the area on which his QRA managers wanted him to focus, namely asset allocation.

13. In August 2010, Mr. RG became the Director of QRA.

14. From August 2010 to May 2011, the Applicant was part of a unit in QRA with responsibilities that included asset allocation studies, quantitative strategies, and financial modeling. The Bank states that the asset allocation work with external clients put the greatest demands on QRA and, accordingly, required a large and growing percentage of QRA's time. According to the Bank, the Applicant, however, "spent much of his time in a narrower role supporting primarily one set of investors in IMD." The Applicant rejects this, claiming that he was recognized as "arguably the most versatile staff in QRA."

15. In the meantime, given his interest in IMD, the Applicant applied for a Portfolio Manager position, Level GF, in IMD in December 2010. He was interviewed for the position, but was not ultimately selected and was so informed in April 2011.

16. In May 2011, as the Applicant's contract was coming to an end, Mr. RG, the Director of QRA, extended the Applicant's contract for one year, i.e. until July 2012. According to the Bank, Mr. RG made this extension for the following reasons: (i) to avoid any discontinuity in the work the Applicant was doing in IMD; and (ii) to give the Applicant an opportunity to demonstrate the ability to perform a wider set of tasks in the broader team, as he had been advised to do.

17. In mid-2011, a new Vice President for Treasury was appointed and set new priorities for Treasury.

18. In January 2012, Mr. RG left QRA. Mr. AR became the Acting Director of QRA and was confirmed as Director in May 2012. He was tasked with reorganizing QRA, including its staff.

19. On 29 March 2012, the Applicant was informed that his Term contract would not be renewed because, according to the Bank, there was no ongoing business need in QRA to justify renewing the contract. His contract with the Bank accordingly ended on 6 July 2012.

20. In the meantime, on 11 July 2011, the Applicant filed a Request for Review with Peer Review Services ("PRS") challenging the Bank's decision not to select him for the Portfolio Manager position. On 22 August 2011, he also challenged before PRS the Bank's 2011 decision to renew his contract only for one year.

21. In March and April 2012, PRS recommended that both requests for relief be denied. The Bank accepted these recommendations.

22. On 20 August 2012, the Applicant filed this Application challenging: (i) the Bank's 2011 decision not to select him for the Portfolio Manager position; (ii) the Bank's 2011 decision to renew his contract for one year only; and (iii) the Bank's 2012 decision not to renew his contract. As remedies, the Applicant seeks reinstatement, damages, and attorneys' costs.

### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

#### *The Bank's non-selection of the Applicant for the Portfolio Manager position*

23. The relevant facts relating to the Bank's decision are as follows. In November 2010, IMD advertised the position of Portfolio Manager, Level GF (Job No. 102264). The Applicant was one of seven candidates short-listed and invited to interview for the position. A five-member interview panel found the Applicant and another internal candidate (Mr. X) to be qualified for the position, and the Applicant to be "the best fit for the job."

24. On 25 January 2011, the chair of the interview panel submitted a report to the hiring manager, Mr. MB, the Director of IMD. In a cover note, the chair summarized the assessment of the interview panel as follows:

An internal candidate, [the Applicant] was near unanimously perceived as the best fit for the job and therefore selected by the panel. A very close second was also an internal candidate, [Mr. X]. Hat tip to QRA who managed to field the best contenders.

The panel felt that special mention should be made regarding [Mr. X] whose qualifications were not necessarily inferior to the selected candidate but whose best potential probably resided in a different role, one less focused on portfolio management/maintenance and trouble shooting and more geared to trade idea or model generation, or even asset allocation. [Mr. X] likes to trade equity and equity vol. in his own PA and in fact builds his own trading programs. He could make great contributions to a relative value group if there should be one, or if we continue pursuing in TRE an equity product he certainly would be an asset to the initiative.

Of course, the ideal outcome would be to allow us to hire them both.

25. After considering the interview panel's report and additional feedback he received on the top two candidates, the hiring manager decided to select Mr. X for the position. The Applicant was informed of this on 12 April 2011.

26. The Applicant argues that the decision not to select him for the position was arbitrary, and followed an unfair and improper procedure. The Applicant notes that the Director of IMD ignored the panel's recommendation and undertook his own investigation. In the Applicant's view, the Director acted improperly when he contacted the other Team Heads in IMD for their opinions on the two top candidates, and when he solicited references from the Applicant's former and current colleagues and supervisors. In the Applicant's view, the Director engaged in this further investigation to find some justification for not appointing him.

27. The Applicant argues that the Bank has failed to produce any evidence to show that the Director routinely went through such a laborious hiring process in the case of other staff, and notes that no Bank guidelines require it. The Bank claims that the Applicant was not selected because some of his colleagues expressed doubts about his teamwork. This explanation, according to the Applicant, is not credible. The Applicant points out that he never received anything less than "Fully Satisfactory" ratings for his teamwork in his Overall Performance Evaluations ("OPEs"). The Bank answers that its decision not to select the Applicant had a reasonable basis and that proper procedure was followed.

28. The Tribunal has consistently held that selection decisions are discretionary decisions of the Bank. 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.

29. The Tribunal will first consider whether it was improper for the hiring manager to seek feedback from the Team Heads in IMD and to conduct reference checks on the top two candidates. The record is clear that the hiring manager sought additional feedback because the position required supporting different teams in IMD, and therefore in the hiring manager's view, the IMD Team Heads should have the opportunity to comment on the top candidates before the final decision. The hiring manager also considered that since both candidates were internal and were well known to colleagues of different teams in IMD, the Team Heads would be in a good

position to provide valuable feedback. In this context, the Tribunal holds that the hiring manager's action had a reasonable basis. The record also supports the Bank's assertion that it was standard practice in IMD for the hiring manager to undertake reference checks and it did not represent a departure from any established rules or practice of the Bank.

30. The next question for the Tribunal is whether the hiring manager's decision to select the candidate identified by the interview panel as the second most suitable, and not the Applicant, was an abuse of discretion. In appointing staff, hiring managers have a wide margin of discretion. The Tribunal has held that:

It is not for the Tribunal, in assessing the validity of the selection or non-selection of a staff member, to undertake its own examination of that staff member's record, or a criterion-by-criterion assessment of his or her qualifications. That is for the Bank to do in the first instance, subject to review by the Tribunal only for abuse of discretion. *Jassal*, Decision No. 100 [1991], para. 37.

31. The PRS Report shows that the hiring manager stated that he received the following feedback from the Team Heads of IMD on the Applicant and Mr. X:

The Team Heads provided [the hiring manager] with detailed feedback. According to the [hiring manager], they advised him that he should consider which candidate would be the "best fit" in the long term for IMD, not just the fit for the technical needs of the Libor team. They acknowledged that there may not be much difference between the candidates from a technical perspective. They felt, however, that [Mr. X] would be "a much better fit" in IMD and had greater potential to move into other roles in the future. In addition, they believed that [Mr. X] would be an important "bridge-builder" between the Libor team and the other teams in IMD, and thus was "highly desirable" in their view. In contrast, they believed that [the Applicant's] "personality and inter-personal skills made him a less capable team player" and consequentially less suitable for the position.

32. This feedback is consistent with the feedback the hiring manager received from the Applicant's colleagues. In a contemporaneous e-mail dated 24 March 2011, the Staff Relations Officer of Treasury, who conducted the reference checks in relation to the Applicant, provided a summary of the results to the hiring manager. She wrote:

Following our earlier conversation, below is a summary note on the references for [the Applicant].

[The Applicant] is bright, sharp and quite analytical. He has expressed interest in moving to IMD earlier. He could be useful as a trader given his nose for bargains

and could be a good fit in the front office. His technical skills are not the issue. He can deliver and with coaching and guidance, he could be a valuable trader. Feedback from his work on projects with other teams is quite positive.

There's always the risk of [the Applicant] concentrating too much on [his] own work and he is always encouraged to be part of the team. One reference indicated that he was not flexible but over time, he was able to adjust. He can be difficult to work with since he is critical and negative. He has been up front and indicated that he is happy to help on specific projects but not with collecting data and research. He felt that QRA work was less appealing and there's no value added. He is probably in the wrong team since 3 people tried to avoid working with him.

Three people hesitated when I posed the question, "would you hire him again?" Responses from two referees indicated that they would rather not since they don't want to spend time dealing with difficult people. One said that it depends on the position.

33. The record shows that in making his final decision, the hiring manager took into account: (i) the assessment of the interview panel; (ii) feedback from Team Heads in IMD; (iii) feedback from reference checks; and (iv) guidance from a Senior Human Resources Officer. The hiring manager stated that he "deliberated on these inputs carefully over several weeks, considering them in the context of the position's full requirements" and ultimately decided to select Mr. X. The PRS Report indicates that the hiring manager in his testimony before PRS provided the following justification for his ultimate selection:

[P]ortfolio managers in IMD have responsibility to transact billions of dollars of securities in the World's market, and can expose the Bank to significant financial and reputational risk. Candid communication and teamwork are critical to limit the risk of errors and mistakes. ... [H]e was presented with two candidates who were assessed as being technically qualified, and he determined that the safe decision was to avoid the risk that [the Applicant] may not either work well in teams or be accepted as a good fit for the department and select [Mr. X]. ... [T]he reference checks indicated that there was a risk that [the Applicant] would not work well in the team, and presented sufficient justification for his decision.

34. This sort of risk assessment in determining the most suitable candidate is plainly a prerogative of management. The Applicant has not provided any grounds for the Tribunal to set aside the exercise of this prerogative in this case. It is true that the interview panel identified the Applicant as the strongest candidate, but this alone is not a basis for impugning the decision of the hiring manager to appoint another candidate, especially one identified by the panel as a "very close" contender. The Tribunal finds no ground on which the hiring manager's decision may be set aside.



35. The Applicant argues that by not appointing him, the Bank violated Principle 4.1 of the Principles of Staff Employment, which states that the Bank must hire candidates “of the highest caliber appropriate to job requirements.” The Tribunal disagrees. Even though the Applicant was ranked first by the interview panel, the hiring manager had discretion to select a candidate found by the interview panel to be a very close contender. The hiring manager decided that Mr. X was the most suitable. Based on the record before it, the Tribunal does not find this decision to be an abuse of discretion.

*The Bank’s decision of 2011 to renew the Applicant’s contract for one year only*

36. In 2011, the Applicant continued to work in QRA under a Term contract. In May 2011, as the Applicant’s Term contract was due to expire in July, the then Director in QRA, Mr. RG, decided to extend the Applicant’s contract for a further year.

37. The Applicant argues that the decision to renew his contract for one year was arbitrary and discriminatory. The Bank answers that the decision was supported by a reasonable business rationale, followed proper procedure, and did not result in an abuse of discretion. According to the Bank, Mr. RG decided upon the extension for the following reasons: (i) to avoid any discontinuity in the work the Applicant was doing in IMD; and (ii) to give the Applicant an opportunity to demonstrate an ability to perform a wider set of tasks in QRA, as he was advised to do.

38. The Tribunal notes that neither the Staff Rules nor the Applicant’s contract with the Bank obliged the Bank to extend his contract. Nor was the Bank obliged to extend his contract for more than one year. Staff Rule 4.01, paragraph 6.01(a), states that: “A Term appointment may be extended for any period by the manager responsible for the position ... .”

39. The staffing needs of a unit are determined by management and the Tribunal does not interfere in such decisions unless abuse of discretion is apparent. Here, the record establishes a reasonable basis for management’s decision. Mr. RG, the Director of QRA and the Applicant’s manager in 2011, provides two reasons for his decision to offer the one year extension. First, the extension would avoid any discontinuity in the work the Applicant was doing for IMD during that time. The record supports this explanation. The Applicant himself acknowledges in his Application that during his tenure in the Bank, including in 2011, he worked for projects involving IMD.

40. The record is also consistent with the second reason provided by Mr. RG. Mr. JG, who was the Acting Vice President of Treasury in May 2011 and who also approved the one-year extension, explained the decision in a written submission before PRS as follows:

Mr. [RG's] decision to extend [the Applicant's] contract was in accordance with Staff Rules and was purely based on his assessment of business needs. ... [I]n the Spring of 2011, it was not clear to Mr. [RG] whether QRA would continue to have a complete work program for [the Applicant] in his narrow set of responsibilities but instead that he would have to demonstrate an ability to perform a wide set of tasks in the broader team. In particular, the broader team was lacking resources to deploy towards external client projects, which mainly entailed strategic asset allocation analyses for the external clients. Again, it is useful to note that [the Applicant's] previous supervisor gave him feedback several years prior on needing to develop his competency in this area as it was an area of growth and need for the team. Instead of letting [the Applicant's] contract lapse, Mr. [RG] wanted to give him the opportunity to show his aptitude and enthusiasm for engaging in other necessary work for QRA, in particular for the strategic asset allocation work for external client. ... Consequently, Mr. [RG] took the decision to extend [the Applicant's] contract for one year.

41. The Applicant's OPEs record the fact that his supervisors advised him to expand his areas of expertise in particular in the area of strategic asset allocation, which the Bank maintains was the core work for the unit for which he was hired. For instance, in the Applicant's 2009 OPE, his manager noted:

[The Applicant] has strong technical and modeling skills, and superior quantitative abilities, and has been able to effectively utilize them on a wide array of projects as mentioned before. It will be important going forward to achieve a finer balance between his participation in the group's core strategic asset allocation work agenda on the one hand versus contribution to a wide array of projects on the other. In essence, it would be desirable if [the Applicant's] participation in the group's core strategic asset allocation work can be expanded, both as it relates to external client engagement involving RAMP as well as internal fixed income portfolios.

42. Similarly in the Applicant's 2010 and 2011 OPEs, his managers urged him to expand his work in strategic asset allocation. In addition, in May 2010, his title was changed to "Investment Strategist/Asset Allocation and Quantitative Strategies," which reflected the area his QRA managers wanted him to focus most: asset allocation.

43. The record thus supports the Bank's assertion that there was a reasonable basis for Mr. RG's May 2011 decision to extend the Applicant's contract for only one year. The Director

determined that given the business needs of QRA at that time, he needed flexibility to see how best to use the Applicant's skills and also whether the Applicant could make a greater contribution in asset allocation. Based upon the record before it, the Tribunal finds no abuse of discretion.

44. The Applicant claims the one-year extension was discriminatory because the Bank treated him "differently from his colleagues; giving them more favorable term contracts, converting them to, or hiring them as, open-ended staff, and promoting them beyond the GF level." The Tribunal is not convinced that the Applicant was discriminated against. Matters of Term appointments, their extension or conversion to Open-Ended appointments, all depend on individual circumstances and the discretion of each manager in considering the business needs of his or her unit. Discrimination occurs when "staff who are in basically similar situations are treated differently." *Crevier*, Decision No. 205 [1999], para. 25. There is no convincing evidence of discrimination here. Rather, the record supports a business justification for the one-year extension in the Applicant's case. The record provides no support for the contention that QRA management demonstrated a discriminatory attitude towards the Applicant. He was promoted within one year of his service. Management also consistently recognized his contributions by providing him good OPE ratings, and has given him a performance award, known as a spot award. The Tribunal finds no trace of impermissible discriminatory treatment here.

*The Bank's 2012 decision not to renew the Applicant's contract*

45. In 2011 and 2012, the Treasury, including QRA, underwent management and organizational changes. In July 2011, a new Vice President joined the Treasury and set new priorities. In February 2012, Mr. AR became the Acting Director of QRA. The Bank explains that during this month, Mr. AR "presented a staffing plan and a corresponding budget request, for which incremental funding was not granted, for the FY13-FY15 ... ." The Bank further explains that:

Included in his staffing plan was the goal to rotate two staff members into FAB [Financial Advisory and Banking Department] to support the 9 mission weeks of strategic asset allocation work and the advisory work related to risk and performance. The plan also emphasized the need to rapidly address severe staffing deficiencies in the compliance, risk and performance groups.

46. The Applicant was considered for a rotation into FAB through a competitive process, along with two other candidates, but ultimately was not selected. On 29 March 2012, the Acting

Director of QRA informed the Applicant that: “Further to our discussion today, I am writing to confirm that your term contract will not be renewed [and] therefore your employment will cease on the 6 of July 2012.” The next day, the Applicant sent an e-mail message asking the Acting Director to provide him with the reasons for non-renewal. The Director replied the same day, stating: “As I mentioned yesterday, there is no ongoing business need that allows the Department to renew the contract. We have no intent to refill this position at this stage.” The Applicant’s contract accordingly ended on 6 July 2012.

47. The Applicant argues that the non-renewal was arbitrary because there was a business need for his services. The Applicant also claims that the non-renewal was retaliatory because the Bank declined to renew his contract after he had exercised his right to challenge the 2011 decision to renew his contract only for a year before PRS.

48. The Bank answers that his contract was not renewed because under the changed circumstances in Treasury and QRA, it became difficult to place the Applicant in an area of need for QRA. Specifically, the Bank articulates the following justification for not retaining the Applicant:

Increasingly, it became difficult to support a business need for [the Applicant] in QRA, considering that he was not chosen for the FAB rotation, the severe understaffing and need of permanent additional staff to support the operational work of the risk and performance team, the shift in priorities to risk management, and the IT renewal needs.

49. The Bank argues that there is no evidence of retaliation. The renewal decision rested with Mr. AR and he was not privy to the PRS deliberations, nor was he a party to the proceedings. He had no vested interest in the outcome of the Applicant’s appeals with PRS, and in such case had no reason to retaliate against the Applicant.

50. In *Rittner*, Decision No. 339 [2005], paras. 30-32, the Tribunal reiterated its jurisprudence governing the issue of non-extension of Term appointments:

The Tribunal has had several occasions in the past to consider claims by staff members serving on Fixed-Term, Term or Temporary appointments to have their appointments extended or regularized. In *Kopliku*, Decision No. 299 [2003], para. 9, the Tribunal explained the governing principles in the following manner:

The legal principles that govern this case have been well established in the jurisprudence of the Tribunal. A staff member

appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. Staff Rule 7.01, para. 3.01, states: “A staff member’s appointment shall expire on the completion of an appointment for a definite term, as specified in the staff member’s letter of appointment, or as otherwise amended.” As the Tribunal has held before, in *Mr. X*, Decision No. 16 [1984], para. 35: “A fixed-term contract is just what the expression says: it is a contract for a fixed period of time.” Accordingly, the Bank need not provide reasons for the non-reappointment of a person serving for a temporary and fixed term. “Absent unusual circumstances, the individual should be fully aware of the reason why his or her appointment does not continue beyond the stipulated date: because the parties so agreed and have stipulated to that effect in the employment contract.” *McKinney*, Decision No. 187 [1998], para. 10.

The applicable principle is that the Bank has discretionary authority to grant the holder of a Fixed-Term appointment a further contract. That discretionary authority to renew or not to renew a contract at the expiration of its predetermined date is not, however, absolute and unlimited; it may not be exercised in an arbitrary manner. (*Barnes*, Decision No. 176 [1997], para. 10.)

The nature of applicable limitations was indicated by the Tribunal in *Carter*, Decision No. 175 [1997], para. 15: the decision not to renew or extend a contract may not be based “on considerations unrelated to the functioning of the institution, such as racial discrimination.”

Another kind of restriction upon the Bank’s discretionary authority to renew or extend, or not, a Fixed-Term contract arises when circumstances are shown which reasonably warrant the inference by a staff member that the Bank in fact made a promise to extend or renew his or her appointment “either expressly or by unmistakable implication.”

51. The record does not show that the non-renewal of the Applicant’s contract was arbitrary, i.e. lacking a reasonable basis. The record is consistent with the fact that in 2011 and early 2012, new management came on board bringing in organizational changes and setting new priorities. The record includes an e-mail message of 9 November 2011 from the new Vice President to all Treasury staff setting out her vision for reorganization of Treasury, where she also noted that “once we determine the appropriate sizing needs for all of the groups in Treasury under this reorganization, I will lift the hiring freeze I had put into place so as to staff ourselves appropriately.” It was evident that staff changes were underway under this reorganization plan.

52. In February 2012, Mr. AR became the Acting Director of QRA. He needed to address his staffing needs and priorities in view of the new directions from the Vice President. As the Bank describes it: “Included in his staffing plan was the goal to rotate two staff members into FAB to support the 9 mission weeks of strategic asset allocation work and the advisory work related to risk and performance.”

53. The record includes a contemporaneous e-mail dated 19 March 2012 in which a Director in one of the departments in Treasury informed Mr. AR that they had considered three staff members including the Applicant for the “rotation into FAB” but decided to select only two candidates because they had “space for only two full time subject matter experts” and that the Applicant was not selected.

54. Given this context, the Acting Director of QRA concluded that there was no ongoing business need for the extension of the Applicant’s contract in QRA. The Tribunal finds that the record is consistent with the Director’s reason and finds no arbitrariness here.

55. In support of his claim, the Applicant relies on an e-mail from one of his colleagues, a staff member of IMD, to Mr. AR and to the Vice President of Treasury questioning the decision not to renew the Applicant’s contract. In that e-mail the IMD staff member advocated that the Applicant was “arguably the most versatile staff in QRA” and asserted that there was a “business need” for the Applicant’s services. The Bank discounts the significance of this e-mail, stating that the staff member of IMD in question “was the beneficiary of some of the projects [the Applicant] completed on behalf of IMD - a unit the Applicant had significant interest in.”

56. The Tribunal finds that the e-mail representing the personal view of a staff member of IMD, who was not part of QRA management, does not defeat the determination of QRA management. Mr. AR was responsible for determining the staffing needs of QRA and in the exercise of that managerial responsibility he came to the conclusion that there was no ongoing business need for the Applicant in QRA. The Applicant also refers to the facts that around the time his contract expired, QRA advertised for vacant positions, which in his view demonstrates there was a business need for someone with the Applicant’s skills and responsibilities. The Tribunal notes that the Applicant did not apply for any of these positions. On the record before it, the Tribunal finds no convincing evidence to conclude that the reason invoked by QRA managers for not retaining the Applicant was not genuine or bona fide.

57. The Applicant claims that the only explanation for his non-renewal is retaliation. He explains that after he initiated PRS proceedings in July and August of 2011, he met with his then Director, Mr. RG, on 5 January 2012. The Applicant adds that when the subject of PRS came up, the Director told him that: “I find it difficult to see how you can develop a productive working relationship with managers if you decide to, you know, essentially sue all of them.” The Applicant states that “Mr. [RG’s] retaliatory attitude was undoubtedly passed to his successor, Mr. [AR], who had been promoted by [RG] in 2010” and who ultimately made the decision declining to renew his contract.

58. The Tribunal notes that the Staff Rules prohibit retaliation against staff members who use the conflict resolution system (“CRS”). Under Staff Rule 3.00 such retaliation amounts to misconduct. Regarding proof of retaliation, the Tribunal has stated in *O*, Decision No. 337 [2005], para. 47, that:

The burden lies with an applicant to establish facts which bring his or her claim within the definition of retaliation under the Staff Rules. An applicant bears the onus of establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse action. A staff member’s subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation, which in essence is that the allegation of poor performance is a pretext to mask the improper motive.

59. The Tribunal has found that QRA management had a legitimate reason for not extending the Applicant’s contract. The Tribunal is not convinced that retaliation was the motivating factor, or a motivating factor, for the non-renewal of the contract. The Tribunal emphasizes that managers must not discourage staff members from resorting to CRS when differences arise. Therefore, the Director’s comment to the Applicant in January 2012 was ill-judged; but this comment does not, without more, establish retaliation, particularly in the absence of evidence that this disposition was shared by Mr. AR.

## DECISION

The Applicant’s claims are dismissed.

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

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, D. C., 13 February 2013