



World Bank Administrative Tribunal

2013

Decision No. 482

**CC,
Applicant**

v.

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

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

**CC,
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, Ahmed El-Kosheri, Andrew Burgess and Abdul G. Koroma.

2. The Application was received on 27 December 2012. The Applicant was represented by Nicolas C. Johnson of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 24 September 2013.

3. The Applicant challenges the Bank's decisions: (i) to abolish her position and to allow her term appointment to lapse; (ii) not to select her for the position of Manager, Total Compensation; and (iii) not to shortlist her for the positions of Manager, Corporate Units, and Director, Shared Services.

FACTUAL BACKGROUND

4. The Applicant had over 20 years of senior human resources management experience and had worked in senior human resources roles for leading organizations, including vice presidential roles in Sallie May and the Marriott International Corporation. Directly before joining the Bank, the Applicant served as Division Chief, Compensation and Benefits Policy Division, at the International Monetary Fund ("IMF"), an open-ended position she held for almost three years.

5. The Applicant was appointed to a four-year term appointment as Director, Employment Policy and Compensation (Level GI) at the Bank's Human Resources ("HR") Vice Presidency.

6. The Applicant's term commenced on 15 December 2008. She served as one of four Directors in HR, and at the time of the contested decisions, six managers reported directly to her. In her Overall Performance Evaluations ("OPEs"), she received very good reviews for her accomplishments and performance.

7. Starting in 2007, the Bank had decided to reform its HR function, in order to modernize it and enable it to meet better the challenges of the changing global economy and the evolving demands of its clients. Bank-wide staff surveys in 2009 and 2011, however, indicated considerable dissatisfaction with HR policies, procedures and services. It appeared that there was also considerable dissatisfaction on the part of staff within the HR Vice Presidency. In October 2011, a group of HR staff met with the Managing Director ("MD") for the HR Vice Presidency, the Vice President of Human Resources, ("HRSVP"), and the HR Directors. It was noted in the meeting that the HR function was perceived as ineffective by clients because of the lack of integration among the three pillars (Client Services; Employment Policy and Compensation; and Performance and Development). The poorly developed relationships and the low morale within HR were also noted. Subsequently, the MD hosted an HR townhall meeting which was followed by a survey by HR staff. It was recommended that the three pillars be disbanded and HR be reorganized.

8. The then HRSVP left the HR Vice Presidency on 1 January 2012. The Bank identified and offered the position to a new HRSVP, who assumed his position in March 2012.

REORGANIZATION OF THE HR VICE PRESIDENCY

9. HR reform was a priority for the new HRSVP. A paper titled “Project Charter” issued in April 2012 set out the business case for reorganization in HR and recognized that the 2007 reform had not produced the desired results. The paper proposed that the new objectives would be to align the organization and resources of HR with strategic priorities to ramp up efficiency and effectiveness of HR service delivery, while reinforcing line managers’ responsibility for people management. Account was to be taken of the \$2 million reduction in the Vice Presidency’s base budget in FY13.

10. The new HRSVP envisioned a three-pillar structure for HR in which services would be separated by function: HR Business Partners; HR Centers of Expertise; and HR Shared Services. Among other things, the HRSVP decided to remove the intermediate layer of Directors and have the managers report directly to him, in order to increase their individual engagement in and responsibility for the tasks assigned. The HRSVP sought and received the support of the MD and the Staff Association for his proposed reorganization.

11. On 15 May 2012, the HRSVP convened an HR townhall meeting to announce the proposed reorganization of the Vice Presidency. Before the townhall meeting, the HRSVP met with each of the affected individuals, including the Applicant, and gave them advance notice of the reorganization and its effect on their positions. At the meeting, attended by over 300 staff members and others via webcast, the HRSVP explained the rationale for the reorganization in a Power Point presentation setting out a “Case for Change.” He also stated that four Director, nine managerial and one advisor positions would be abolished and replaced by two Director positions and six managerial positions, all of which would be open to competitive recruitment. Nine managerial positions were left untouched and the incumbent staff was not affected. Of the fourteen positions that were to be abolished four were vacant or soon to be vacant. The following day the HRSVP confirmed to the Applicant by e-mail that her position would be abolished effective September 2012.

THE SHORTLISTING PROCESS FOR THE POST-REORGANIZATION POSITIONS

12. On 16 May 2012, the newly created HR managerial positions were advertised. The Applicant applied for three of the open positions: Director, Shared Services (Level GI); Manager, Total Compensation (Level GH); and Manager, Corporate Units (Level GH).

13. On 5 June 2012, a first Shortlisting Committee (“SLC”) was formed to review applications for the managerial positions. The SLC was made up of the Vice President for the Sustainable Development Network, as Chair, the Director of the World Bank Institute, and the Director of Strategy and Operations, Latin America and Caribbean (“LAC”). They were assisted by an HR Business Partner.

14. Initially, recruitment for the new positions was limited to internal candidates. However, the Bank also hired two executive search firms to assist in finding potential external candidates for the positions of Director, Shared Services, and Manager, Total Compensation.

15. The SLC’s shortlist in June 2012 shows that the Applicant was shortlisted for the positions of Manager, Corporate Units, and Manager, Total Compensation. By letter dated 11 June 2012, to which the shortlist was attached, the Chair of the SLC informed the HRSVP of the results of the SLC’s deliberations. She stated:

First, overall we did not believe the long list was sufficiently strong to give you the caliber of team you need and the diversity you seek. Secondly, we felt that you may want to interview with no position in mind those candidates who have been shortlisted for multiple positions as you will need to compose a team. Thirdly, for the critical position of Director, Strategy and Operations we didn’t believe any of the candidates had sufficient quality or would lend you the credibility in that position you need to succeed. As someone new to the institution you may want to look into Bank operations, across the Networks and Regions to highly qualified and motivated managers who will serve you well.

16. On 17 June 2012, the HRSVP announced to HR staff that he had decided to extend the search to the external market with the assistance of a search firm. He re-opened the internal process for an additional two weeks to allow additional staff to be included.

17. On 9 July 2012, a second SLC was formed. The SLC was made up of the Chair of the first SLC, as Chair, the Vice President of HR, International Finance Corporation (“IFC”), the Chair of the Staff Association, and the Director, LAC Regional Office, Operational Services. Two external search firms assisted with the recruitment for four positions.

18. The HRSVP had briefed the SLC as follows:

[A]ll new and previously submitted applications are to be reviewed

[A]ll candidates need to meet the selection criteria as listed in the job descriptions

[C]andidates can be considered for multiple positions, based on their experience

[C]andidates should have demonstrated managerial skills or demonstrated managerial potential if not currently managers

Criteria applicable to all nine positions include superb people skills, strong business acumen, team player and multicultural global experience.

19. The report of the second SLC was sent to the MD on 13 July 2012. The report shows that the SLC shortlisted four candidates – not including the Applicant – for the position of Manager, Corporate Units. For the position of Manager, Total Compensation, the second SLC shortlisted two internal candidates (the Applicant and Mr. A) and one external. For the position of Director, Shared Services, the second SLC did not shortlist any internal candidates as it believed that none was qualified for the position and that the necessary skill set should be sought outside the Bank. It was accordingly noted in the report that

[i]n addition to the internal pool, the SLC reviewed the applications submitted by the search firms and determined that while some of the proposed profiles were promising, the list was not complete and additional CVs would need to be included to support the selection process. The SLC

will communicate back once we have a proposed list of external candidates to add to the internal profiles.

20. On 13 July 2012, the Applicant was advised that she had been shortlisted for the position of Manager, Total Compensation. On 14 July 2012, the Applicant was notified by the HRSVP that she had not been shortlisted for either of the other two positions. She was informed that, while the SLC was impressed with her background and experience, they had concluded that other candidates' qualifications more closely matched the positions' requirements.

21. On 24 July 2012, having received additional applications from the search firm, the HR Business Partner sent to the members of the SLC additional names of external applicants for both the positions of Director, Shared Services, and Manager, Total Compensation, for clearance. On 1 August 2012, the HR Business Partner communicated the names of the new candidates to the MD, requesting her approval to add the identified candidates to the interview shortlist. She stated, *inter alia*:

As per my previous e-mail (pasted below), while there were no qualified internal applicants identified for the Shared Services Director, there are three candidates (2 internal and 1 external) who were short listed for the Total Compensation Manager job, including [the Applicant and Mr. A], and who will be included in the list of candidates to interview. Diversity has been a challenge. We partnered with two search firms to extend our reach to a global level to ensure we would gather interest from a diverse group of applicants. The reality of the business for Shared Services and Total Compensation is such that markets are limited to specific geographical areas. Our VP is committed to having a diverse management team in place and will take this aspect into consideration when reaching a decision on all nine vacancies.

22. The MD gave her approval.

THE INTERVIEW PROCESS FOR THE POSITION OF MANAGER, TOTAL COMPENSATION

23. On 8 and 11 August 2012, an interview panel consisting of the HRSVP, a senior official described by the Bank as Director, General Services Department, and the

Director, Investment Management, interviewed six candidates for the position of Manager, Total Compensation.

24. The Senior HR Recruitment Officer prepared a summary report of the interview panel's conclusions and assessments regarding each candidate. Regarding the Applicant, the interview summary states:

Currently Director of Compensation & Employment Policy at the World Bank, she has more than 30 years of HR experience in the IMF, Sallie Mae, Capital One, Veridian, Marriott, etc. She has held VP of HR and Head of Compensation & Benefits roles, in both private and public sectors. [The Applicant] holds BSBA and MBA degrees. [The Applicant] came across as articulate in her responses, but as not presenting new ideas. On a technical level she is not as hands-on as the other candidates. The Panel thought that despite her extensive experience they did not see her as innovative and were not convinced she could drive a change agenda. The consensus was that she could do the job but it would be in maintenance mode rather than leading or driving change.

25. Regarding Mr. A, then Manager, Benefits, the interview summary states:

Manager of Benefits at the World Bank, [Mr. A] has about 20 years of HR experience, mostly in senior Compensation & Benefits roles at the [Inter-American Development Bank (IADB)]. All his experience has been in the public sector (including information systems jobs at OAS, PAHO). [Mr. A] holds Masters in General Administration, MIS, and Public Policy. He played a key role in developing the Human Capital Strategy at the IADB, and co-designed its Total Rewards Framework. He came across as very strong technically, but also an effective and persuasive communicator, with well thought-through responses. They liked his low-key self-confidence and ability to tease out solutions to complex issues. His experience persuading the IADB Board to adopt change would serve him in good stead at the [World Bank]. Since his current job is his first formal management role (following Acting assignments at the IADB), the Panel thought it would be useful to get feedback on his management skills. They agreed that if he were not to be selected for the manager job, he should be retained in a Senior Technical role.

26. Having considered the interviewees, the HRSVP, as the hiring manager, selected Mr. A for the job of Manager, Total Compensation. His appointment was announced later in September 2012, and the announcements regarding the appointees for the other two positions were made also in September 2012.

27. On 7 September 2012, the HRSVP called the Applicant to meet with him personally. According to the Applicant, during this meeting, he informed her, among other things, that the selected candidate had more experience in international finance institutions than she had. He said that the Applicant had been at a higher level during her tenure at the Bank, had not been “hands on” in compensation work, and was an “HR generalist.” The Applicant states that she disagreed, and she suggested that the HRSVP study her CV again.

28. On 9 September 2012, the HRSVP wrote to the Applicant the following e-mail message stating, among other things:

As you know, I am required by Staff Rule 7.01, Ending Employment, to give you formal notice of the abolition of [your] position. Accordingly, your position will be abolished with effect from October 1, 2012. At that time the new HR Organisation team will become effective. I want to reiterate what I have said to you in our meetings. I understand fully your desire to obtain a position within the Bank Group, and I will support your efforts fully. I hope that you are successful. I also hope that you appreciate the importance of an effective HR reorganization to the Bank and the obligation I have to put in place a new HR Team as of October 1 as part of the objective.

29. On 11 September 2012, the Applicant submitted a letter to the HRSVP formally requesting from him reasons for his summary termination of her Bank career, and particularly for the basis underlying the decisions not to shortlist her for the posts of Director, Shared Services, and Manager, Corporate Units, and her non-selection for Manager, Total Compensation. The Applicant states that she received no response.

30. The Applicant decided to retain counsel and advised the HRSVP of this in a meeting with him in late September.

31. On 28 September 2012, after receiving a letter from her counsel, the HRSVP stated, *inter alia*, in an e-mail message to the Applicant of the same date:

I confirmed in an email to you on September 9, 2012 that your position as Director of Employment Policy and Compensation will be abolished with effect from October 1, 2012 as part of the HR reorganization. I announced to HR staff by email on September 13, 2012 that the new HR structure and reporting relationships will be effective on October 1, 2012. As a result of the abolition of your position as well as your non-selection for any of the new positions created as part of the HR restructuring, I confirm my earlier notice to you of my decision not to renew your Term appointment due to expire on December 14, 2012. While, as noted in your Letter of Appointment, a Term appointment is designed to expire on its own terms, I am extending your appointment to December 31, 2012. This additional time will result in your having a full three months of notice of non-renewal from October 1, 2012, during which time you will be granted Administrative Leave. You will be receiving a memo with additional details on the conditions of Administrative Leave. In order to assist with your job search and transition, you will not be expected to undertake any work assignments for the Bank Group during the period of your Administrative Leave. I have also offered you the services of an executive coach to assist you in the transition, coupled with outreach to other potential employers; these options will continue to be open to you during this period. Further, in line with your request, you are welcome to use your current office with access to Lotus Notes and the intranet until, as we have discussed, we are able to make other arrangements in the Bank Group premises.

32. On 15 October 2012, the HRSVP sought to place the Applicant in an office in a different Bank Group building, away from HR's main location. After a series of e-mail exchanges between the Applicant and the HR Business Partner in October and November 2012, the Bank acquiesced in the Applicant's objection to moving outside HR and the Applicant stayed in her office until the termination of her employment.

33. On 1 October 2012, the Bank consented to the Applicant's request to file an Application directly with the Tribunal. In her Application, filed on 27 December 2012, the Applicant requests the Tribunal to order: (i) rescission of the contested decisions and reinstatement with full back pay and benefits; (ii) restitution and moral damages in the amount of four years' salary, i.e. \$1,075,024.00 net of taxes, plus tax allowance; (iii) any other relief deemed fair and appropriate by the Tribunal; and (iv) attorneys' fees and costs in the amount of \$52,258.99.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

THE APPLICANT'S EXPECTATION THAT HER CONTRACT WOULD BE RENEWED

34. First, the Tribunal will consider the Applicant's claim that she had a legitimate expectation that her appointment would be renewed if she performed well, because assurances to this effect had been given to her by the Bank when she was first offered her term appointment. She states that she left her open-ended position at the IMF in reliance on such assurances.

35. The Tribunal has consistently held that a staff member appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. (*See e.g. Koplaku*, Decision No. 299 [2003], para. 9). This rule is consistent with Staff Rule 7.01, paragraph 3.01, which 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 held 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." Therefore, to sustain this first claim, the Applicant must establish "unusual circumstances" in her case.

36. In *Bigman*, Decision No. 209 [1999], the Tribunal considered the question of when assurances and promises that a fixed term appointment would be converted to regular given by a Bank authority would amount to "unusual circumstances." The Tribunal held that proof that the Bank made express and unambiguous promises that a fixed term appointment would be converted to a regular appointment amounted in the circumstances of that case to "unusual circumstances" sufficient to establish an enforceable obligation.

37. The Applicant seeks to rely on *Bigman* to support her claim that she had a legitimate expectation of extension or renewal of her term contract. The Applicant alleges that the former HRSVP, who was the hiring manager at the time of her

appointment and her immediate supervisor thereafter, had assured her that her position was part of a thoughtfully considered and well-planned human resources strategy and that the Applicant's skills were needed by the Bank for the long term. She also states that he gave her the compelling statistic as reported to the Human Resources Committee of the Executive Board that 87% of all term appointments are renewed at the Bank and that given her situation, his assurances and her acknowledged performance, she was expecting a long-term career at the Bank.

38. However, the former HRSVP's declaration of 2 April 2013 contradicts the Applicant's claims. In this declaration, made for the proceedings in this case, the former HRSVP states:

At no time during the hiring process or during [the Applicant's] term as the Director did I promise that her appointment as Director would be renewed, as long as her employment remained satisfactory. I would not have made such a representation because I knew that the business needs and the particular skillset of an individual needed in a particular position could change in the future. I also knew that any successor to the position of Vice President, Human Resources, could always reconsider the need for a Director of Employment Policy and Compensation, and may want to restructure the Vice Presidency.

I did represent to [the Applicant] that she was being hired to do employment, compensation and benefits work for the World Bank and there would likely be a need for these functions in the future. I therefore anticipated that the functions of the position [the Applicant] occupied would be needed by the Vice Presidency long term, but I never told her that she would be the one occupying the position.

39. In sum, the Tribunal does not find in the record any unequivocal promise of renewal of the Applicant's appointment by the HRSVP or any official of the Bank with the apparent authority to do so. The Applicant cannot therefore rely on *Bigman* where the existence of the promise was acknowledged by the Bank.

40. In the same vein, while there is no doubt that the Applicant's performance throughout her four-year term was good, as her OPEs and the laudatory comments in them by the former HRSVP show, the Applicant's performance alone without evidence

of assurances of extension or renewal of her contract cannot give rise to an expectation of such extension. As the Tribunal stated in *Kopliku*, Decision No. 299 [2003], para. 10:

[A]bsent such assurances on the part of the Bank, simply performing to an expected level of performance does not entitle a staff member on a Fixed-Term contract to renewal or extension. As the Tribunal concluded in *McKinney*, Decision No. 187 [1998], para. 16: “Whenever a person is initially employed by the Bank, it is assumed that his or her performance will prove to be satisfactory. Performing at that level cannot reasonably give rise to an expectation of greater employment rights than those expressly provided in the contract of employment.”

41. Her letter of appointment also confirms that “the World Bank has no obligation to extend the appointment, even if your performance is outstanding.”

42. Notwithstanding the foregoing, the Tribunal recalls that since its early jurisprudence it has ruled that the decision not to renew or extend a term contract is discretionary but not absolute and may not be exercised in an arbitrary manner or be based on factors unrelated to the functioning of the institution. (*See e.g. Carter*, Decision No. 175 [1997], para. 15; *Barnes*, Decision No. 176 [1997], para. 10.) Therefore, in order to ensure that there was no abuse of discretion, the Tribunal will review the decision not to renew the Applicant’s appointment as a result of the abolition of her position and her non-selection to any of the newly created positions.

ABOLITION OF THE APPLICANT’S POST

43. The Tribunal has recognized the discretionary nature of redundancy decisions and has ruled that the Bank’s powers in this respect are subject only to limited review by the Tribunal. It held in *Yoon (No 2)*, Decision No. 248 [2001], para. 28:

[T]he exercise of such discretion will not be overruled by the Tribunal unless it constitutes an abuse of discretion, being arbitrary, discriminatory or improperly motivated, or otherwise in violation of the Staff Rules, the Principles of Staff Employment or any element of due process. (*See Montasser*, Decision No. 156 [1997]; *Mahmoudi (No. 2)*, Decision No. 227 [2000]; *Lee*, Decision No. 241 [2001]). At the same time, however, it must

be recognized that it may be exceedingly difficult for a staff member to substantiate his or her allegation of arbitrariness or lack of fairness amounting to abuse of discretion. It is, therefore, incumbent on the Tribunal to require the strictest observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy. Otherwise, ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in “the interests of efficient administration.”

44. The Applicant claims that there was no legitimate business rationale for the reorganization and for the abolition of her post. She explains that she is not challenging the reorganization itself but rather the intentionally defective process and abuse of power by the HRSVP in implementing the reorganization.

45. After an examination of the record, the Tribunal finds that the HR reorganization was not an artifice and that there was a genuine business need for it. The Project Charter of April 2012 and the presentation given during the 15 May 2012 townhall making a “Case for Change” explain the rationale for the reorganization. The various surveys that the Bank has presented in its pleadings, including the October 2011 HRS Townhall Feedback Survey and the 2011 Staff Pulse Survey on Modernization corroborate the disappointment of both HR staff and clients with the HR function. It is evident that the reorganization was motivated by a desire to enhance the effectiveness of HR services supporting operations of the Bank and to respond to the pressing business needs to modernize the HR function. To achieve this objective, the new HRSVP envisioned a restructuring of HR to ensure greater connectivity between HR units, create clear accountability for core HR deliverables and flatten the existing management structure by removing the intermediate layer of Directors and having regional, network and corporate HR managers report directly to him. It appears that both the MD and the Staff Association shared his view. An inevitable consequence of the need to flatten the management structure was the elimination of the old managerial positions and the creation of new ones. The Tribunal finds that it was within the HRSVP’s discretion to decide which functions would be retained and which posts would be abolished to serve the objectives of the reorganization more efficiently.

46. The Applicant also claims that the abolition of her post was pretextual because the functions of her position were not abolished but simply retitled.

47. Staff Rule 7.01, Section 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.

48. An examination of the genuineness of abolition calls for a comparison of the positions before and after the reorganization. When posts are abolished, if new positions are created and some of the functions of the abolished positions continue in the new positions, the abolition would be considered genuine if the new positions are materially different from those abolished. (*See e.g. Arellano (No. 2)*, Decision 161 [1997], paras. 32-33; *Brannigan*, Decision No. 165 [1997], para. 23; *Husain*, Decision No. 266 [2002], para. 32.) In the current case, the record shows that, even though there are certain elements common to the positions before and after the reorganization, there are material differences between them. Most of the newly created positions are at the lower grade of Manager, with only two new Director positions. More importantly, it appears that the duties of the Applicant's position which, according to her, included Shared Services, Benefits and Compensation, appear to have been distributed to at least two other positions, namely Director, Shared Services and Manager, Total Compensation.

49. The Tribunal notes that the Applicant was allowed to apply for these new positions and was indeed shortlisted for one of them. However, like the applicant in *Arellano (No. 2)*, Decision No. 161 [1997], who had made a similar claim, the fact that the Applicant may possess the qualifications required for properly carrying out the responsibilities of the new positions is not conclusive in determining whether the new

positions are merely a continuation of the abolished ones. As the Tribunal also found in that case, at paragraph 34:

It will often be the case that some duties will be carried over from an abolished position to a newly created one, and that a staff member will be able to demonstrate the needed skills in the job application process. But that does not mean that the two positions are the same.

50. The Tribunal finds that the abolition of the Applicant's position was not pretextual.

51. The Applicant has also made the related claim that the abolition of her post was tainted by bias because of the HRSVP's hostility towards her and his determination "to get rid" of her from the very beginning. However, the Applicant was not the only staff member for whom the reorganization had adverse effects, and the positions of many other staff members were abolished for the creation of a new structure intended to serve better the objectives of the reorganization. The Applicant has not shown that she was unfairly targeted in this respect.

52. Taking all the circumstances into consideration, the Tribunal concludes that the Applicant has not shown that the Bank's decision to abolish her post was based on illicit reasons.

THE REDUNDANCY PROCESS AND THE APPLICABLE STAFF RULE

53. In its review of the HRSVP's decision to abolish the Applicant's post the Tribunal will next examine whether the applicable rules and procedures were followed. The Applicant asserts that there were many shortcomings in the process. She claims in particular that the reorganization was carried out in haste and in secrecy, without alternatives being considered, without respect for staff rights, and with a surprise announcement of the abolition of her position sprung on her at a moment's notice without any reference to the Staff Rules.

54. The record suggests that the reorganization was carried out with some urgency, and may well have been planned even before the HRSVP assumed his responsibilities in March 2012. He had sought the advice of the Advisor to the former HRSVP in January 2012 who had provided him with briefing materials. He had also met in February 2012 with a number of HR managers, World Bank senior management and Executive Directors. Notably, by mid-April 2012, and less than a month after the new HRSVP joined the Bank, the “Project Charter” paper made the case for the reorganization. By mid-May 2012, the HRSVP was ready to present his plan of the HR reorganization including the abolition of posts and the creation of the new positions. The Applicant may have been aware that the HRSVP intended to reorganize HR, but it appears that she had not been privy to any discussions and was not aware of the exact impact of the reorganization on her status before 15 May 2012 when she was informed orally that her position would be abolished.

55. The applicability of Staff Rule 7.01 (“Ending Employment”), Section 8 (“Redundant Employment”) is central in the determination of the Applicant’s claim that applicable rules and procedures were not followed. In *Garcia-Mujica*, Decision No. 192 [1998], para. 19, the Tribunal held:

Although Staff Rule 7.01 does not provide for a specific advance warning about the issuance of a notice of redundancy, a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work.

The Tribunal must bear this jurisprudence in mind in its consideration of Staff Rule 7.01.

56. The Applicant claims that her appointment was terminated as a result of the abolition of her post and not as a result of a simple expiry of the term of her contract and that therefore Staff Rule 7.01, Section 8, is applicable to her. The Bank responds that the provisions of this rule are not applicable to her because of her status as a term employee. The Bank further responds that, in the absence of a renewal, the Applicant’s appointment expired by its own terms, under Staff Rule 7.01, paragraph 3.01 (“Expiration of Term

Appointment”) of Section 3 (“End of Appointment”) and not because her position was abolished.

57. The record shows that the Applicant’s contract was not renewed because her employment had been declared redundant, as her position had been abolished and she was subsequently not selected to any of the newly created positions. The non-renewal was not simply a result of the expiry of her appointment. Indeed, a few months before the end of her original term appointment on 14 December 2012, the Applicant had stopped working in the position to which she had been hired because that position had been abolished with effect 1 October 2012. The Tribunal finds that, as the position that the Applicant had been hired to occupy under her letter of appointment had been abolished, the provisions of the Staff Rule governing redundant employment were applicable to her case. Staff Rule 7.01, paragraph 8.01 clearly states that Section 8 “applies ... to staff members holding Open-Ended, Term, Regular, or Local Staff Regular appointments.”

58. The significance of the application of Section 8 of Staff Rule 7.01 to the Applicant is two-fold. First, the Bank was under an obligation to observe the procedural guarantees set out in that Section regarding the redundancy of the Applicant’s employment, particularly as it related to the requirements of proper notice and notification of the redundancy. Secondly, it was obliged to comply with the provisions regarding the granting of severance payments and assistance in finding alternative employment. To the extent that the Bank did not meet such obligations, it failed to comply with the Applicant’s terms of appointment.

59. Regarding notice of redundancy, Staff Rule 7.01, paragraph 8.04 states:

Staff members will receive a written notice of redundancy. The notice will state that the staff member’s employment is redundant, and that unless the staff member is reassigned, the staff member’s employment will be terminated six months from the effective date of the notice of redundancy.

Paragraph 8.06 provides in pertinent part:

Following the effective date of the notice of redundancy, the Bank Group will assist redundant staff in seeking another position within the Bank Group by providing access to MyJobWorld and to a job search specialist. Staff are responsible for applying to existing vacancies in MyJobWorld. Placement also may be offered in a vacant lower level job in accordance with Rule 5.06. "Assignment to Lower Level Positions."

60. Furthermore, the Tribunal has found in its jurisprudence:

The basic elements of due process and the rule of law mandate that a staff member be clearly notified of the exact and correct Staff Rule under which his or her employment is being terminated. That the Bank must invoke the proper subdivision of the Staff Rule dealing with redundancy is not a mere technicality since each of the situations covered by the different subdivisions may have different procedural and substantive requirements. (*See Arellano (No. 2)*, Decision No. 161 [1997], para. 31.) In the absence of such notification, the staff member would indeed be put at a great disadvantage in preparing her defense and presenting her case to her managers and ultimately through the Bank's grievance system. (*Yoon (No. 2)*, Decision No. 248 [2001], para. 37.)

61. The record shows that the Applicant received written notification of the abolition of her post on three occasions. The first occasion was on 16 May 2012, when the HRSVP informed the Applicant of the abolition of her post. This first letter only stated "that the position of Director of Employment Policy and Compensation that you are currently filling is to be abolished effective from September 2012" and that in this regard "I and the team here will personally assist you over the coming weeks and months." The Tribunal finds that this communication was lacking in specificity and did not fulfill the requirements set under paragraph 8.04; it did not make reference to either a possible reassignment or termination, as required by paragraph 8.04 of the Staff Rule, nor to any redundancy benefits under Section 8. It also contained an erroneous reference as to the exact time that the abolition of the Applicant's post was to take effect.

62. The second occasion was on 9 September 2012, following the decisions not to select her for the posts for which she had applied. The HRSVP had sent the Applicant an e-mail message in which he referred to discussions that he had with the Applicant and his

intention to support her in seeking employment opportunities in the future urging her to avail herself of the resources that the Bank was making available to her to assist her search for available vacancies. He stated that as he was required to give her formal notice of the abolition of her post under Staff Rule 7.01, he was informing her that the position “will be abolished with effect from October 1, 2012.” While this notice referred to Staff Rule 7.01 and stated the exact date on which the Applicant’s position would be abolished, it made no reference to paragraph 8.04. It only referred to the expiry of the Applicant’s term contract in December, stating only that she should expect to be paid until the end of her contract.

63. The third occasion was on 28 September 2012, when the HRSVP reiterated the content of his previous communications to the Applicant. He informed her by e-mail that her term appointment would be extended until 31 December 2012, in order to give her a full three months’ notice of non-renewal from 1 October 2012 during which time she would be placed on Administrative Leave. In a memorandum of the same date to the Applicant, the HRSVP informed her that she would continue to receive full pay and benefits while on administrative leave during which she was not expected to undertake any work, to allow her to use all of her time for her job search and for preparation of her transition. This notice again failed to refer to Section 8, and the HRSVP continued to treat the Applicant’s situation as one of expiration of her term appointment and not of abolition of post. Any offer on his part was presented as an *ex gratia* offer and not as an obligation of the Bank under that Section of the Staff Rule.

64. The Tribunal finds that as the Bank and the HRSVP did not treat the Applicant’s case as a redundancy and did not apply the provisions of Staff Rule 7.01, Section 8, proper procedure was not followed. This *détournement de procedure* caused prejudice to the Applicant in two respects. First, she was deprived of the severance payments that would have been due to her. Paragraph 8.08 (“Severance Payments”) prescribes:

Staff members whose appointments are terminated on grounds of redundancy will be entitled to severance payments equal to the larger of:

Three months' net pay; or
One month net pay for each complete year of continuous service, up to a maximum of 18 years.

Severance payments may not exceed the maximum annual net salary for the level GH, or *net pay for the number of months remaining* until a staff member's mandatory retirement date, or *until the expiration of the staff member's appointment*. In this Section, the term "continuous service" means continuous service in one or more of the following appointment types: Open-Ended, Term, Regular, Fixed-Term, Local Staff Regular, or Local Staff Fixed-Term. (Emphasis added.)

65. Under this provision, the Applicant should have received three months' net pay in severance payments since, although she had served for nearly four years, only three months remained between the abolition of her post and the expiry of her term appointment as extended by the HRSVP.

66. Secondly, under paragraphs 8.04 and 8.06, quoted above at paragraph 59, the Applicant would have also received job search assistance for six months. The Tribunal, however, finds that the three-month limitation on the severance payments under paragraph 8.08 discussed above is also applicable to the provision of job placement assistance under paragraph 8.06. Accordingly, because there was a three-month period between the effective date of the abolition of the Applicant's post and the expiry of her contract as extended, the Tribunal finds that the Bank had an obligation to provide such job placement assistance to the Applicant under paragraph 8.06 for three months.

67. The question arises whether the HRSVP did offer such job placement assistance, even if he did not consider that he was under an obligation to do so. The Tribunal held in *Arellano (No. 2)*, para. 42, that

[t]he obligation of the Respondent in this respect ... is not to reassign staff members whose employment was declared redundant ... but to try genuinely to find such staff members alternative positions for which they are qualified. It is an obligation to make an effort; it is not an obligation to ensure the success of such effort.

68. A review of the record shows that while the HRSVP's notifications discuss the provision of job search assistance to the Applicant and his readiness to do so, it is less clear that the Bank tried genuinely to find the Applicant an alternative position, particularly as it was under the impression that Section 8 was not applicable to her and that therefore it did not have such an obligation. However, the record shows that the HRSVP had given the Applicant full three months' notice to allow her to search for a position and had offered the Applicant the use of an executive coach to assist her with the job search (which would appear to be similar to the assistance by a job search specialist referred to in paragraph 8.06) but the Applicant did not respond to his offer. The Applicant also appears to have had access to advertisement of vacancies in the Job World and other HR Resources as well as access to her office until the end of her employment.

69. Regarding the possibility of re-training under paragraph 8.07 of the Staff Rule or outplacement assistance, the record shows that the HRSVP offered to contact other international financial institutions and to give the Applicant financial assistance for three months in the event she found an opportunity to be employed in these organizations, but the Applicant declined his offer. Accordingly, when awarding the Applicant compensation for the violations of process with regard to notice and notification, as well as for not providing her with the payments and other assistance under Section 8, and in addition to the severance payments in the amount of three months' net pay, the Tribunal will take into account the efforts that the Bank made to assist her after the abolition of her post.

THE SELECTION PROCESS FOLLOWING THE REORGANIZATION

70. The Tribunal will next examine the Applicant's challenges of the decision not to shortlist her for the positions of Manager, Corporate Units, and, Director, Shared Services, and the decision not to select her for the position of Manager, Total Compensation, following the abolition of her post.

71. Regarding the scope of its review of the Bank's decisions to select or not select a candidate to a particular position, the Tribunal held in *Riddell*, Decision No. 255 [2001], para. 23, citing *Jassal*, Decision No. 100 [1991], para. 30:

[N]o 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.

The shortlisting process

72. The Applicant has claimed, among other things, that the shortlisting process following the HR Reorganization was not fair and transparent and that it was conducted in haste. She states that no documents of record provide any rationale for the shortlisting decisions. In addition, she claims that the decisions not to shortlist her for two of the positions to which she had applied and for which she was fully qualified were skewed by bias, based on the desire to remove her from HR.

73. With regard to the inclusion of candidates in a shortlist on substantive grounds, the Tribunal found in *Riddell*, Decision No. 255 [2001], para. 30:

The imposition of rigorous selection criteria ... did not in and of itself amount to an abuse of discretion, as this was consistent with the Bank's obligation under Principle 4.1 of the Principles of Staff Employment "to seek to attract staff members of the highest caliber appropriate to job requirements...." The Tribunal, in a previous case, held that this Principle and Principle 2.1(d) ... justify the conclusion that "the Bank acts reasonably when it takes into consideration, in managing staff appointments ... [the] relative qualifications [of staff members] when weighed one against the other." (*Fernandes*, Decision No. 90 [1990], para. 29.)

74. Furthermore in *AH*, Decision No. 401 [2009], para 40, the Tribunal found that

[A] staff member's qualifications of themselves are not sufficient to require being short-listed. Short-listing is a competitive process. Ordinarily several qualified applicants apply for a job, but only a handful

are interviewed. That does not mean that the other candidates are not qualified, only that the ones selected are better fits for a particular position.

75. With regard to the selection process, the Tribunal's well-established jurisprudence has often upheld the need to observe the principles of objectivity, transparency, rigor, diversity and fairness. (*See e.g. Jassal*, Decision No. 100 [1991]; *Riddell*, Decision No. 255 [2001]; *Hitch*, Decision No. 344 [2005]; *Perea*, Decision No. 326 [2004]). The Tribunal held in *BK*, Decision No. 444 [2010] at paragraph 46:

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

Create a short-list of candidates considered to be the best qualified to put forward for interviews. Shortlisting is screening a long list of candidates against the selection criteria for the job. The short list of candidates should also represent the diversity and fungibility requirements of the sector. ... Shortlisting results must be documented.

76. The Tribunal further found in *BK* at paragraph 56, regarding the shortlisting process:

These objectives in recruitment are realized if the Bank makes its shortlisting process uniform with clear guidelines and when the composition of a shortlisting committee is diverse. *Furthermore, staff members' confidence in the shortlisting process will be enhanced by the Bank's proper and contemporaneous documentation of the deliberations of the SLC in as much detail as practicable. Contemporaneous and detailed documentation of SLC deliberations is also a guarantee of a transparent, sound and fair recruitment process.* (Emphasis added.)

77. In the present case, the Tribunal finds that the record before it does not suggest any reason to conclude that the process as conducted by the first and second SLCs, both of which consisted of senior managers from different departments in the Bank, was not in

accordance with the principles of objectivity, rigor, transparency, diversity and fairness set out in its jurisprudence on the shortlisting process.

78. The observance of these principles in the current case is shown, first, by the fact that the second SLC applied the objective criteria given to it by the HRSVP when shortlisting the candidates and preparing its reports. It reviewed, as required, the CVs, OPEs and applications of the internal candidates and the applications and CVs of the external candidates. The members of the SLC provided comments and made changes to the reports to reflect accurately their deliberations. Notably, in its final report to the MD of 1 August 2012, the SLC expressed reservations as to the suitability, scope of professional experience and effectiveness of some shortlisted candidates identified by the external search firms, while noting at the same time the high caliber of their technical competence and professional experience.

79. Second, the record shows that both SLCs insisted on receiving additional applications and on expanding the search in order to ensure the shortlisting of the most qualified candidates.

80. Third, both SLCs produced well-reasoned, contemporaneous and sufficiently detailed reports with their findings and recommendations. The second SLC documented its deliberations in contemporaneous communications produced for the Tribunal's review. Matrices were also used by the SLCs. While questions are raised as to their origin and the necessary level of detail in comparing every applicant against the selection criteria, the two contemporaneous and cogent reports of the second SLC and the documented internal communications among its members remedy this defect. The Tribunal will therefore attribute weight to the matrices only to the extent that they supplement information consistent with that in the reports of the second SLC.

81. Additionally, while the Applicant complains that preference should have been given to internal candidates in the shortlisting process, the record shows that both SLCs

first shortlisted internal candidates and then expanded their search to add external candidates.

82. Lastly, and contrary to the Applicant's claim that the Bank refused to give her written reasons for not shortlisting her, the record shows that the Bank did give her a written reason in two e-mail messages from the HRSVP dated 14 July 2012. This reason was "that other candidates' qualifications more closely match the position's requirements."

83. On the substance, the Applicant's main claim is that she was fully qualified for the two positions for which she was not shortlisted. In this respect, the Tribunal recalls its ruling in *Riddell*, citing *Fernandes*, Decision No. 90 [1990], para. 29 and *AH*, Decision No. 401 [2009], para. 40 (see paragraphs 73-74 above).

84. Regarding the position of Director, Shared Services, the Applicant contends that she was qualified for that position because in her post as Director she had already overseen the shared services functions. The Bank replies that a successful candidate was expected to lead the automation of the transactional and high volume HR services, oversee the design and implementation of a new service delivery model focused on simplifying and standardizing HR processes and services, and manage the day to day offshoring of services. It points out that the SLC felt that no internal candidate fit that profile.

85. The record shows that the Applicant was indeed performing shared services functions and her perspective on such functions had been acknowledged by the HRSVP. However, the Tribunal also finds that the Bank's explanation is supported by the matrix of the first SLC, which had noted regarding all the internal applicants for that position, that they were: "Not qualified – Need to have 'done it in the real world'... Very specialized skills set not available in-house." The matrix produced by the second SLC shows simply that a question mark had been placed next to the Applicant's name, suggesting that she had been considered, but the letter "N" next to her name signified that

she should not be shortlisted. The Bank's view is also supported by the reports of the second SLC where it was stated that there were no qualified internal applicants identified for the Shared Services Director position. The Tribunal notes in this respect that, even if the Applicant was qualified to perform shared services functions, there could have been candidates who were a better fit for that position. It is within the management's discretion to seek out the best qualified candidates to ensure that the best candidate is selected.

86. Regarding the position of Manager, Corporate Units, the Applicant contends that she was qualified because she had strong relationships with the corporate units and the Board of Executive Directors and was also well-versed in corporate HR management functions from years of work in the private sector. The Bank responds that the position of Manager, Corporate Units, required a team leader to oversee the HR Business Partners providing HR advisory services "to their client Vice Presidencies in Finance, Administration, and Corporate," and that the Applicant's background, as reflected by her CV, was in the compensation and benefits area. The Bank's claim is supported by the matrix used by the first SLC, which stated regarding the Applicant: "To be interviewed but not the right fit for this job." The second SLC had an "N" next to her name, and mentioned that she was "No client facing." It is also to be inferred that, as the Applicant was not recommended by the second SLC in its report of 13 July 2012, she was indeed not considered the best fit for that position. In this respect the Tribunal notes that the Applicant admits that it was the other two positions for which she had applied that fell within her experience and qualifications as a Director.

87. With regard to the shortlisting process for the position of Manager, Total Compensation, the Applicant has pointed to some inconsistencies in the documents of the two SLCs. While the matrix prepared by the first SLC with regard to the Manager, Total Compensation position included the comment regarding the Applicant: "Deserves to be interviewed," under Mr. A's name (the candidate who was ultimately selected) it had commented that he was "[t]oo short on relevant experience." In its preliminary assessment of candidates, the first SLC had recommended that the Applicant be included

in the shortlist for that position but that “regrets” be conveyed to Mr. A. Later, in the matrix used by the second SLC a “yes” appeared next to the names of both Mr. A and the Applicant. As the reports of the second SLC show, Mr. A was then shortlisted, along with the Applicant, as one of the two internal candidates for the position of Manager, Total Compensation.

88. The Tribunal notes that while the first SLC did not consider that Mr. A had the required years of relevant experience, the second SLC, with a new composition and upon further review of the candidates following the expansion of the search, concluded that, in comparison to other internal candidates, Mr. A was, along with the Applicant, a better fit for the position. More importantly, as reflected in the interview summary that followed, Mr. A had many years of relevant experience. While an explanation by the second SLC would have been desirable as it would have avoided the appearance that the process lacked transparency or objectivity, the record does not show that the addition of Mr. A’s name to the shortlist by the second SLC lacked objective reasons.

89. On balance, and despite the lack of detailed information in the matrices and questions as to their origin, the Tribunal finds that the guarantees of transparency, rigor, objectivity, diversity and fairness were observed in the shortlisting process in this case and that the decisions not to shortlist the Applicant for the positions of Manager, Corporate Units, and Director, Shared Services, had a reasonable and observable basis and were not vitiated by abuse of discretion.

The interview process

90. The Applicant claims that the decision not to select her for the position of Manager, Total Compensation, was arbitrary and tainted by bias and unfairness. She also claims that the interview process did not meet the standards laid out by the Tribunal in *Perea*, Decision No. 326 [2004] and *BK (No. 2)*, Decision No. 452 [2011] in that the candidates were not assessed fairly against the same selection criteria and that no matrix

was used showing the strengths and weaknesses of the candidates. She further asserts that she was bullied and subjected to hostility during her interview by the HRSVP.

91. Regarding its review of selection decisions, the Tribunal found in *Jassal*, Decision No. 100 [1991], para. 37, 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. But the Tribunal is charged with determining whether the Bank's decision was the product of bias, prejudice, arbitrariness, manifest unreasonableness, or unfair or improper procedure. *Thus, if the Bank's conclusion regarding the Applicant's qualifications for selection ... altogether lacks support in factual evidence or reasonable inference, that conclusion must be found to be an abuse of discretion.* (Emphasis added.)

92. Likewise, the Tribunal has underscored the importance of recording the comparative assessment of staff skills, knowledge and performance of the candidates. It found in *Perea*, Decision No. 326 [2004], para. 53, that while in selection processes “decisions will be made based on an assessment of staff skills, knowledge, and performance record against job requirements,” in that case there was “no record of the meeting at which candidates were compared to show how the comparative assessment was made of staff ‘skills, knowledge and performance’.” (*Id.*, para. 55.) The Tribunal further held at paragraph 57 that it was

unable to determine how comparisons were made to select candidates on a competitive basis for reassignment, whether and, if so, how performance assessments were considered, or how the Respondent met the guidelines it had established for the process. In this regard, the Tribunal considers that there was a lack of coherence and transparency in regard to the selection process ... The Respondent failed to provide a fair procedure.

93. Additionally, the Tribunal noted at paragraph 72 of that judgment “the absence of any interview/evaluation report indicating why the Applicant was considered less qualified for the position than the other candidate” for another position for which the

Applicant had applied and concluded at paragraph 74 that “the selection process was lacking in transparency, and was arbitrary and an abuse of discretion.”

94. In *BK (No. 2)*, Decision No. 452 [2011], para. 41, the Tribunal referred to its holding in *BK* at paragraph 56 which discussed the principles of “objectivity,” “transparency,” “rigor,” and “diversity” and held that these same criteria may be applied to the interview process. In addressing the issue of whether the Bank had an obligation to use matrices or forms to document candidate assessments and results or whether an interview summary and report could be used instead, it further held at paragraph 42:

The Bank’s process requires, at a minimum, that a report of the results of the panel interviews should be prepared and should “clearly document the Panel’s findings and identify the top candidates....” In the present case, the record demonstrates that there was *contemporaneous and detailed documentation of the deliberations of the interview panels, and the Interview Summary and Interview Report provided a comparison of the candidates relative to the selection criteria.* (Emphasis added.)

95. The Tribunal found at paragraph 35 of that judgment that as there existed an interview summary and interview report, both of which clearly delineated the qualifications and skills of the interviewed candidates, the explanations provided in the record about the reasoning of the interview panel members, and the full record of the candidates’ qualifications, the Bank’s decisions to select candidates other than the Applicant were not unreasonable.

96. In the present case, in accordance with the Bank’s Recruitment Guidelines, the HRSVP organized the interviews, inviting two other senior managers familiar with issues of benefits and compensation and working outside the hiring unit to conduct the interviews with him. In this case, no candidate assessment forms or matrices were used, but instead an interview summary was prepared by a Senior HR Recruitment Officer present at the interviews.

97. The interview summary presented a contemporaneous and detailed documentation of the deliberations of the interview panel and clearly presented comparative assessments of all the candidates against the same selection criteria for the position. The summary set out the candidates' "technical" and "people" skills, their managerial background and abilities, their knowledge, education and experience, their strengths and weaknesses in relation to the job requirements as well as the manner in which their qualifications impressed the interview panel and the reasons for which they would be considered suitable for the position. Therefore, the Tribunal finds that the interview summary satisfied the requirements of transparency, rigor, and fairness set out in *Perea* and *BK (No.2)*.

98. The Applicant, however, claims that there are a number of negative comments regarding her skills in the interview summary not supported by evidence. She states that these comments are contradicted by her performance evaluations. Indeed, the Applicant's OPEs present a very favorable review of her performance and show that when she assumed her responsibilities in HR she was able to implement many required changes at that time as well as thereafter. However, the Tribunal finds that the comments in the interview summary only presented the panel's evaluation of her skills in response to their questions and by comparison to the other candidates as well as their impressions as to whether she would be fit as a Manager, Total Compensation, to lead the reorganization that was implemented by the new HRSVP. They did not negate her past good performance recorded in her OPEs. The Applicant has not shown in this respect that the comparative assessment of her qualifications vis-à-vis the other candidates did not have an observable and reasonable basis.

99. The Applicant has also made the related claim that a comparison between her and the selected candidate showed that the HRSVP did not observe the standard of review required by *Perea* in determining whether she was fairly considered for the position. She points out that Mr. A had never performed any formal managerial functions until he was hired in April 2012 by the Applicant to be the Benefits Manager, while the Applicant, for her part, brought to the position of Manager, Total Compensation, two decades of senior

managerial experience. Indeed, she states that her higher level position that was being abolished had compensation and benefits as core areas under her responsibility and she had strong OPEs for over three years, while Mr. A had been at the Bank only for a few months under her guidance.

100. The assessment of Mr. A in the interview summary noted that Mr. A had about 20 years of HR experience mostly in senior compensation and benefits roles at the Inter-American Development Bank. While the interview summary mentioned the fact that his current job (which he had held for a short period of time) was his first formal management role, it also noted that feedback as to his management skills would be sought. Most importantly, the shortlisting criteria for the position specified by the HRSVP listed managerial potential as an alternative to managerial experience. The Tribunal here recalls its ruling in *Fernandes*, Decision No. 90 [1990], para. 28 which it finds applicable in this case:

[Principles 2.1(d) and 6.1 of the Principles of Staff Employment] do not justify inferring a staff right to priority of assignment over a lower graded staff member, when in the course of a comprehensive reorganization the Bank, within the range of its allowable discretion, determines that the promotable employee is in fact more qualified to perform the job.

101. The Tribunal will now turn to the Applicant's claims regarding her interview which, according to her, was hostile and unfair. Both the Applicant and the Bank appear to agree that, during the interview, questions were posed to the Applicant regarding the area of compensation and employment policy challenging her to defend the existing approach to compensation and benefits review. The Applicant contends that the HRSVP did not simply pose difficult questions but personally criticized and attacked her, putting her on the defensive regarding her professional service to the former HRSVP. She also claims that the HRSVP bullied and berated her during the interview. The Tribunal notes that, with the exception of the Applicant's description of the interview, the only other information regarding the interview is a declaration by the Senior HR Recruitment Officer who was present at the interview and drafted the summary report of the interview panel. She declared that, in her judgment, the interview was conducted professionally

and that she did not sense any antagonism, hostility or aggression from the panel members directed towards the Applicant. The Tribunal finds that the evidence in the record is not conclusive regarding the Applicant's claims about her interview.

102. The Applicant has further claimed that the non-selection decision was tainted because the HRSVP was biased against her from the first day they met. She has stated in this respect that there were many unnerving and dismissive episodes before and after her interview during which the HRSVP sought to humiliate her, including in personal meetings, in group meetings and also in his statements at the 15 May 2012 townhall meeting. The Applicant has made a related claim of being subjected to a hostile environment in this respect. The Tribunal has stated that "a finding of improper motivation cannot be made without clear evidence" (*Lysy*, Decision No. 211 [1999], para. 71) and that "an allegation is not a substitute for proof" (*Malekpour*, Decision No. 322 [2004], para. 29). While the Applicant has recounted in her pleadings a number of meetings between her and the HRSVP during which he allegedly made dismissive, sarcastic or hostile comments to her, she has admitted that no one was present when such comments were made and that the HRSVP was careful not to make them in front of others. In addition, a review of the presentation made during the 15 May townhall meeting shows that the statements in the presentation were not criticisms directed at the Applicant but rather an elaboration of the reasons for reform of the HR function. Other allegations of the Applicant regarding statements made during that meeting have not been proven. Accordingly, the Applicant has not substantiated her claim of bias and the claim that the HRSVP subjected her to a hostile work environment.

103. The Applicant also claims that the Bank has not documented any portion of the decision-making process for the interview despite the Applicant's request for production of written reasons for the non-selection decision.

104. As the Tribunal found in *Denis*, Decision No. 458 [2011], para. 59, "the requirements of due process do enter the picture and it is only fair that, in principle, staff members be provided with the reasons for adverse administrative decisions taken by the

Bank.” According to the Applicant, it appears that during a meeting on 7 September 2012 the HRSVP informed her orally of such reasons, some of which appear to have been reflected in the interview summary. The Applicant was also given written notice of the adverse decisions of the abolition of her post and her non-selection to the position of Manager, Total Compensation, through the relevant communication to her by the HRSVP of 9 September 2012. While it would have been preferable that the Applicant receive reasons in writing for her non-selection to the position of Manager, Total Compensation, the Tribunal recalls its ruling in *Fernandes*, Decision No. 90 [1990] at paragraphs 42 and 43, which it finds also applicable in this case:

There is something to be said for the Applicant’s claim that the Bank’s language is more a statement of its decision than it is the provision of a reason for that decision.

Nonetheless, in all the circumstances of the Reorganization the Bank’s notification can only be read as informing the Applicant that others in the pool of eligible staff members had been regarded as better qualified for selection This seems to the Tribunal to constitute a sufficient initial statement of reasons for the non-selection of a staff member within a comprehensive reorganization process. Such selection process necessarily involved the subjective assessment on the part of management of a variety of skills, aptitudes and the like possessed by thousands of staff members vying for positions in the reorganized Bank. Given the nature of the process, the statement given by the Bank to the Applicant may be regarded as an adequate statement of reasons as required under Principle 7.1(b).

105. Similarly, the Tribunal finds that the Applicant’s claims here regarding the interview process and her non-selection to the position of Manager, Total Compensation, have not been substantiated.

Retaliation

106. The Applicant has also described another private meeting between herself and the HRSVP in late September 2012 during which, apparently upon informing him that she had retained counsel to protect her legal rights, the HRSVP told her that she had “moved too quickly” and that, “now that the boat had sailed” he would have to re-think whether

to pay the Applicant through 14 December 2012 or “to cash her out” even before that date, thus leaving her without entitlement to benefits. She perceived his statement as retaliation against her for having sought to determine her legal rights. The Bank has denied this allegation and points out that the HRSVP continued in his effort to accommodate the Applicant until the end of her term.

107. The Staff Rules prohibit retaliation against staff members who use the conflict resolution system. Under Staff Rule 3.00 such retaliation amounts to misconduct. However, as the Tribunal has found in its well-established jurisprudence and recently, in *AH*, Decision No. 401 [2009], para. 36:

It is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. *There must be a direct link between the alleged motive and the adverse action to amount to retaliation.* (Emphasis added.)

108. The Tribunal notes that in this case the Applicant has not shown that an adverse action was taken following her retaining counsel or that such threat of retaliatory act was indeed made. Consequently, the Applicant’s claim of retaliation fails.

OVERALL CONCLUSION

109. The Tribunal concludes that the decision not to renew the Applicant’s contract following the HR reorganization and the abolition of her post was based on legitimate business reasons. It also finds that the decisions not to select her for the HR managerial positions were not an abuse of discretion. It, however, finds that the decision not to renew her contract as a result of the abolition of her post was taken in violation of proper procedure, as discussed in paragraphs 53-69 above. The Tribunal will therefore award compensation.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of four months' salary net of taxes for the failure to follow the proper procedure in this case.
- (2) The Bank shall contribute to the Applicant's attorneys' fees in the amount of \$10,452.
- (3) All other pleas are dismissed.

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

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D.C., 3 October 2013