



**World Bank Administrative Tribunal**

**2015**

**Decision No. 506**

**CP,  
Applicant**

**v.**

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

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

**CP,  
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), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 5 May 2014. 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 World Bank Staff Association filed an *amicus curiae* brief on 18 September 2014. The Applicant's request for anonymity was granted on 21 May 2015.

3. The Applicant challenges: (i) the non-extension of her Extended Term Consultant (ETC) contract; (ii) her non-selection for Job Vacancy No. 122592; (iii) the mismanagement of her career; and (iv) “[v]iolation of various promises, including explicit promises that she would be hired for at least two years and that, when hired, she would be working on certain specific tasks.”

**FACTUAL BACKGROUND**

4. The Applicant was hired by the Global Partnership for Education (GPE) on 2 April 2012 as an ETC. Her title was that of Senior Education Specialist in the Country Support Team, Level GG. Before joining the Bank, between September 2009 and March 2012, the Applicant had worked as an Education Advisor on a United States Agency for International Development (USAID) education project in Afghanistan.

5. In 2010, the Applicant had applied for a position at GPE, then called Education for All Fast Track Initiative (EFA FTI) Secretariat, but received no response. The following year, however, on 19 September 2011, Ms. SB, the Country Support Team Coordinator in GPE, sent her an e-mail which stated, *inter alia*:

We are currently looking for two more Senior Education Specialists to work closely with partner countries and help implement new strategies to support girls' education and step up engagement in fragile states. We were impressed with your application last year and for this reason I am writing to you to ask whether you would now be interested and available to consider a position with the Secretariat.

6. The Applicant expressed her interest and Ms. SB responded in an e-mail message dated 21 September 2011 that she had included the Applicant for consideration for the upcoming posts and that

these will start as TWO-YEAR (not one-year as advertised) External Term Contract positions that we anticipate converting to term positions at some point in the coming 18 months.

7. The attached Terms of Reference (TOR) showed that the ETC positions were for a term of one year renewable for one additional year.

8. On 17 November 2011, the Applicant had a "welcoming conversation" by telephone conference with Mr. R, then Head of GPE. On 22 November 2011, a representative of the Human Resources (HR) Service Center (HRSC) sent the Applicant an appointment letter asking her to review its terms carefully. On 26 November 2011, the Applicant responded by saying that the proposed salary was not acceptable. The Applicant noted that the proposed salary was even less than what she was making in Washington, DC back in 2009 and prior to coming to Afghanistan where she was paid an additional amount as "danger pay."

9. On 5 December 2011, Ms. SB sent the Applicant an e-mail copying Mr. R in which she stated that she had been "authorised to (unofficially) let you know that we can raise the

salary offer [...] We will communicate this to HR today and they should be officially in touch. I hope we can find middle ground on this.”

10. On 22 December 2011, Ms. SB informed the Applicant that although she had discussed her salary proposal with Mr. R and other members of the management team they could not stretch the salary offer beyond [...], a figure that was already higher than offers made to comparable staff in the Secretariat. She then added:

In addition, we will almost certainly offer Term Positions to ETC team members in around 12 months and this will provide another opportunity to negotiate your salary.

11. In a letter dated 15 February 2012, a USAID officer informed the Applicant that she had been selected for the position of Senior Education Advisor USAID/Afghanistan and mentioned her grade, salary, “danger pay” and post differential, all of which amounted to a grade and salary higher than the one offered by the Bank. That letter also mentioned that the Applicant’s initial contract would be for a period of 12 months. Subsequently, the Applicant accepted the Bank’s offer, passing up the opportunity for a position with USAID.

12. On 23 March 2012, the Applicant signed her letter of employment dated 13 March 2012 which stated in pertinent part:

We are pleased to offer you an Extended Term Consultant appointment to the staff of the World Bank for an assignment with the EFA-FTI Secretariat.... Please report to [Mr. R], who will provide you with your terms of reference.

Your appointment is for 12 months and is contingent upon certain conditions being met, as explained below and in the attachment “Important Notes for Extended Term Consultant and Extended Term Temporary Appointments.” Your appointment will terminate at the end of that period unless it is extended. The appointment may be renewed for a second year, subject to a lifetime maximum of two years. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but may do so if agreed to in writing at the time of the expiration of the appointment.

13. During a telephone conversation the Applicant had with Ms. SB before assuming her position, and while in Afghanistan, Ms. SB told her that that she would be the Country Lead for the Central Asian countries (Uzbekistan, Kazakhstan and Kyrgyzstan) because of her extensive experience in Afghanistan and other countries in South Asia, including Myanmar. Ms. SB had also said that the Applicant would lead the cluster on girls' education because of her extensive experience in working on gender issues.

14. When the Applicant began working in GPE on 2 April 2012, however, she was not given the Central Asian countries which Ms. SB had mentioned to her. According to Ms. SB, these had been given to someone else. The Applicant was given a portfolio that included Nepal, Bangladesh, Afghanistan, Sri Lanka, Cambodia, and Mozambique which, according to the Applicant, were entirely inactive countries with respect to the Applicant's portfolio. Even though the chart showing country assignments also listed Myanmar as part of the Applicant's portfolio, she was informed just two days later that Myanmar would remain with another staff member. According to the Applicant, when she protested her lack of any meaningful assignments, Ms. SB told her that staff did not want to give up their countries, but suggested she could try working on Nigeria. Nigeria was then added to the countries on which the Applicant was working.

15. Ms. SB also told the Applicant that the girls' education cluster was led by another GPE colleague, Mr. L, and asked the Applicant to become a co-leader. Even though the Applicant agreed, her relationship with Mr. L, in her view, was very difficult as he appeared to take all credit and refused to co-operate with her. In fact, Mr. L had listed himself alone in a publication as the focal point for the girls' education initiative in GPE. E-mail exchanges between the representative of the Canadian International Development Agency (CIDA) and Mr. L in relation to the girls' education initiative show that the Applicant was only copied on the final e-mail.

16. On 3 July 2012, only three months after the Applicant had joined the unit, Ms. SB left the Bank. Thereafter three of the Applicant's colleagues (Ms. T, Mr. B, and Mr. L) were given temporary assignments to be Acting Country Support Team Coordinators until a

replacement for Ms. SB was found. Later, a fourth colleague, Ms. ML, replaced the three alternating Acting Country Support Team Coordinators. A replacement for Ms. SB, as the GPE Country Support Team Coordinator, Mr. PC, was not hired until 28 January 2013.

17. After Ms. SB's departure, the Applicant's portfolio changed several times. Countries were given to the Applicant (Vietnam, Myanmar, and Timor Leste, for example) and then taken away. The Applicant was informed of these changes often when she was on mission. Even though she protested, her view did not prevail. For example, on 2 October 2012, Ms. ML after several exchanges with the Applicant who was on mission, told her that she would transfer her work on Vietnam to another staff member, even though the Applicant disagreed. The next day, the Applicant sent an e-mail stating her unhappiness with this change. According to the Applicant, these constant changes in her portfolio, of which she often learnt when on mission, caused the Applicant strain and the need to receive medical assistance.

18. Two of her colleagues who were Acting Coordinators (first Ms. ML and then Ms. T) almost succeeded in removing Nigeria from her work program when she was at a conference in Bangkok. The record shows that the Applicant was successful in that country. The Applicant only managed to retain Nigeria by going to Mr. R, the Head of GPE, and asking him to intervene on her behalf. This, according to the Applicant, made her very unpopular with staff in GPE, particularly Ms. ML with whom her relationship was very strained. Several e-mails are in the record from Ms. ML to the Applicant where Ms. ML complained that she felt disconnected from what was going on in countries assigned to the Applicant. Ms. ML also stated that, as an Acting Coordinator, she had the responsibility of overseeing country level collaboration issues so as to step in and be helpful when needed and to ensure consistency in terms of approach to the countries. Ms. ML also reminded the Applicant that she should always go through the coordinator before requesting approval for anything from the Secretariat Head. The Applicant however states that she had not been informed that Ms. ML was her supervisor.

19. The Applicant received praise for her work and very positive feedback by clients and some managers and colleagues. Of note are (i) e-mails from the Secretary of State for

Cambodia, UNESCO's Cambodia Office and the Deputy Director General, Department of Planning, Ministry of Education and Sports, in Laos, thanking the Applicant for her crucial and instrumental contributions; (ii) positive comments in e-mails from Mr. R to the Applicant regarding her work in Afghanistan and Cambodia and (iii) lengthy e-mail exchanges regarding her work and contributions in Nigeria.

20. On 20 February 2013, Mr. R signed a Results Agreement which although covering the period from 1 July 2012 to 30 June 2013 presented the 5 results for which the Applicant would be accountable for the remainder of the year. Mr. R recognized that her work program was an ambitious one, particularly the Nigeria program, and recommended that she prepare a write-up for publication for both the Afghanistan and Nigeria cases. The Applicant, however, never received a formal Overall Performance Evaluation (OPE) as the Program Administrator, GPE, had informed Mr. PC, the new Country Support Team Coordinator, that there was no requirement to complete an OPE for an ETC before the completion of the first year on the job.

21. In the meantime, on 7 November 2012, GPE advertised under Job Vacancy No. 122592 a renewable 2-year Coterminous Term appointment for a Senior Operations Officer, Level GG. GPE planned to convert several ETC positions with the country support team including the Applicant's, to Term positions. A total of five individuals were expected to be selected for virtually identical jobs; the Bank has described this type of recruitment as "a batch recruitment." The duties and accountabilities of the Senior Operations Officer described in the job posting were very similar to the Applicant's responsibilities in her ETC appointment as Senior Education Specialist.

22. The Applicant applied for the position, was shortlisted, participated in a written test, and was interviewed. The interview panel members for the position were: Ms. ML, Chair of the interview panel; Mr. PC, then Country Support Team Coordinator, GPE; Mr. PP, Senior Financial Officer, GPE; Ms. KB, Global Good Practices Team, GPE; and Mr. OC, Senior Public Finance Specialist, GPE. The Applicant expressed to Mr. R her serious concerns about Ms. ML chairing the interview panel.

23. Following the interviews, which had been held between 25 January and 1 February 2013, the interview panel prepared a report which was written by Ms. ML. The interview report shows that the panel had interviewed 13 candidates and had identified five candidates as “highly suitable” and one as “suitable.” While the initial interview report had found that the Applicant was a “suitable” candidate for the position, the final report stated that the Applicant was not “suitable.” The overall statement made in the report regarding the Applicant was that:

The candidate demonstrates a project-management oriented approach rather than a partnership approach, which is consistent with her pre-GPE experience. Despite her work in GPE for 10 months, the candidate is unclear on GPE’s role. As Sr. specialist she should have a much stronger understanding by this time. Indications of a somewhat top-down approach came through in the interview.

24. The decision on whom the interview panel would recommend for the position was made by 15 February 2013.

25. Also on 15 February 2013, Mr. R left the Bank and Ms. A became the CEO of GPE. Ms. A became the hiring manager for Job Vacancy No. 122592 when Mr. R left the Bank and all hiring decisions were put on hold until Ms. A met with the shortlisted candidates for the advertised position. Both Mr. R and Mr. PC advised the Applicant to meet Ms. A as she would now be the hiring manager for Job Vacancy No. 122592.

26. The Applicant postponed a planned mission twice in an attempt to meet Ms. A, but the meetings were cancelled. She finally left on mission without having met Ms. A. According to testimony of Mr. PC before Peer Review Services (PRS), while the Applicant was on mission, Ms. A met with him and they reviewed the interview panel’s report. During the hearing, Mr. PC clarified that Ms. A met with only one candidate because that candidate had also applied for another position with GPE. He noted further that an interview with Ms. A was not part of the selection process. Ms. A endorsed the interview panel’s recommendation in making her decisions.



27. Mr. PC also presented verbally to Ms. A the proposed decision not to renew the Applicant's contract, which Ms. A approved. On 10 March 2013, the Applicant returned from her mission. The next day, on 11 March 2013, she was called into Mr. PC's office who told her that she had not been selected for Job Vacancy No. 122592. He also told her for the very first time that her ETC contract would not be extended and that her employment with GPE would end on 2 April 2013. The Applicant states that she was so shocked that she fainted in his office.

28. As shown above, the Applicant was given 22 days' notice of the non-renewal of her appointment. On 28 March 2013, GPE offered the Applicant a Short Term Consultant (STC) appointment from 2 April 2013 to 10 May 2013 to provide her with 60 calendar days' notice of the non-extension of her contract. Thereafter GPE extended the Applicant's STC contract from 11 May 2013 until 31 May 2013. Subsequently, it offered the Applicant an unpaid extension of the STC contract from 31 May 2013 through 30 June 2013 and reimbursement for her relocation expenses.

29. The Applicant also trained her successor, who joined GPE in May 2013 and who had been previously working for the Bank in Delhi as a Senior Social Development Specialist.

30. On 2 July 2013, the Applicant filed a Request for Review with PRS. A hearing was held on 4 December 2013. The PRS Panel recommended that the Applicant's requests for relief be denied. On 6 January 2014, the Acting Vice President and Network Head, Human Development, accepted the recommendations of the PRS Panel.

31. The Applicant filed an Application with the Tribunal on 5 May 2014. The Applicant requests the Tribunal to order: (i) reinstatement to a comparable position to that of Senior Education Specialist or of Senior Operations Officer, Level GG, under a Term contract, or equivalent monetary compensation; (ii) removal of all records of the Applicant's non-renewal and non-selection from her personnel files; (iii) compensation for (a) the lost salary and benefits as a result of the Applicant's termination; (b) the cost of the Applicant's relocation from the United States to India; (c) the lost salary that the Applicant forwent when

she accepted employment at the Bank; (iv) such additional compensation as the Tribunal deems appropriate and just for the stress and suffering caused by the Bank's mismanagement of her career and unfair treatment, and for the damage to her professional reputation; and (v) attorney's fees in an amount of \$15,008.53.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Applicant's Main Contentions*

32. The Applicant contends among other things that: (i) the Bank's failure to renew her ETC appointment for a second year was a breach of specific promises given to her in writing on which she relied when accepting a position in GPE; (ii) she was misled into believing that the conversion of her appointment would take place without her having to compete against others, both inside and outside of GPE, for her own position; (iii) she was not given sufficient notice of the non-renewal of her ETC contract; (iv) her non-selection to Job Vacancy No. 122592 was an abuse of the Bank's discretion and it was not fair; (v) she was given no notice of any performance issues which might affect the security of her job and no opportunity to improve; and (vi) GPE grossly mismanaged the Applicant's career and created a hostile work environment.

### *The Bank's Main Contentions*

33. The Bank responds, *inter alia*, that: (i) nothing in the e-mail exchange that the Applicant had with Ms. SB is akin to a promise that would substantiate the Applicant's claim that she had a right to the renewal of her contract nor is there anything in the surrounding circumstances of the Applicant's employment that would create such a right; (ii) the two e-mails from Ms. SB on which the Applicant bases her claim of breach of promise did not constitute promise of conversion of her appointment to Term; (iii) the written offer for an ETC contract in March 2012 followed the e-mail exchange of Ms. SB with the Applicant, thus superseding such e-mail, and rendering any reliance on the e-mails unreasonable; (iv) the Applicant had notice from the day she signed the contract that it would expire on 2 April 2013 but, in any event, GPE supported the Applicant by offering her a series of STC

contracts; (v) GPE followed a competitive process in which the Applicant participated, but was not selected; (vi) the selection process assesses relative, as opposed to absolute merits, which means that other candidates were found more suitable for the position than the Applicant; (vii) the Applicant did not raise the claim of career mismanagement before the PRS; and (viii) the Applicant interprets the administrative decisions as having evaluated her performance whereas, in fact, they had nothing to do with this.

*The Staff Association's Amicus Curiae Brief*

34. In its *amicus curiae* brief, the Staff Association states, *inter alia*, that: (i) promises were made to the Applicant with the clear purpose of doing whatever was necessary to lure the Applicant from Afghanistan to Washington, DC, knowing that it was only with these assurances that the Applicant would give up another lucrative offer and move halfway around the world; (ii) once she arrived at GPE, every promise she had been made was broken; (iii) the selection panel's finding that she was "not suitable" for the position she had been eagerly recruited for and had been performing for the previous year reflects not only a clearly flawed assessment of her qualifications, but could also reflect that she had been given little opportunity to demonstrate her "suitability" during the year she spent in GPE; and (iv) such recklessness on the part of management – be it in the process of hiring the Applicant, the (lack of) use of her skills once she was hired, or the abrupt decision not to continue her employment – does great harm to the Bank as well, wasting the resources used in hiring and moving staff, and then wasting the resources a staff member has to offer once she is being employed and paid by the Bank.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

*Non-Extension of the Applicant's appointment*

35. The Applicant first claims that the Bank's failure to extend her ETC appointment for a second year was a breach of specific promises given to her in writing that she would be hired for at least two years. The Applicant states that she relied on such promises to her detriment when she accepted a position in GPE.

36. The Tribunal recalls its well-established jurisprudence on the renewal or extension of term appointments in *Kopliku*, Decision No. 299 [2003], para. 9 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. 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.” ... Even so, the decision not to extend a Fixed-Term contract, like all decisions by the Bank, must be reached fairly and not in an arbitrary manner.

37. The Tribunal then noted in *Kopliku* at para. 10 that there might nevertheless be circumstances which lead to the creation of a right to renewal:

Another restriction upon the Bank arises when circumstances warrant the inference by a staff member that the Bank has indeed made a promise to extend or renew his or her appointment either expressly or by unmistakable implication. “[T]here may be something in the surrounding circumstances which creates a right to the renewal of a consultant appointment.” *Carter*, Decision No. 175 [1997], para. 13. But absent 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.

38. In *Bigman*, Decision No. 209 [1999], 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. More specifically, in that case, the Tribunal found that the Bank, through an official with the apparent authority to do so, had unequivocally made a legally valid promise of conversion of the applicant’s fixed term appointment to regular, conditional on his satisfactory performance. The applicant had relied in good faith on such promise and had passed up other opportunities outside the Bank such as assured positions at the IMF and the Hebrew University in Israel.

39. In *Brebion*, Decision No. 159 [1997], the Tribunal found that assurances given to a staff member supplementing her separation agreement from the Bank that no limitation

would apply to her future rehiring, as a consultant, and on which she relied in accepting such agreement, had become essential terms of that agreement.

40. The Applicant seeks to rely mainly on *Bigman*, and also on *Brebion*, to support her claim that a legally valid promise was given to her by the Bank before she accepted the offer of her ETC appointment which created a legitimate expectation of extension or renewal of such appointment.

41. The first question that the Tribunal must address in this case is whether, in fact, there was, as in *Bigman*, a legally valid promise made by a Bank official with an apparent authority to do so to the effect that the Applicant's appointment would last for at least two years. The answer to this question can be found through an examination of the e-mail exchanges of Ms. SB with the Applicant and a review of the Applicant's letter of appointment.

42. The record shows that Ms. SB sought to convince the Applicant to consider a position as Senior Education Specialist in GPE as she was impressed by the Applicant's application to GPE the previous year. Ms. SB had the second highest position in the GPE Secretariat after Mr. R. As such, she was an official who had at least the apparent authority to negotiate on employment matters on behalf of the unit.

43. When the Applicant expressed her interest, Ms. SB followed up with two e-mail communications over the period of two months which clearly show that she was actively seeking to attract the Applicant's interest and have her hired in one of these positions.

44. The first e-mail of 21 September 2011 stated:

I have included you for consideration for the upcoming posts. Please be aware that these will start as TWO-YEAR (not one-year as advertised) Extended Term Contract positions that we anticipate converting to term positions at some point in the coming 18 months.

45. In the attached terms of reference it was shown that the positions were for a term of one year renewable for one additional year. Thereafter, the Applicant had communications

with an HR representative who also sent her a draft appointment letter asking her to examine it carefully. This also included language that showed that the appointment was for one year with a possibility for renewal for one additional year. The Applicant was not in agreement with the salary offered and Ms. SB raised the salary offer.

46. When discussing the salary offer with the Applicant, Ms. SB stated in a second e-mail of 22 December 2011 that she understood that the salary offer would be disappointing to the Applicant and added, again trying to convince the Applicant to accept the offer:

I can say, though, that the post you are being offered is exciting and unique and that the other members of the team are a wonderful crew to work with. In addition, we will almost certainly offer Term positions to ETC team members in around 12 months and this will provide another opportunity to negotiate your salary....We would be delighted if you decided to take us up on our offer and would certainly welcome a February start.

47. On the record is also a letter from a USAID officer dated 15 February 2012 for a position with a salary higher than the one offered by the Bank which mentioned that the Applicant's initial contract would be for a period of 12 months. The Applicant, however, passed up this new opportunity to work with USAID and accepted the Bank's offer.

48. Notwithstanding the communications by Ms. SB to the Applicant, the letter of appointment which the Applicant signed on 23 March 2012 stated that:

Your appointment is for 12 months ... Your appointment will terminate at the end of that period unless it is extended. The appointment may be renewed for a second year, subject to a lifetime maximum of two years. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but may do so if agreed to in writing at the time of the expiration of the appointment.

49. A year later, on 11 March 2013, the Applicant was informed by Mr. PC that her appointment would end on 2 April 2013.

50. The Applicant now points to the 21 September 2011 e-mail of Ms. SB to show that there was a legally valid promise for a two-year appointment that was breached. The Bank

points to the letter of appointment to show that this was the governing instrument of the legal relationship of the Applicant with the Bank and that its terms superseded any type of promises that Ms. SB might have made, even though it also claims that the Bank never made any promises in the first place.

51. The Tribunal finds that an interpretation of Ms. SB's e-mail of 21 September 2011, shows that she, in fact, made an unequivocal and unambiguous promise to the Applicant for a contract of a duration of at least two years. Ms. SB expressly stated in her e-mail that the post for which the Applicant was being considered "will start as TWO-YEAR." The way she chose to convey her promise is notable. To emphasize the two-year duration of the post, she (i) used the word "will" not "may"; and (ii) spelled the phrase "two-year" in capital letters. Furthermore, to distinguish clearly the treatment of the Applicant's post from the ETC posts that were advertised with a one year duration she put in parenthesis right after the "two-year" phrase the words "not one year as advertised." By doing this, Ms. SB promised the Applicant that her contract would last two years, notwithstanding the attached job description which indicated a duration of one year with the possibility of extension for one more year. In these circumstances, it was reasonable for the Applicant to rely on the emphatic assurances of Ms. SB included in the e-mail of 21 September 2011. While the applicant in *Bigman* was able to establish the existence of such promise which had been given to him verbally through subsequent confirmation by the official who had given such promise, the Applicant, in this case, has been able to establish the existence of the promise through a written contemporaneous communication.

52. Furthermore, as with the applicant in *Brebion* who had signed a separation agreement after being given specific assurances and an express commitment which the Tribunal found to constitute an essential term of her agreement with the Bank, the Applicant here was also persuaded to sign the ETC letter of appointment, which she initially did not want to sign, on the basis of express assurances which thus became essential elements of the Applicant's employment relationship with the Bank. As the record shows, due to the fact that the ETC position offered a salary lower than that of the Applicant's previous positions in USAID, the Applicant was not interested in accepting the Bank's offer. The promise of a position of at

least two years had a material effect on the Applicant's agreeing to enter into a legal relationship with the Bank and thus became an essential term of such relationship.

53. To support its point that the Applicant was aware that under the terms of the letter of appointment there was no promise of extension of the contract after the first year and that all that the Applicant was promised was that her appointment "could be" but not "would be" for at least two years, the Bank points to an e-mail of the Applicant to the HR representative dated 26 November 2011. In it, the Applicant confirmed that she was fully aware of the terms of the contract and stated "I have reviewed the terms and conditions carefully and also looked at the WB website." She continued to state in relation to her salary: "[g]iven that this is a short-term assignment (a maximum of two years) and this significant cut in my salary will negatively affect my future salary, I can't afford to take such a huge cut at this point in my career." However, the Tribunal does not find that this statement necessarily shows that the Applicant knew that her appointment would not last for at least two years as promised. Rather it can be interpreted to convey her understanding according to Ms. SB's e-mail of 21 September 2011 that, while the appointment would be for at least two years, the Bank anticipated converting such ETC appointments to Term at some point in the next 18 months (less than two years). It is also clear that, at the time, the Applicant was negotiating her salary and as she had a hope that her appointment would be converted later to Term she was certainly trying to set a good level for her salary. It is noteworthy that a few weeks later and in order to further encourage her to sign the letter of appointment, even with a lower salary, Ms. SB followed up with her 22 December 2011 e-mail reiterating that the unit would almost certainly offer Term positions to ETC team members in around 12 months (i.e., in less than two years) and pointing out that at that point the Applicant would be provided with another opportunity to negotiate her salary.

54. In any event, even if the Applicant must be deemed to have been fully aware of the terms of the letter of appointment, she had a legitimate expectation of extension of her appointment at the end of the first year on the basis of the assurances given to her by Ms. SB who had asked her to disregard that these positions were advertised for one year. The applicants in *Bigman* and *Brebion* had also signed agreements with certain terms of which



they were well aware; however they relied on assurances outside of such agreements which created enforceable obligations against the Bank.

55. While Ms. SB's e-mail shows that an unequivocal promise existed that the Applicant's appointment would last for two years, the Tribunal finds noteworthy in this respect that Mr. R had also testified before PRS that he did not expect that the Applicant's non-selection to one of the positions she had applied for later would be connected to the non-renewal of her appointment. Rather he had expected that the Applicant could have continued in her ETC position for another year and subsequently applied for other positions.

56. Finally, the Bank states that the Applicant has not shown evidence of detrimental reliance as no promise was made. The fact, however, that the Applicant relied on assurances given by Ms. SB and gave up another employment offer is abundantly clear in this case. The letter of 15 February 2012 from the USAID representative stating that she had been selected for a position in that agency shows that the Applicant would have been offered a higher salary than that offered by the Bank in order to work in Afghanistan, in addition to other benefits. At the same time that letter offered her an "initial" contract for a period of 12 months. Even though the Applicant states that this was standard practice in the offers in the USAID, the record does not show that a guarantee of employment for a longer period of time had been given to the Applicant. By contrast, regardless of the specification in ETC job descriptions of an initial one year duration an assurance of a longer period of employment was embodied in Ms. SB's e-mail. Thereafter the Applicant signed the ETC contract relying on the assurances given on behalf of the Bank.

57. It has been established that the Bank, through a Bank official with at least the apparent authority to do so, made a promise to the Applicant that her appointment would be of a duration of at least two years. The Applicant relied on that promise and passed up another employment offer when she signed the ETC contract. There is therefore evidence of detrimental reliance on a promise which was breached when the Bank ended her appointment after one year of service. The Applicant suffered material injury for which she must be compensated.

*Conversion of appointment*

58. The Applicant has also made the claim that even though Ms. SB's e-mails did not include a promise for a conversion of her ETC appointment to a Term appointment, the expectation that was created was not that she would simply have the opportunity to compete for such a position but that her position would be "converted" to Term or that she would be "offered" the position without her having to compete against others.

59. As regards this claim, the Tribunal ruled in *Kopliku*, at para. 10, that a restriction on the Bank arises when circumstances warrant the inference by a staff member that the Bank has indeed made the promise to extend or renew his or her appointment either expressly or by unmistakable implication. More recently, in *CC*, Decision No. 482 [2013], para. 36, the Tribunal noted 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."

60. A review of the language in the e-mails used by Ms. SB does not show that express and unambiguous promises were made to the Applicant for conversion of her appointment, nor were such made by unmistakable implication. With regard to the conversion of the ETC contracts to Term, the words that she uses are "anticipate" and "almost certainly." The meaning of these terms is not indicative of express and unambiguous promises. They allow room for the possibility that expectations may not materialize and that promises may not be met depending on circumstances. In addition, Ms. SB is discussing the conversion of a number of positions in her e-mail of 21 September 2011 and the offering of Term positions to many ETC team members in her e-mail of 22 December 2011. Even though the e-mails of Ms. SB are addressed to the Applicant and it is reasonable to infer that she was discussing possibilities for future recruitment as would also apply to her, this reference to a number of staff members combined with the use of the words "anticipate" and "almost certainly" show a lack of an unambiguous promise made directly to the Applicant. So, while Ms. SB's words may have created a hope for the Applicant that, in all likelihood, her appointment would be

converted to a Term appointment in the future, they did not rise to the level of a promise that created an enforceable obligation on the part of the Bank.

*Non-selection decision*

61. The Applicant has made the claim that her non-selection to the advertised position (Job Vacancy No. 122592) was unfair and an abuse of discretion. With regard to decisions to select staff members for positions, the Tribunal has held in *Riddell*, Decision No. 255 [2001], para. 23:

[A] decision by the Bank to select a staff member for a particular position rests within the Bank's discretion, and may be overturned by the Tribunal only when it concludes that this discretion has been abused.

...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.

62. Furthermore in *Jassal*, Decision No. 100 [1991], para. 37, the Tribunal held in relation to its assessment of the validity of the decision on selection or non-selection of a staff member 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.

63. The Tribunal has addressed in a number of judgments the need to observe the principles of objectivity, transparency, rigor, diversity and fairness in the selection process (both shortlisting and interviewing). (See e.g. *Jassal*, Decision No. 100 [1991]; *Perea*,

Decision No. 326 [2004]; *BK*, Decision No. 444 [2010]; *BK (No. 2)*, Decision No. 452 [2011].)

64. The Tribunal ruled in *BK (No. 2)* at paras. 41 and 42 regarding the interview process:

The question may be answered on the basis of the Tribunal's holding in *BK*, paras. 56 and 57, even though that case related to shortlisting and not interviews:

The principles of "objectivity," "transparency," "rigor," and "diversity" cannot be implemented unless the [shortlisting committee] is composed of staff members from more than one unit in addition to an HR Officer. These objectives in recruitment are realized if the Bank makes its shortlisting process uniform with clear guidelines and when the composition of a shortlisting committee is diverse. Furthermore, staff members' confidence in the shortlisting process will be enhanced by the Bank's proper and contemporaneous documentation of the deliberations of the [shortlisting committee] *in as much detail as practicable*. Contemporaneous and detailed documentation of [shortlisting committee] deliberations is also a guarantee of a transparent, sound and fair recruitment process. (Emphasis added.) ...

The Tribunal finds that these same criteria may be applied to the interview process.

65. In this case, the Shortlisting Committee approved the Applicant for an interview and "an objective blind written test." The issue is whether the decision of the interview panel not to recommend the Applicant for selection was based on a fair assessment of the candidates during the interview, whether that decision was based on a reasonable and observable basis, and whether the principles of objectivity, diversity, rigor, transparency and fairness during the recruitment process established in the Tribunal's jurisprudence were observed.

66. The Applicant has stated that the outcome of the interview which rated her as not suitable was not based on an observable and reasonable basis since the Applicant had already been successfully performing the duties of the position for a year and she could not possibly be considered not suitable. Furthermore, the Applicant states that the decision not to select her for one of the positions advertised under Job Vacancy No. 122592 was the direct result

of the bias and prejudice against her held by the Chair of the interview panel, Ms. ML. The Applicant also states that the process was flawed in that there was much discussion after the interviews and that members of the interview panel changed their ratings after pressure to do so and that the process was not fair or transparent. The Bank denies all the Applicant's claims.

67. The Tribunal called upon the Bank to produce contemporaneous communications from the interview process. The Bank did not produce any documents pursuant to the Tribunal's first order. It only produced documents satisfying this request after a second order by the Tribunal at the very end of the Tribunal proceedings.

68. The contemporaneous communications on record of the interview panel exchanges produced pursuant to the Tribunal's order show that the assessment of the candidates changed from the initial interview report (candidates' assessment matrix) to the last interview report.

69. A review of the interview reports (candidates' assessment matrices) shows that all candidates were comparatively assessed against the same selection criteria which were: professional competence; task management; partnership orientation; communication; working with others; and additional added value. They were then rated with regard to each of these criteria and were given an overall rating score along with a conclusion as to whether they were "highly suitable"; "suitable" or "not suitable."

70. The first candidates' assessment matrix shows that the Applicant had initially been rated "suitable," although she ranked sixth and had an overall rating of 33, lower than that of the other suitable candidates except for one. In the overall comments it was recognized, *inter alia*, that the Applicant had "extensive country level experience [including] in fragile contexts, gender issues." E-mail exchanges among the panel members show that there was discussion as to whether the Applicant's ETC appointment would be extended instead of her being selected to one of the advertised positions. Mr. PC, however, after discussions, suggested that the list of candidates recommended as suitable for the positions was too long

and that it should be shortened to five names. He then proposed five candidates to be included in the list of recommended candidates for the position. The Applicant was not among them. Upon the question of one of the interview panel members whether it had been decided whether the Applicant would be removed since she would be extended for one more year as an ETC instead, Mr. PC presented his position “that anyone not deemed suitable on our list would not be extended as ETC either.”

71. Immediately thereafter, the record shows that the Chair of the interview panel sent an e-mail to all the interview panel members informing them that on the basis of the earlier communications with the other members of the panel, the Applicant along with two other candidates had been moved from the list of “suitable” to the list of “not suitable” candidates. A new matrix with the candidates’ assessment was attached.

72. According to this new matrix, the detailed assessment and ratings regarding the other two not suitable candidates were removed to comply with the format used for the other non-recommended candidates. For the Applicant, however, the new matrix presented a more detailed assessment which showed that the Applicant’s overall rating had been downgraded from 33 to 29 and the Applicant was identified as “[n]ot suitable.” In addition, the ratings given to the Applicant in the first matrix had been lowered and the overall comments on her assessment had changed. The new overall comments no longer mentioned the Applicant’s extensive country level experience in fragile states and gender issues. Instead the overall comments presented mainly criticism of the Applicant’s performance stating, *inter alia*, that the Applicant “demonstrates a project-management oriented approach rather than a partnership approach” and that “[d]espite her work in GPE for 10 months, the candidate is unclear on GPE’s role.”

73. Furthermore, her ratings appear to have been changed. The only explanation given for the adjusted ratings was that they aligned more clearly with the basis for the ratings. By lowering such ratings, and changing the overall comments with the effect of justifying the Applicant’s ranking as not suitable, the interview panel appears to have attempted to justify *post hoc* the later decision that the Applicant was not among the “suitable” candidates.

74. The Tribunal does not see any reasonable basis in fact for the new ratings. The Tribunal notes that if the ratings did not initially align with the comments in the first report, proper ratings aligning with such comments should have been given earlier by the interview panel. Nor should new overall comments have been given to justify the new decision. In addition, a clear explanation of the reasons for the changes should have been given through contemporaneous communications of the interview panel. Moreover there is no evidence of a discussion among other members of the panel of these reductions.

75. The Tribunal is further troubled by the fact that the ranking of the Applicant as “not suitable” resulted not only in her not being recommended for selection to the position she had applied but also ensured that her contract would not be renewed as it had been decided that the candidates that were “not suitable” for selection would also not be suitable for renewal. Thus, the *post hoc* characterization of the Applicant as not suitable resulted also in her appointment being terminated.

76. The Tribunal cannot conclude, on the basis of the record before it, that a fair assessment of the Applicant had been conducted during the interview process, or that the principles ensuring a transparent, objective and fair recruitment process established in its jurisprudence have been observed in this case. Given the deficiencies in the process as well as the other circumstances in this case, and even though, as the Bank states, the Applicant might not have been selected for the position absent those deficiencies, the Tribunal finds that an award of compensation to the Applicant is warranted. (*See Iqbal*, Decision No. 485 [2013], para. 59, citing *King*, Decision No. 131 [1993], para. 59.)

#### *Other claims*

77. The Applicant also claims that the Bank mismanaged her career and created a hostile work environment during the time she was working in GPE. The Bank states that the Applicant’s claim of career mismanagement is inadmissible because she failed to exhaust internal remedies regarding this claim. The Tribunal notes that the issue of the Applicant’s frequent change of portfolio was described and addressed in the PRS report, according to

which, the Applicant stated at the PRS hearing that she believed that she was set up for failure due to this constant change of assignments. The Tribunal also notes that there is no issue of admissibility regarding the Applicant's other claim on hostile work environment, as it was addressed in the PRS conclusions and the Bank has not raised an objection as to its admissibility.

78. The Tribunal takes note that the record shows that there appeared to be a lack of a defined work program for the Applicant in GPE, a very frequent change of her portfolio (often announced when she was on mission) without a justified business need, a lack of opportunity to carry out her duties uninterrupted, a frequent change of coordinators who did not appear to communicate clearly to the Applicant issues regarding her performance or to guide her sufficiently in this respect. The Applicant states that the above behaviors caused her considerable stress. Based on the record before it, however, the Tribunal cannot conclude that the behaviors alleged by the Applicant amounted to unreasonableness and arbitrariness warranting additional compensation.

79. The Applicant also claims that the 22-day notice she was given of the non-renewal of her ETC contract was not sufficient and was contrary to Bank practice. Since the Tribunal finds that the Applicant must be compensated for the breach of promise for a two-year contract, the claim of insufficient notice of non-renewal of her one year ETC contract warrants no further discussion.

80. The Applicant also claims that e-mails that she had in her archive folder were lost or destroyed and this impeded her from accessing valuable evidence to support her case when she was preparing her Application before the Tribunal.

81. The record raises questions in this respect. Pursuant to the Applicant's request, HR arranged for a disc with her e-mails to be sent to her. When she reviewed the e-mails, however, she found that many were missing, including all her archived e-mails. Whatever the reason for the disappearance of the Applicant's e-mails, the Tribunal notes that she, at least, had e-mails from her archives during the presentation of her case before PRS and



apparently used a number of these for her presentation before the Tribunal. The Tribunal ruled in *CF*, Decision No. 486 [2014], para. 215, that

it is incumbent upon the Bank to ensure that a staff member's e-mail records are safeguarded from destruction whenever a preliminary inquiry is launched in order that relevant correspondence is preserved to the maximum extent possible.

82. The Tribunal calls upon the Bank to take appropriate measures to preserve the e-mail records of staff for a reasonable period of time, particularly those whose employment ends.

#### *Overall Conclusion*

83. The Tribunal has found that (i) the Bank in not extending the Applicant's appointment breached a legally valid promise it made to the Applicant to offer her an appointment of a duration of at least two years; and (ii) the non-selection decision was tainted by irregularities. The Tribunal will therefore award the Applicant compensation for the non-renewal of her appointment for the promised additional year. The Tribunal will also award damages in the amount of three months' net salary for the irregularities in the selection process.

#### DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of one year's salary net of taxes for the breach of promise to extend her appointment.
- (2) The Bank shall pay the Applicant compensation in the amount of three months' salary net of taxes for irregularities in the process.
- (3) The Bank shall pay the Applicant's attorney's fees in the amount of \$15,008.53.
- (4) All other pleas are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 29 May 2015