



**World Bank Administrative Tribunal**

**2015**

**Decision No. 509**

**CQ,  
Applicant**

**v.**

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

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

**CQ,  
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 9 September 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 in this case on 5 February 2015. The Applicant's request for anonymity was granted on 21 May 2015.

3. The Applicant challenges: (i) the decision not to shortlist him for the position of Lead Specialist (Bank Procurement Reform), Level GH, Job No. 131690, in the Operation Risk Management Department (OPSOR); (ii) the subsequent decision of the Shortlisting Committee (SLC) for Job No. 131690 not to begin the selection process anew once the seriousness of an alleged conflict of interest involving the Chair of the SLC, Mr. B, was recognized; and (iii) the decision of the SLC for Job No. 131690 that relationships between some of its members and some of the internal candidates did not rise to the level of a conflict of interest.

**FACTUAL BACKGROUND**

*The Applicant's career*

4. Before joining the Bank, the Applicant had extensive experience in procurement working, *inter alia*, as Procurement Officer for the Ministry of Finance in France and as a

Procurement Advisor to the European Commission. He has two master's degrees and is an experienced lecturer on procurement policy and law.

5. The Applicant joined the Bank in November 2002 as a Senior Procurement Specialist on a Special Assignment in the Office of the Africa Region's Procurement Advisor. Until June 2009, he worked as Senior Counsel in the Bank's Legal Department working on procurement issues, including proposals for reform of the Bank's procurement policy and providing advice on procurement policy changes.

6. In July 2009, the Applicant was transferred to the Latin America & Caribbean Region (LCR), Procurement Sector Unit (LCSPT), as a Senior Procurement Specialist and Procurement Coordinator, working in Bolivia, Chile, Ecuador, Peru and Venezuela. His tasks included playing a leading role in the Bank's dialogue with government authorities about the design and reform of national and sub-national public procurement systems. In 2011, the Applicant wrote an article in a book published by the Bank about the need for procurement reform in the country which, the Applicant observes, inspired the new President of Peru. The Applicant and his team worked with the Peruvian Government to pass a new law and the Peruvian Government expressed its appreciation of their assistance.

7. The Applicant's performance was always considered excellent by his supervisors as shown by their comments and ratings in his Overall Performance Evaluations (OPEs). In his OPEs from 2009 to 2012, he received numerous "Outstanding/Best Practice" and "Superior" ratings by his former supervisor, Mr. E. Mr. E made reference, among other things, to the Applicant's "maturity, leadership, in depth grasp of Bank policy, institutional awareness, and superior communications skills." The Applicant also received 5 "Superior" ratings and 1 "Outstanding/Best Practice" rating in his 2013 OPE by his supervisor, Ms. S, who stated in the overall comments of that same OPE that the Applicant "demonstrates a good grasp of policy and sound judgment and his communications skills are strong."

8. Between March and May 2013 a Bank-wide exercise called "Talent Review" was used by the Procurement Sector Board for the first time. This exercise was first introduced

in the Bank in 2012. In a declaration to the Tribunal, Ms. A, the Senior Human Resources (HR) Business partner (“HR Representative”) who assisted with the shortlisting and interviewing processes for the position of Lead Specialist (Bank Procurement Reform) discussed below, explained as follows the role of the Talent Review and its relationship to the OPE:

The Talent Review is conducted on a yearly basis to assess the talent pool of the Bank. Specifically, each operational [Vice Presidential Unit (VPU)], Sector Board and Network Council, assessed staff vis-à-vis their current performance and future potential. The goal of the Talent Review is to identify staff development actions, potential mobility, and possibility of growing into the next role, either through lateral movement or promotion. During the Talent Review, staff members are discussed by Regional, Sectoral and in some cases (GH and above), Network Council and considered for various talent pools. The outcome is typically that some staff are deemed to be ready for their next move immediately, some are deemed to be ready in 1-3 years, and some are deemed to be ready in 3-5 years. Some are also deemed not to be ready within these timeframes. The Talent Review is not a performance evaluation exercise which management undertakes annually, which looks into the past performance of the staff and in which the staff participate directly. Rather, the Talent Review is meant to be future-looking, designed to help managers to identify talent that can be tapped for different assignments or that are ready for potential promotions, if there are open positions and they are successful in competing for those roles. It has no immediate career or development implications for staff, but is rather used to assess current stock of staff against future needs of the Bank. These discussions are confidential, and all involved participants sign a confidentiality agreement at the commencement of discussions.

9. Regarding the role of the 2013 Talent Review that was carried out by the Procurement Network, Ms. A stated:

In the case of Procurement staff, all staff were first nominated to Talent Pools by their regional management. Then the Sector Board principals (Practice Managers) participated in the Talent Review discussions during which all staff grade GF and above, including [the Applicant], were discussed. The results of this Talent Review and conclusions reached by all practice managers were then validated at the Operations Policy and Country Services (OPCS) Council level where the Vice President for OPCS and OPCS Directors participate. These discussions took place around late May 2013. All the practice managers who participated in the shortlisting discussions of the

applicants for the position for which [the Applicant] applied had earlier participated in the Talent Review discussions.

10. In relation to the Applicant, the Talent Review included a comment that he has “[g]ood communications skills” as reviewed by the regional management on 28 March 2013. It also stated that he would be ready for promotion in 1-3 years. Regarding the development needs and actions to be taken in relation to the Applicant, the Talent Review included a comment on “[c]oaching on different communications style.” The Bank explains that this comment was also made by the regional management. Another comment by the Human Resources Committee (HRC) of the Procurement Sector Board made on 13 May 2013 was that the Applicant “[n]eeds lot of coaching on message delivery and cynicism. Needs to recognize his own development need before he can move on.”

*Background on the procurement reform at the Bank*

11. From 2012 to 2015, the Bank has been reviewing its operational procurement policy procedures in order to reform the Bank’s procurement. According to the Bank, this is the first comprehensive review in the history of the institution and the Bank is consulting widely with its shareholders and all stakeholders. The Bank adds that while the current policy had served it well with managing complexity in procurement throughout the past decades, changes in the demands of Bank’s clients and in the way the Bank does business now require a more adaptive approach.

*Job No. 131690, Lead Specialist (Bank Procurement Reform)*

12. In July 2013, to support the Chief Procurement Officer in developing and driving the reform process, the Bank announced vacancies for two Level GH positions in OPSOR: (i) Lead Specialist (Operational Procurement), focusing on supporting operational procurement activities and (ii) Lead Specialist (Bank Procurement Reform), focusing on system reform and modernization of the Bank’s procurement approach in its client countries. The hiring manager for the positions was Ms. T, Manager for Operations, OPSOR. The position for the Lead Specialist (Bank Procurement Reform) was announced on the Bank’s website and

the announcement included a detailed description of the role, a comprehensive list of “Duties and Accountabilities” and a list of 31 “Selection Criteria.”

13. The announcement stated in pertinent part:

This position will be instrumental in driving Procurement Reform across the Bank, in particular, program managing procurement reform. This is a leadership role that requires the ability to undertake tasks as needed, modeling behaviors in others by actively doing what needs to be done to support bank reform activities. This position will be a role model for the procurement changes that this reform program will achieve, this person will act as a change champion. A strong knowledge of procurement reform, gained through actual, real, “hands-on” experience undertaking procurement change programs in organizations is critical to this role. Equally important is experience in actually undertaking strategic procurement projects/activities to lever results.

14. The Applicant applied for Job No. 131690 on 25 July 2013.

15. The Bank received a total of 149 applications for the position. Each of the applications was screened against the job description and the minimum requirements for the grade Level GH. This process resulted in a longlist consisting of 18 candidates. Nine of these candidates were external and nine candidates were internal.

16. In early September 2013, Ms. T appointed a Shortlisting Committee (SLC) to review the applications for Job No. 131690 and the other Lead Specialist position available in OPSOR. The members of the SLC were:

1. Mr. B, the Chief Procurement Officer, OPSOR, and the Chair of the SLC;
2. Mr. E, Regional Procurement Manager for East Asia & the Pacific and the Applicant’s former supervisor;
3. Mr. M, Regional Procurement Manager for Africa;
4. Ms. S, Regional Procurement Manager for Latin America and the Caribbean, Procurement Sector Unit (LCSPT), and the Applicant’s current supervisor; and

5. the HR representative, Ms. A.

17. Other staff members had been invited to participate in the SLC but only participated subsequently in the interview panel that interviewed the successful candidates. Ms. T, the hiring manager, did not participate in the shortlisting process apart from briefing the SLC on the background of the position and on the selection process.

18. When Mr. B's staff prepared the longlist of candidates, Mr. B became aware of a possible conflict of interest affecting him and Mr. J, one of the external candidates for Job No. 131690. Mr. J was a close personal friend of Mr. B, had worked with him in the past, and had taken Mr. B's position when he left his previous employer. Mr. B served as best man at Mr. J's wedding – which took place the very same week as did the interviews for Job No. 131690.

19. Mr. B informed his manager and Director of OPSOR, Mr. K, Ms. T, and Ms. A of the situation. They discussed it and recognized that there may be a conflict of interest or perception of a conflict. Because Mr. B was the Chief Procurement Officer for OPSOR and the successful candidate would need to have a close working and reporting relationship with Mr. B, who was ultimately responsible for the procurement reform, Mr. B's participation in the selection process was considered "critical." They agreed that the selection process could continue as planned, so long as Mr. B disclosed his relationship with Mr. J at the meeting of the SLC and abstained from discussions on Mr. J's application.

20. When the SLC met, Mr. B disclosed his relationship with Mr. J. The SLC also discussed any potential conflicts of interest related to the other candidates. Mr. E, who was previously the Applicant's manager, disclosed his knowledge of Mr. D, one of the candidates, who also worked under Mr. E. Mr. M also disclosed that he knew Mr. D. Mr. E and Mr. M were friends with Mr. D and his partner. The SLC decided that none of these disclosures were material or rose to the level of a conflict of interest.

21. The SLC considered three aspects of each candidate's application: (1) the Application Package; (2) the SLC members' experience with each candidate vis-à-vis key

competencies such as persuasive communication skills and management change; and (3) job-related strengths vis-à-vis other candidates.

22. When Mr. J's application was considered, Mr. B stepped out of the room and did not re-enter until after the discussion of Mr. J was over.

23. On 10 September 2013, the SLC prepared its report. According to the SLC report, out of a longlist of 18 candidates, four were initially shortlisted for interviews and 14 did not make the shortlist. The shortlisted candidates were: one internal, Mr. D; two external, Mr. J and Ms. X; and a fourth candidate. The first three candidates were then cleared by representatives of the HRC of the Procurement Sector Board to proceed to the first stage interview. The Applicant was one of the 14 unsuccessful candidates. The SLC report described as follows the reasons for the decision, which apparently was unanimous, not to shortlist the Applicant:

Does not meet technical qualification criteria: Lack of experience driving change [management] agenda of this scale. Concerns raised on communication and positively influence [sic] change.

24. According to his testimony before Peer Review Services (PRS), Mr. B was present when the shortlist was prepared although apparently he "stayed quiet for that discussion when the rest of the panel had the debate about whether [Mr. J] should proceed or not."

25. On 11 September 2013, the Applicant received an automated message through JobWorld that he was not shortlisted for the position.

26. On 18 September 2013, the interview panel conducted first stage interviews of the three shortlisted candidates. This first round interview was undertaken by the HRC of the Procurement Sector Board. In addition to the members of the SLC, the members of the interview panel included Ms. Y, Manager, Middle East and North Africa Regional Office, Procurement; Ms. H, Manager, Europe and Central Asia Sector Units, Procurement; and Ms. L, Lead Counsel, Legal Department, Operations. These individuals were also



representatives of the HRC of the Procurement Sector Board. Mr. E was the Chair of the Sector Board Interview process. Mr. B abstained from the interviews held by the HRC for this position.

27. On 24 September 2013, Mr. E sent an e-mail addressing Mr. B and Ms. T enclosing a summary of the interviews for the position prepared by the HR Representative, Ms. A, and incorporating comments received by all interview panel members. Mr. J and Mr. D both received positive reviews by the panel. The panel felt that both candidates were qualified for the role and recommended that they both move forward to the final interview stage.

28. Mr. E further said that all the interviews were very good but panel discussions were not exactly conclusive and different point of views and opinions were expressed. Ms. Y provided comments on the interview minutes stating that regarding Mr. J there were issues because he was so close to Mr. B. She added:

It is important that to third parties it is crystal clear that the members of the panel (or some members of the panel, including me) have raised this matter. It is important to ensure that our processes are conducted in a manner that is above reproach and consistent with the expectations associated with our function.

29. In an e-mail to Mr. B dated 27 September 2013, Ms. T stated that she had a lot of difficulty making a choice between Mr. D and Mr. J.

30. On 2 October 2013, Mr. E sent an overview note to Mr. B giving his own perspective as Chair of the interview panel. He stated:

As mentioned in the minutes, both [candidates] were deemed capable to fulfill the key requirements for the reform position, although their profiles are different, and somewhat complementary.

Of course, the potential perception issues with respect to both candidates were clear to all panel members, and were openly discussed. They need to be factored in the final selection decision, and further managed, if it goes forward. However, the panel was not unanimous in its overall assessment of related risks and how these should be gauged vis-à-vis the potential benefits of selecting either candidate. ....

The same panel members, pointed out that there had been specific disclosure to the panel in the case of [Mr. J], and or no lack of transparency could be seriously alleged in the case of [Mr. D], about the underlying causes of the potential perception issues. The position was widely advertised inside and outside the Bank and, among the candidates who applied, these were the only ones deemed qualified, after the interview. Disqualifying them on the basis of the potential perception issues only, would seem unfair to these candidates, who were shortlisted with full knowledge by the panel members of these underlying reasons. In addition, the consequences of not filling the position would leave you and the anchor with significant uncertainty on most appropriate next steps.

31. Following HRC clearance and before the final interview, Mr. J had been ranked as first and Mr. D as second. The final interview was undertaken by Ms. T, Mr. B, and Mr. M as Sector Board representative. For the final interviews, Mr. B and Mr. M declared their conflicts of interest. Mr. B attended the final interview of Mr. J, but he did not ask any questions. The final interview panel offered three hiring options. The recommended option by the final interview panel was to hire both Mr. J and Mr. D to work on reforms bolstering the resources in that area “due to the need to rapidly progress delivery and their complementary skills.”

32. On 2 October 2013, Mr. B sent an e-mail to Mr. K, Director, OPSOR, giving him an overview of the selection process and attaching all exchanges of communications. Regarding the “optics/issue” in relation to the two recommended candidates he stated:

[Mr. J] is a close personal friend of [Mr. B].... [Ms. Y and Ms. H] have specifically raised this as a concern – [Ms. Y] has since formally raised this. Someone has also lodged this as a query with the Ethics Office, who have spoken to [Ms. A] who has explained the process thus far and mitigations taken. It also appears that information has leaked to Procurement staff and there is now noise building.

[Mr. D] is viewed by some as being very close to [Mr. M], [Mr. E] and [Mr.K], ([ex-staff member of the Latin America and Caribbean Region]). [Two other staff members] have informally raised concerns on his ability to undertake this role.

33. Ms. T made the final hiring decision with input from Mr. B and Mr. M. Thereafter, Mr. E conducted due diligence on the selected candidate: Mr. D. The feedback received

from the Country Operations Advisor for the unit where Mr. D worked as well as from the Country Director was positive. They both recommended him highly for a Level GH position. Mr. E further provided his own feedback on Mr. D as his current manager and stated that he considered him an asset to the Bank, as very creative, and a provider of high quality services.

34. Following the due diligence exercise, Ms. T offered the position to Mr. D.

35. During the week of 4 November 2013, the Bank published on its intranet the name of the internal candidate who was selected as the final candidate for the position.

36. On 7 November 2013, the Applicant sent an e-mail to Ms. A copying Ms. T requesting feedback as to why he was not shortlisted for the position. On 12 November 2013, Ms. A informed the Applicant that he was not shortlisted because of (i) his lack of experience in change management; and (ii) questions regarding his ability to communicate and influence the change agenda in the Bank.

37. On 4 December 2013, the Applicant met with Mr. B, Mr. E, and Ms. T. At this meeting, Mr. B discussed the differences between Lead Specialist for Bank Procurement Reform and other Lead Specialist positions. Mr. E also referred to “a significant gap in reform-related experience when compared with other candidates” on the Applicant’s part, in addition to the Applicant’s alleged lack of experience with change management.

38. Since November 2014, the Applicant holds the position of Lead Procurement Specialist, Governance Department – Global Practice.

#### *The Applicant’s Request for Review*

39. On 30 December 2013, the Applicant filed a Request for Review with PRS of the Bank’s decision not to select him during the shortlisting process for Job No. 131690. A hearing was held on 1 April 2014. The Peer Review Panel concluded that the decision not

to shortlist the Applicant was reasonable and supported by the evidence and that the Bank had followed proper procedures. On 12 May 2014, the Vice President and Head of Network, Operations Policy and Country Services, accepted the recommendation of the PRS Panel that the Applicant's request for relief be denied.

40. The Applicant filed an Application with the Tribunal on 9 September 2014. The Applicant requests the Tribunal to order: (i) rescission of the selection process and a new selection process for Lead Specialist (Bank Procurement Reform), Level GH, Job No. 131690 in OPSOR, excluding Mr. B from all aspects of the process; (ii) the destruction of and the removal from the Applicant's personnel records of any reference to the April or May 2013 Talent Review conducted by the HRC of the Procurement Sector Board; (iii) the difference between the Applicant's salary, as paid, between October 2013 to the date at which he became a Level GH staff member, and what he would have been paid at Grade Level GH if he had been appointed to the position of Lead Specialist (Bank Procurement Reform), Level GH, Job No.131690, in OPSOR; (iv) such additional compensation as the Tribunal deems just and fair for the reputational damage and harm to the Applicant's career, the loss of potential benefits and income, and the intangible damages and distress caused by the unfair selection process; and (v) attorney's fees and costs in the amount of \$20,385.86.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Applicant's Main Contentions*

41. The Applicant contends among other things that: (i) the decision not to shortlist him for Job No. 131690 was neither reasonable nor fair; (ii) the selection criteria for Job No. 131690 were neither rigorous nor transparent and failed to meet the requisite standards for Bank hiring; (iii) the conflicts of interest within the SLC completely undermined the shortlisting process and eviscerated its objectivity; (iv) the SLC's consideration of confidential information about the Applicant's interviews in other application processes violated the Bank's confidentiality rules, was grossly prejudicial, and denied him due process and fairness; and (v) the Applicant had no warning or adequate notice of alleged

performance issues in a Talent Review which contradicted his OPEs and affected his ability to get promoted.

*The Bank's Main Contentions*

42. The Bank responds, *inter alia*, that: (i) the decision not to shortlist the Applicant was reasonable and fair; (ii) the selection criteria for the position had to be comprehensive and detailed due to the importance and uniqueness of the position; (iii) alleged conflicts of interest were either properly handled or did not exist; (iv) the SLC did not make use of feedback from interviews with the Applicant; and (v) while the SLC considered the results of the 2013 Talent Review, such consideration was consistent with the Talent Review's intent.

*The Staff Association's Amicus Curiae Brief*

43. In its *amicus curiae* brief, the Staff Association states, *inter alia*, that, in this case, the process was highly questionable from beginning to end: (a) the vacancy announcement was overly long and repetitive, and so vague as to permit the selecting manager to justify selecting whomever they wanted to select; (b) the SLC had conflicts of interest well-documented in the Applicant's brief; and (c) the reasons given for not shortlisting the Applicant are both specious on their face and not supported by the facts.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

44. Regarding its scope of review of the Bank's decisions to select or not select a candidate to a particular position, the Tribunal found in *Riddell*, Decision No. 255 [2001], para. 23, that:

With regard to decisions to select staff members for positions, the Tribunal has held:

[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. ...

(*Jassal*, Decision No. 100 [1991], para. 30.) It is clear from the above jurisprudence, that no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position. The decision to select an applicant for a particular position, or to include him or her in a list of candidates, is discretionary and the Tribunal will not overturn such a decision unless it finds that it is tainted by bias or abuse of discretion.

Furthermore in *Jassal*, para. 37, the Tribunal held:

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.

45. Additionally, the Tribunal has addressed the need to observe the principles of objectivity, transparency, rigor, diversity and fairness in the selection process (both shortlisting and interviewing) in a number of judgments. (*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]).

46. Regarding the applicable principles in the shortlisting process, the Tribunal noted in *BK*, Decision No. 444 [2010], at para. 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...

47. The Tribunal further found in *BK* at para. 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.

48. The Tribunal ruled in *BK (No. 2)*, Decision No. 452 [2011], paras. 41 and 42 that the same criteria and principles identified in the shortlisting process were also applicable in the interview process.

49. The Applicant has claimed first that the decision not to shortlist him was not based on an observable basis. In the Applicant's view, he met all the 31 selection criteria while the successful candidate did not meet the minimum qualification requirements of 10 years of relevant experience in the Bank. He maintains that, while Mr. D had at most eight years procurement experience in the Bank, the Applicant's experience on procurement reform dates back to the very beginning of his time in the Bank in 2002 and even earlier.

50. Furthermore, the Applicant states that – at the time of the selection process – in 2013, he was spearheading efforts to modernize and reform the Peruvian Government's procurement function – a task for which he was rated "Superior," for which the Bank Director praised his experience and leadership, and for which the Peruvian Minister of Finance thanked his team. By contrast, he states, Mr. D's procurement experience related almost entirely to routine procurement support for Bank projects, not to procurement reform.

51. The Bank points out that even though the Applicant does indeed have experience in procurement reform, this experience is limited to being an advisor to governments, and the

Applicant did not have sufficient experience working hands-on with procurement reform. The Bank points to Mr. D's work with the Government of Mexico carrying out procurement reform – a project that had been uniformly described as highly successful and innovative and won a Vice Presidential Unit Team Award for excellence. It also points out that the role as Lead Specialist for Bank Procurement Reform required just the kind of experience that Mr. D had and which the Applicant lacked.

52. Recalling its jurisprudence mentioned further above, the Tribunal emphasizes that in assessing the validity of the selection or non-selection of a staff member the Tribunal does not undertake its own examination of a staff member's record; it rather reviews whether the Bank's examination in this respect is tainted by abuse of discretion. If the Bank's conclusion regarding the qualifications of an applicant lacks support in factual evidence or reasonable inference, the contested decision may be found to be an abuse of discretion.

53. A review of the qualifications of the candidates and of the processes followed in evaluating those qualifications does not lead the Tribunal to conclude that the qualifications of Mr. D vis-à-vis those of the Applicant were lacking and that therefore the Applicant should have been shortlisted instead of Mr. D. The qualifications of the Applicant, and his experience in procurement reform, seem to have been of a high quality, as also attested by his OPEs. At the same time, Mr. D's qualifications in these respects have been demonstrated by the Bank to be substantial. Mr. D met the minimum requirements of 10 years of relevant experience as was determined based on documentation provided during an earlier procurement accreditation process. The due diligence exercise that was conducted before the position was offered to Mr. D shows that his supervisors at a senior level considered his technical expertise and his innovative solutions to procurement reform to be of high quality. The Tribunal does not find that the Applicant has shown that the comparative assessments of candidates lacked support in factual evidence. The Applicant is undoubtedly a staff member of attainment and promise. But it does not follow that the shortlisting of other candidates whom the SLC found even better qualified was an abuse of discretion.



54. The Applicant also claims that the selection criteria of the advertised position were neither rigorous nor transparent. He states that the list was too long and that the criteria were confusing making it impossible for candidates to know what was being sought. Because the list was so broad, he states, it provided the SLC and the hiring manager with endless ways to justify any decision whatsoever. The Applicant points out that, from all the criteria listed, the SLC considered only two criteria: those of communications skills and ability to lead change management.

55. The Tribunal found in *Garcia-Mujica*, Decision No. 192 [1998], para. 13, that

[t]he identification and definition of specializations is a matter that comes within the managerial discretion of the Bank as does the evaluation of the corresponding skills to perform these tasks.

56. In the current case, the record shows that there was a great number of selection criteria for the Lead Specialist (Bank Procurement Reform) position which, as the Applicant states, may have been confusing. The Bank, however, provides a plausible explanation, when it states that the position was at Level GH and required the successful candidate to master a large number of skills and that the nature of this position was particular as it required a candidate with skills and ability to lead the procurement reform in the Bank.

#### *Conflicts of interest*

57. The Applicant claims that the conflicts of interest within the SLC undermined the shortlisting process and eviscerated its objectivity. The Applicant argues that there were two serious sets of conflicts. One related to Mr. B, the Chair of the SLC, and his relationship with Mr. J, one of the shortlisted candidates. The other pertained to the perceived problems that other members of the SLC had with the candidates and particularly with the selected candidate, Mr. D.

58. The Bank's Staff Principles and its Code of Conduct stress the importance of avoiding conflicts of interest, real or apparent.

59. Principle 3 of the Principles of Staff Employment states:

3.1 The sensitive and confidential nature of much of their work requires of staff a high degree of integrity and concern for the interests of the Organizations. Moreover, as employees of international organizations, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest.

60. The Bank's Code of Conduct: Living Our Values, in discussing Principle 3, states:

A conflict of interest may arise when a staff member has competing professional and/or personal interests that can make it difficult to fulfill his or her duties impartially. Likewise, intra- or inter-organizational conflicts of interest can arise between World Bank Group entities or units. In such cases, the World Bank Group's own organizational business units may have different or even competing interests. Conflicts of interest can adversely impact the World Bank Group's activities and reflect poorly on the institution. Furthermore, even *potential* or *perceived* conflicts can undermine stakeholder relationships and damage the World Bank Group's reputation. That is why we must always be alert and consider how actions both inside and outside the World Bank Group may be viewed by a third party. Having a conflict of interest does not necessarily mean a staff member has done something wrong. However, promptly disclosing and dealing with the conflict is critical to avoiding potentially serious consequences.

61. The Bank's Code of Conduct further provides regarding the personal conflicts of interest:

We must perform our official duties in a manner that preserves and enhances public trust and confidence in our integrity and that of the World Bank Group. As soon as we become aware of a situation where our personal interests may conflict – or may be perceived by others to conflict – with those of the World Bank Group, we may need to take further action to appropriately resolve the conflict. The actions needed may include restricting our access to information, recusing ourselves, or avoiding the situation. Common personal conflicts of interest that arise include gifts, outside activities, and relationships.

Furthermore, Staff Rule 3.01 "Standards of Professional Conduct" provides at para. 1.02:

Staff members who have questions about the application of ethical rules in particular circumstances should seek advice from an ethics counselor in the Office of Ethics and Business Conduct (EBC).

62. Taking into account the provisions of the Staff Rules and Code of Conduct and the facts of this case, there was at least room for a perceived conflict of interest because of the very close relationship of Mr. B and Mr. J. The existence, or, in the least, the perception, of such conflict was not disputed by Mr. B. In fact, he discovered it himself upon reviewing the names in the longlist of candidates. Mr. B recognized that he was required to disclose his friendship with Mr. J and take further appropriate action to resolve any conflict of interest, real or perceived.

63. As the record shows, Mr. B properly discussed the matter with the hiring manager, and with the HR Representative as well as his manager, the Director of OPSOR. The question is whether the actions taken after his disclosure were adequate to resolve any conflict, in compliance with the Code of Conduct and Principle 3.1 of the Principles of Staff Employment.

64. As the Code of Conduct states, actions needed to resolve the conflict “may include restricting our access to information, recusing ourselves, or avoiding the situation.”

65. After Mr. B disclosed the conflict to his manager and the hiring manager, it was decided that he would not recuse himself altogether from the process but would disclose his friendship with Mr. J before the SLC and exit the room when Mr. J’s case was discussed. However he was present when the candidates were shortlisted as he was the Chair of the SLC.

66. Notwithstanding the provision of Staff Rule 3.01, according to which, “Staff members who have questions about the application of ethical rules in particular circumstances should seek advice from an ethics counselor in the Office of Ethics and Business Conduct (EBC),” EBC was not consulted.

67. During the shortlisting, no one saw the need to take any other measures. As the record shows, however, during the interview stage of the selection process, when other members joined the members of the SLC to conduct the interviews, questions were raised as to whether the perceived conflict had been properly handled. The communications from the interview process show that issues of perceived conflict were a concern for members of the interview panel. Thereafter, at least one member raised the matter with EBC.

68. Although Mr. B abstained from the first round of interviews, he was a part of the final interview of Mr. J and Mr. D (though he did not ask questions) and he gave his views to the hiring manager as to the selection of the final candidate.

69. In the end, the hiring manager decided not to select Mr. J even though it appeared to her that he was the best qualified candidate. The Bank has not produced any contemporaneous communications showing why the decision not to select Mr. J was taken. The hiring manager had stated that she had difficulty choosing between Mr. D and Mr. J but later acknowledged before PRS that the perceived conflict of interest affected the decision. She admitted that of the two recommended candidates (Mr. J and Mr. D),

one was more up ... front ... but then had the perceived conflict of interest, and again for us, it was extremely important to ensure that the change management process, is led by somebody who has the integrity and is seen by the rest of the Bank as being both technically, and for the position, not giving the impression that there is any conflict of interest. For us even though [Mr. J] seemed much more qualified, that perceived conflict of interest could undermine the change process and the reform that we were going to put in place; so technically very strong ... but had this shortcoming.

...

The other one was very strong but did not have as much of the expertise.

70. One member of the PRS Panel noted that “if [Mr. B] had recused himself from participating in the entire selection process, there would be no question regarding even the perception of a conflict of interest.”

71. The Applicant has also made the claim that there was a perceived conflict of interest by virtue of Mr. D's relationship with Mr. E and Mr. M which tainted the selection process and the selection decision.

72. Mr. E and Mr. M were two Regional Procurement Managers and members of the SLC that shortlisted Mr. D. They were also members of the interview panel that interviewed him. Mr. M also participated in the final interview stage with the hiring manager that interviewed Mr. D. Both Mr. E and Mr. M knew Mr. D. As can be seen from contemporaneous communications before SLC, both Mr. E and Mr. M, had "identified a potential conflict of interest in relation to [Mr. D], both worked with him and were friends with him and his partner." These same documents show that Mr. D was viewed by some as being very close to Mr. E and Mr. M as well as the Director of OPSOR, Mr. K.

73. The Tribunal notes that Mr. E was the manager of Mr. D and he had offered him the arrangement to telecommute from a country in a different region where he lived. While this may be viewed as a favorable arrangement, the Bank has explained that the policy on telecommuting exists and is given on the basis of objective reasons when certain circumstances are present. The Applicant has not shown that such circumstances were absent or why granting such arrangement evinces favoritism.

74. The Tribunal notes the Bank's argument that previous experience or working relationships normally exist where the recruitment is open to internal candidates. It can be reasonably expected that, as the procurement field is small enough, Bank managers would sooner or later know the colleagues in the field (whether internal to the Bank or external), and it would be unrealistic to expect that they are able to ignore the experience that they have gained through working with the candidates.

75. The Tribunal is of the view that a more appropriate procedure would have been for Mr. B, as the Chair of the SLC, or the SLC as a whole to have consulted EBC on the best way to address the conflict of interest issue. In that case, even the hiring manager may not have been reluctant to select Mr. J because of the perceived conflict of interest. However,

under the circumstances, the Tribunal is of the view that the prompt and sustained disclosure of Mr. B as well as Mr. E and Mr. M with Mr. J and Mr. D addressed the potential issues of conflict of interest.

*Information from previous interviews*

76. The Applicant also claims that the SLC considered confidential information from his interviews in other application processes and thus violated the Bank's confidentiality rules. Consideration of such information, he claims, was prejudicial to him and denied him due process and fairness.

77. The Applicant maintains that, as is shown from the hiring manager's response before PRS, confidential and extraneous material was reviewed by the SLC at the time his application was considered. It included interview notes from his earlier job interviews. He states that they should have never been part of the selection process or its justification. He says that these were not part of his staff records, and that selecting officials should not have had access to them.

78. The Applicant also refers to the testimony of Mr. E before PRS who explained regarding the reasons for not shortlisting the Applicant that, *inter alia*, there was "feedback, coming from three recent interviews and talent review exercise done by [the Procurement Sector Board] around his ability to communicate effectively."

79. The Bank denies that the SLC made use of feedback from interviews with the Applicant and states that feedback from recent interviews with the Applicant was only used during the PRS process, as supporting evidence in the Manager's Response, to provide context to the PRS as to why the Applicant was not the right candidate for the position. Therefore, it claims, there was no prejudice to the Applicant during the shortlisting process.

80. The Tribunal notes that there is no conclusive evidence that feedback from previous interviews was discussed during the SLC meeting. On the one hand, it appears that Mr. E

testified that such feedback had been discussed. On the other hand, no other member of the SLC said that feedback from previous interviews had been discussed during the consideration of the Applicant's application. The Tribunal finds this contradiction problematic but it does not find that breach of confidentiality has been proven. It appears also that some of the SLC members had participated in earlier interviews of the Applicant and took into account their experience with him into this shortlisting decision, even if not sharing directly the feedback from the interviews. In fact, Mr. M has alluded in his testimony before PRS to doing so. However, the record does not show that confidential documents from previous interviews were used during the shortlisting process for the position to which the Applicant applied.

81. An additional question might be whether the Applicant had ever been made aware of issues in his performance recorded in these interview reports that resulted in his non-selection to these other positions. No contemporaneous written evidence exists in this respect. The question of whether any weaknesses in the Applicant's performance should have been taken into account in relation to the decision not to shortlist him if the Applicant had never been informed of them and given an opportunity to respond will be examined below in the review of the Talent Review exercise conducted in relation to the Applicant.

#### *The Talent Review*

82. The Applicant claims that there were comments in the 2013 Talent Review exercise discussing concerns about his communications skills which contradicted his performance evaluation in his OPEs and affected his ability to get promoted. For example, he states that on 1 September 2013 – just a few days before he was informed that the SLC had not shortlisted him for Job No. 131690 – he received his OPE where his manager, Ms. S (a member of the SLC), had written that “his communication skills are strong.” Ten days later he was told that he had not been shortlisted. As he found out subsequently, the reason for the decision not to shortlist him was, *inter alia*, for “concerns raised on communication.” He claims that these alleged concerns came from the Talent Review which was considered during the shortlisting process.

83. The Applicant states that he had no warning or adequate notice of these alleged issues in his performance nor an opportunity to respond to criticism, and therefore such performance issues should not have been given any weight when making the shortlisting decision.

84. The Bank responds, *inter alia*, that the Talent Review results were not improperly used during the shortlisting process but they did form part of the general background information and experience that members of the SLC had accumulated over the years of knowing the Applicant and working alongside him. It states that the Applicant's complaint that the Talent Review results were inconsistent with the OPE feedback is groundless. It points out that, as Ms. S, his supervisor at the time, explained during the PRS hearing, there was no inconsistency between the Applicant's OPE and the reasons for not shortlisting the Applicant; she clarified that the position as Lead Specialist for Bank Procurement Reform involved communication skills that were different from those which Ms. S considered when providing feedback to the Applicant as part of his OPE. Furthermore, the Bank states, in this case, the Applicant cannot point to any Staff Rule violation: because it is not a performance evaluation under Staff Rule 5.03 (Performance Management Process), no discussion with the staff member prior to the Talent Review is required.

85. At issue therefore is whether the comments on performance deficiencies regarding the Applicant's communications skills which were reported in the Talent Review results but which were inconsistent with his OPEs, including the OPE that followed the Talent Review exercise for that year, were improperly taken into account as a partial basis for the non-shortlisting decision.

86. The Tribunal notes first that the Bank has given contradictory accounts of whether or not the Talent Review in relation to the Applicant had been discussed during the shortlisting process. The HR Representative (Ms. A) stated "that the Talent Review results were not used during the shortlisting discussions. It was also not part of the application package that was generated for internal application package for internal applicants." She claims that the Talent Review was only presented as part of the PRS filing, as an exhibit to



the Manager's Response to show the consistent pattern of feedback that the Applicant received regarding his communications skills. In its Answer, the Bank has stated that "while the SLC considered the results of the 2013 Talent Review, such consideration was consistent with the Talent Review's intent." In all its subsequent filings, the Bank states that the Talent Review was not used in the hiring process and the Talent Review results were not shared with the members of the SLC.

87. As the record shows, the issue of the Applicant's communications skills appears only in the Talent Review results and, according to the SLC report, is also one of the reasons for which the Applicant was not shortlisted. Even if the results of the Talent Review were not physically before SLC, the evidence shows that the practice managers who participated in the shortlisting discussions of the applicants for the position for which the Applicant applied had a few months earlier participated in the Talent Review's preparation and had helped write its observations, including the Chair of SLC, Mr. B. Furthermore both Mr. B and Mr. E confirmed that the Talent Review was discussed during the meeting of the SLC.

88. The question then is whether the Applicant had ever become aware of these issues of performance which were reported in the Talent Review. The hiring manager for the advertised position stated in her Manager's Response to PRS that the Applicant "does not seem to acknowledge his behavioral weaknesses as consistently recorded during his previous interviews and confirmed, unanimously by the Procurement HRC in the talent review." However, it is not clear that the Applicant had received this feedback from the interviews. Furthermore it is certain that the Talent Review had not been shared with him. As the Bank has explained, the Talent Review exercise is confidential. It has also stated that managers are discouraged from sharing its results with the staff members even though they may share feedback from the Talent Review with staff during the OPE discussion.

89. The record, however, does not show that the Applicant had been notified, at least, formally, of weaknesses in his communications skills.

90. Indeed his performance evaluations of many years did not give him such notice. On the contrary, they contained praise for his performance, including his communication skills. Even the Talent Review presented on the same page where its results were recorded a comment regarding his “[g]ood communications skills” and another comment that he needed “[c]oaching on different communications style.” Although these are contradictory comments, it appears that this information had been given by the Applicant’s manager during a meeting of the regional management on Talent Review. The other comment in the Talent Review given by the HRC of the Procurement Sector Board was that he “[n]eeds lot of coaching on message delivery and cynicism. Needs to recognize his own development need before he can move on.” The Applicant’s manager states that she shared this information with the Applicant during the OPE as feedback from the Talent Review and even discussed a coaching arrangement with him but he denies it; there is no record showing that such information was shared with him.

91. The next question then becomes whether it was fair for the Applicant not to be selected on the basis of issues of which he had not received formal notice, and as to which he did not have an opportunity to defend himself and an opportunity to challenge them.

92. With regard to non-selection decisions and the factors to be taken into account when making such decisions the Tribunal ruled in *Fabara-Nuñez*, Decision No. 101 [1991], para. 49:

The Tribunal for the same reason concludes that the Selection Committee ought not have given weight to such strongly negative evaluations when considering the Applicant for the ... position. There is not the slightest suggestion that these critical views ... were ever called to the attention of the Applicant or of any other staff member at any time before.

The Tribunal has also ruled in *Garcia-Mujica*, Decision No. 192 [1998] at para. 19:

[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.

93. Consistent with its jurisprudence, the Tribunal could reasonably conclude that if these negative views of the Applicant's performance had never been shared with him they should not have been given weight in the decision not to shortlist him.

94. The Tribunal notes that the OPEs are the only official records of performance evaluations governed by the Staff Rules (Staff Rule 5.03). As the Tribunal has ruled in *K. Singh*, Decision No. 188 [1998], para. 21, "Staff rules are not written for the sake of formality but precisely to secure an orderly process that will be fair and ensure that the staff member affected can feel that his or her case has been properly considered." It also notes that the Talent Review is a process where the staff members are not involved and whose results are confidential. While it is a forward looking process and has a perfectly legitimate goal of helping both the organization and staff members with the best management of talent pools in order to advance the career of staff, it is not a process governed by the Staff Rules and, as the Bank acknowledges, it is not transparent. Therefore, to the extent that it discusses performance of staff members, criticism of such, and need for development in certain areas so that staff advance in their careers, Talent Review results should be expected not to contradict the evaluation in the OPEs of such staff members. If they do, the question arises as to whether Talent Review observations, meant to be confidential, are more candid, and more accurate, than OPE comments which the manager does discuss with the staff member.

95. In fact the "Talent Review Overview and Talking Points For Managers" produced by the Bank asks managers to give staff feedback from the Talent Review and states that managers should try to time their Talent Review feedback around the Performance Management Cycle so that they can make the link between performance and career development in their discussions with the staff. The document states that this exercise helps staff by focusing on their next potential role and helping the manager to identify concrete steps that can be taken together with the staff to move their career forward. Therefore, if there are performance issues identified during this exercise such issues should be shared so that the staff members become aware of them and have an opportunity to respond, address the concerns and improve their performance.

96. This lack of notice to the Applicant of an important performance issue deprived him the opportunity to respond, address the issue and improve so as to advance his career. Since the issue with his communication skills identified in the Talent Review was one of the reasons given for the decision not to shortlist him and as he had never previously been notified of this issue, it should not have been given weight. Because it was given weight it affected the legitimacy of one of the grounds for the decision not to shortlist him.

97. The Tribunal finds, however, that the decision not to shortlist the Applicant was also based on an even more significant reason – that of the experience in leading the change management agenda. This was a core requirement in order to be shortlisted for this position, which constituted a requirement of a minimum qualification. As has been explained above, when assessed vis-à-vis the other candidates, the Applicant was found not to have met this requirement. It is not plausible, therefore, that the Applicant would have been shortlisted even if the factor of his communication skills had not been taken into account in the decision not to shortlist him. For this reason, the Tribunal will not set the decision aside. Nevertheless, for the reasons discussed in paragraph 96 above, the Tribunal will order the Bank to pay the Applicant's attorney's fees.

#### DECISION

- (1) The Bank shall pay the Applicant's attorney's fees in the amount of \$20,385.86.
- (2) 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