



World Bank Administrative Tribunal

2016

Decision No. 530

**DC,
Applicant**

v.

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

(Merits)

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

**DC,
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 10 April 2015. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 13 November 2015.

3. The Applicant sought: a) rescission of his 2013 Overall Performance Evaluation (OPE) and Salary Review Increase (SRI) – or, in the alternative, referral back to Peer Review Services (PRS) ordering the reinstatement and continuation of PRS Request for Review No. 186; b) rescission of the Opportunity to Improve Plan (OTI) – or, in the alternative, referral back to PRS ordering the reinstatement and continuation of PRS Request for Review No. 186; c) removal of all records of his 2013 OPE and SRI and of the OTI from his personnel records – or, in the alternative, referral back to PRS ordering the reinstatement and continuation of PRS Request for Review No. 186; d) provision of full information as to the amount of all separation benefits which would be due to the Applicant if he were to resign from the World Bank as of 1 July 2015; e) invalidation of the MOU dated 3 September 2014, and the consequent reinstatement of his right to appeal the notice of his termination given to him on 14 July 2014; and f) appointment to a position within the World Bank equivalent to his former position of Program Officer, Level GF.

4. Following an exchange of pleadings on the Bank's preliminary objection in *DC*, Decision No. 525 [2015], the Tribunal upheld the validity of the MOU and found that the scope of the MOU was limited to the Applicant's ending employment with the World Bank Group and post-

employment benefits, commitments, and understandings. *See DC*, paras. 62–75. In assessing whether the claims reviewed in PRS Request for Review No. 186 were claims connected to the issues in the MOU, the Tribunal held that the decision that the Applicant’s OTI was unsuccessful resulting in termination, the subject of the MOU, was separate and distinct from the decision to give him a poor OPE, a low SRI and even the decision to place him on an OTI. *Id.*, paras. 76–80. The Tribunal further held that the waiver clause in the MOU did not apply to the PRS Request for Review No. 186 and claims which preceded the notice of termination of the Applicant’s employment. The Tribunal further reviewed the Bank’s practice in drafting MOUs, and, applying the *contra proferentem* rule, found that the MOU waiver clause did not operate in the manner asserted by the Bank. *Id.*, paras. 81–92.

5. The Tribunal referred the Applicant’s OPE, SRI, and OTI-related claims back to PRS, holding in para. 102 that:

As per the normal processes, the decision of the Vice President and the recommendations of the PRS Panel should be transmitted to the Applicant. [...] He is therefore entitled to receive the results of the review of those pre-existing claims, bearing in mind that regardless of the result he is barred from future challenges to the termination of his employment contract due to the 3 September 2014 MOU.

6. The Tribunal further held that the Applicant’s claims concerning his separation benefits are admissible. This judgment addresses the merits of those claims.

FACTUAL BACKGROUND

The Memorandum of Understanding

7. On 20 May 2014, the Applicant met with Mr. AB, the Director of the Applicant’s unit who had received the memorandum recommending that the Applicant’s employment be terminated for unsatisfactory performance following an unsuccessful OTI.

8. On 21 May 2014, Mr. AB sent an email to the Applicant with a summary of their discussion. He noted:

On the OTI options, I know you indicated that [you] were well aware of the options, such as termination, reassignment, or downgrade, but do not hesitate to contact [Ms. W] if you have any questions.

Likewise, as we discussed, MAS could be another option that provides a package and potential for future employment as a consultant. Again if you have any questions, please contact me or [Ms. W].

9. On 3 September 2014, a Memorandum of Understanding (MOU) was concluded between the Applicant and Mr. AB, acting on behalf of the World Bank Group. The document provides that:

This Memorandum of Understanding (MOU) documents the agreement between [the Applicant] and Mr. [AB], on behalf of the World Bank Group (“WBG”) regarding the following issues:

- [The Applicant’s] ending employment with WBG
- Post-employment benefits, commitments and understandings

10. The MOU sets out the process for ending the Applicant’s contract with the Bank, namely that he agrees to resign effective 1 July 2015 and would be placed on Administrative Leave from 12 September 2014 until 30 June 2015. The MOU further states with respect to post-employment understandings:

7. The parties agree that [the Applicant] shall be ineligible to resume any employment relationship (as staff, contractor, or employee of a contractor) with the WBG for a period of five (5) years from the date of his separation from the WBG, after which [the Applicant] may seek such employment.

11. Regarding post-employment benefits and commitments, the MOU provides that:

8. On or about his last day of employment [the Applicant] would be paid a lump sum in respect of any accumulated annual leave days, up to a maximum of 60 days, as of the close of business on his last day of service in accordance with Staff Rule 6.06 “Leave.”

9. Upon separation [the Applicant] would be entitled to any benefits for which he is eligible to receive in accordance with Staff Rule 7.02 (Benefits on Ending Employment) and his Letter of Appointment.

The Applicant's request for information on his separation benefits

12. On 5 December 2014, six months prior to the Applicant's departure from the Bank, the Applicant sent an email to the Lead Human Resources Specialist and Head of Human Resources Corporate Operations (the Lead Human Resources Specialist), to request the breakdown of the separation benefits he should expect to receive on 30 June 2015, his last day of employment at the Bank. According to the Applicant, there were payments he expected as a result of information provided by the Human Resources Officer, Ms. W. The Applicant wrote:

You may remember me as you helped the Mediation office finalize the MOU I signed on September 3, 2014. Following the terms of the MOU I will be leaving the WBG on 30 June 2015.

The purpose of this email is to request help from your office again: I would like to receive a breakdown of the payments I will be receiving on 30 June 2015.

(a) Details and total of payments without severance payment.

(b) Details and total of payments if I opt to take severance.

This will be very helpful for me and my family.

If a copy of the MOU is necessary, please let me know so I can send it to you as soon as possible.

Again I thank you for your help.

13. On 11 December 2014, the Applicant sent the Lead Human Resources Specialist a reminder email:

Just in case you missed it, last week I sent you the email below requesting your office's help with some financial details.

I hope to hear from you at your earliest convenience.

14. On the same day, the Lead Human Resources Specialist responded informing the Applicant that he was "in and out of the office quite a bit during the last week and a half." He stated that he would look into the Applicant's request and respond "hopefully tomorrow, otherwise by Monday."

15. On 23 December 2014, the Applicant sent the Lead Human Resources Specialist a follow up email stating:

I just want to remind you of the breakdown I requested from your office on 12/05/2014. I know you are very busy but my family and I are considering our options about taking the severance payment or not. The breakdown I am asking for will help us in this time of difficult decisions.

16. The Applicant did not receive a response.

The dispute concerning payment of annual leave

17. On 4 August 2015, the Applicant contacted Human Resources Operations (HR Operations) seeking clarification on an amount of money which was transferred to his bank account. He enquired what the payment was for, how the amount was determined, and a breakdown “showing the details [of] the transaction.”

18. On 10 August 2015, the Applicant received an email from Human Resources Operations in which he was informed that the amount transferred to his account was his annual leave balance. Following a further email from the Applicant enquiring how this amount was determined, the Applicant was informed on 14 August 2015, that the “amount was calculated for 417 hours of leave balance you had at the time of termination.”

19. The email correspondence continued from 14 August until 24 August 2015.

20. On 18 September 2015, the Applicant sent an email to HR Operations stating that he is still expecting the payment of his annual leave balance, and he has already submitted all supporting documentation. The Applicant received a response on 21 September 2015 which was an internal email from one HR officer to another requesting the latter to respond to the Applicant’s email.

21. On 10 November 2015, the Applicant sent an email to HR Operations requesting a “clear statement on [his] requests.” He stated that he was owed an additional 172 hours which represented “a balance of 63 hours (480 payment due – 417 hours paid = 63 hours) related to the MOU dated 9/3/2014” and a “balance of annual leave 109 hours authorized for cash out on 07/16/2014 BUT never paid.”

22. On 16 November 2015, the Applicant was informed that the maximum carry over limit for annual leave as a payment is 480 hours. With the amount of 417 hours paid, the “balance of 63 hours has to be verified by your LARS coordinator copied in this mail.” The Applicant was further informed that “[t]he leave balance of 109 hours was not paid because as mentioned earlier only 480 hours of leave balance should be authorized for payment as per the policy. HR Operations will be able to authorize only if the leave balance is verified in the system by the LARS coordinator and approved by the manager. I am requesting your manager [...] to kindly look into this request on priority.”

23. In his Application before the Tribunal the Applicant contends that he is eligible to receive severance payment, and asserts that as a result of the Bank’s failure to provide: a) the breakdown of his separation benefits; and b) the severance payment, he has suffered damages. The Applicant also contends that he lost 14 hours of annual leave on 28 February 2015 solely because he was not able to use more than 106 hours of leave during the prior leave year. He contends that the Bank owes him 14 hours of annual leave. He seeks the severance payment to which he claims he is entitled, the 14 hours of annual leave, and compensation for the harm suffered. The Applicant also seeks attorney’s fees for this phase of the proceedings in the amount of \$3,186.92.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The Applicant was not provided with the information on his separation benefits and lacked satisfactory alternative means to obtain the information

24. The Applicant contends that the Lead Human Resources Specialist’s failure to respond and provide him with information on his separation benefits was unreasonable and unfair treatment in violation of Staff Principles 2.1 and 9.1. He further attests that contrary to the Bank’s assertions, he did not have satisfactory alternative means to obtain the information he sought. According to the Applicant, Staff Rule 7.02 does not state how it would be applied in his particular circumstances, and only Human Resources “had the information about [the Applicant] himself and how the Rules would apply to him.” The Applicant emphasizes that his contract was being

terminated after 13 years of employment and it was “therefore critically important to him to know exactly how much money he would receive in July 2015 as that amount would have to be budgeted to support his family for as long as possible. Staff Rule 7.02 was not a satisfactory source of information.”

25. The Applicant also argues that the HR Kiosk intranet page would not have provided him with the information he needed since he lacked the required data. He states that the HR Kiosk required him to input “Estimated Net Annual Salary at separation date,” “Estimated Hours of Unused Annual Leave at separation date,” and “Qualifying Service Years for Separation Grant.” The Applicant argues that while he could have conceivably “gathered this information or at least made guesses,” it was Human Resources personnel who had “the capability of obtaining the information as a result of pushing a few computer keys.”

The Bank’s Response

The Applicant had alternative means to obtain the information about his separation benefits

26. The Bank first states that “the Lead Human Resources Specialist should have responded to [the] Applicant’s email. Respondent regrets, and has no intention to justify, this oversight.” That said, the Bank asserts that all the benefits the Applicant was entitled to receive were established in the MOU which the parties signed on 3 September 2014.

27. The Bank asserts that by reading the MOU and Staff Rule 7.02, the Applicant could have known that the only benefits he was entitled to were those identified in the MOU he signed. Furthermore, the Bank contends that if the Applicant had any questions about the other benefits he would receive upon termination of employment, he could have consulted his personal HR Kiosk page on the Bank’s intranet. The Bank submitted a sample page of this intranet page stating that the “Applicant’s HR Kiosk would have identified the termination of employment benefits, including a tool that would have allowed [the] Applicant to estimate the amount of his termination benefits at the time of ending employment.”

The Applicant's Contention No. 2

The Applicant is entitled to receive severance payment

28. The Applicant argues that he is entitled to receive severance payment so long as he was not terminated for poor performance, and that the document he signed with the Bank amounted to a Mutually Agreed Separation (MAS). The Applicant asserts that he was counseled by the Human Resources Officer, Ms. W, that he would avoid losing severance payment if he entered into an MAS with the Bank. He asserts that Ms. W informed him that if his contract was terminated for poor performance he would not receive severance payment. According to the Applicant, in reliance on the statements made by Ms. W and Staff Rule 7.01, paragraph 11.04 he entered into the MAS with the understanding that he would receive severance payment. The Applicant further states that in discussion with Mr. AB, the Bank's representative Director with whom the Applicant signed the MOU, "MAS" was the term used to discuss termination options. The Applicant states that he, therefore, believed that the MOU he signed with Bank management was the "MAS" to which both Mr. AB and Ms. W had referred.

29. Secondly, the Applicant maintains that the MOU he signed, like an MAS, addressed his "separation from service on mutually agreed terms" which is how the Bank characterizes an MAS. The Applicant argues that if there was a legal and significant difference between an MOU and an MAS, this should have been explained to him by Human Resources and Mr. AB; however, no such explanation was forthcoming. The Applicant contends that the fact that the MOU makes no reference to severance payment is far from conclusive. The Applicant notes that Staff Rule 7.01, paragraph 12.01 discusses two types of severance payments: those to which a staff member is entitled, and those "which may be given at the discretion of the Bank Group". The Applicant argues that even if the Bank contends that he was not entitled to severance, the MOU remains silent on whether or not the Bank Group would give him a discretionary severance.

30. Finally, the Applicant asserts that if the Bank had intended the MOU to exclude the severance payment normally associated with an MAS "it should have said so clearly, so that [the Applicant] could have fairly assessed whether the agreement was sufficiently advantageous for him to accept." Relying on *BU*, Decision No. 465 [2012], para. 11, the Applicant contends that the

Bank has in the past drafted MOUs stating clearly where it intends to exclude severance payment. The Applicant asserts that the Bank cannot rely on the fact that it omitted any reference to severance in the MOU to escape its obligation to pay him that benefit.

The Bank's Response

The Applicant is not entitled to receive severance payment

31. The Bank contends that the MOU contained no mention of severance payment, either express or implied, and the Applicant is ineligible to receive severance payment. The Bank further asserts that there is a distinction between a Memorandum of Understanding, which the Applicant signed, and a Mutually Agreed Separation Agreement (MAS). According to the Bank, alleging that the MOU was really an MAS, and that the MOU implicitly provides for more than is in its text, has no merit or basis in the record.

32. The Bank states that an MAS is an agreement reached between a staff member and the organization for separation from service on mutually agreed terms. It is provided for under Staff Rule 7.01 Section 5. By contrast, the Bank defines an MOU as a document used by the Bank in the context of a mediation conducted under Staff Rule 9.01 (Office of Mediation Services). It memorializes the agreement reached between the Bank and a staff member in the context of a mediation under the auspices of the Office of Mediation Services. The Bank argues that the Applicant did not sign an MAS, and also notes that the Staff Rule does not mandate payment of severance; rather, it provides only that the MAS must set out "severance payments, if any."

The Applicant's Contention No. 3

The Applicant should be paid 14 hours of annual leave

33. The Applicant contends that he lost 14 hours of annual leave on 28 February 2015 because he was not able to use more than 106 hours of leave during the prior year. Though these 14 hours were deducted in accordance with the minimum use of annual leave rule in the Staff Rules, the Applicant claims that the sole reason he was unable to take his leave during the 2014-2015 leave

year was because the Bank placed him on Administrative Leave. The Applicant argues that in the interest of fairness, the minimum use of annual leave rule should be waived in his case.

The Bank's Response

The Applicant has been paid all that he is owed

34. The Bank contends that Staff Rule 6.06, paragraph 2.04 provides that staff members are required to take a minimum of 120 hours of annual leave each leave year. Since the Applicant had used only 106 hours during the leave year 2014-2015, 14 additional hours were deducted from his balance. The Bank submits that the total accrued balance of 417 hours was paid to him. The Applicant is therefore not entitled to any additional annual leave payment.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Whether the Applicant should be compensated for the Bank's failure to provide him with the information on his separation benefits

35. The Applicant's first contention is that he was unfairly treated in violation of Staff Principles 2.1 and 9.1. These Staff Principles provide that:

Staff Principle 2.1

The Organizations shall at all times act with fairness and impartiality and follow a proper process in their relations with staff members.

Staff Principle 9.1

Staff members have the right to fair treatment in matters relating to their employment.

36. As a preliminary observation, the Tribunal acknowledges the Bank's admission that the Lead Human Resources Specialist should have responded to the Applicant's requests for information on his separation benefits; the Bank states that it "regrets, and has no intention to justify, this oversight." The Bank nevertheless argues that the Applicant could have read Staff Rule 7.02 and visited the HR Kiosk page on the Bank's intranet to calculate for himself the separation benefits he was entitled to receive. The Applicant, on the other hand, asserts that reading Staff

Rule 7.02 does not provide him with the actual figures and how it would apply to his case. He further states that the HR Kiosk did not offer a satisfactory solution since the site required detailed information which HR possessed.

37. The Tribunal notes that though the Bank claims the Applicant could have obtained the information he sought from the HR Kiosk page, the Bank's own intranet page invites staff members to contact Human Resources for more information should they have any questions on their benefits and entitlements. The Bank's response that the Applicant should have found the information himself online is, therefore, inconsonant with the Bank's own policies. The Tribunal further finds that the Applicant has made a convincing argument that the information on the intranet page was insufficient. The Applicant sought information about how much he would also receive in severance payment, information which is not available on the MyHR intranet page. It was Human Resources which possessed the relevant information and calculations.

38. It was reasonable for the Applicant to approach the Lead Human Resources Specialist since it is his office that processes separation benefits. The Lead Human Resources Specialist had also assisted the Applicant on the MOU which the Applicant signed with the Bank. Had the Lead Human Resources Specialist been too preoccupied to respond to the Applicant, another member of his office could have been assigned the task of corresponding with the Applicant. However, the Applicant received no response to his query for over a year until 28 December 2015 when the Bank submitted its Answer in these proceedings. Such an extended period of silence is unjustifiable and the Tribunal is satisfied that the Bank's failure to respond to the Applicant, within a reasonable time, amounted to unfair treatment of the Applicant inconsistent with Staff Principles 2.1 and 9.1.

39. The Applicant asserts that the Bank's failure to provide him with the information on severance payment "deprived [him] of the chance to resolve the dispute over payment of his severance payment prior to his termination when he desperately needed the money." He states that "[i]t was humiliating and degrading to be brushed off as if he did not exist; it increased his levels of stress – already bad enough to have driven him into a profound depression – because he was uncertain about his financial status at a critical time; it wasted his time when he should have been

concentrating on seeking another job rather than trying to calculate his financial status; and it denied him the fair treatment to which he was entitled under Staff Principles 2.1 and 9.1.” The Tribunal notes that the Applicant sought this information six months prior to the termination of his contract at the Bank. In his emails to the Lead Human Resources Specialist, the Applicant conveyed the importance of the information, which was needed at a time when he and his family were trying to decide what were the best options for them financially: to take severance payment, which the Applicant believed he was entitled to, or to preserve his employment opportunities at the Bank.

40. The Tribunal finds that the Bank’s failure to respond to the Applicant caused him harm, particularly as he was unable to address this matter, and therefore protect his interests, before his contract ended. The fact that the Applicant eventually received the Bank’s response, over a year later in the course of litigation before the Tribunal, does not negate the harm the Applicant suffered from the Bank’s failure to respond to him in a timely manner. In *Apkarian*, Decision No. 58 [1988], paras. 49–50, it was held that:

It does not follow, however, that staff members suffering interim, economic or other injury by virtue of the Respondent’s ultimately corrected mistakes must be altogether without recourse. [...]

The Tribunal concludes that it is appropriate to direct the Respondent to recompense the Applicant for the intangible injury suffered by her. Such an award was made by the Tribunal under comparable circumstances in *Durrant-Bell* (Decision No. 24 [1985], para. 36).

41. In light of the above, the Tribunal finds that the Bank’s transgression of the Staff Principles to treat staff members fairly warrants compensation in this case.

Whether the Applicant is entitled to receive severance payment

42. The Applicant’s second main contention is that he is entitled to receive severance payment. Critical to this issue is the question of whether the Applicant and the Bank signed a Memorandum of Understanding or a Mutually Agreed Separation.

43. According to the Bank, a “Mutually Agreed Separation (MAS) is an agreement reached between a staff member and the organization for separation from service on mutually agreed terms. It is provided for under Staff Rule 7.01 Section 5.” The Bank maintains that the Applicant did not sign an MAS, and he rejected it when it was offered to him. The Bank contrasts an MOU with an MAS, defining the former as “a document used by the Bank in the context of a mediation conducted under Staff Rule 9.01. Office of Mediation Services. It memorializes the agreement reached between the Bank and a staff member in the context of a mediation under the auspices of the Office of Mediation Services.”

44. The Bank’s argument is unpersuasive. The record shows that the MOU which the Applicant signed with the Bank’s representative, Mr. AB, specifically addressed the Applicant’s “ending employment with WBG.” This MOU memorialized the mutually agreed terms of the Applicant’s separation from the Bank, namely that his contract would be terminated by resignation. Those were the terms which were negotiated by the parties. The Tribunal considers that what is determinative is the substance of the document and not the title attributed to it. The fact that the Office of Mediation Services assisted the parties to reach an agreement does not change the substance and nature of the document which they signed. The Bank also has not demonstrated that mutually agreed separation documents are different in form and substance from memoranda of understanding which depict separation of a staff member from the Bank on mutually agreed terms.

45. The Tribunal further notes that the record demonstrates that in entering into an agreement with the Bank, the Applicant believed he was signing an MAS. It was an MAS, not a different instrument, which was the subject of his discussion with Mr. AB. Furthermore, Ms. W informed the Applicant of management’s interest in entering into an agreement with the Applicant on the termination of his employment. What the Applicant rejected, and which the Tribunal confirmed in *DC*, Decision No. 525 [2015], was any waiver of his PRS claims.

46. The Tribunal, therefore, finds that the MOU which the Applicant signed with the Bank was an MAS, in substance and effect, since it documented the Applicant’s separation from service on mutually agreed terms.

47. Having found that the Applicant and the Bank signed an MAS, the Tribunal will now consider whether the Applicant was entitled to receive severance payment. In *Crevier*, Decision No. 205 [1999], para. 15, the Tribunal recognized the Bank's contention that "severance is compensation for involuntary or negotiated mutually agreed separation." In that case, the Bank had addressed the payment of severance to staff whose employment was being made redundant. It was noted that:

Severance [...] is not defined by the Principles of Staff Employment, but rather is related to separation from service under Principle 7.1. This Principle provides that if separation is at the initiative of the Bank, a staff member "shall receive financial and/or other assistance on conditions and within limits established by the Organizations, which shall include consideration of the reason for such decision, the length of service, as well as other relevant factors." [...] While the main purpose of severance is therefore to provide assistance for staff members made redundant so that they can better adjust to career changes and to the expenditures that this can involve, the purpose is also related to other objectives of management.

48. In the context of pension and severance payments, the Tribunal noted in para. 10 the Bank's rationale, which is relevant here:

The reason is because the incentive [under the Rule of 50] is intended to induce eligible staff to retire early on a voluntary basis, *while severance is compensation for involuntary or negotiated mutually agreed separation*. Accordingly, we propose that staff whose employment has been declared redundant, or who have signed mutually agreed separations, or who otherwise are to receive severance payments, be given a choice between retaining their severance benefit eligibility or the enhanced early retirement (accrued pension at age 50). (Emphasis added).

49. Though this clarification was made in the context of waiver of severance payments under a particular pension rule, the Bank's explanation is nevertheless instructive in providing that severance payment is considered by the Bank as "compensation for involuntary or negotiated mutually agreed separation." There is nothing on the record to suggest that the Bank has altered its view that severance payment is compensation normally associated with mutually agreed separation.

50. The Tribunal observes that the Staff Rules clearly state the circumstances in which a staff member would not be entitled to severance payment upon the termination of his/her contract. For

instance, under Staff Rule 7.01, paragraph 3.02, staff who are employed as Extended Term Consultants, Extended Term Temporary, Short Term Consultants, Short Term Temporary, and on Special Assignment appointments are not “entitled to severance payments” if their employment is ended by their manager on the grounds that the employment is no longer required. This provision is not applicable to the Applicant since he was employed on an Open-Ended appointment.

51. Staff Rule 7.01, paragraph 10.03 provides that a staff member whose employment is terminated for misconduct will not receive severance payment. This provision is also inapplicable to the Applicant.

52. Staff Rule 7.01, paragraph 11.04 provides that:

A staff member separated for reasons of unsatisfactory performance is not entitled to severance payments.

53. This Staff Rule is not applicable to the Applicant since by entering into a Mutual Agreement with the Bank, the Applicant avoided termination for reasons of unsatisfactory performance, and he was therefore not barred from receiving severance payment. Had the Applicant’s employment been terminated for unsatisfactory performance, he would be clearly barred by Staff Rule 7.01, paragraph 11.04 from receiving severance payment. However, the Applicant’s departure from the Bank was governed by a mutually agreed separation agreement.

54. Staff Rule 7.01, paragraph 5 on Mutual Agreements provides that:

5.02 The terms and conditions upon which separation by mutual agreement is effected must be set forth in writing and contain:

- a. The date of separation;
- b. The obligations, if any, of the Bank Group and the staff member; and
- c. Severance provisions, if any.

5.03 The severance payments, if any, will not exceed the severance payments that would have been payable had the staff member’s employment been terminated in accordance with Section 8 of this Rule.

55. On the administration of severance payment, Staff Rule 7.01, paragraph 12.01 provides that

severance payments to which staff members are entitled, or which may be given at the discretion of the Bank Group, will be paid in a lump sum on the last day of the staff member's service, unless the Vice President, Human Resources or his/her designee, determines that they will be paid on a different schedule or administered in the form of a special leave as provided in Section 13 of this Rule.

56. The Tribunal notes that while severance payments may be made at the discretion of the Bank, there are also some staff members who are entitled to receive severance payment. Moreover, the references to "severance provisions, if any" in paragraph 5.02 and "severance payments, if any" in paragraph 5.03, suggest that severance payment can be excluded from the terms of a mutual agreement.

57. As noted above, severance payment is considered compensation for involuntary or mutually agreed separation. Pursuant to the Tribunal's order in this case, the Bank provided a document titled Summary Matrix on Separation Options which contains information on the separation options available to staff members. This document is identical to that submitted into the record by the Applicant. The Applicant states that he received a copy of this document from the Staff Association and a colleague who had received it from Human Resources. The Applicant also states that it "was a document that was in wide circulation throughout the World Bank Group at the time," and he received it at the same time he discussed the MAS alternative with Mr. AB and Ms. W.

58. The Summary Matrix on Separation Options contains information on the separation options available to staff members who fall in one of four scenarios: (i) MAS in lieu of Redundancy, (ii) Early Out, (iii) Term Expiration, and (iv) Redundancy. While none of these categories directly apply to the Applicant, the Tribunal notes that the document contains a footnote which provides that:

For MAS other than in lieu of redundancy: (a) severance will not be more than 60% for staff meeting Rule of 85, and no more than 80% for other staff, (b) no job search period will apply.

59. The Tribunal finds that this document, generally made available to staff, creates a presumption that, in the absence of any express agreements to the contrary, severance will be paid to staff who conclude mutual agreements with the Bank in lieu of redundancy, and also in situations other than in lieu of redundancy.

60. The Tribunal observes that the MOU does not expressly refer to severance payment. It is the Bank's contention that since the MOU makes no reference to the payment of severance, the Applicant was not entitled to receive them. The Tribunal considers that while the MOU does not expressly refer to severance provisions, it also does not exclude the payment of such sums, and the absence of such language does not prejudice any entitlement the Applicant may have had to this payment. The Tribunal reiterates that clarity and transparency in the drafting of such documents are important to staff members. It is imperative that "in the conclusion of agreements between the Bank and its staff that the Bank, the drafter of a projected MOU, acts transparently and clearly." *See DC*, para. 95.

61. The Bank, as the drafter of this document, could have expressly stated that the Applicant would not receive the severance payment normally associated with, and considered compensation for, separation from employment on mutually agreed terms. Doing so was made all the more necessary in light of the fact that Human Resources generally makes available to staff a document which notes that severance will be paid according to a certain calculation for an MAS other than in lieu of redundancy. The Tribunal recalls the MAS which the Bank signed with the applicant in *BU*, Decision No. 465 [2012], para. 11. In that case, the MAS clearly stated:

On or about your last day of service, you will be paid a lump sum corresponding to six months of your then net pay, a lump sum payment for outplacement support corresponding to three months of your then net salary, and a lump sum in respect of your accumulated annual leave, up to a maximum of 60 days, as of the close of business of your last day of service. *There will be no severance payments associated with this agreement.* You will also receive any termination and/or resettlement benefits to which you may be entitled. (Emphasis added).

62. Similarly, in *Isaac*, the applicant in that case received a memorandum of understanding governing her separation from the Bank which expressly stated that she would not receive severance payment. *See Isaac*, Decision No. 274 [2002], para. 9.

63. Once again, the Tribunal will apply the *contra proferentem* rule against the Bank since it drafted the MOU and ambiguities are resolved against the party seeking to rely on the text. The Bank seeks to rely on the absence of specific language on the payment of severance. However, the Tribunal would, in interpreting the document, consider the circumstances of its conclusion. The Tribunal is satisfied that the receipt of severance payment was a specific condition for the Applicant entering into an MAS with the Bank. He asserts that he was told that he would receive this payment if he entered into an agreement with the Bank and avoided termination of his contract for unsatisfactory performance. It is significant that, in multiple rounds of pleadings in the written proceedings of this case, the Bank did not dispute the Applicant's assertion that Ms. W indeed told the Applicant that he would receive severance payment if he signed an agreement with the Bank. The Tribunal, therefore, accepts the Applicant's assertion as fact.

64. The Tribunal finds that the Applicant's belief that he would receive severance payment is credible in light of the fact that he received, and the HR Department regularly makes available, a document which depicts the provision of severance payments to staff members signing separation agreements with the Bank. Furthermore, the record shows that Mr. AB, the Bank's representative, had discussed MAS options with the Applicant. There is scope within the Staff Rules for the Applicant to receive severance payment under an MAS since he avoided termination of his employment for unsatisfactory performance. Additionally, it is also the Bank's policy that severance is considered compensation for a staff member's negotiated separation from employment. Collectively, these considerations raise a presumption that the Applicant was to receive severance payment upon his separation from the Bank, a presumption which the Bank has failed to rebut. The Tribunal considers that while Staff Rule 7.01, paragraph 5.02 provides a list of terms an MAS should include, notably "severance payments, if any," failure to include those terms does not indicate that eligibility for particular compensation has been denied. Staff Rule 7.01, paragraph 5.02 addresses the importance of transparency and clarity. In the absence of express words to the contrary, staff are entitled to receive the benefits for which they are eligible.

65. The Bank is reminded that "[s]ettlement agreements presented by the Bank to staff members could be more explicit regarding their impact on [...] staff members signing such agreements, thereby leaving no doubt that staff members are on notice of important consequences

that may not otherwise be apparent on the face of the agreement. Non-disclosure could be considered actionable in certain circumstances.” See *BW*, Decision No. 467 [2012], para. 28.

66. In light of the fact that the Applicant was told he would receive severance payment, and acted upon that assurance when he signed an MAS with the Bank, the Tribunal finds that the Bank has not demonstrated why the Applicant should be denied payment of severance – compensation normally associated with the type of agreement the Applicant signed with the Bank. Under the circumstances of the case, the Tribunal holds that the Applicant is entitled to receive severance payment, and that if the Bank meant to exclude severance payment, it should have explicitly so specified in the conclusion of the separation agreement with the Applicant.

Annual Leave Payment

67. The Applicant’s final contention concerns the payment of 14 hours of annual leave which were deducted from his annual leave balance in 2015 due to the application of Staff Rule 6.06, paragraph 2.04. This rule requires staff to use a minimum of 120 hours of annual leave each leave year. In that leave year, which ran from 1 March 2014 to 28 February 2015, the Applicant accrued 240 hours of annual leave and took 106 hours of leave during that year. The Applicant contends that this rule should be waived to permit payment of these unused hours which he was unable to take having been placed on Administrative Leave.

68. In its entirety, Staff Rule 6.06, paragraph 2.04 provides that:

Minimum Use of Annual Leave

2.04 Staff members are required to take a minimum of 120 hours of annual leave each leave year. The minimum usage requirement will be waived:

- i. for the leave year prior to the first full leave year of a staff member’s employment;
- ii. if a staff member leaves Bank Group service during the leave year;
- iii. if a staff member was on leave without pay or external service without pay for 31 calendar days or more; or
- iv. if a staff member was approved for disability during the leave year.

69. The Tribunal observes that none of the scenarios above, where a waiver of the rule is permissible, is applicable to the Applicant. The Applicant entreats the Tribunal to nevertheless waive the application of this Staff Rule. According to the Applicant, he could not take leave that year because the Bank placed him on Administrative Leave. To the Applicant, it is “contrary to the fundamental principle of fairness that he was penalized for not doing that which the Bank had rendered impossible.”

70. The Tribunal finds the Applicant’s contention unpersuasive. Placement on Administrative Leave was a term in the MOU which the Applicant knowingly signed on 3 September 2014. Clause 2 of the MOU stipulates that:

WBG agrees to provide [the Applicant] with administrative leave from September 12, 2014 through June 30, 2015. During this period, [the Applicant] will continue to be on payroll and receive his salary and benefits. He will not be expected to report to work or undertake work-related communications.

71. The Tribunal considers that the Applicant was not penalized in any manner since, by agreement, he was placed on Administrative Leave and continued to receive his salary and benefits during that leave year.

DECISION

- (1) The Bank shall pay the Applicant severance payment as calculated for MAS other than that in lieu of redundancy.
- (2) The Bank shall pay the Applicant compensation in the amount of 3 months’ of his then net salary for the transgression of Staff Principles 2.1 and 9.1.
- (3) The Bank shall pay the Applicant the amount of \$3,186.92 in attorney’s fees arising from the merits phase of these proceedings.
- (4) All other claims are dismissed.

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

/S/ Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 8 April 2016