



World Bank Administrative Tribunal

2016

Decision No. 551

**DV,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**DV,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, and Mahnoush H. Arsanjani.
2. The Application was received on 16 December 2015. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 24 October 2016.
3. The Applicant challenges the decision to abolish his position under Staff Rule 7.01, paragraph 8.02(b).

FACTUAL BACKGROUND

4. The Applicant began his career with the IFC on 15 March 2004. On 13 February 2009, the Applicant was appointed on a Term Appointment (subject to international recruitment) as a Senior Administrative Officer (Grade GG) for Sub-Saharan Africa (CAF).
5. On 18 February 2009, the Applicant signed and accepted a Memorandum of Extended Assignment to Johannesburg, South Africa with a duration of two years effective on or about 1 April 2009.
6. On 15 April 2009 the Applicant reported for duty in Johannesburg, South Africa. His supervisor was Mr. X, IFC Senior Manager for Southern Africa. The Applicant asserts that a

decline in his working relationship with his supervisor began in January 2010, citing instances in which Mr. X allegedly treated him with hostility.

7. In or around November 2012, the Applicant spoke with the Director of CAF who determined that the Applicant should no longer report directly to Mr. X. However, since Mr. X remained the Senior Manager for Southern Africa, the Applicant asserts that Mr. X continued to wield influence against him.

Restructuring

8. In March 2014, the CXAVP Principal Financial Controller, Mr. Z, conducted an analysis of the CAF Finance, Budget and Procurement function in light of the ongoing changes in the IFC. The Principal Financial Controller, also referred to in the record as the Principal Finance Officer, arrived at the conclusion that “over a period, the CAF F&B team has gradually fallen behind their counterpart regional finance teams in skills, capabilities and – importantly – the ability to meet evolving business needs and meet higher expectations which are now the norm across the Finance network in IFC.” The CAF Finance, Budget and Procurement Team Restructuring Proposal, dated 25 March 2014, notes that reasons for this situation included “skills which have not kept pace” as well as team leadership and cohesion issues.

9. Specific steps to attain the goal of “systematically upgrading and enhancing its capabilities” included changes to the CAF Regional Financial Controller (RFC) role held by the Applicant. This role is also referred to in the record as the Regional Finance Officer. The Proposal noted:

To redeploy the RFC away from line oversight of the CAF team into an advisory role. This will mean (i) CXAVP Financial Controller to take over the team oversight and supervisory role; (ii) The AS duties of the RFC reassigned to dedicated focal point for AS financial management/TF work, based in Dakar; and (iii) for the RFC’s IS and other work duties, to assign a finance staff from outside CAF on a DAIS to Joburg to handle this day-to-day work load for a transition period. Simultaneously, to (i) extend RFC’s field assignment which ends on April 15, 2014 to October 31, 2014 and (ii) to initiate a mediated discussion on a transition for exiting IFC.

Notification of Redundancy

10. The Applicant's Extended Assignment was due to end on 15 April 2014, while his term appointment end date was 15 April 2016. Prior to this date, in April 2014, the Applicant was invited to a meeting with Mr. Z and Ms. Y, the CAF Human Resources Officer. The Applicant was informed that the IFC had decided to make his position redundant effective 15 October 2014. The Applicant was also informed that his staff would no longer report to him but that his responsibilities would be transferred to Mr. Z, the Principal Financial Controller.

11. The parties differ on the content of this April 2014 meeting. According to the IFC, the Applicant was advised that his Extended Assignment would be extended to 15 October 2014 and that he would be supported in finding other assignments, if he wished, or in negotiating exit options. The IFC claims that the Applicant was provided with an overview of the separation options of Mediated Exit, Mutually Agreed Separation (MAS) or Redundancy. On the contrary, the Applicant asserts that during the meeting he was given no clear reason for the redundancy other than that certain unnamed staff members had complained about him and that this had contributed to the redundancy decision. The Applicant further asserts that neither Mr. Z nor Ms. Y clarified whether his Extended Assignment would be extended until the scheduled redundancy in October.

12. In April 2014, the CAF Restructuring Proposal was presented to the CAF Finance, Budget and Procurement Team. The Team was informed that the Applicant would assume an advisory role for the team while team supervision would be handled by Mr. Z.

13. On 8 April 2014, Ms. Y sent an email message to the Senior Human Resources Officer informing her of the discussion with the Applicant. Ms. Y noted that:

The terms we shared with [the Applicant] and that we shall be negotiating with him will be as follows:

- I. 6 months contract extension starting April 2014 (HR Action by [Mr. X])
- II. MAS exit arrangement equal to 100% redundancy benefit

Job placement support for 6 months. [The Applicant] would like to go on Admin leave for the duration of the Job placement period. He seeks the flexibility to sit in Jburg or in Peru or Canada

Severance payment 1 month for every year worked = 10 month[s]

Out placement training for up to 3 months' salary (will need to be less than 3 months because the total redundancy cannot be more than duration of the existing contract (please advise)

As per our discussion [the Applicant] appeared prepared for the discussion and was more interested in the nature of the separation package than our rationale for the redundancy which we shared with him. We have advised him of the process; i.e. a mediated exit facilitated by an appointed mediator in the coming two weeks. [...] would be available to participate in the discussion as would I.

14. On 9 May 2014, an automatically generated HR reminder email was sent to Mr. X requesting action to be taken concerning the Applicant's Extended Assignment. The message noted that the Applicant's Extended Assignment had lapsed on 15 April 2014 and had not yet been renewed.

15. On 12 May 2014, the Applicant and IFC Management, represented by the CAF Head of Human Resources, entered into a Mediated Exit discussion.

16. In the summer of 2014, following several automated reminders, the Applicant's Extended Assignment was eventually extended to 31 October 2014.

17. On 2 August 2014, an automatically generated HR email reminder was sent to Mr. X with copy to the Applicant reminding the former that the Applicant's Extended Field Assignment was due to end on 31 October 2014. The message noted that if the Extended Assignment would end as planned no further action was needed. It further noted that action was required if the Assignment would be extended further.

18. On 1 September 2014, a similar reminder was sent to Mr. X.

19. In September 2014, the Mediated Exit discussion between the Applicant and the IFC ended without agreement. At this time the Applicant and the IFC entered into discussions on a Mutually Agreed Separation.

20. On 14 and 24 October 2014, automated HR reminders were sent to Mr. X noting that the Applicant's Extended Field Assignment was due to end on 31 October 2014, and reminding Mr. X to take action if the Assignment would be extended.

21. Further reminders were sent to Mr. X on 7 and 14 November 2014 indicating that no action had been taken by management to either extend or terminate the Extended Assignment.

22. On 18 November 2014, the Applicant sent an email message to Ms. Y requesting information on his employment situation, stating "no one has explained under what situation I will be working." The Applicant added:

In the meeting, you stated that the idea was not to extend my extended field assignment because you/management did not want that action to lessen your argument for redundancy. The idea of putting a staff in a difficult position so that you/management feel that your argument would be strengthened, is not the way I would expect an organization like IFC to treat its staff. In my opinion, this action should neither strengthen nor weaken whatever argument you are making. In addition, no one has stated to me the reason that my role is being seen as redundant, which is unusual.

23. On 24 November 2014, Ms. Y and the Applicant met to discuss his employment situation. Following the meeting the Applicant sent Ms. Y an email message stating:

I would like to confirm the discussion we had today. You had mentioned the following points:

- I. My extended assignment in Johannesburg would be extended until December 31st 2014 by today or an email would come from you confirming this, this would be effected in the system asap. Confirmed.
- II. On January 1st, you/management will unilaterally decide to put me on admin leave.
- III. Once a decision comes from [the Severance Review Group (SRG)] we will proceed accordingly.

Could you please confirm the above discussion?

24. On the same day Ms. Y responded to the Applicant's email stating:

Allow me to confirm that while we await a decision from SRG we shall take the following steps:

- 1) Take the necessary measures to place you on an admin leave for you for 3 – 6 months effective January 1, 2015 as advised. The date of January has been decided to provide you sufficient time to make arrangements given the delay that we have experienced awaiting the decision from the SRG to date.
- 2) Retroactive to October 16, we shall therefore extend the field assignment to December 31, 2014.

Should a decision from the SRG be received within the period of extended assignment or the period of admin leave, each will cease and we shall effect the decision as soon as we have notified you of the decision and the actions to be taken.

25. On 25 November 2014, the Applicant responded to Ms. Y noting that he was yet to receive the rental assistance benefits associated with the Extended Assignment. These would normally have been issued by the end of September. He further requested the basis for the administrative leave stating: "I would like to know which part of the admin leave policy you are using to put me on admin leave. I would like to ensure that proper policies are being used and applied." The record does not contain any evidence that Ms. Y responded to the Applicant's query.

26. On the same day, the Applicant sent Mr. X an email message in which he requested the approval of the extension of his field benefit assignment noting that he could not get his rent for November paid nor could he prepare for December. He added: "This should have been done weeks, if not months ago. This is not the proper way to treat an IFC staff, who has been working hard and diligently for the past ten years."

27. On 26 November 2014, Mr. X responded to the Applicant stating: "I returned to [the] office this morning, and have just submitted the field assignment benefit extensions in MyHRSS."

28. In December 2014, discussions on the Mutually Agreed Separation ended without agreement.

29. On 17 December 2014, a proposal for redundancy was submitted to the Severance Review Group (SRG) regarding the Applicant's position.

30. On 30 December 2014, a revised and final redundancy proposal was submitted to the SRG.

31. On 31 December 2014, the Lead Human Resources Specialist sent the Applicant an email message with the notification of the decision to place him on administrative leave pending the decision with respect to his "employment or separation from the International Finance Corporation, following a review of the proposed redundancy of [his] position." The message further stated "this does NOT constitute Notice of Redundancy, but merely provides administrative leave in advance to a decision on the matter." The Applicant's placement on administrative leave was made effective until 28 February 2015, "unless withdrawn prior to this date as a result of the decision referred to being reached before this date."

32. On 24 February 2015, the Applicant received a written notice of redundancy from the IFC along with a confidential memorandum outlining the reasons for his redundancy. According to the redundancy memorandum, the Applicant's position was declared redundant effective 1 March 2015 pursuant to Staff Rule 7.01, paragraph 8.02(b).

33. On 16 December 2015, the Applicant submitted this Application to the Tribunal. The Applicant raises five main claims. First, that the IFC (a) failed to ensure that fair and reasonable procedures were followed throughout the redundancy decision process; and (b) took "an extraordinary length of time in reaching a decision, leaving him in a state of limbo and creating numerous personal difficulties for him and his family." According to the Applicant, the IFC's decision to make his employment redundant was an abuse of discretion, and the IFC failed to treat him fairly in declaring his employment redundant. Second, the Applicant contends that the IFC failed to satisfy the requirements of Staff Rule 7.01, paragraph 8.02(b) in selecting his position for redundancy. Third, the Applicant contends that the IFC violated Staff Principle 7.1(b)(iii) by determining that his position was unnecessary despite the fact that a vacancy was advertised for the same type of appointment. Fourth, the Applicant asserts that the IFC failed to genuinely assist

him in finding alternative employment within the Bank Group. Fifth, the Applicant argues that the IFC failed to declare his employment redundant for legitimate and genuine managerial reasons.

34. The Applicant seeks: a) rescission of the redundancy decision; b) reinstatement as a Level GG2 Regional Finance Officer, with no loss of continuous service; c) compensation in the amount of his salary and benefits from 1 September 2015 until the date of his reinstatement; d) compensation in the amount of the Applicant's "housing rental and relocation costs", as well as other expenses incurred while his status at the IFC and his Extended Assignment in South Africa were "left in limbo" from April 2014 until 1 September 2015; and e) such additional compensation as the Tribunal deems fair and just for the harm to his professional reputation and personal life; the loss of potential benefits and income; the intangible damage and distress; and the pain and suffering caused to the Applicant.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The IFC failed to treat the Applicant fairly or observe fair procedures in declaring his employment redundant

35. The Applicant contends that the IFC failed to observe fair and transparent procedures in implementing the Staff Rules regarding redundancy as required by the Tribunal's jurisprudence, gave him contradictory reasons for the redundancy decision, and included false or misleading statements in the Redundancy Memorandum. The Applicant also contends that the IFC took an "extraordinary" amount of time to reach a decision about making his employment redundant. He states that he was told of his impending redundancy in April 2014 but did not receive a formal written notice until 24 February 2015. To the Applicant, the IFC's alleged failure to "observe the 'basic elements of due process and the rule of law' was unacceptable, grossly unfair, and in violation of staff principles."

The IFC's Response***The IFC followed the proper procedures***

36. The IFC contends that it adopted the proper process in discussing the various applicable separation options with the Applicant and denies that it took an “extraordinary amount of time” to reach the redundancy decision. The IFC argues that the exercise of managerial discretion also extends to discretion as to if and when to declare the redundancy. The IFC argues that any uncertainty about the Applicant’s employment situation is due to his prolonging the stages of the Mediated Exit and Mutually Agreed Separation. According to the IFC, once it was clear that all negotiated options had been considered, the redundancy proposal was submitted to the Severance Review Group which took only two months to make the redundancy decision. The IFC further maintains that the Applicant was not given different and contradicting reasons for the redundancy.

The Applicant's Contention No. 2***The IFC failed to satisfy the requirements of Staff Rule 7.01, paragraph 8.02(b) in selecting the Applicant for redundancy***

37. The Applicant contends that contrary to the requirements of Staff Rule 7.01, paragraph 8.02(b) his position was not truly abolished. The Applicant observes that the IFC itself concedes that his responsibilities were transferred to Mr. Z, the Principal Finance Officer. According to the Applicant, when Mr. Z left the organization, the IFC advertised a Level GH position to replace him and to also perform some of the Applicant’s former responsibilities. Although the IFC renamed the position “Finance Team Lead,” the Applicant asserts that the only apparent difference between his old position and the newly advertised Finance Team Lead was the grade level – Level GH instead of Level GG.

The IFC's Response

The basis for the redundancy decision was legitimate. The decision was based on managerial considerations in the interest of efficient administration

38. The IFC argues that its redundancy decision complied with Staff Rule 7.01, paragraph 8.02(b). According to the IFC, where the skills and experience no longer match the position to which it was originally assigned, a position could be abolished. The IFC contends that the “work may be assigned to another level position or various positions, either above or below the level of the position being abolished.”

The Applicant's Contention No. 3

The IFC violated the Principles of Staff Employment in its treatment of the Applicant

39. According to the Applicant, the IFC violated the Principles of Staff Employment which safeguarded the rights of staff members to fairness and impartiality and protected them from arbitrary termination of employment. The Applicant refers to Principle 7.1(b)(iii) which provides that a staff member's contract may be terminated by redundancy provided that no vacant position exists in the same type of appointment for which the staff member is eligible or for which he/she can be trained. He also refers to Principle 5.1(d) which requires the Bank Group to establish training and development programs for the purpose of updating and improving staff skills. Finally, the Applicant points to Principles 2.1 and 9.1 which mandate that the Bank Group shall act with fairness and impartiality towards staff.

40. The Applicant asserts that the IFC violated these Principles by declaring his position redundant despite the fact that vacancies were advertised. According to the Applicant, prior to the formal notification of redundancy, the IFC advertised a Level GG Senior Finance Officer position in the LAC region. Subsequently, the IFC advertised the Level GH Finance Team Lead to perform functions which the Applicant asserts he performed as the CAF Regional Financial Controller. Given these vacancies, the Applicant contends that the redundancy decision was grossly unfair and violated the Principles of Staff Employment.

41. The Applicant further contends that the IFC's failure to extend his field assignment in South Africa in a timely manner constituted unfair treatment in violation of Principle 2.1 and caused him and his family considerable harm.

The IFC's Response

The IFC treated the Applicant fairly and did not violate the Principles of Staff Employment

42. The IFC asserts that it informed the Applicant before making the final decision to abolish the RFC position and worked with him to mitigate the consequences. According to the IFC, it allowed ample time to explore options short of termination of employment and it was only after these efforts were unsuccessful that the decision was made to terminate the Applicant's employment.

43. The IFC further asserts that the advertised positions were different from the RFC position which the Applicant held. For instance the IFC notes that the new Finance Team Lead (FTL) position was created to combine what remained of the Principle Financial Officer position, previously occupied by Mr. Z, with add-on duties and responsibilities from the RFC position, previously occupied by the Applicant. The IFC maintains that the new FTL position was more leadership-oriented than the abolished RFC position and required a "business partnership" capability. Thus, to the IFC, the Applicant's assessment that this was the "same" as his abolished RFC position is not correct.

44. According to the IFC, it acted in good faith in extending the Applicant's Extended Assignment. The IFC acknowledges that there may have been delays in some approvals of those extensions; however these delays, according to the IFC, happened when the Country Manager or his acting officer were away and there was no one to approve the extensions in the HR system. The IFC claims that the Applicant received all the benefits to which he was entitled under the terms of his Extended Assignment.

The Applicant's Contention No. 4

The IFC failed to genuinely try to find an alternative position for the Applicant

45. The Applicant contends that the IFC failed in its obligation under Staff Rule 7.01 to “try genuinely to find [...] alternative positions for which [he was] qualified.” The Applicant asserts that, contrary to this obligation, the IFC did not assist him with his job search and advertised two positions to perform duties that were nearly identical to those which the Applicant had performed as CAF Regional Financial Controller, and failed to select him for those positions when he applied for them. The Applicant further contends that the IFC had a vacancy for a Senior Budget and Finance Officer, Level GG in Nairobi or Dakar but failed to present this opportunity to him. The Applicant asserts that he should have been given the choice of which of these three vacancies he wanted.

The IFC's Response

The IFC assisted the Applicant in finding alternative employment

46. The IFC argues that Mr. Z and the CAF Head of HR assisted the Applicant in seeking possible developmental assignments; however, no opportunity materialized for the Applicant. In response to the Applicant's claim that he should have been selected for one of the Finance Officer positions identified, the IFC argues that these positions were established to meet its evolving needs. The IFC further contends that it was not obliged to find the Applicant another job. The IFC notes that during the six-month period from 1 March 2015 there was a general slowdown in business and no job opportunities materialized for the Applicant. To the IFC, this fact does not mean that its efforts at assisting the Applicant were not reasonable. The IFC asserts that the Senior Budget and Finance Officer position was not offered to the Applicant because the position did not become part of the restructured finance and budget function.

The Applicant's Contention No. 5

The Applicant was declared redundant for improper reasons

47. The Applicant contends that the decision to declare his position redundant was motivated by improper reasons namely that staff members had allegedly complained about him, that he had performance deficiencies, and Mr. X's personal hostility toward and desire for retaliation against the Applicant.

48. The Applicant avers that his claims of retaliation are timely in that the retaliation he believes he suffered was the redundancy decision. The Applicant argues that until the redundancy decision was made, he did not have a cognizable retaliation claim. The Applicant notes that he sought the advice of the Office of Ethics and Business Conduct (EBC), and was informed that until he had suffered a specific retaliatory action he did not have a valid claim to present to EBC.

The IFC's Response

The Applicant's claims of a hostile work environment and retaliation are not cognizable by the Tribunal and the redundancy decision was not based on the Applicant's performance

49. The IFC argues that the Applicant's claim that the redundancy was motivated by retaliation and a hostile work environment is out of time. To the IFC, this claim is belied by his own inaction to file a complaint at the time when he claims he was first harassed by Mr. X in January 2010. The IFC contends that the Applicant failed to exhaust internal remedies as he should have filed a complaint either with EBC for misconduct, or with Peer Review Services, for managerial actions relating to his performance. Furthermore, the IFC argues that the Applicant has not demonstrated a causal link to the incidents he describes and the IFC's restructuring decisions.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

50. The scope of the Tribunal's review in redundancy cases is well-established. While the Tribunal has held that "the decision to declare a staff member redundant is an exercise of [managerial] discretion," it has also stated that it will nevertheless review such a decision to

determine whether there has been “an abuse of discretion, such as where a decision is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.” See *Harou*, Decision No. 273 [2002], para. 27 citing *Kahenzadeh*, Decision No. 166 [1997], para. 20; and *Mahmoudi (No. 2)*, Decision No. 227 [2000], para. 24.

51. To be upheld, the redundancy decision in question must be based on a legitimate rationale, and must have been made in the interests of efficient administration. (See e.g. *Marchesini*, Decision No. 260 [2002], paras. 30 and 35.) In order to substantiate a claim against a redundancy decision, the initial burden of proof lies on the Applicant who must make a *prima facie* case of abuse of power (*de Raet*, Decision No. 85 [1989], para. 57). However, the Tribunal has recognized in *DD*, Decision No. 526 [2015], para. 40 that it may be “‘exceedingly difficult’ for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion.” It is thus incumbent upon the Tribunal to require, from the Bank Group, strict observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy. Otherwise:

Ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in “the interests of efficient administration.” (*Yoon (No. 2)*, Decision No. 248 [2001], para. 28).

52. Staff Rule 7.01, paragraph 8.02 provides that:

Employment may become redundant when the Bank Group determines in the interests of efficient administration, including the need to meet budgetary constraints, that:

- a. An entire organizational unit must be abolished;
- b. A specific position or set of functions performed by an individual in an organizational unit must be abolished;
- c. The responsibilities of a position no longer match the skills and experience of the incumbent and are unlikely to do so within a reasonable period of time; or
- d. Types or levels of positions must be reduced in number.

Whether there was a legitimate rationale for the redundancy decision under Staff Rule 7.01, paragraph 8.02(b)

53. The Tribunal has held that a redundancy decision must have a legal basis and serve a legitimate goal. *See e.g. DI*, Decision No. 533 [2016], paras. 85; and *Marchesini*, paras. 30.

54. The IFC contends that the redundancy decision was legitimate and based on managerial considerations in the interest of efficient administration. The IFC refers to documentation between 2012 and 2015 which demonstrate there was a legitimate reorganization process underway at the IFC. Both the Redundancy Proposal submitted to the Severance Review Group on 30 December 2014 and the Redundancy Memorandum provided to the Applicant on 24 February 2015 state the following background to the reorganization process:

IFC has proposed and implemented a more simplified organizational structure to deepen its engagement with the World Bank Group. The realignment has eliminated some duplication and streamlined several processes by establishing three new Vice Presidential Units along functional rather than regional lines. [...] Accordingly, the “super-region” dimension of the finance function in each Region has transitioned, with changes experienced in the roles of Principal Financial Officer (level GH) each former super-region and Regional Financial Controllers (RFC, level GG) respectively. Moving of resources to industry groups has further increased the need for rationalizing and restricting the CAF finance function.

55. With respect to the CAF team, the CAF Finance, Budget and Procurement Function (F&B) Team Restructuring Proposal of 25 March 2014 details the restructuring plan for the CAF finance function. It notes that “[o]ver a period, the CAF F&B team has gradually fallen behind their counterpart regional finance teams in skills, capabilities and – importantly – the ability to meet evolving business needs and meet higher expectations which are now the norm across the Finance network in IFC.” The Proposal further notes that the reasons for the restructuring proposals were: 1) to “align to emerging CAF IS and AS business needs”; 2) to “enable F&B team growth”; 3) to “build new capabilities”; and 4) to “optimize operational efficiency.”

56. Part 3 of the Applicant’s Redundancy Memorandum further itemizes the reasons for the “removal of the role of Regional Finance Officer (Level GG) position.” It provides that:

3.1 Significant reduction in day-to-day work load within the CAF regional finance team under IFC Refocus has substantially reduced or altogether eliminated core aspects of the RFC-CAF role:

- Investment business & Advisory work load: The investment analysis and profitability complexity associated with managing the Africa Regional Department budget has significantly reduced. In addition, the Financial management service (planning, monitoring and reporting, and donor reporting) have been gradually phased out. Remaining financial management and analytical tasks have been redistributed to the analyst level (GE), within the team.
- Internal Controls of the CAF admin budget[:] The size of CAF regional administration budget has significantly reduced and will be managed by the existing GE/GF staff under the oversight of the GH-level Principal Finance Officer.
[...]
- [...] The related business judgment by the Africa Regional Directors is that the senior Principal Finance Officer level GH position is better suited to the Refocused IFC, Africa Region requirements. It is noted that same or similar considerations have been made in Middle East and North Africa and Latin America and Caribbean regions. In these regions departing RFCs have not been replaced.

57. Upon a review of these documents the Tribunal finds that there was a legitimate restructuring process underway, and objective reasons which could have supported the IFC's redundancy decision. The Tribunal will now review the record to consider whether the abolition of the Applicant's position was genuine and followed the proper process. The redundancy decision will also be reviewed to assess whether it was affected by improper motivations.

Whether the abolition of the Regional Financial Controller position was genuine

58. With respect to redundancy decisions made pursuant to Staff Rule 7.01, paragraph 8.02(b), the Tribunal has held that “[p]aragraph (b) would be appropriate where a position is abolished because the specific functions were no longer required or because different skill requirements applied, such as after a reorganization.” *Harou*, para. 34. The IFC, however, must demonstrate that the abolition of post was “‘genuine’ in the sense that the position was not replaced by a new one with substantially the same description and duties.” *See Husain*, Decision No. 266 [2002], para. 32.

59. When abolition of posts take place specific functions are either abolished or re-distributed to existing positions. A new position could be created and some of the functions of the abolished position may continue in the new position. In this scenario the abolition is deemed genuine if the new positions are in fact different from the abolished ones and not essentially the same. The test is whether there are material differences between the pre and post reorganization positions. Therefore, the IFC is required to demonstrate a “clear material difference between the new position and the position that was made redundant.” *Brannigan*, Decision No. 165 [1997], paras. 23.

60. In this case, the functions of the RFC were transferred to Mr. Z, the Level GH Principal Finance Officer/Controller. After Mr. Z left the organization, the Finance Team Lead (FTL) position was advertised. According to the Applicant, the terms of reference for the FTL position were essentially the same as the Regional Finance Officer/Controller position he occupied. The Tribunal finds that the advertised FTL position involved more strategic planning, and leadership roles, and was substantially different from the Applicant’s role. As an illustration, where the descriptions of both the Applicant’s position and Mr. Z’s post-restructuring position refer to provision of “support,” the advertised FTL position requires the incumbent to “take charge,” or “lead.” The Tribunal is therefore satisfied that there were material differences between the position occupied by the Applicant and the advertised Level GH Finance Team Lead position. There was therefore a genuine abolition of the Applicant’s position.

Whether there was an improper basis for the redundancy decision

61. The Tribunal will now review the Applicant’s contention that the redundancy decision was: a) a form of retaliation; b) a means to address performance deficiencies; and c) made in response to allegations made against him by staff members.

62. The Tribunal finds that the record does not contain evidence of retaliation or a hostile work environment. Though the Applicant refers to one incident in 2010 which he claims was the beginning of the decline in his relationship with Mr. X, the Applicant fails to draw the requisite causal link between that incident and the subsequent redundancy decision four years later. The Applicant bears the initial burden of proof as “[i]t is not enough for a staff member to speculate or

infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation.” *AH*, Decision No. 401 [2009], para. 36. *See also CW*, Decision No. 516 [2015], para. 95.

63. With respect to the Applicant’s second claim that the redundancy decision was made to address performance deficiencies, the Tribunal reviewed the CAF Finance, Budget and Procurement Team Restructuring Proposal. It is clear from the document that the Applicant’s managers considered that the low morale and team cohesion issues in the Applicant’s team were due to the leadership of the incumbent Regional Financial Controller. It notes:

[K]ey factor affecting the CAF F&B function is and has been leadership gaps at the team lead level (Regional Financial Controller – RFC), both now and with a predecessor. One effect of this has been problems with team cohesion and periods of low morale, which has affected smooth business delivery. For this reason, addressing *this matter is a core part of this restructuring plan*. (Emphasis added).

64. As a means to addressing this matter, it was proposed:

To redeploy the RFC away from line oversight of the CAF team into an advisory role. This will mean (i) CXAVP Financial Controller to take over the team oversight and supervisory role; (ii) The AS duties of the RFC reassigned to dedicated focal point for AS financial management/TF work, based in Dakar; and (iii) for the RFC’s IS and other work duties, to assign a finance staff from outside CAF on a DAIS to Joburg to handle this day-to-day work load for a transition period. Simultaneously, to (i) extend RFC’s field assignment which ends on April 15, 2014 to October 31, 2014 and (ii) to initiate a mediated discussion on a transition for exiting IFC.

65. The Tribunal observes that the proposal to initiate a mediated exit arrangement with the Applicant is contrary to the IFC’s assertion that it notified the Applicant of the redundancy decision “in time to attempt to preserve his employment at the IFC even as his position was abolished.” It is apparent from the record that in redeploying the Applicant from the RFC position and proposing an exit arrangement, the IFC was motivated by the low morale and team cohesion issues in the Applicant’s team.

66. The Tribunal has also reviewed the Applicant's Overall Performance Evaluations (OPE) between 2010 and 2014, and his 360 Evaluations. The Tribunal finds that these documents reveal longstanding concern about the Applicant's leadership style, teamwork and communication skills. For instance, in 2011 the Applicant's Supervisor stated in his OPE that teamwork and communication were the Applicant's "biggest development area." It was noted that the Applicant "struggles sometimes to maintain effective relationships with peers and seniors [and] finds it very difficult to accept constructive feedback." To the Applicant's Co-Supervisor this trait "causes friction." In 2012, the Applicant's Supervisor commented in the OPE that "[f]eedback from [the Applicant's] Direct Reports via the 360, which speak to [the Applicant's] team leadership style, is rather less positive. We have discussed the 360, and [the Applicant] needs to work hard on the gap between his self perception and that of his team." It was further noted that the Applicant's "central developmental challenge is personal leadership." In his 2013 – 2014 Performance Evaluation, the Applicant stated that there were some "team issues" which he had to deal with that year. Both the Applicant's Supervisor and Co-Supervisor concurred in the assessment that the Applicant's leadership style perhaps contributed to the team cohesion issues referred to by the Applicant.

67. The issue is whether these concerns about the Applicant's performance influenced the decision to abolish the Applicant's position. In other words, whether the objectivity of the redundancy decision was impaired because of the perceived performance deficiencies. The Tribunal has held that "redundancy provisions may not be used to deal with unsatisfactory performance." *See Harou*, para. 37. Furthermore, in *Husain*, Decision No. 266 [2002], para. 43 the Tribunal noted that it:

[H]as previously expressed concern about the practice of mixing redundancy issues with decisions about the performance of staff, since redundancy does not give staff an opportunity to consider allegations or respond to them. (*See de Raet*, Decision No. 85 [1989], para. 62.) Redundancy procedures are not appropriate mechanisms for addressing performance issues, as they do not provide procedural protection, nor enable staff to respond to accusations.

68. Based on the foregoing, the Tribunal finds that the redundancy decision was motivated by the perception of the Applicant's performance. By declaring the Applicant's position redundant and arranging his exit from the organization through the abolition of his position, the IFC denied

him the procedural safeguards afforded to staff members in the event of poor performance that might lead to termination.

The IFC's obligations to assist the Applicant to find alternative appointment

69. The Tribunal has held that “[t]he obligation of the Respondent, in this respect, is not to reassign staff members whose employment was declared redundant under Staff Rule 7.01 but to try genuinely to find such staff members alternative positions for which they are qualified. It is an obligation to make an effort; it is not an obligation to ensure the success of such effort.” *See Arellano (No. 2)*, Decision No. 161 [1997], para. 42.

70. The issue at hand is whether the IFC fulfilled its obligation to actively, and in good faith, assist the Applicant in his effort to seek reassignment. Under the Staff Rules, the IFC's obligations to reassign and retrain staff whose employment has been made redundant commence following the effective date of the notice of redundancy. Staff Rule 7.01, paragraph 8.06 provides:

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

71. Staff Rule 7.01, paragraph 8.07 further provides that:

Following the effective date of the notice of redundancy, redundant staff may receive retraining, which may include on-the-job training, for an existing or known prospective vacancy where the manager agrees to accept the assignment of the staff member after a reasonable period of retraining. The cost of such training may not exceed three months of the staff member's net salary and training must begin at least 60 calendar days prior to the staff member's termination date.

72. There is no evidence in the record of any effort made by the IFC to assist the Applicant to find another position within the World Bank Group. In light of the Tribunal's finding in paragraph 68 above, it is not necessary to further examine this issue.

Whether the redundancy decision complied with the procedural requirements

73. The Tribunal will now consider the Applicant's contention that the IFC failed to observe fair and transparent procedures in implementing the Staff Rules regarding his redundancy. In particular, the Applicant contends that the IFC gave him contradictory reasons for his redundancy and took an extraordinary length of time to reach the redundancy decision. The Applicant further contends that the Redundancy Memorandum contained false or misleading statements.

74. Regarding the assertion that the Applicant received contradictory reasons for the redundancy decision, the Tribunal finds that this claim, concerning what the Applicant was told, cannot be resolved in either party's favor. The Applicant asserts that he was verbally told at the April 2014 meeting that the redundancy was based on complaints by staff members. However, there are no records of this meeting and the IFC contends that the Applicant was told that the redundancy decision was based on the restructuring process. While there is no proof of what the Applicant was told, the Tribunal has already found that the redundancy decision was motivated by perceptions of the Applicant's performance and complaints about his leadership style.

75. With respect to the second contention that the IFC took an extraordinary length of time to reach the redundancy decision, the Tribunal observes that the Applicant was told in April 2014 that his position would be made redundant due to restructuring within the organization. The record shows that a request to the Severance Review Group was made as late as November 2014 and an updated request was sent in December 2014. The Applicant did not receive formal written notice of the redundancy until 24 February 2015. The record also shows that the Applicant engaged in mediated exit discussions, as envisioned in the 2014 Restructuring Proposal, and subsequently in mutually agreed separation discussions. According to the IFC, it was only after these discussions failed that approval for the redundancy decision was sought.

76. The Tribunal has stressed that "[i]t is of utmost importance for the Bank to follow established procedures closely so as to ensure transparency and avoid the appearance of unfairness." *Moussavi (No. 2)*, Decision No. 372 [2007], para. 47. Though Staff Rule 7.01 does not provide for specific advance warning about the issuance of a redundancy notice, "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 aspect of his work.” *Garcia-Mujica*, Decision No. 192 [1998], para. 19.

77. The Applicant was informed as early as April 2014 that his position would be made redundant, thus providing him with advance notice of the adverse decision concerning his position. In addition, the mediated exit and mutually agreed separation discussions may have contributed to the delay in submitting the request to the Severance Review Group. Finally, the Redundancy Memorandum, once issued to the Applicant, contained the exact provision of the applicable staff rule. These facts lead to the conclusion that the redundancy decision complied with the procedural requirements. The Tribunal nevertheless notes with concern that prior to receiving the Redundancy Memorandum, in response to the Applicant’s request for the exact applicable staff rule, the Principal Finance Officer sent him an email message with all four subdivisions without clarification on which applied in his case. The Tribunal reiterates the principle laid out in *Yoon (No. 2)*, Decision No. 248 [2001], para. 37 that the basic elements of due process mandate that “a staff member be clearly notified of the exact and correct Staff Rule under which his or her employment is being terminated.” Invoking the proper subdivision of the staff rule dealing with redundancy is not a “mere technicality since each of the situations covered by the different subdivisions may have procedural and substantive requirements.” *Id.*

78. The Tribunal now considers the Applicant’s claim that the Redundancy Memorandum contained false or misleading statements. Having reviewed the Redundancy Memorandum and the Redundancy Proposal submitted to the Severance Review Group, the Tribunal observes that there is no evidence on the record to support the assertion made therein that the Applicant received a personal coach to assist him with his internal job search. The record shows that the personal coaching which the Applicant received pertained to improving his leadership skills and he began working with the coach in or around November or December 2013, prior to the redundancy announcement in March 2014.

79. It is unclear whether this inaccurate statement impacted the Severance Review Group’s decision to approve the request to make the Applicant’s employment redundant. The Tribunal

ordered the production of “all documents submitted to the Severance Review Group (SRG), comments or questions posed by the SRG and responses by the department to those questions.” Though the IFC did not submit any comments or questions posed by the SRG, the record suggests that additional information must have been requested by the SRG since the HR Officer, Ms. Y, sent the SRG an amended Redundancy Proposal “following the feedback from the SRG.”

Other claims

80. The Applicant contends that the IFC’s failure to extend his assignment in South Africa in a timely manner constituted unfair treatment in violation of Staff Principle 2.1. He further asserts that the delays caused him personal harm as it caused visa problems for him and his wife, and also affected his accommodation. The IFC contends that it acted in good faith in extending these assignments and asserts that these delays were a direct result of on-going discussions about the Mutually Agreed Separation Agreement.

81. The record shows that there were several delays in the extension of the Applicant’s Extended Assignment, and the Tribunal finds the IFC’s explanations for the delays unpersuasive. There was nothing preventing the IFC from extending the Applicant’s field assignment with a note that, should the parties enter into an agreement, the assignment would terminate on the date of such agreement. This is precisely what the Human Resources Officer, Ms. Y, wrote to the Applicant on 24 November 2014 while the SRG decision was pending: “Should a decision from the SRG be received within the period of extended assignment or the period of admin leave, each will cease and we shall effect the decision as soon as we have notified you of the decision and the actions to be taken.”

82. The Tribunal is satisfied that the Applicant has demonstrated that he suffered intangible harm as neither he nor his wife could obtain visas because his field assignment had not been extended. This harm was acknowledged by the Ms. Y who admitted in an email to the Lead Human Resources Specialist on 17 December 2014 that the Applicant faced “a lot of challenges in relocating and managing his visa and family situation with the assignment conclusion.” These challenges were caused by the delays in extending his Extended Assignment.

Conclusion

83. Having reviewed the record, the Tribunal finds that despite the legitimate reorganization process at the IFC, the decision to abolish the Applicant's position and declare his employment redundant was motivated by his perceived performance deficiencies. It is evident from the record that the Applicant's management sought, from the beginning, to arrange his exit from the organization prior to the completion of his term appointment. This conclusion is further supported by the fact that the record contains no evidence that the IFC assisted the Applicant to find alternate employment opportunities within the World Bank Group. Coupled with the delays in extending his Extended Assignment, the treatment of the Applicant fell short of the requirement to treat staff fairly contained in Principles of Staff Employment 2.1 and 9.1. Although reinstatement is not considered appropriate in this case, the Tribunal finds that the Applicant is entitled to compensation.

DECISION

- (1) The IFC shall pay the Applicant compensation in the amount of two years' net salary based on his salary at the time of the contested decision;
- (2) The IFC shall pay the Applicant's legal fees and costs in the amount of \$23,776.26;
and
- (3) All other claims are dismissed.

/S/ Mónica Pinto
Mónica Pinto
Vice-President

/S/Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D.C., 4 November 2016