



World Bank Administrative Tribunal

2017

Decision No. 556

**DW,
Applicant**

v.

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

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

**DW,
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 30 March 2016. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 10 April 2017.

3. The Applicant challenges the non-renewal of her contract and the Bank's denial for expiration payment upon the expiration of her contract.

4. The Bank has raised a preliminary objection to the admissibility of certain claims in this Application. On 22 July 2016, the Tribunal decided that the preliminary objection be joined with the merits. This judgment addresses the preliminary objection and the merits.

FACTUAL BACKGROUND

5. The Applicant joined the Bank on 17 June 2002 on secondment until 30 September 2008, at which time she accepted a Short Term Consultant appointment. On 15 December 2008, the Applicant commenced a two-year Coterminous Term appointment as a Senior Public Health Specialist, Level GG. On 1 May 2012, the Applicant's Coterminous Term appointment was converted to a Term appointment and extended until 30 June 2015.

Non-Renewal

6. On 29 January 2014, the Applicant had her midterm performance review with her manager, Sector Manager, Health, Nutrition and Population Global Practice (GHNDR) (hereinafter “Sector Manager”). During this meeting, the Applicant mentioned that “[her] portfolio was wrapping down” and by February 2014, she “would expect not to be fully committed.”

7. The Applicant alleges that during this meeting, voices were raised. Immediately after the meeting, the Applicant reported this incident to the Ombuds Services Office and requested their intervention with the Sector Manager.

8. On 30 January 2014, the Applicant also made a verbal complaint with Human Resources (HR) and the Sector Manager’s manager, Acting Director, GHNDR. HR and the Acting Director subsequently informed the Applicant that they had a meeting with the Sector Manager.

9. On the same day, on 30 January 2014, the Sector Manager sent an email to the department, copying the Applicant, requesting projects on the Applicant’s behalf. In the email, the Sector Manager noted that the Applicant was “exploring work program opportunities” and specified that those opportunities could be within Africa or other regions.

10. In an email of 4 February 2014, the Applicant reported the incident of 29 January 2014 to HR as follows:

The only participants present in the meeting [were] myself and the manager and the door was closed. Based on misunderstanding of perspective, I suggested to the manager that the parties may consider conflict resolution. The manager informed me that it was my right to seek conflict resolution and then raised his voice and started pointing his finger aggressively towards me and stating whether I was threatening him [with] conflict resolution. I also raised [my] voice and informed the manager that if he continued with his threatening behavior, I would call HR. After several repetitions, the manager stopped his aggressive behavior and we continued with the review.

11. On 4 February 2014, the Ombudsperson met with the Sector Manager to discuss the incident and subsequently informed the Applicant.

12. The Sector Manager continued as the Applicant's manager until 30 June 2014, at which point he was promoted to the position of Director, GHNDR. During the Fall of 2014, Mr. A became the Applicant's acting manager (hereinafter "Acting Manager").

13. On 16 November 2014, the Applicant's Acting Manager sent an email to the GHNDR management team requesting their help in deciding whether to extend the Applicant's Term appointment and convened a meeting for that purpose. The Acting Manager stated that he had reviewed the Applicant's last four overall performance evaluations (OPEs) and would present options for management's "consideration and guidance." In that email, the Acting Manager explained the Applicant's "strengths" as follows:

Her OPEs state that she is an expert on supply chain and in fact the bulk of her work in the earlier OPEs were on supply chain issues, mostly support to operational teams and limited related AAA.

OPE ratings (by three different managers over four years [...]) have been consistently average.

The Africa management team three years ago gave her a stretch assignment to lead a major ESW [Economic and Sector Work] on Demographic Dividend, and while it has been a struggle, especially with the lead consultants not always delivering on time, the assignment was completed.

She has TTled a challenging project in Mozambique

Came to the Bank as a USAID secondee and was then hired on a fixed term basis.

14. Also, in that email, the Acting Manager then set out the following "issues" regarding the Applicant:

Difficult market signals related to business needs: has not been able to get an assignment outside Africa (applied to several) and having a difficult time getting a full work load within Africa.

Performance has seen a slight decline. Ratings were highest in 2011, but since then have been lower (still average). The last two OPEs raised issues/concerns about communication and team work.

Can be seen as a challenging personality by colleagues (including by myself) which has made it harder to place her in teams this FY.

Despite being a Sr. Health Specialist for a number of years, her Bank work experience is quite limited in scope (mainly to supply chain and one TTLship of a project and a large ESW), and in breadth (does not appear to have a wider knowledge base beyond her main strength in supply chain). Moreover, limited regionally to Africa.

15. The Acting Manager subsequently proposed two options for discussion at the meeting:

Option 1: Transfer [the Applicant] (or her work program) to another region where her technical skills are needed and she is given the chance to grow and show her potential [...] and give her a 2-year extension.

Option 2: Do not extend [the Applicant's] contract and if there is work available offer a STC contract on supply chain issues to help her with her transition.

16. On 18 November 2014, the management team met to address a number of matters, including the decision whether to extend the Applicant's Term appointment. The GHNDR Senior Director served as chair of the meeting. The Sector Manager and other managers were present, including an HR representative. The Acting Manager participated by telephone. The management team unanimously decided not to extend the Applicant's contract based on "business and skills mix needs."

17. On 25 November 2014, the Acting Manager informed the Applicant that her Term appointment would not be renewed. The following day, the Acting Manager provided written notice by email and informed the Applicant that her appointment would be extended until 30 June 2015, noting "this extension will provide you with more than the required six-month notice period for the end of your term appointment."

18. On 8 January 2015, the Applicant responded to the Acting Manager and informed him that she intended to contest the non-renewal decision, claiming that it was a result of retaliation by the Sector Manager.

Expiration Payment

19. Upon receiving notice of non-renewal, the Applicant requested expiration payment from HR, which the Applicant alleges was denied on 6 December 2014.

20. In an email of 31 March 2015, the Applicant approached the Human Resources Vice President (hereinafter “HRVP”), and noted that she had been informed she was not eligible for expiration payment and found “this policy very unfair.” On 8 April 2015, in his response, the HRVP referred to Staff Rules relevant to Coterminous appointments and informed the Applicant that the conversion of Coterminous into Term appointments “was not intended to create a right to severance for prior time served in a coterminous appointment,” as it had been duly announced by HR on the Kiosk on 12 September 2013.

21. On 25 March 2015, the Applicant submitted a Request for Review to the Peer Review Services (PRS) challenging the non-renewal of her appointment and alleging that the reason for non-renewal was in retaliation for having accessed the Conflict Resolution System. In her request to PRS, the Applicant did not challenge HR’s denial for an expiration payment. In its Report dated 25 September 2015, the PRS Panel found that “the Bank made its non-renewal decision on a reasonable and observable basis, that it followed the applicable procedures, and that management acted in good faith. The Panel therefore recommends that [the Applicant]’s requests for relief be denied.” The Bank accepted this recommendation on 30 September 2015.

22. The Application was received on 30 March 2016. The Applicant contests the non-renewal of her Term contract and HR’s denial of expiration payment of 6 December 2014. The Applicant seeks: a) compensation for unfair treatment and procedural violations in the decision of non-renewal; b) rescission of the decision by HR denying her expiration payment; c) expiration payment in the amount of seven months’ salary; d) compensation for career mismanagement and reputational damage in the amount of three years’ salary; and e) legal fees and costs in the amount of \$37,081.25.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

PRELIMINARY OBJECTIONS

The Bank's Contentions

23. The Bank submits that the following claims of the Applicant are outside the Tribunal's jurisdiction: (i) HR's denial of her expiration payment; (ii) Bank's failure to investigate the alleged misconduct by the Sector Manager; (iii) HR's inaction with respect to the tension between the Applicant and the Sector Manager; (iv) gender-based unfair treatment that resulted in a hostile work environment; and (v) ethnic and gender discrimination that purportedly factored into the Bank's non-renewal decision.

24. The Bank contends that these claims have been brought directly before the Tribunal without having previously exhausted internal remedies and without giving the Bank the opportunity to contest them. The Bank further contends that these claims are untimely as they were not submitted for review before PRS within 120 days of receiving notice of the disputed employment matter.

25. Specifically regarding the Applicant's claim for expiration payment, the Bank contends that this claim was final and ripe prior to the submission of the Request for Review to PRS. The Bank submits that the HR decision of 6 December 2014 denying the Applicant's request for expiration payment constitutes the date on which the Applicant was put on notice and not 8 April 2015 as the Applicant now contends. The Bank further submits that this claim, as a matter of policy, is outside the Tribunal's review.

26. The Bank asserts that the Applicant's additional claims are not merely contextual as alleged by the Applicant. With regard to the allegations of ethnic and gender-based discrimination, the Bank asserts that they should have been taken to EBC for thorough investigations. Regarding the Applicant's claim of management's failure to investigate misconduct, the Bank argues that "claims of nonfeasance" are also within the Tribunal's jurisdiction and must be challenged according to the limitations of the Staff Rules. The Bank maintains that the Applicant's claim of undue

interference in her non-selection to a position by an unaffiliated organization is not cognizable by the Tribunal for not having been raised before the appropriate internal bodies in a timely manner.

The Applicant's Contentions

27. The Applicant asserts that her claim for expiration payment is timely. The Applicant claims that there is no official document showing she received a decision on eligibility for expiration payment on 6 December 2014. She explains that she submitted her request to PRS on 25 March 2015, her request to the HRVP was made on 31 March 2015 and she received his interpretation of the policy on 8 April 2015, which “was too late to introduce the issue into the PRS request.” According to the Applicant, the expiration payment was dependent on the PRS Panel’s Recommendation decision and only after that, “the matter of terms of separation was ripe for adjudication by the Tribunal and all incidents pertaining to the decision such as denial of any severance payment were ripe for adjudication.”

28. The Applicant maintains that the Bank’s policy regarding expiration payment does not “make any legal sense” and that the application of the Staff Rules results in differential treatment. The Applicant also maintains that, in order for a policy to be outside the Tribunal’s review, the policy has to be shown to be more than simply a “dictate of HR,” that “it emanates from a policy making body of the Bank,” and that it does not “discriminate unjustly among staff.”

29. In relation to the rest of the claims challenged by the Bank, the Applicant submits these claims do not relate to specific decisions but rather “[t]hey are part of the *res* and cannot be excluded from being considered as part of management’s failure that pervades the decision-making in this case and the issues of retaliation considered by the PRS [...]”

MERITS

The Applicant's Contention No. 1

The Bank's business-based motivation for non-renewal was a mere pretext

30. The Applicant asserts that because there was at the time of her non-renewal a high demand for her skills at the Bank, the business reasons given in support of her non-renewal were a mere pretext, which contravened the "update on Renewable Term Appointments" issued by HR on 21 May 2009.

31. The Applicant maintains that the new results-based financing approach adopted in the Africa region "simply place[s] emphasis on the formulation and supervision of projects to assure that projects are properly implemented, disbursed and replicated" and does not change the need for experienced and knowledgeable sector specialists like her. She alleges that the Bank has failed to demonstrate her lack of aptitude for this new approach, and its claim that her knowledge was "deep but limited in scope and breadth," is not sufficient.

The Bank's Response

The Bank had a legitimate and reasonable basis for not renewing the Applicant's contract

32. The Bank asserts that the Applicant's non-renewal had a legitimate and reasonable basis, was "related to the functioning of the institution," and was based on objective staffing needs consistent with the "update on Renewable Term Appointments" of 2009, which should not be confused with the Bank's strategic staffing reorganization undertaken in 2015.

33. The Bank asserts that during the Applicant's tenure with the Bank, the delivery model within GHNDR changed into focusing its services on the delivery of expert policy advice and incentivizing certain results. The newly adopted results-based financing approach rendered the Applicant's "supply chain expertise in Africa [...] less readily applicable to the projects implemented under the new [results-based] approach." While acknowledging that the Applicant's skills were "rich in her area of expertise," the Bank contends they were however limited in breadth and no longer fit the unit's business needs.

The Applicant's Contention No. 2

The non-renewal of her Term appointment followed a defective process

34. The Applicant claims to have been prevented from defending herself as she was not provided with “fair, honest, straightforward and justified” reasons for non-renewal. She claims that it is up to the Bank to demonstrate that the Applicant’s skills or functions were no longer needed due to reorganization, or that there was an objective fact-based discussion of the Applicant’s career, her capabilities and the unit’s work program.

The Bank's Response

The Bank followed fair and reasonable procedures and afforded the Applicant adequate due process

35. The Bank asserts that due process was followed in deciding the Applicant’s non-renewal. It further asserts that the decision was taken unanimously at a GHNDR management meeting with the presence of an HR representative, where renewals of other staff were also discussed, minutes of the meeting were taken, the Applicant was promptly notified of the decision “with a description of the deliberative process and the business rationale” both verbally and in writing, and she was granted approximately seven months’ notice.

The Applicant's Contention No. 3

The non-renewal of her Term appointment was retaliatory

36. The Applicant alleges that the non-renewal decision was made in retaliation for her reporting the abusive and aggressive behavior that the Sector Manager displayed towards her during her midterm review to the Conflict Resolution System.

37. The Applicant contends that the Sector Manager’s email of 30 January 2014 asking for work opportunities for the Applicant, his influencing the GHNDR managers to decide on the Applicant’s non-renewal, and the hiring of a secondee with lesser experience to replace her, all constitute retaliatory actions.

The Bank's Response

The decision not to renew the Applicant's Term appointment was not retaliatory

38. The Bank submits that the Applicant has deprived the Tribunal and the Bank of an impartial record by failing to bring her claims of retaliation before EBC for a proper investigation. While acknowledging that a staff member may establish a *prima facie* case of retaliation under Staff Rule 8.02, paragraph 3.01(a), the Bank asserts that the Applicant has failed to provide evidence substantiating the reasonableness of her belief or any link between her reporting of the Sector Manager to the Conflict Resolution System to the non-renewal of her contract.

39. The Bank strongly disagrees with the Applicant's allegations of "silent complicity" of all the managers that participated in the decision of non-renewal, and asserts that the PRS Report has confirmed that "there were no prior communications by the Sector Manager to set the stage for Applicant's non-renewal, and neither the Sector Manager nor the Senior Director said much during the management meeting to influence the decision."

The Applicant's Contention No. 4

The Applicant was treated unfairly and denied work assignments

40. The Applicant alleges she was treated unfairly, "ostracized" and denied work assignments in her unit under the claim of insufficient demand for supply chain expertise while in fact her work program was very diverse in the public sector and she possessed expertise in areas other than supply chain management. She also submits that she faced exclusion, and isolation from her colleagues who avoided her out of concern for repercussions from the Sector Manager, and that while she tried reaching out to management, including the Senior Director, she never "got responses back, or very little reaction."

The Bank's Response***The Applicant was treated fairly and supported in her work program***

41. The Bank denies the Applicant's allegations of unfair treatment and isolation in her workplace. The Bank claims that the reduction in the Applicant's work program did not happen subsequent to the midyear review in January 2014 but that the Applicant's work program was winding down prior to that date, as acknowledged by the Applicant. The Bank submits that all the steps taken by management throughout 2014 and 2015 were done in good faith and with the intention to support the Applicant's work and accommodate her priorities.

42. The Bank denies having hired a secondee to replace the Applicant and asserts that the secondee in question joined the Bank on 1 July 2013, several months prior to the Applicant's non-renewal, for a temporary placement with the Bank, which ended in July 2016. The Bank notes that neither the Sector Manager nor the Acting Manager assigned the secondee to the Interagency Supply Chain group. The Bank explains that another staff member, a Lead Health Specialist, was responsible for preparing the secondee's work program.

The Applicant's Contention No. 5***The Applicant was made redundant***

43. The Applicant asserts that the non-renewal decision amounted to redundancy because the Bank concluded that her skills were deemed "too narrow, too focused on only supply chain management and therefore there was no business need for [them]," and specifically to the criterion of the Staff Rules regarding when "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." She claims therefore to be entitled to compensation for redundancy.

The Bank's Response

The decision not to renew the Applicant's contract was not a redundancy, and she is not entitled to any severance pay on this basis

44. The Bank asserts that the management determination of non-renewal for lack of business needs must be distinguished from any of the circumstances reserved for redundancy in the Staff Rules. The Bank maintains that redundancy by definition involves the abolition of a position that has become redundant, and that none of the records show that procedures for redundancy were applicable to the Applicant. The Bank submits that the Applicant's appointment was not terminated prematurely but rather was not renewed on its natural expiry date. Given that the Applicant was not made redundant, she is not entitled to any severance payment on this basis.

The Applicant's Contention No. 6

The Applicant is eligible for expiration payment after having worked at the Bank from 2002 under different appointments

45. The Applicant submits that at the time of her non-renewal in 2015, she had accumulated seven years in a Term appointment, of which four were Coterminous, which entitled her to expiration payment. She claims that a reasonable interpretation of Staff Rule 7.02, paragraphs 7.01 and 7.03, "does not exclude the three years which are provided for staff with 'five or more continuous years of service in a Term appointment'" and that the Staff Rule "simply says that years of coterminous service do not qualify for severance." The Applicant submits that since the Bank has not provided evidence that her position from 2008 to 2012 was paid from a Trust Fund, the appointment was not Coterminous, and therefore she is entitled to more years of expiration payment.

The Bank's Response

The Bank acted consistently with the Staff Rules, the Principles of Staff Employment and the Applicant's terms of employment in denying the Applicant's request for expiration payment

46. The Bank maintains that this claim is not properly before the Tribunal. The Bank asserts that the Applicant does not possess the five years of service in a Term appointment required by the Staff Rules in order to be eligible for an expiration payment. The Bank further asserts that the Applicant's initial Coterminous appointment was funded by a Trust Fund, which excludes the years served under this appointment from being considered for expiration payment.

47. The Bank submits that the Applicant cannot claim ignorance of the distinction between Coterminous and Term appointments and of the implications of eliminating Coterminous appointments because the record shows that HR made multiple announcements throughout 2013, shortly after the Applicant was converted into a Term staff, explaining that service under a coterminously-funded appointment would not be considered in calculating a Term staff member's expiration payment.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

PRELIMINARY OBJECTIONS

Whether the Applicant's claim challenging HR's refusal of expiration payment was filed in a timely manner

48. Article II(2) of the Tribunal's Statute states:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

- (i) the applicant has exhausted all other remedies available within the Bank Group, except if the and the respondent institution have agreed to submit the application directly to the Tribunal;
- (ii) the application is filed within one hundred and twenty days after the latest of the following:
 - (a) the occurrence of the event giving rise to the application;

- (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
- (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

49. Regarding time limitations for requesting peer review, Staff Rule 9.03, paragraphs 7.01 and 7.02, provides that:

7.01 A staff member who wishes to request peer review must submit a Request for Review with the Peer Review Secretariat within 120 calendar days of receiving notice of the disputed employment matter [...].

7.02 A staff member receives “notice” of a disputed employment matter when he or she receives written notice or ought reasonably to have been aware that the disputed employment matter occurred.

50. In *Peprah*, Decision No. 275 [2002], para. 24, the Tribunal observed:

The Tribunal has stressed, in several decisions (*see e.g. Klaus Berg*, Decision No. 51 [1987], para. 30), the importance of the statutory exhaustion requirement. The Tribunal has also emphasized in numerous decisions that a failure to observe time limits for the submission of an internal complaint or appeal resulting in that complaint or appeal being rejected as untimely is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. (*See de Jong*, Decision No. 89 [1990], para. 33; *Setia*, Decision No. 134 [1993], para. 23; *Sharpston*, Decision No. 251 [2001], paras. 25-26.)

51. In *AH*, Decision No. 394 [2009], para. 15, the Tribunal held that

timely exhaustion of internal remedies is necessary if an application is to be admissible. The “exhaustion of internal Bank remedies requires recourse to the Appeals Committee in a timely manner.” *Motabar*, Decision No. 346 [2006], para. 12. Internal Bank remedies “include timely recourse to the Appeals Committee. ... The Applicant must formally and in a timely manner invoke and exhaust available internal remedies in order that the allegedly improper Bank decisions may be challenged in an application before the Tribunal.” *Malekpour*, Decision No. 320 [2004], para. 20.

52. The Tribunal however noted at para. 16 that

the time limit may be abated in exceptional circumstances. For example, in *Mustafa*, Decision No. 195 [1998], para. 7, the Tribunal held, invoking *Yousufzi*, Decision No. 151 [1996], para. 28, that the statutory requirement of timely action may be “relaxed in exceptional circumstances” and that such circumstances

are determined by the Tribunal from case to case on the basis of the particular facts of each case. In deciding that exceptional circumstances exist the Tribunal takes into account several factors, including, but not limited to, the extent of the delay and the nature of the excuse invoked by the Applicant.

53. In the instant case, while the Bank considers that the Applicant has not exhausted internal remedies with respect to this claim and that this claim is untimely, the Applicant contends that the HRVP’s email of 8 April 2015 constitutes the only “decision” on her expiration payment and that only after that “the matter of terms of 2015 separation was ripe for adjudication by the Tribunal.”

54. The Tribunal notes that multiple references are made in the Application to a “decision” made by HR regarding expiration payment. The Applicant specifically refers to a “Request to HR for severance pay, December 6, 2014,” “denial by HR of compensation for severance pay on December 6, 2014,” and the “HR decision of December 6, 2014”, which she claims “den[ie]d [the Applicant] compensation for severance on the grounds that three out of the five years of her employment period was financed by a Trust Fund and therefore made her ineligible for severance pay.” The Applicant asserts, however, that the Bank has been misled by her statements in the Application, and that the HRVP’s email of 8 April 2015 “is the only documentation on this issue of separation compensation.”

55. The Bank submits that the HRVP’s email is not a decision but it “simply explained the policies applicable to coterminous staff, in response to Applicant’s March 31, 2015 email.” The record shows that in her email of 31 March 2015 to the HRVP, the Applicant notes “I have been informed that for these years, I was co-terminous staff for 6 years and hence am not eligible for severance pay.” The Applicant added “I find the policy very unfair” while contrasting it against the “indemnity payment” received by Extended Term staff, and noted “staff like me [who] have dedicated a significant amount of my career are thrown out of this institution without a penny.”

The Tribunal observes that, while there is nothing in this message referencing a prior HR decision, there is, however, an acknowledgment on the Applicant's part that she had been informed that she was ineligible for expiration payment.

56. The record further shows that on 8 April 2015, the HRVP responded to the Applicant, clarifying the rules applicable to expiration payments and reminding the Applicant that the conversion of Coterminous into Term appointments announced on 12 September 2013 did not intend to create a right to severance for prior time served as coterminous. The HRVP added that neither Coterminous service nor Extended Term service qualify for purposes of expiration payment and concluded that there was not a fundamental unfairness when comparing these provisions for Extended Term staff and formerly Coterminous staff. The Tribunal finds that the HRVP's email does not convey any decision on the part of the HRVP denying the Applicant an expiration payment nor is the language indicative of such denial. The HRVP's email rather explains the policies applicable to Coterminous appointments. This has also been the understanding of the Applicant who conceded that the correspondence with the HRVP was solely informative.

57. Regarding the determination of the *dies a quo* for challenging decisions, the Tribunal held in *Njinkeu* (Preliminary Objection), Decision No. 538 [2016], para. 31, citing *Al-Muthaffar*, Decision No. 502 [2014], para. 40:

[W]hat is a timely manner is delimited by the time limit stipulated in the Staff Rules for the pursuit of internal remedies which, in this case, was triggered at the time at which the Bank's decision not to extend her appointment was first notified to the Applicant. That is the *dies a quo* and it is not changed by assertion of a subsequent discovery of circumstances or allegedly false reasons given for the Bank's decision.

58. The Tribunal finds that pursuant to Staff Rule 9.03, paragraph 7.02, the *dies a quo* for the Applicant's claim regarding expiration payment is not 8 April 2015, but rather 6 December 2014, the date on which the Applicant "[was] aware that the disputed employment matter occurred," that is when she was first informed of her ineligibility for expiration payment, which she acknowledged to be 6 December 2014. After this date, any challenge on expiration payment was ripe for review before PRS. By not bringing this claim to PRS for review within the time limit imposed by the

Staff Rules, the Applicant failed to meet the statutory requirements for exhaustion of internal remedies provided for in Article II of the Statute. The Tribunal therefore finds this claim inadmissible.

59. In addition to the claim regarding the denial of expiration payment, the Bank contests the Tribunal's jurisdiction over the following allegations of the Applicant: (i) the Bank failed to investigate the Sector Manager's misconduct; (ii) HR failed to take action with respect to the tension between the Applicant and the Sector Manager; (iii) gender-based unfair treatment that resulted in a hostile work environment; and (iv) ethnic and gender discrimination that purportedly factored into the Bank's non-renewal decision. The Applicant alleges that these claims are not independent but are "part of the *res*" of the case and constitute "factors affecting her career and the eventual decision to terminate her."

60. The Tribunal observes that the allegations raised by the Applicant all relate to retaliatory and discriminatory actions, which, as claimed by the Applicant, were behind the decision of non-renewal. The Tribunal will address the merits of those claims.

MERITS

61. The only matter properly within the jurisdiction of the Tribunal is the non-renewal of the Applicant's appointment. In order for the Tribunal to find whether the non-renewal did not constitute an abuse of discretion, the Tribunal will address whether i) the Bank had a reasonable basis for non-renewal; ii) the Bank followed fair and reasonable procedures; and iii) the non-renewal decision was retaliatory and discriminatory. On a separate issue, the Tribunal will also address the Applicant's claim that she was made redundant.

Whether the Bank had a reasonable basis for non-renewal

62. Regarding expiration of term appointments, Staff Rule 7.01, paragraph 3.01 provides that "[a] staff member's appointment expires on the completion of an appointment for a definite term, as specified in the staff member's letter of appointment, or as otherwise amended."

63. The Applicant's Letter of Appointment states:

Your appointment will terminate at the end of this two-year period unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of the appointment.

64. In *Rittner*, Decision No. 339 [2005], para. 30, the Tribunal held:

The Tribunal has had several occasions in the past to consider claims by staff members serving on Fixed-Term, Term or Temporary appointments to have their appointments extended or regularized. In *Kopliku*, Decision No. 299 [2003], para. 9, the Tribunal explained the governing principles in the following manner:

The legal principles that govern this case have been well established in the jurisprudence of the Tribunal. A staff member appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. Staff Rule 7.01, para. 3.01, states: "A staff member's appointment shall expire on the completion of an appointment for a definite term, as specified in the staff member's letter of appointment, or as otherwise amended." As the Tribunal has held before, in *Mr. X*, Decision No. 16 [1984], para. 35: "A fixed-term contract is just what the expression says: it is a contract for a fixed period of time." Accordingly, the Bank need not provide reasons for the non-reappointment of a person serving for a temporary and fixed term. "Absent unusual circumstances, the individual should be fully aware of the reason why his or her appointment does not continue beyond the stipulated date: because the parties so agreed and have stipulated to that effect in the employment contract." *McKinney*, Decision No. 187 [1998], para. 10.

65. More recently, in *CP*, Decision No. 506 [2015], para. 36, the Tribunal reiterated its previous holding that a staff member appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. The unusual circumstances to which the Tribunal refers to were outlined in *CA*, Decision No. 475 [2013], para. 50, citing *Rittner*, paras. 30-32:

The applicable principle is that the Bank has discretionary authority to grant the holder of a Fixed-Term appointment a further contract. That discretionary authority to renew or not to renew a contract at the expiration of its predetermined date is

not, however, absolute and unlimited; it may not be exercised in an arbitrary manner. (*Barnes*, Decision No. 176 [1997], para. 10.)

The nature of applicable limitations was indicated by the Tribunal in *Carter*, Decision No. 175 [1997], para. 15: the decision not to renew or extend a contract may not be based “on considerations unrelated to the functioning of the institution, such as racial discrimination.”

Another kind of restriction upon the Bank’s discretionary authority to renew or extend, or not, a Fixed-Term contract arises when circumstances are shown which reasonably warrant the inference by a staff member that the Bank in fact made a promise to extend or renew his or her appointment “either expressly or by unmistakable implication.”

66. Furthermore, in *AQ*, Decision No. 412 [2009], para. 41, The Tribunal held that:

Decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member’s contract of employment or terms of appointment. *See De Raet*, Decision No. 85 [1989], para. 67; *Marshall*, Decision No. 226 [2000], para. 21; *Desthuis-Francis*, Decision No. 315 [2004], para. 19.

67. Pursuant to the 2009 “Guidelines for Use of Term Appointments to Enhance Staffing Flexibility,” managers have broad discretion regarding expiration of Term appointments. As the expiration date approaches, managers may

allow the term appointment to expire under its own terms, in which case staff should be given notice that is practical from a business perspective and that allows staff time to plan future career arrangements [...].

68. The Tribunal is satisfied by the reasons articulated by the Bank that the changing business needs in GHNDR required a different skillset which the Applicant did not possess. The record indeed shows that GHNDR adopted a new approach to lending in Africa. Emails among GHNDR staff, including the Applicant, attest to a rethinking of the medicines supply chain model in Africa, which resulted in the adoption of a results-based financing (RBF) approach, a “program that rewards a verifiable health action of outcome through financial or in-kind incentives.” According to this new approach, the focus is no longer supply chain but the delivery of expert policy advice and incentivizing of certain results.

69. The Tribunal is further satisfied with the management's explanation that the "business and skills mix needs" was the basis for non-renewal, as shown in the minutes of 18 November 2014. The decision taken by management was not taken lightly but reflects a careful consideration of all the points raised by the Acting Manager in his email to the management team asking for guidance on the Applicant's case.

70. The Tribunal has held in its jurisprudence that management retains discretion in deciding which skillsets adapt best to changing needs. In *DM*, Decision No. 542 [2016], para. 49, the Tribunal held that

identifying the skills that are suitable for these changing needs and who is the most suitable staff to perform these tasks are discretionary decisions of the IFC (*see Jassal*, Decision No. 100 [1991] para. 37). The IFC concluded that Mr. D, the new supervisor of the Applicant, was in the best position to carry on managing the P7 portfolio and also concluded that the Applicant's skills with a GH level position were no longer in need. The Tribunal is not convinced that this discretionary decision of the IFC had been abused.

71. In *Koclar*, Decision No. 441 [2010], para. 45, the Tribunal held that "[t]he changing demands of the Bank require that it adapt to meet evolving needs and circumstances; the Bank is free to make changes to its staffing needs in accordance with the Staff Rules."

72. The Tribunal also observed in *Koclar*, para. 35, that it did not have cause to doubt the Bank's assertions that changes in strategy diminishes the need for a certain skill. The Tribunal noted:

While the Applicant challenges the veracity of the Bank's assertions in this regard, the Tribunal has no cause to doubt, on the basis of the record before it, that there were changes to the Bank's Country Partnership Strategy which may have diminished the need for the Applicant's particular skills.

73. Similarly, in the present case, based on the record, the Tribunal has no basis to doubt the Bank's reasons for non-renewal. The Tribunal agrees with PRS in that management had a reasonable and observable basis not to extend the Applicant's appointment. The Tribunal finds

that the Acting Manager's decision to not renew the Applicant's contract was not arbitrary and that managerial discretion was not abused.

Whether the Bank followed fair and reasonable procedures

74. In accordance with the "update on Renewable Term Appointments" issued by HR on 21 May 2009 "[renewal] decisions should be part of managers' normal strategic staff planning to meet business needs, with a supporting business judgment discussed with HR and approved by the manager's manager or at a management review."

75. The Tribunal observed in *Skandera*, Decision No. 2 [1981], para. 28 that

notice of termination should communicate to the affected staff member the true reasons for the Bank's decision. It is in the interest of the Bank that the employment of qualified employees not be terminated on the basis of inadequate facts or ill-founded justifications, and one way to assure this is to furnish the staff member at the time of termination with a specific and true assessment which will provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank. The prompt communication of reasons for termination will also facilitate the preparation and presentation of appeals and other remedies provided in the Bank's dispute-resolution procedure.

76. The record shows that in deciding the Applicant's non-renewal, procedures were duly followed. Nine members of senior management, all GHNDR practice managers and directors, convened on 18 November 2014 to discuss the Applicant's non-renewal, in the presence of an HR representative. They unanimously concluded that the non-renewal of the Applicant's contract was appropriate.

77. The record further shows that the employment contracts of five staff members were discussed in the meeting, of which only two were extended, while three, including the Applicant's, were not renewed due to business needs. During the PRS proceedings, the Acting Manager testified that due process was equally followed for each staff member whose contract renewal was discussed in the meeting, that he presented the case for each affected staff member to the management team, and that each manager was given the opportunity to comment on and discuss

the staff member further to which a consensus decision was taken regarding each case. The HR officers who testified before the PRS Panel corroborated that procedures for non-extension were appropriate and duly observed.

78. Another proof that proper process was followed is the taking and distributing of the meeting's minutes. The minutes show that the Senior Director served as chair of the meeting. The Sector Manager and other staff members, including an HR analyst, also attended the meeting, with the Acting Manager participating by telephone. As further attested by the minutes, the meeting started with the Senior Director's briefing, followed by the Sector Manager's. The third and final item on the agenda discusses the cases of three staff members, including the Applicant's.

79. Further steps were taken in order to ensure the appropriateness of the process. The record shows that a few days after the meeting, the Applicant was informed of the management decision and reasons for non-renewal first orally, and then by email. The Applicant's appointment was extended until 30 June 2015 in order to provide her with the required six-month notice period.

80. The Tribunal considers that all the above mentioned steps show that appropriate procedures were duly followed in making the non-renewal decision.

Whether the non-renewal was retaliatory and discriminatory

81. The Tribunal stated in *Bauman*, Decision No. 532 [2016], para. 95 that:

As the Tribunal has frequently observed, the Staff Rules are clear that retaliation against any person "who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System" is prohibited. *See* Staff Rule 3.00, paragraphs 6.01(g) and 7.06, and Staff Rule 8.01, paragraph 2.03; *see also* CS, Decision No. 513 [2015], para. 104; *Sekabaraga* (No. 2), Decision No. 496 [2014], para. 60. This prohibition extends also to retaliation against any person who is believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken. *Id.*

82. Discrimination also constitutes misconduct prohibited under the Staff Rules. Staff Rule 3.00, paragraph 6.01(e) entrusts EBC in the resolution of allegations of misconduct, including, among others:

(e) Harassment; contributing to a hostile work environment; or wrongful discrimination, including on the basis of age, race, color, sex, sexual orientation, national origin, religion or creed [...]

83. The record shows that the Applicant did not submit any request for investigation to EBC regarding these claims, but instead raised allegations of retaliation as the basis for the non-renewal of her contract in Request for Review No. 241. The PRS Panel did not find any retaliatory motivation.

84. In *Bodo*, Decision No. 514 [2015], para. 76, the Tribunal stated that allegations of retaliation and discrimination are serious forms of staff misconduct which should not be alleged lightly. Further, at para. 78, the Tribunal observed:

Given the severity of allegations of discrimination and retaliation, thorough investigations of the facts are imperative, and staff members should avail themselves of the investigative body that is the Office of Ethics and Business Conduct (EBC). The Tribunal wishes to reiterate its observation in *Sekabaraga*, para. 42 that such serious allegations may merit detailed investigation by EBC prior to asserting them before the Tribunal:

[T]here are good grounds for having EBC undertake a review of allegations of retaliation before such allegations are considered by PRS or the Tribunal. EBC is the unit with the primary mandate and the resources to review allegations of retaliation, and review by EBC could make an important contribution to a proper consideration of the often complex factual background against which retaliation is alleged. In addition to ensuring a more complete factual record, prior review by EBC would also eliminate the possibility of EBC reaching conclusions that are at variance with findings of fact made by PRS or the Tribunal.

85. The Tribunal observes that the Applicant should have brought any allegations of retaliation and discrimination based on race or sex to EBC for thorough investigations.

86. The Tribunal observed in *Bodo*, para. 77, that

an applicant asserting discrimination or retaliation must still make a *prima facie* case with some evidence to show the discriminatory or retaliatory motives behind the impugned decision. Without any elaboration on her claims or evidence of actual or perceived retaliation and discrimination by the Sector Manager, the Applicant has given the Tribunal little to deliberate on.

87. In *AH*, Decision No. 401 [2009], para. 36, the Tribunal found:

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

88. The Tribunal observes that for retaliation cases to be substantiated, a staff member must establish (i) he/she engaged in activity protected by the Staff Rules; (ii) the decision-maker in question was aware of the protected activity; and (iii) a direct link, i.e. a causal nexus, exists between the protected activity and the adverse action in question. The record shows that the Applicant reported the incident of 29 January 2014 with the Sector Manager to the Ombuds Services Office and that the Sector Manager was aware of this fact. There is, however, no evidence supporting any direct link between her report to the Ombuds Services Office and the subsequent decision of non-renewal, taken many months later by a management team. The record supports that the Sector Manager, despite being present in the management meeting, did not unduly influence the decision related to non-renewal. The PRS Panel has confirmed that there were no communications by the Sector Manager with the rest of the management team prior to the meeting of 18 November 2014 and that both the Sector Manager and the Senior Director did not influence the non-renewal decision. Based on the record, the Tribunal finds the Applicant's allegations of retaliation without substance.

89. The Tribunal also finds unsubstantiated the Applicant's claims that she was treated unfairly and denied assignments as signs of further retaliation for reporting the Sector Manager to the Conflict Resolution System. In the instant case, the record shows that even prior to the midyear review of January 2014, the Applicant had acknowledged that her work program was winding down. This issue was raised at this meeting and steps were promptly taken by the Sector Manager

to address this matter, as proved by the email sent by him to colleagues in GHNDR seeking work on behalf of the Applicant. Furthermore, the record supports the conclusion that the reduction in the frequency of communication between the Sector Manager and the Applicant is the result of fewer ongoing projects and cannot be read otherwise. Likewise, the Acting Manager's decision to be the primary author in the book project the Applicant was working on is indicative of his discretion in managing projects within his unit.

90. Based on the record, the Tribunal finds that the Applicant has failed to discharge the required burden of proof. The Tribunal further finds that the non-renewal decision had a reasonable and observable basis and was not based on discriminatory or retaliatory motives.

Whether the Applicant's employment was made redundant

91. The Applicant asserts that the non-renewal decision amounted to redundancy because the Bank concluded that her skills were deemed "too narrow, too focused on only supply chain management and therefore there was no business need for [them]."

92. 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.

93. The record shows that the Bank did not declare the Applicant's employment redundant and that the Applicant's non-renewal was rather based on business needs and followed the Bank's procedures. Furthermore, the Applicant's Term appointment was allowed to expire on its own terms. The record further supports that none of the procedures reserved for redundancy were

applicable to the Applicant's case given that there was no plan to abolish the unit, eliminate certain positions, or reduce the number of certain positions within GHNDR.

94. The Tribunal therefore finds that the Applicant's employment was not made redundant and she is not entitled to any of the benefits reserved for redundancy.

DECISION

The Application is dismissed.

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

/S/Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 21 April 2017