



World Bank Administrative Tribunal

2017

Decision No. 559

**DY,
Applicant**

v.

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

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

**DY,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.
2. The Application was received on 5 July 2016. The Applicant represented himself. 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 Bank's decision to withdraw offers of Short-Term Consultant (STC) contracts for Fiscal Years (FY) 2015 and 2016.

FACTUAL BACKGROUND

4. The Applicant is a former staff member of the Bank who retired on 28 February 2014 after 16 years of service. Prior to his retirement, he held the position of Senior Financial Management Specialist at grade GG in the Financial Management (FM) unit in one Country Office.
5. Sometime in October/November 2014, a member of the Country Office's FM Team and his wife were murdered. At that time, also, the Country Office's FM Team was severely understaffed, with only a Lead FM Specialist and a Senior FM Specialist doing the brunt of the demanding work program in the office. In those circumstances, a Practice Manager of the Governance Global Practice wanted to hire an STC who was already familiar with the Country Office's FM portfolio and would require minimal training to contribute immediately to the work deliverables of the FM Team. As the Applicant was a recent FM Team member in the Country Office, the Practice Manager thought that he would be a suitable candidate for a short-term

assignment. The Practice Manager also thought that the Applicant's presence in the Country Office would have "a stabilizing effect, provide continuity to the [...] FM Team's work program, afford familiarity to clients and extend additional support for an emotionally distressed team."

6. With this in mind, on 11 November 2014, the Practice Manager emailed the Applicant requesting they "urgently" speak. On 13 November 2014, the Practice Manager called the Applicant to discuss STC job proposals in the Country Office FM Team. The Applicant informed the Practice Manager that his one-year cooling-off period after retirement would lapse on 1 March 2015, after which he would be available to join the FM Team. To this, the Practice Manager told the Applicant that he would seek a waiver from Human Resources (HR) so the Applicant could start before 1 March 2015.

7. The following day, on 14 November 2014, the Applicant emailed the Lead FM Specialist to inform him that the Practice Manager would like the Applicant to come back to work for the Bank under an STC contract for FY15 and FY16, and that the Practice Manager had already requested HR to waive the cooling-off period so that the Applicant could join the Country Office earlier. The Applicant further stated in his email:

[The Practice Manager] inquired about my current commitments and I informed him that there are three opportunities in the pipeline – one short term with [...] and two longer term with [...] and [...]. I told [the Practice Manager] that if I work for the Bank as STC, I will have to forego my longer term opportunities. However, I would be eligible to apply for a Bank staff position in January '16 when the retirement age would have been enhanced to 67 – [the Practice Manager] agreed with that. [The Practice Manager] concluded by saying that he would get in touch with me as soon as he gets the waiver which may take at least 15 days. I don't know what is the maximum number of days for an STC and whether I can be considered for ETC. I would be grateful for your advice on this. [The Lead FM Specialist], I can't stop thanking you for what you are doing for me. God bless you!

8. On 13 December 2014, while on mission in the Country Office, the Practice Manager hosted an FM Team lunch, which the Applicant and his family attended. During this lunch meeting, the Practice Manager reiterated his offer to the Applicant to fill an STC position in the Country Office.

9. On 14 December 2014, the Applicant sent an email to the Practice Manager, in which the Applicant thanked him for the lunch invitation and added that he “look[ed] forward to working with the team of excellent people again.” The Practice Manager responded the following day stating that “[a]s discussed, I will be happy to offer you a STC contract after your cooling off period. Let us discuss the modalities of the contract (duration and fees) in January.”

10. On the same day, the Applicant sent another email to the Practice Manager in which he stated that “[i]n the light of discussions we had yesterday in which you mentioned about offering me STC contracts for the current financial year and the following year, I will not pursue the three long term opportunities in hand.” In a subsequent email the same day, the Applicant inquired of the Practice Manager whether his understanding was correct.

11. On 15 December 2014, the Practice Manager responded that he would “need to confirm the contract for FY16 with HR/RM [Resource Management]” and added that “[f]or FY15, we will process the contract as soon as your cooling off period ends.” The Practice Manager also stated that there was “little appetite from HR to process exceptions to the cooling off period” and that he would “be in touch in January/February 2015 to discuss the TORs [Terms of Reference] and fees of the FY15 (March to June 2015) contract.”

12. On 21 January 2015, the Applicant emailed the Practice Manager, copying the Lead FM Specialist, to ask about the Practice Manager’s upcoming travel plans and when he would like to “finalize the contract for the FY15.” In an email of 26 January 2015, the Lead FM Specialist, noting his upcoming departure from the office, replied to the Applicant stating that “[the Senior FM Specialist] will be taking over to ensure your contract is finalized on a timely basis” and advised the Applicant to “contact [the Senior FM Specialist] directly if you have queries or require updates.” The Lead FM Specialist added that they “have made good progress on the paperwork so far” and that “it [was] likely that [the new FM Coordinator] will be TTL [Task Team Leader] of your STC contract but this we [sic] be finally decided during the fiduciary portfolio review.”

13. On 22 January 2015, a Program Assistant emailed a Senior Program Assistant in the Country Office, requesting a daily rate assessment for the Applicant based on his TOR and CV. In

the same email, the Program Assistant noted that “[the Applicant] will start working with us from March 1, 2015.”

14. On 23 January 2015, the Senior Program Assistant replied that the recommended fee rate for the Applicant was PKR 32,000 per day, level C3.

15. In the same email, the Senior Program Assistant requested the Applicant to clarify whether a) the Applicant had completed 12 months since his retirement; and b) the Applicant did not have a close relative working in the Bank.

16. On 25 January 2015, the Applicant sent an email to the Practice Manager reminding him that he had mentioned during the December lunch that “[the Practice Manager] had flexibility in terms of fixing the daily rate for [the Applicant] for the reduced working days (150) as against great number of working days in the full year” and that “[the Applicant] would work full year but charge only 150 days” and that “[the Applicant] would not take up any other assignment outside the Bank.”

17. On 27 January 2015, the Applicant emailed both the Senior FM Specialist and the new FM Coordinator in which he welcomed them to the Country Office adding that “[I] look forward to working with the [...] team again.” To this, the new FM Coordinator replied that he likewise looked forward to working with the Applicant.

18. On 12 February 2015, the Applicant confirmed in an email that “no category I-relative of mine is currently working with the Bank and that my cooling off period (12 months) will end on 1 March, 2015.”

19. On 17 February 2015, the Applicant emailed the Practice Manager the benefits package he had at the time of retirement and his consultancy contract with the Asian Development Bank to be taken into consideration in calculating his daily rate. The Applicant ended his email by noting that, as agreed, he looked forward to starting work on 1 March 2015.

20. In an email of 18 February 2015, the Program Assistant requested the Senior Program Assistant to consider an increase of the Applicant's daily rate "from PKR 32,000/- to some flexible point, equal or around to [the Applicant's] salary, drawn by him at the time of retirement." In reply, the Senior Program Assistant explained that the Bank's formula to calculate an STC daily rate is "annual salary figure divided by 260." He added that by applying this formula to the Applicant, it "results into a daily fee figure of Rs. 34,981," which could be increased to the "rounded figure of Rs. 35,000/day."

21. On 26 February 2015, the new FM Coordinator emailed the Practice Manager stating that he would "appreciate your approval to [the Applicant]'s contract on the system."

22. On 4 March 2015, the Applicant contacted the Program Assistant, and subsequently the Practice Manager, asking for reconsideration of the daily rate of PKR 35,000. The following day, on 5 March 2015, the Practice Manager replied that "his flexibility on the [daily] rate would be within the range of fees suggested by HR based on [the Applicant]'s CV" and that "[he] can't go above what HR suggests as the maximum fee applicable."

23. On 6 March 2015, the Practice Manager held an audio-conference with the Applicant, with the Senior FM Specialist and the new FM Coordinator in attendance. In an email sent by the Applicant to the Practice Manager right after the meeting concluded, the Applicant stated that:

I am recapping below gist of our discussions:

1. You mentioned that the daily rate for my contract would be PKR 35,000 which is the maximum quoted by HR.
2. I would be allocated complex projects based on my experience with the Bank as Sr. FMS.
3. The TORs and list of all projects to be allocated to me would be shared with me by [the new FM Coordinator].
4. Other working details would be discussed between [the new FM Coordinator] and me.
5. I would be entitled to use 'Sr. Financial Management Specialist/Consultant' without using Bank's logo.
6. The tentative starting date for the contract is likely in two weeks.

It would have been great had we met but for your commitments.

24. The same day, the Practice Manager replied:

Let's discuss tomorrow before I leave. This is becoming too bureaucratic for me to handle. I thought we were going to have a straightforward process so that you can start working. But these discussions about the logistics (office, titles, etc.) are too complicated for me. It is probably best for you to pursue other opportunities.

25. A few minutes later, the Applicant replied to the Practice Manager stating that he was "sorry for upsetting you – I did not mean that at all – please accept my apologies." The Practice Manager replied to the Applicant a few hours later stating: "No worries. I am not upset. It's just that the transaction cost of this appointment is high. Best to look for other opportunities."

26. The following day, on 7 March 2015, the Applicant again emailed the Practice Manager apologizing and requesting that the Practice Manager reconsider his decision. The record shows no further interaction with the Practice Manager.

27. The Applicant filed a Request for Review before Peer Review Services (PRS) on 20 April 2015. On 15 March 2016, the PRS Panel delivered its report and found that management acted within its discretion in withdrawing the offer and deciding not to proceed with finalizing the STC contract for the Applicant.

28. In the Application before the Tribunal, the Applicant seeks: "i) restoration of firm offer made for Short Term Consultancy (STC); ii) action to be taken against the person responsible for this unfair treatment; iii) payment of compensation if restoration of STC offer is not possible and iv) compensation for mental torture that I and my family are going through due to this abrupt unfair decision." The Applicant claims the following amount of compensation: "PKR 10,010,000 for offer withdrawn and PKR 50,000,000 for the mental torture [the Applicant] and [his] family went through and [are] still going through due to unfair treatment."

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

29. As a preliminary matter, the Bank requests the Tribunal to dismiss the Applicant's claims. The Bank submits that pursuant to the Tribunal's Statute, the Tribunal shall hear and pass judgment

upon claims regarding the “non-observance of the contract of employment or terms of appointment of such staff member.” The Bank contends that as the Applicant’s claims do not fall within any of the conditions provided in the Statute they are outside the Tribunal’s jurisdiction.

The Applicant’s Contention No. 1

While an appointment letter had not been issued, the Practice Manager committed to processing an STC contract for the Applicant at the end of his cooling-off period

30. The Applicant contends that there was a firm commitment that the Practice Manager would process the Applicant’s STC contracts for FY15 and FY16. The Applicant submits that the Practice Manager unequivocally stated that “he will process the contract for FY15 at the end of [the Applicant]’s cooling off period,” while “he would need to confirm the contract for FY16” with HR.

The Bank’s Response

No offer of appointment or letter of appointment was ever issued to the Applicant and no “express” promise or promise by “unmistakable implications” was made to the Applicant for an STC contract for two fiscal years

31. The Bank contends that no offer of appointment or letter of appointment was ever issued to the Applicant because the terms of the Applicant’s prospective STC contract were still being negotiated when the Practice Manager made the decision to discontinue the negotiations on 6 March 2015.

32. The Bank also contends that there was no “express,” “legally enforceable” promise of an STC contract made to the Applicant by the Practice Manager or any other Bank staff for FY15 and FY16, nor could one infer that the Practice Manager had made a promise by “unmistakable implications.” The Bank asserts that the Practice Manager was in no position to commit to an STC contract for FY16 without first receiving confirmation from HR and RM colleagues. The Bank further asserts that no promise was given for FY15 as the Practice Manager informed the Applicant that “negotiations for such a prospective STC contract would be subject to the following two

conditions. First, Applicant had to wait for his mandatory 1-year ‘cooling off period’ to lapse. Second, the finalization of the prospective STC contract would be dependent on further discussions between the parties on the ‘modalities’ of such contract.”

The Applicant’s Contention No. 2

There was an agreement on the terms of the STC contract for FY15

33. The Applicant submits that several actions taken by Management and the Country Office’s FM Team support his contention that an agreement had been reached on the terms of the STC contract for FY15 and that an employment contract had been formed. First, the Applicant submits that the Practice Manager communicated the broad terms of the contract over their phone conversation of 13 November 2014 which the Applicant accepted. Second, final terms of the contract were discussed and agreed upon on 6 March 2015 and that it was “only a matter of communicating [the contract] to [the Applicant] the following week” in order to complete the process. Third, the Applicant submits that “all was set for [him] to start working again for the Bank from 1 March ’15.”

34. The Applicant specifies that he never demanded a specific type of project, or to use his old office or a specific title on his business cards. He asserts that he got in touch with the Country Office’s Director to inquire about the nature of the projects to be allocated to him, what kind of title he could use in his cards, and requested whether he could sit in his old office, but never demanded any of these as essential to the conclusion of the contract. Once the answers to these inquiries were given, he no longer raised the matter.

The Bank’s Response

There was no agreement between the parties on the terms of the Applicant’s proposed STC contract for FY15

35. The Bank denies that by 6 March 2015 there was a final agreement on the terms of the proposed STC contract for FY15 as material disagreements remained unresolved between the Applicant and the Bank on several issues regarding the contract. The Bank claims that

disagreements still persisted with regard to the daily rate, the nature of the projects the Applicant would work on, and other logistical demands made by the Applicant relating to his preferred seating arrangements, and the title he would use on his business cards.

36. The Bank submits that the Practice Manager could not and was not dealing with the negotiations alone because, as per the hiring practices of the Country Office's FM Team, all working-level discussions of the modalities and terms of the proposed STC contract were done and finalized by the FM Coordinator in the Country Office. The Practice Manager was then responsible for providing the final approval.

The Applicant's Contention No. 3

The Practice Manager's decision to withdraw the employment offer was unfair, arbitrary, and contrary to the Bank's core values

37. The Applicant contends that the Manager's decision to withdraw the offer of an STC contract without any cogent reason after having negotiated and agreed on the most fundamental terms of the contract was unfair, arbitrary, and contrary to the Bank's core values concerning fair and respectful treatment.

38. The Applicant also submits that he was not informed of, much less given an opportunity to resolve, the issues that the Practice Manager raised in his email of 6 March 2015 that "[t]his is becoming too bureaucratic for me to handle." The Applicant notes that despite the Practice Manager's suggestion in the same email to discuss before he leaves, he did not meet the Applicant to address these issues. Furthermore, the Applicant disagrees with the Practice Manager's labeling of his email of 6 March 2015 as "bureaucratic" and argues that he acted professionally in summarizing the discussions of the meeting of 6 March 2015 in that email. The Applicant contends that the content of the email of 6 March 2015 was not contradicted by any person that attended the meeting, including the Practice Manager.

The Bank's Response

The Practice Manager's decision to discontinue negotiations was motivated by legitimate business reasons and was not arbitrary

39. The Bank contends that there was no abuse of discretion and that the Practice Manager did not act arbitrarily or unfairly in deciding to discontinue STC contract negotiations in early March 2015, and that such action was motivated by legitimate business reasons. According to the Bank, there were a number of factors that made it reasonable for the Practice Manager to exercise his discretion. First, there were disagreements in daily rate and logistical demands not resolved with the intervention of the Practice Manager at the audio-conference of 6 March 2015. Second, the increasingly difficult negotiating posture adopted by the Applicant, as corroborated in his email of 6 March 2015, would have affected the Country Office FM Team's dynamics. Third, that posture "ran counter to the Manager's original objective to hire an STC who could pick up the work seamlessly and provide support to the [Country Office's] FM Team."

40. It is the Bank's contention that the Staff Rules confer on it ample discretion not only to issue letters of appointment but also to withdraw them before they have been accepted or before conditions precedent to the selected candidate's entry on duty have been met. The Bank submits that it is logical to conclude that the Bank's decision to discontinue the negotiations with the Applicant "was permissible under the Staff Rules as long as such decision did not amount to an abuse of discretion."

The Applicant's Contention No. 4

The Applicant relied on the Practice Manager's promise of an STC contract and forwent other job opportunities, which caused him detriment

41. The Applicant argues that he relied on the Practice Manager's promise to be offered an STC contract for FY15 and FY16 and that he therefore forwent "three long term opportunities in hand" in favor of a contract with the Country Office's FM Team. The Applicant also argues that the Practice Manager "never denied contents of [his] email at any stage" in which the Applicant

communicated that “[he] would work full-time [for the Bank] but charge only 150 days” and therefore “would not take up any other assignment outside the Bank.”

42. The Applicant further claims that the Practice Manager’s decision to withdraw the offer of an STC contract “humiliated [him] and emotionally devastated [him] and [his] family” and that “[they] went into a shock and have still not been able to come out of it completely.”

The Bank’s Response

There was no detrimental reliance on the Bank’s alleged promise

43. The Bank concedes that the Practice Manager duly informed the Applicant of his intentions to offer him a possible four-month STC contract for FY15, but argues that the Practice Manager never guaranteed that such contract would materialize as it depended on the parties reaching final agreement on its modalities. As the Applicant took a unilateral decision to forgo “three long term opportunities in hand,” he should assume the consequences thereof. The Bank submits that there is no evidence that the Practice Manager encouraged or even suggested to the Applicant that he should forgo or cease to explore any other employment opportunity while waiting for the expiration of his cooling-off period or beyond the end of June 2015.

44. The Bank further contends that the Applicant had adduced no evidence to show that he had secured another employment offer or that he had been in substantive discussions with any other entity aside from the Bank about other concrete job opportunities.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

THE TRIBUNAL’S JURISDICTION TO HEAR THE CASE

45. The Tribunal first addresses the Bank’s contention that it is without jurisdiction to hear and pass judgment on the Applicant’s claim pursuant to Article II of the Statute. Article II states:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of

employment or terms of appointment of such staff member. The words “contract of employment” and “terms of appointment” include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.

46. The Bank has not filed a preliminary objection but contends that because there was no contract of employment between the Bank and the Applicant, the Applicant was not a “member of the staff” and thus had no entitlement to having his claims reviewed by the Tribunal. The Applicant has not rebutted these contentions in the Reply. However, while not explicitly argued, the Applicant’s claim imports that a contract of employment between the parties was concluded, the non-observance of which falls within the Tribunal’s review.

47. The Tribunal has established in its jurisprudence that it has jurisdiction under Article II of the Statute to consider the soundness of any allegation of contract formation. In *Justin*, Decision No. 15 [1984], para. 22, the Tribunal propounded:

The Tribunal, in effect, has the power initially to consider the merits of the Applicant’s claim of contract formation for the limited purpose of determining its own jurisdiction. This is a power commonly exercised by domestic and international tribunals.

48. Other administrative tribunals have also established their jurisdiction to review allegations of the existence of a contractual relationship even in the absence of a formal contract of employment. The International Labour Organization Administrative Tribunal (ILOAT) found in Judgment No. 3112 [2012], p. 7, para. 2, that

persons who are applicants for a post in an international organization but who have not been recruited are barred from access to the Tribunal. It is only in a case where, even in the absence of a contract signed by the parties, the commitments made by the two sides are equivalent to a contract that the Tribunal can decide to retain jurisdiction [...].

49. In the present case, the question of whether a contractual relationship arose between the Bank and the Applicant in the absence of a letter of appointment can be decided only in conjunction with the merits of the case. The Tribunal observes that the issues before it are therefore: a) whether a contractual relationship arose between the Bank and the Applicant; b) if a contractual relationship

exists, whether the Practice Manager's decision to stop the recruitment was arbitrary, improperly motivated, unfair, lacking a reasonable and observable basis, and an abuse of discretion; and c) whether the Practice Manager's decision caused harm to the Applicant.

MERITS

Whether a contractual relationship between the Bank and the Applicant has arisen

50. Staff Rule 4.01, paragraph 4.01 reads as follows:

An offer of appointment to the staff of the Bank Group is made by a letter of appointment signed by the Vice President, Human Resources, or his/her designee. The letter establishes conditions for employment which must be met by the selected candidate prior to entry on duty and includes the appointment type, entry on duty date, entry level salary, and, where applicable, grade and probationary period.

51. It is uncontested that a letter of appointment as defined in Staff Rule 4.01, paragraph 4.01, was never issued to the Applicant. Nor was an offer of appointment extended to the Applicant in the way established in the Staff Rules. However, the Tribunal has stated that an employment relationship could be formed outside the framework of the Staff Rules if the communications between the parties show that there was an intent to contract and an agreement on all its essential terms. *See Justin*, para. 27.

52. The record shows that it was the Practice Manager who contacted the Applicant by email on 11 November 2014 requesting to "urgently" speak with him. On 13 November 2014, the Practice Manager called the Applicant to discuss job proposals for an STC contract with the Country Office's FM Team for two fiscal years. The Applicant asserts that during this phone call they discussed broad Terms of Reference, including the type of contract, job description, and start date, which he accepted. The record also shows that the job proposal was repeated on 13 December 2014 during an FM Team lunch hosted by the Practice Manager, which the Applicant and his family attended. Further reiteration of the job proposal is in an email of 15 December 2014, where the Practice Manager noted that he would "be happy to offer [the Applicant] a STC contract after your cooling off period."

53. While the intention of both parties to enter into a contract can be identified in these first communications, a stronger commitment to offer employment to the Applicant for FY15 was made by the Practice Manager in an email of 15 December 2014, in which he stated that “[f]or FY15, we will process the contract as soon as your cooling off period ends.” The Practice Manager added that he would “be in touch in January/February 2015 to discuss the TORs and fees of the FY15 (March to June 2015) contract.”

54. Given the absence of a letter of appointment, determining the moment when a contract of employment was formed is fundamental especially if such contract depends on the parties reaching final agreement on its modalities. The Tribunal held in *Justin*, para. 27, that

[t]he question whether a contract of employment has been formed depends on certain general principles of contract law. One such principle is that there is a binding contract if both parties manifest an intention to contract and if all the essential terms have been settled, and if any additional steps to be taken are merely formalities that require no further agreement.

55. The ILOAT has also looked into matters of contract formation. In Judgment No. 621 [2000], p. 2, para. 2, the ILOAT found:

A contract is concluded only if both parties have shown contractual intent, all the essential terms are worked out and agreed on, and all that may remain is a formality of a kind requiring no further agreement.

56. The Tribunal finds that, while in December 2014 the parties seemed in agreement on the type of appointment (STC), appointment duration (March to June 2015), and entry of duty date (1 March 2015), agreement on the daily rate of the Applicant, another essential term of the contract, was still pending. The record shows that calculations of the daily rate of the Applicant started on 22 January 2015 and that the initial proposal was of PKR 32,000 per day, level C3. Requests for revision of the daily rate ensued and it was agreed on 18 February 2015 to increase the daily rate to PKR 35,000 per day. On 4 March 2015, the Applicant requested reconsideration of the daily rate of PKR 35,000 but was informed by the Practice Manager that he could not “go above what HR suggests as the maximum fee applicable.” The Tribunal considers that with the Practice

Manager's final proposal on the daily rate at PKR 35,000 per day, it was up to the Applicant to accept it in order to reach final agreement on that matter.

57. The Tribunal holds that from the email of 6 March 2015 sent by the Applicant, in which he summarizes the discussions held in the audio-conference of the same date, it can be inferred that the essential terms of the contract, including the daily rate, were deemed acceptable by all the parties. In fact, there is no evidence in the record to suggest that they were not acceptable to the Practice Manager or the new FM Coordinator.

58. The Bank contends that the issue of whether the Applicant would be assigned complex projects is an essential term of the contract. The Tribunal observes that while the Applicant showed a desire to be allocated complex projects, no party seemed to have attached an essential importance to the nature of the projects prior to 6 March 2015. The record supports the conclusion that the Applicant was first contacted by the Practice Manager due to his extensive experience in FM projects in the Country Office, and, as such, he was deemed qualified and expected to take on financial projects of different types, including complex ones. As attested to in the email of 6 March 2015, this appears to have been acceptable to both parties.

59. The Bank further contends that logistical matters such as seating arrangements and the title on business cards were essential terms not agreed upon by the parties. However, the exchanges between the parties do not support the conclusion that the parties treated these additional requests as critical to the conclusion of the contract.

60. In light of the foregoing, the Tribunal is persuaded that there was an agreement on all the essential terms of the contract for FY15 and that a binding contractual relationship arose between the Bank and the Applicant. Any additional steps to be taken after 6 March 2015 regarding the implementation of the Applicant's contract constituted, on the facts of this case, a formality that required no further agreement.

61. The Tribunal does not, however, come to the same conclusion regarding FY16. The email of 15 December 2014 sent by the Practice Manager to the Applicant expressly stating that he

“would need to confirm the contract for FY16 with HR/RM” does not show an intention to enter into a contract of employment. There are no further communications in the record that would evidence discussions and agreement on the terms of the contract for FY16 either. Nor is there an indication that a promise “unequivocally” or “by implication” was extended to the Applicant with regard to FY16. In the absence of such elements, the Tribunal holds that no contractual relationship arose between the parties for FY16.

Whether the Practice Manager’s decision to stop the recruitment was arbitrary, improperly motivated, and unfair, lacked reasonable and observable basis, and constituted an abuse of discretion

62. The Applicant contends that the Practice Manager’s decision to withdraw the offer of employment for FY15 so abruptly and with no cogent reason was unfair and arbitrary and contrary to the Bank’s core values concerning fair and respectful treatment. The Bank argues it has ample discretion in issuing and withdrawing letters of appointment, and even more to discontinue the negotiations with the Applicant “as long as such decision did not amount to an abuse of discretion.” The Bank’s authority in this respect is not contested. Rather, the Tribunal has been asked to determine whether such withdrawal constitutes an abuse of discretion.

63. The Tribunal found in *AK*, Decision No. 408 [2009], para. 41, that

[d]ecisions 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 and *Desthuis-Francis*, Decision No. 315 [2004], para. 19.

64. The Applicant’s allegations will be examined according to this standard. The evidence shows that further to the email of 6 March 2015 sent by the Applicant to the Practice Manager, the latter replied “[t]his is becoming too bureaucratic for me to handle” and that he thought that “[they] were going to have a straightforward process,” adding “[b]ut these discussions about the logistics (office, titles, etc.) are too complicated for me” and “[i]t is probably best for you to pursue other opportunities.” The Applicant immediately replied to the Practice Manager apologizing. The

Practice Manager replied a few hours later stating that the transaction cost of the Applicant's appointment was high and reiterated that it was "best to look for other opportunities."

65. The Tribunal finds that the reasons given by the Practice Manager to stop the recruitment, namely, that "this was becoming too bureaucratic to handle" and that "these discussions about the logistics (office, titles, etc.) are too complicated for me" could not be considered a proper justification. The Bank claims that there were a number of factors that made it reasonable for the Practice Manager to exercise his discretion and discontinue the STC contract negotiations given that the Applicant's "difficult negotiating posture" was affecting the Country Office FM Team's "dynamics" and "ran counter to the Manager's original objective" to hire the Applicant. There is however no evidence that the Applicant was informed of such factors nor ever given the opportunity to adjust his "increasingly difficult negotiating posture."

66. The Tribunal is of the view that following the agreement reached at the meeting of 6 March 2015, the Applicant could have only reasonably expected the notification of his letter of appointment. As far as the record shows, the Applicant was given no more explanation at the turn of events.

67. The Tribunal holds that the Practice Manager's decision of 6 March 2015 was, on the facts of this case, unfair, and in that sense, constitutes an abuse of discretion.

Whether the Practice Manager's decision caused harm to the Applicant

68. The Applicant cites *CP*, Decision No. 506 [2015] in support of his claim that he relied on the Practice Manager's promise to offer him contracts of employment for two fiscal years with the Country Office's FM Team and that he therefore forwent "three long term opportunities in hand." He also claims that the Practice Manager's decision of 6 March 2015 to withdraw the offer of an STC contract "humiliated [him] and emotionally devastated [him] and [his] family" and that "[they] went into a shock and have still not been able to come out of it completely." In response, the Bank asserts that the Applicant has failed to demonstrate any detriment resulting from the Practice Manager's decision of 6 March 2015.

69. The Tribunal has established in its jurisprudence that compensation may be awarded for lost employment opportunities, provided that detrimental reliance on a promise has been demonstrated. In *CP*, para. 57, the Tribunal held:

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

70. Unlike the applicant in *CP*, the Applicant in this case has not adduced evidence of another employment offer or any specific loss of income to show that, because of the Bank's decision, he suffered material injury for which he must be compensated.

CONCLUSION

71. The Tribunal finds that the Bank's failure to observe the contractual relationship that arose between the Applicant and the Bank in FY15 gives rise to compensation. The Tribunal therefore considers that the Bank is liable in damages in an amount equivalent to the maximum number of days the Applicant would have effectively worked in FY15. The Tribunal further finds that the Applicant has not substantiated his claim for compensation for "mental torture."

DECISION

- (1) The Bank shall pay compensation equivalent to the remuneration due for 80 days of employment at a daily rate of PKR 35,000; and
- (2) All other claims are dismissed.

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

/S/Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 21 April 2017