



World Bank Administrative Tribunal

2015

Decision No. 514

**Anne-Marie Bodo,
Applicant**

v.

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

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

**Anne-Marie Bodo,
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 19 May 2014. The Applicant represented herself. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the non-extension of her Short-Term Consultancy (STC) contract and raises claims of discrimination and retaliation against the Bank.

FACTUAL BACKGROUND

Applicant's 2009 Complaints

4. The Applicant is of French/Cameroonian nationality. In 2001, she joined the Bank as an STC in the Bank's Africa Region.
5. In October 2008, the Applicant applied for and was offered a position as a Senior Pharmaceutical Specialist. On 25 January 2009, the Applicant was diagnosed with cancer and she informed the Bank of this diagnosis. The Applicant asserts that prior to the issuance of the official offer letter she was informed that the Senior Pharmaceutical Specialist position was reclassified from a three-year renewable regular staff term assignment to a two-year Extended Term Consultancy (ETC) assignment. According to the Applicant, she was "forced by the circumstances

to take the downgraded position mainly because of the health insurance coverage that came with the extended term consultancy assignment.”

6. It is noted that the Applicant states that in July 2012, she met with the World Bank President, Jim Yong Kim, and “complained about racial discrimination in general and about the unfair treatment [she] endured after [she] was diagnosed with cancer.”

Applicant’s First Request for Review

7. In March 2011, after her ETC contract ended, the Applicant was offered an STC contract for an assignment with the Africa Region’s Health and Population Unit (AFTHE). The Letter of Appointment (LOA) for this assignment provided that the Applicant would render services to the Bank “for about 100 days from March 16, 2011 to June 30, 2011.” That same day, the Applicant signed her acceptance of the LOA. The STC appointment with the AFTHE was subsequently extended beyond 30 June 2011. In respect of the terms of this STC contract, the Applicant claims that her grade in the consultant’s fee matrix was reduced from UC3 tier B4 to UC3 tier B3, while at the same time her responsibilities were increased “both in substance and volume.”

8. During her appointment as an STC with the AFTHE, the Applicant was tasked with drafting an Implementation Completion Report (ICR). Her supervisor, the Senior Nutrition Specialist, Health, Nutrition and Population West/Central Africa (AFTHW), expressed reservations about the Applicant’s competence for this task and informed her that she “might be ‘teamed up’ or replaced with another STC if she failed to deliver a satisfactory report.”

9. At the request of her supervisor, the Applicant submitted an initial draft of the ICR on 11 September 2012, eleven days after the set deadline. Her supervisor was dissatisfied with the draft and made comments as to how it might be improved. Although the Sector Manager for AFTHW recognized that the Applicant had subsequently improved the quality of the ICR after the Applicant’s initial submission, she determined that the document was “far from the level needed for the internal review.”

10. The Applicant subsequently submitted a request for payment for the time she spent working on the ICR, which the Applicant's supervisor approved. However, the Applicant's STC contract was closed effective 1 November 2012 on the grounds that she was "not the right person to bring this to a satisfactory close within the time available."

11. On 14 December 2012, the Applicant filed a Request for Review with Peer Review Services (PRS) challenging the Bank's decision to close her STC contract (PRS Request for Review No. 122(A)). The basis of her challenge was that the closure was improperly motivated. In support of this challenge, the Applicant alleged that she was discriminated against on the basis of her race (Sub-Saharan African), gender and status as a native French speaker in the context of this decision. In further support of her challenge that the termination was improper, the Applicant alleged that management considered the health problems she was facing in making its decision.

12. On 4 February 2013, PRS submitted a written memorandum to the Sector Manager informing her that she had been identified as one of the Responding Managers with respect to PRS Request for Review No. 122(A). The Sector Manager filed the Manager's Response with PRS. However, subsequently, on 29 April 2013, PRS stayed the proceeding in PRS Request for Review No. 122(A) while the parties engaged in mediation with the Office of Mediation Services.

Applicant's Second Request for Review

13. On 31 December 2012, the Bank offered the Applicant an STC appointment on the Ghana and Sierra Leone health projects within the same AFTHW sector for a total of thirty-five days from 2 January to 25 June 2013 which she accepted. Her Task Team Leader (TTL) was responsible for determining the Applicant's terms of reference, and providing guidance, supervision and confirmation of the completion of the Applicant's work.

14. The LOA stated:

Your appointment will terminate accordingly 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 to in writing at the time of the expiration of the appointment.

15. On 12 July 2013, the TTL submitted an “eConsult” request to extend the Applicant’s consultancy contract for 100 days at the rate of \$546 per day for a total amount of \$54,600. Simultaneously the TTL also submitted a request for another consultant in the amount of \$87,300.

16. On 16 July 2013, the Sector Manager requested a meeting with the TTL to discuss the status of the Ghana and Sierra Leone projects.

17. On the following day, 17 July 2013, the TTL requested urgent approval for the contract extensions for the Applicant and the other consultant because she needed assistance with the projects. On the same day, the Sector Manager responded by email stating:

I know that you need support and that is precisely why I have proposed tomorrow’s meeting [...] One of the things that I want to discuss tomorrow is how best to help you mobilize the technical resources to support the 2 Ghana health projects, particularly the second. I would prefer not to approve individual consultant contracts until I have had a chance to see the full picture of what technical areas the project(s) require expertise on, discuss the optimal skills mix, etc. all within a hard budget constraint. It would be good if you could send something brief where you indicate your current thinking of where the projects need technical input (based on the proposed design).

18. On 17 and 18 July 2013 the Applicant and the Sector Manager participated in a mediation session in respect of PRS Request for Review No. 122(A).

19. On 18 July 2013, the TTL responded to the Sector Manager’s email indicating the areas which required technical support on the two projects. The Sector Manager responded the same day requesting “the latest CN or draft PAD so we can see the design. I remember much more than this – equity, eclaims and provider payments etc. Pls send ASAP.”

20. Later that day, the Sector Manager held a telephone conference call with the TTL, the Senior Operations Officer of AFTHW and the HD Sector Leader for Ghana/Sierra Leone to discuss the technical options and approaches to improve the design quality of the Ghana program. The

TTL was asked to provide a more comprehensive and detailed proposal of technical needs, and the costs of the needs against approved budgets for the portfolio.

21. On 19 July 2013, the TTL submitted new requests for approval for extension of the STC contracts for the Applicant in the amount of \$43,680 for 80 days and for the other consultant in the amount of \$58,200. These new requests were submitted without the overall plan which had been requested and discussed.

22. On 21 July 2013, the Sector Manager denied the request for extensions of both contracts, adding the following statement: “[a]s discussed with TTL, full array of technical experts required for the tasks in question need to be planned and costed within the available budgets. Following this, individual contracts can be submitted for review and approval.” It is noted that though the Applicant states the decision was made on 27 July 2013, the record shows that 21 July 2013 is the accurate date.

23. On 24 July 2013, the Office of Mediation Services closed its proceedings involving the parties in PRS Request for Review No. 122(A).

24. On 26 July 2013, PRS resumed its processing of PRS Request for Review No. 122(A).

25. On 29 August 2013, the TTL provided the Sector Manager with a detailed plan of the technical areas necessary with information on cost and available budgets that management requested in the meeting on 18 July 2013.

26. On 26 September 2013, the grants for the Ghana and Sierra Leone projects were approved.

27. On 19 November 2013, the PRS Panel issued its report on the merits of PRS Request for Review No. 122(A) which concerned the decision to end the Applicant’s STC contract effective 1 November 2012. The Panel found that the Bank acted consistently with the Applicant’s former contract of employment, and the discrimination claims were not substantiated. The Panel further

concluded that management provided a reasonable and observable basis for the closure decision. The Panel recommended that the Applicant's request for relief be denied.

28. On 22 November 2013, the Vice President of the Africa Region communicated to the Applicant his acceptance of the Panel's recommendation.

29. On 25 November 2013, the Applicant submitted a Request for Review to PRS challenging the non-approval decision of the 21 July 2013 "eConsult" request (PRS Request for Review No. 163). According to the Applicant, the non-approval decision was retaliation for her prior use of the Bank's conflict resolution system. The Sector Manager was the designated responding manager.

30. On 19 December 2013, the African Human Development Department (AFTHD) contracted the Applicant for a new STC assignment for 10 days for the period 30 December 2013 through 31 March 2014.

31. On 14 March 2014, the PRS Panel issued its report on Request for Review No. 163. The PRS Panel found that the Bank acted consistently with the Applicant's contract of employment and terms of appointment in making the non-approval decision. The Panel further found that the Applicant's retaliation claims were not substantiated.

32. On 20 March 2014, the Vice President of the Africa Region informed the Applicant of his decision to accept the recommendation of the PRS Panel.

The Application to this Tribunal

33. On 21 March 2014, the Applicant filed an application before the Tribunal. Pursuant to Rule 7, paragraph 9 of the Rules of the Tribunal, the Executive Secretary called upon the Applicant to make necessary corrections to her application to ensure compliance with the formal filing requirements.

34. On 19 May 2014, the Applicant filed this updated Application with the Tribunal. In her Application, she challenges the 21 July 2013 non-approval decision. The Applicant also raises other claims in relation to events which occurred in 2009, 2011 and 2012. First, the downgrade of her position as Senior Pharmaceutical Expert from a three-year renewable term employment to a two-year ETC contract in January 2009 on the basis of racial discrimination. The Applicant maintains that because of this reclassification she was denied sick and disability leave even though the Bank was aware that she had aggressive cancer which would require her to take sick and/or disability leave. Second, the reduction of her grade in the consultant's fee matrix from UC3 tier B4 to UC3 tier B3 in March 2011 on the basis of racial discrimination. Third, the Bank's decision to close her STC contract effective 1 November 2012, the subject of PRS Request for Review No. 122(A).

35. The Applicant requests the Tribunal to order: a) compensation for lost income due to discriminatory treatment in the amount of \$251,800 resulting from the reclassification of her position in 2009; b) reinstatement as a term regular staff at the Senior Pharmaceutical Specialist position; c) compensation for lost pension resulting from the reclassification of her position in 2009; d) moral damages as compensation for "extreme stress, severe pain, emotional suffering, and mental anguish" caused by discrimination at the equivalent of four years' salary at the senior expert level; and e) costs in the amount of \$5 million for "13 years [of] the suffering ... being diagnosed with a very aggressive cancer related to stress."

The Bank's Preliminary Objection

36. On 30 June 2014, the Bank filed a Preliminary Objection on Jurisdictional Issues. The Applicant submitted her response to the Preliminary Objection on 29 July 2014. On 9 September 2014 the Bank submitted its Written Comments in support of its Preliminary Objection. The Applicant declined to submit any comments on the Bank's comments.

37. On 17 December 2014, having considered the submissions of the parties, the President of the Tribunal decided to join the preliminary objection to the merits. The President of the Tribunal invited the parties to submit subsequent pleadings on the merits with respect to the Applicant's

claim concerning the 21 July 2013 non-approval of her STC contract and the related allegation that the STC contract was not approved on grounds of retaliation.

38. On 18 February 2015, the Bank submitted its Answer to the Application. The Tribunal Secretariat contacted the Applicant on 19 February 2015 requesting acknowledgement of receipt of the Answer and informing her she could submit her Reply pursuant to Rule 10 of the Tribunal's Rules. The Secretariat received no response. Further attempts on 23 February 2015 and 13 April 2015 to contact the Applicant proved unsuccessful.

39. On 21 May 2015, the Applicant contacted the Secretariat seeking information on her case. It was subsequently discovered that the Applicant had not received the correspondence and reminder messages from the Secretariat.

40. On 25 May 2015, the Applicant requested an extension of time to file her Reply.

41. On 5 June 2015, the Applicant was granted an extension by the President of the Tribunal.

42. On 20 July 2015, the Applicant submitted her Reply which was transmitted to the Bank.

43. On 18 August 2015, the Bank submitted its Rejoinder.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

PRELIMINARY OBJECTIONS

The Bank's contentions

44. In its preliminary objection the Bank contends that the Application should be dismissed on the grounds that it did not meet the requirements of Article II of the Tribunal's Statute. The Bank first contends that all occurrences of events that are claimed by the Applicant to have given rise to the Application fall outside the 120-day filing deadline. According to the Bank, the latest date that can be found in the text of the Application is 21 July 2013, the date that the Sector Manager rejected

the request by the TTL to extend the Applicant's contract. The Bank argues that "counting 120 days from this date, the last permissible day on which Applicant could have filed her Application with the Tribunal would have been November 24, 2013."

45. The Bank further argues that the claims presented in the Application appear to be an accumulation of different unrelated events which the Applicant has consolidated to create the appearance of a pattern of discrimination and retaliation.

46. Finally, the Bank contends that none of the claims pleaded in the Application are based on receipt of notice of any previous decisions, and the text of the Application does not include any challenge to the matters reviewed by the PRS panel or the decision of the Vice President, Africa Region.

The Applicant's response

47. In her response to the Bank's argument that the events which took place in 2009, 2011 and 2012 are inadmissible, the Applicant notes that "[t]he unfair condition and incidents were related to support actions made in 2012 and 2013," apparently suggesting that these claims were raised, not necessarily as stand-alone claims, but rather to support her contention that she has been racially discriminated against by the Bank.

48. The Applicant maintains that, in any event, she respected the time limits and followed the grievance process at the Bank namely the informal process with the Ombudsman, the request for relief with PRS, the Vice-President's decision and this Application challenging the decision of the Vice-President.

MERITS

The Applicant's main contentions

The July 2013 non-approval decision was improperly motivated and was in retaliation for prior use of the Bank's conflict resolution system

49. The Applicant argues that the Sector Manager retaliated against her for her use of the Bank's conflict resolution system in December 2012. According to the Applicant, the "TTL requested an extension of my contract for the following FY, and insisted to have me and my colleague [...] but the Manager [...] rejected the request. It happened that I felt it was retaliation due to the PRS review of my case." Further, the Applicant states that the "request to extend [her] STC was rejected after an unjustified long awaiting delay, ignoring the urgent request of Task Team Leader (TTL)."

50. The Applicant contends that it is not accurate that the TTL failed to explain why her technical skills were needed "because the STCs requested for the continuation of the previous STC approved on December 2012. The project was under preparation and ongoing." The Applicant did not submit any documentary or other evidence in support of this contention. She nevertheless maintains that she and the other consultant were rejected after the decision to move from mediation to the Tribunal. She further queries the long period before issuing a decision.

The Bank's response

There is no factual support for a claim based on the July 2013 decision and no evidence of retaliation

51. The Bank contends that the evidence points to the conclusion that there were legitimate business reasons to deny the proposed STC contract and does not support any suggestion of wrongful motivations. The evidence is that the Sector Manager did not approve either of the two proposed STC contracts, not only the Applicant's contract. This, according to the Bank, undermines the Applicant's claim of improper animus toward her.

52. The Bank further argues that the basis of the non-extension decision can more appropriately be traced to the TTL's failure to present an appropriate project plan to the Sector Manager to support recruiting the Applicant. The Bank points to the fact that the TTL failed to provide this justification within the necessary time frame, and speculates that if the TTL had "costed the proposed project budget properly, Applicant's STC contract likely would have been approved by the [Sector Manager]." According to the Bank, the Manager gave the TTL several opportunities to provide additional information on technical and budgetary needs for the Ghana and Sierra Leone health projects, but the TTL failed to justify the high fees for the two new STC contract requests. The Bank concludes by arguing that the fact that the Applicant was later offered an STC contract within the Africa region weakens her allegation of retaliation against her. According to the Bank, the Applicant was offered that STC contract for a different project which had adequate funds to pay for her services.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

53. The Applicant raises claims of discrimination and retaliation in her treatment at the World Bank between 2009 and 2013. As the Bank raised preliminary objections which were joined to the merits, these will be addressed first.

Admissibility of the Applicant's Claims

54. Article II(2) of the Tribunal's Statute provides that:

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 applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
- (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.

55. Though the Applicant raised claims concerning events which occurred as early as 2009, it is possible to determine from the Application and the annexes that the main decision which the Applicant is challenging is the 20 March 2014 decision of the Vice President of the Africa Region accepting the recommendations of the PRS Panel in Review No. 163, and upholding the non-approval decision by the Sector Manager. While the occurrence of the event giving rise to the Application (i.e. the non-approval decision by the Sector Manager) occurred on 21 July 2013, the relevant provision to determine the time limit for the purposes of this Application is Article II(2)(ii)(b).

56. According to Article II(2)(ii)(b), an application shall be admissible if it is filed within 120 days following receipt of notice, after the applicant has exhausted all other remedies. Following receipt of the 21 July 2013 non-approval decision, the Applicant filed a request for review with PRS on 25 November 2013 which is the internal remedy required to satisfy Article II. On 20 March 2014 the Applicant received the decision of the Vice President of the Africa Region which for the purposes of an application before the Tribunal is notice that the relief asked for will not be granted.

57. The Applicant therefore had 120 days from 20 March 2014 to file this Application in so far as it challenged the 20 March 2014 decision of the Vice President of the Africa Region which upheld the earlier non-approval decision. *See McCall*, Decision No. 201 [1998], para. 19. The Applicant filed her updated Application on 19 May 2014 which is within the 120-day limit. The Application is therefore timely. Given this, the Tribunal finds that the primary claim concerning the 21 July 2013 non-approval of the Applicant's STC contract, which is the subject of PRS Panel Request for Review No. 163, was filed in a timely manner and is admissible.

58. With respect to the Applicant's other claims, she challenges: a) the downgrading of her position as Senior Pharmaceutical Specialist from a three-year renewable term employment to a two-year ETC contract in January 2009 on the basis of racial discrimination; b) reduction of her grade in the consultant's fee matrix from UC3 tier B4 to UC3 tier B3 in March 2011 on the basis

of racial discrimination; and c) the Bank's decision to close her STC contract effective 1 November 2012 which was the subject of PRS Request for Review No. 122(A).

59. The Tribunal finds that claims (a) and (b) above are submitted out of time. As clearly stated in Article II(2) of the Tribunal's Statute, the Applicant has 120 days from the occurrence of the event giving rise to the claim or the receipt of notice that her request would not be granted to file an application. The Tribunal also observes that even if these claims were filed within the time limit, the Applicant has not demonstrated that she exhausted internal remedies concerning these claims prior to submitting them to the Tribunal. These claims should have been the subject of a PRS review but the Applicant, without giving any explanation, did not avail herself of this remedy.

60. The Tribunal also finds that with respect to claim (c), the Applicant has not challenged the decision concerning PRS Request for Review No. 122(A) in this Application. A copy of the PRS Report was attached to the Bank's Answer, but the Applicant did not submit a substantive Reply and failed to elaborate on this claim in her Application or Reply.

61. The Tribunal notes that the Applicant asserts that claims (a) to (c) are not her principal claims. In her response to the Bank's preliminary objections the Applicant argues that "[t]he unfair condition and incidents were related to support actions made in 2012 and 2013," apparently suggesting that these claims were raised, not necessarily as stand-alone claims, but rather to support her contention that she was the object of racial discrimination by the Bank. This being the case, the Tribunal notes the Bank's argument that the "claims presented in this Application appear to be the kind of accumulation of different unrelated events that the Tribunal refuses to accept. Applicant has consolidated numerous issues, incidents, and accusations in order to attempt to create the appearance of a pattern of discrimination and retaliation."

62. The Tribunal has explained in several cases the important reasons for the requirement that Bank decisions be reviewed in a timely manner and that internal remedies are first exhausted (*see Sekabaraga*, Decision No. 494 [2014], paras. 36 - 38; *Dhillon*, Decision No. 75 [1989], paras. 22-25; *Steinke*, Decision No. 79 [1989], paras. 16-17; *de Jong*, Decision No. 89 [1990], paras. 29-33). As was held in *Jalali*, "[n]ot having raised them before and not having taken them through

administrative review, the Applicant cannot now incorporate these earlier decisions by the Bank as part of a ‘pattern’ that can be indefinitely subjected to review by the Tribunal.” *Jalali*, Decision No. 148 [1996], para. 35.

63. In the present case, the Applicant has not convincingly demonstrated that claims (a) to (c) form part of the factual matrix relevant to the non-approval of her STC contract in July 2013. For instance, the Applicant does not assert that the Bank staff members responsible for the alleged 2009 downgrade of her position are the same individuals responsible for other instances of alleged discrimination and retaliation. In fact, the Applicant provides little or no evidence to support her claims of retaliation and discrimination, and no evidence that those allegations of unfair treatment are connected with the decision made by the Sector Manager in 2013.

64. The foregoing notwithstanding, the Tribunal takes note of the following statements made by the Applicant in her response to the Bank’s Preliminary Objections:

6. The Tribunal cannot judge my request as vague allegations of discrimination and been [sic] dehumanized. Because being a cancer patient for two years without any sick leave opportunity and being downgraded after two years of ETC (means full time staff), with a proof that the position has been changed from three years term (shown on position ad.) and the contract signed (all documents and information are available in Bank HR system) are not “vague.”

7. By arguing the Tribunal is taking a subjective position and do not [sic] want to judge based on evidence. I completely refute this argument because fact can be verify [sic].

8. Being just a woman in working place, is a problem. Do you think that rejecting even the evidence by trying to put on front details as timeline and money is fair?

III. Conclusion

I object completely all argument and request that the tribunal treat my case with fairness based on Rules protecting women and cancer patient discrimination stated by The World Bank Group and United States of America.

65. The Tribunal acknowledges that the Applicant must have faced difficulties in addressing her serious medical condition. The Tribunal is willing to consider the existence of exceptional circumstances which may have prevented an applicant from filing claims in a timely manner. The

Tribunal considers the issue of exceptional circumstances on a case-by-case basis, taking into account several factors, including the extent of the delay and the nature of the excuse invoked. (*Mustafa*, Decision No. 195 [1998], para. 7.)

66. However, it is the Applicant who bears the burden of establishing exceptional circumstances justifying relief (*Malekpour*, Decision No. 320 [2004], para. 22) and this burden cannot be satisfied by allegations of a general nature. It requires reliable, pertinent and contemporaneous proof (*see Mahmoudi (No. 3)*, Decision No. 236 [2000], para. 27; *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30).

67. The Tribunal observes that the Applicant does not contend that exceptional circumstances existed to prevent her from bringing her past claims to PRS and subsequently to the Tribunal. Even though she states that her health was affected by the decisions taken against her, she does not assert that it was due to health reasons that she was unable to take the requisite action to address past claims when they arose. Rather, the Applicant clearly states that she did not file an application challenging the 2009 downgrade of her position because she “needed to avoid going through a stressful litigation process before the Bank’s widely discredited Tribunal that never rules in favor of victims of racial discrimination.”

68. Accordingly, the Tribunal finds that exceptional circumstances do not exist to permit the admission of these other claims. The Applicant’s claim concerning the July 2013 non-approval decision on grounds of discrimination and the ancillary allegation that the STC contract was not approved in retaliation for prior use of the Bank’s conflict resolution system are the only claims that can be considered admissible. All other claims are inadmissible.

The Merits

69. The Applicant contends that the 27 July 2013 decision not to approve the extension of her contract was improperly motivated. In particular she alleges that the decision was discriminatory on the basis of her race and retaliatory due to her prior use of the Bank’s conflict resolution system. The Bank asserts that the Applicant has failed to make a *prima facie* case of either claim.

70. The Tribunal has long established that decisions which are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or which lack a reasonable and observable basis, constitute an abuse of discretion and will be set aside. (*Sekabaraga (No. 2)*, Decision No. 496 [2014], para. 30; *AK*, Decision No. 408 [2009], para. 41; *Desthuis-Francis*, Decision No. 315 [2004], para. 19; *Marshall*, Decision No. 226 [2000], para. 21; *de Merode et al.*, Decision No. 1 [1981], para. 47.)

71. With respect to allegations of discrimination based on race, gender, or other prohibited grounds, the Tribunal has affirmed that it will not hesitate to invalidate such decisions. *AI*, Decision No. 402 [2010], para. 39. However, as the Tribunal observed in *Njovens*, Decision No. 294 [2003], para. 16:

Just as the Tribunal is prepared to be firm on any question of racial discrimination supported by the evidence, so too it is prepared to dismiss outright any unfounded allegation in this context.

72. Furthermore, in *AI* para. 41, the Tribunal held that

the applicant carries the initial burden of establishing a *prima facie* case of racial discrimination. If the applicant meets this burden, the Bank then must provide a non-discriminatory business rationale for its decision. The applicant may then challenge the Bank's stated rationale and provide evidence to show that the Bank's stated reason was a pretext for a racially discriminatory decision.

73. To establish a *prima facie* case the Applicant must "at least provide 'detailed allegations and factual support' for [her] claim of racial discrimination." *AI*, para. 42. This initial burden on the Applicant is equally applicable to allegations of retaliation. *See BI*, Decision No. 439 [2010], paras. 46-48. The question which must then be answered is whether the Applicant has made a *prima facie* case of discrimination and retaliation after which the burden will shift to the Bank to prove that the non-approval decision was neither discriminatory nor retaliatory.

74. The Tribunal finds that the Applicant has not provided any evidence to support her allegations that the non-approval decision was based on retaliation, discriminatory motives or both. In her Application she makes the following statement: "It happened that I felt that it was retaliation

due [to] the PRS review of my case,” to describe the basis of her allegation that the non-approval decision was retaliatory. The Applicant does not elaborate on this statement in her Application, her comments on the Bank’s Preliminary Objection, or her Reply. The Applicant also did not submit a substantive Reply to the Bank’s Answer, losing the opportunity to develop her claims and support her contentions. In her Reply which consisted of six brief paragraphs the Applicant only stated: “I would like to maintain my complain[t] and confirm that my STC had been rejected on July 2013 based on retaliation.” The Applicant did not submit any evidence or documentation to support this claim.

75. The Tribunal is left to hazard a guess that perhaps the reason the Applicant felt retaliated against was because of the proximity in time between the non-approval decision and the Applicant’s involvement in mediation with the Sector Manager. This can be gleaned from her statement: “I am still asking why this long waiting period, before making a decision. Knowing before issuing the e-Consult for the consulting a TTL get the SM’ approval in principle.”

76. While the Applicant may have genuinely felt unfairly treated during her employment at the Bank, allegations of retaliation and discrimination are serious forms of staff misconduct which should not be alleged lightly. Furthermore, feelings are not a reliable indication of reality and the single statement: “It happened that I felt that it was retaliation due [to] the PRS review of my case,” is wholly insufficient to substantiate a claim of retaliation.

77. The Tribunal recognizes that applicants may face challenges obtaining evidence to support a discrimination claim. As was observed in *Sekabaraga (No. 2)*, para. 31 “[s]tatements indicating discrimination on the part of the decision-maker and other forms of direct evidence are likely to be available only in the most egregious cases. Claims must often rely principally on circumstantial evidence from which discrimination may be inferred.” Yet, 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.

78. 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.

79. In any event, the Tribunal finds that a review of the evidence and the chronological record demonstrate a reasonable and observable basis for the non-approval decision by the Bank. The record shows that even though the Applicant and the Sector Manager were engaged in proceedings before PRS and mediation services, the decision concerning the extension of the Applicant's contract was entirely unrelated to the dispute between the Applicant and the Sector Manager. It is evident from the record that the TTL did not supply the Sector Manager with the necessary information for her to make the decision on the Applicant's contract extension in a timely manner. The Applicant need only look at the email exchanges between the Sector Manager and the TTL submitted into evidence to reach this determination herself.

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., 13 November 2015