World Bank Administrative Tribunal

2015

Decision No. 523

DA,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

DA,
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 16 March 2015. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 3 November 2015.

3. The Applicant challenges the 17 September 2014 decision not to renew her Term contract.

FACTUAL BACKGROUND

4. The Applicant is a Spanish national who joined the World Bank in February 2010, as a Junior Professional Officer (JPO) through a donor-funded staffing program, in the Social Development, Environment and Water Resources Management Unit of the South Asia Region (SASDI).

5. The objective of the JPO program is to provide young professionals with work experience and help them to develop a career within the Bank, and also to build the Bank's capacity and contribute to the achievement of its diversity targets. JPOs are assigned on a year to year basis for up to two years, and can be extended for a third year if a Bank hiring unit commits to an additional two years thereafter (for a total of five years). According to the Bank's September 2009 Guidelines on Administration of JPOs, the Hiring Manager or immediate

supervisor should provide "professional guidance" to the JPO, and should assign a mentor from the work unit "to advise the JPO on basic needs (e.g. who's who in the Department, training options, etc.)." JPOs are subject to a probationary period during the first year. Nine months after the entry on duty, the Hiring Manager should inform Human Resources whether there is an intention to extend the JPO's contract to the next year. Extensions depend on good performance, the Hiring Manager's recommendation, as well as the donor's funding availability.

6. The Applicant's initial two-year JPO contract was fully funded and sponsored by the Spanish Government. It gave the Bank the option to extend donor funding for a third year if the Bank committed to offer the Applicant a Term contract for two additional years thereafter.

7. The Applicant's first Overall Performance Evaluation (OPE) at the Bank, covering the period through 30 June 2010, was signed off by her supervisor, Mr. Z, on 23 August 2010. For her Results Assessment she received one rating of "Partially Successful," two of "Fully Successful," and one of "Superior." She received four "Fully Successful" ratings for her Behavioral Assessment. Her supervisor's overall comments in the OPE included the following:

> [The Applicant] has demonstrated a high level of interest in learning about the activities and projects being carried out in the South Asia region. In particular, [she] has taken a large number of courses […]. Given the time she has spent researching, learning and familiarizing herself with Bank operations, the number of tangible outputs has been very minimal.
> […]
> On the preparation of [a business plan] she had difficulty responding to instructions given to her. [The Applicant] assisted in organizing data received […]. [She] tried to analyze the data in a timely manner, but unfortunately did not pay proper attention to detail and her work needed to be checked and rechecked numerous times.
>
> We expect that in the next 6 months she will deliver a greater number of tangible outputs and we expect that she will be able to provide more support with operational activities carried out in the department. […] The areas in which she needs to improve include her attention to detail, responsiveness to guidance from peers/[Task Team Leaders (TTLs)] and her writing skills in general.

8. According to the Bank, the Applicant's performance improved slightly during her second OPE cycle. In February 2011, at the end of her probationary first year, the Applicant was confirmed for a second year.

9. During the second year of the Applicant's JPO contract, the JPO Office offered SASDI the opportunity to retain the Government of Spain's funding for the Applicant for a third year, on condition that she would become a Term staff member thereafter. The manager of SASDI at the time declined the offer because the Applicant's skills and experience did not fit with the work program and portfolio of SASDI. As a result, the Applicant's two-year JPO assignment was set to lapse in February 2012.

TRANSFER TO SASDS

10. In September 2011, the Applicant approached Ms. X, Sector Manager for the South Asia Social Development Unit (SASDS), regarding the possibility of moving from the Environment Unit, where she had very little work to do. The Applicant and Ms. X had several meetings over the next two months. The Applicant's legal training was of interest to the unit as SASDS dealt with land and resettlement issues as well as gender. According to the Bank, during these meetings:

> [Ms. X] specifically explained that SASDS was a service provision unit for social safeguards with a very small self-managed work program and thus [the Applicant] had a year to create demand for her skills, after which she would need to cover her time through cross-support to tasks, just like other staff in the unit.

11. On 9 November 2011, Ms. X informed the Operations Manager for the South Asia Region that she and Mr. B (then the Applicant's supervisor in SASDI) had agreed that the Applicant would be transferred to SASDS. Ms. X noted that the Applicant had a legal background and had worked on "a few social development tasks over the last year." The Applicant's new terms of reference were to include "supporting on South Asia gender agenda on gender difference in legal rights, as well as legal aspects of land acquisition and resettlement." Ms. X continued:

> Under the JPO arrangements, SASDS would get [the Applicant's] services for free until February 2013 and commit to bringing her in on a term or coterm arrangement for the subsequent two years until February 2015. Because we will be using [the Applicant] on gender work, which we anticipate will be well financed through trust funds, I am confident in making the commitment.

12. Replying later that day, the Operations Manager confirmed that this was a "sensible arrangement," with the caveat that "we should ensure that when she does come on our books it will be on a co-term appointment."

13. On 10 November 2011, Ms. X sent a Letter of Commitment to the Applicant, offering her the position of Social Development Specialist, Level GF, in SASDS. The letter stated that "you will be extended to a third year under the 'Donor Funded Staffing Program' (DFSP) on a 'Co-terminous Term Appointment', to be followed by a 2-year Term Appointment," that the first year would be fully financed by the Government of Spain and that the contract would be effective as of 8 February 2012. The subsequent two-year Term contract was to be "fully financed by a SASDS program such as the South Asia Gender Initiative (to be determined)." The appointment was stated to be contingent on continued satisfactory performance, and her assignment would be "subject to the Staff Rules currently in effect and as they may be amended from time to time." The letter concluded as follows:

> Your appointment will terminate on February 7, 2015, unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer you a new appointment, but it may do so if agreed to in writing at the time of the expiration of your appointment.

14. On 12 December 2011, Ms. X sent an email to the Bank's HR department to request clearance to waive advertisement and clear the direct recruitment of the Applicant to SASDS. In justifying this request, Ms. X cited the fact that the Spanish Government would provide financing for the Applicant's first year, and that "we have a strong need for [the Applicant's] legal skills, particularly on resettlement and land acquisition." She noted that the Applicant "has an excellent reputation in the region, having performed very well over the last one and a half years, and having received positive feedback from her supervisors, team members, and clients, who appreciated her efficiency, technical knowledge and experience." Ms. X also noted that the

Applicant had already provided some cross support to the SASDS unit ("in which she performed very well") and was at the time working on two SASDS priority tasks.

15. On 12 January 2012, the Applicant's 2010-2011 OPE was finalized. This covered the period 1 July 2010 to 30 June 2011 (i.e., while the Applicant was still with SASDI). She was given four ratings of "Superior" and four of "Fully Successful." The comments of her supervisor for this period, Mr. B, included the following:

> [The Applicant] had a good first year as JPO in SASDI during which she made important contributions to the work of the Unit. Her legal background was unique in the Unit and very much welcomed. For example, [the Applicant's] high quality analytical work on the legal aspects of land acquisition and resettlement in Afghanistan was timely and well received.

16. In her own comments, the Applicant stated that she had "ongoing performance conversation(s) with [her] supervisor throughout the year," and noted that she had participated in a three-week Environmental Law summer course in June 2011.

17. The relevant Sector Board clearance for advertisement waiver and the direct recruitment of the Applicant to SASDS was confirmed on 20 January 2012.

18. The Applicant began working in SASDS in February 2012. According to the Bank, as manager Ms. X sought to integrate the Applicant into the unit and take advantage of her legal training by introducing her to several senior staff in the unit working on safeguards issues, and asking them to work with the Applicant on various topics. The Applicant began working with Ms. Y, Social Development Specialist, on three tasks.

19. In April 2012, during the 2012 OPE period, Ms. X met with the Applicant regarding her lack of a full work program. To this point, the Applicant had been working mostly on two tasks relating to Afghanistan, and other work had not materialized.

20. Ms. X subsequently worked with the Applicant to help her build up her work program: from 18-29 June 2012, the Applicant travelled to India and participated in a mission for a land

task project which Ms. X was leading, while in July and August 2012 she was assigned to a number of follow-up tasks from the mission.

21. In September 2012, the Applicant met with Ms. X to discuss her OPE. On the Applicant's account, she received no complaints regarding her work, nor had she received anything but positive feedback from the various TTLs for whom she had performed work.

22. The Applicant's 2011-2012 OPE, covering the period from 1 July 2011 to 30 June 2012, was signed by Ms. X on 1 October, and finalized on 12 October 2012. In respect of her Results Assessment she was given five ratings of "Fully Successful." In terms of Behavioral Assessment, her Client Orientation and Drive for Results were evaluated as "Fully Successful," while her Teamwork, and Learning and Knowledge Sharing were evaluated as "Superior."

23. In her comments, Ms. X noted that the Applicant "worked well in team settings and [had] focused on learning Bank procedures," and was "a good team player" who was "open to new ideas, and builds partnerships for learning." Ms. X continued:

> Moving forward, [the Applicant] has been in the Bank for close to two years but has yet to find her niche; she is still on a learning curve when it comes to understanding how to operate effectively in the Bank. As her JPO period comes to an end in early 2012, [the Applicant] will need to work hard over the next six months to find her area of interest and specialization, as well as gain knowledge and experience in navigating her way in the Bank.
> […]
> Finally, [the Applicant] would do well to invest time in building her English-writing skills and capabilities, which will be critical to building a career in the Bank.

24. The Applicant did not make any comments in this OPE; in a separate email to Ms. X, she confirmed that she agreed with the evaluation.

ISSUES REGARDING WORK PROGRAM

25. The Applicant states that from October 2012, just a few months before her third year was due to end, Ms. X "completely changed her attitude" towards her.

26. On 11 October 2012, Ms. X sent an email to the Applicant, stating as follows:

> We have a problem. After looking at your [Results Agreement (RA)], I talked to both [Ms. Y] and [Mr. D, Lead Social Safeguards Specialist] about your work program. At this point, [Mr. D] predicts only about 4 [staff weeks] of your time from now until the end of the FY given that much of the work on the regional MLARR will need to be done in the field. As for [Ms. Y], she indicated that there was only one immediate need: the literature review on the gender and justice study (which you are doing with [another colleague]). As for writing a chapter, it would only be after data are collected, and therefore would unlikely be in this FY. Finally on the Afghanistan social accountability, given the delays [Ms. Y] is considering using local consultants to get the work going.

27. The Applicant responded the same day, agreeing to arrange a meeting as soon as possible, and stating that she was "delighted to play an active role and proactively contribute in any project from this unit," that her personal interests related to safeguards issues and she would like to work on related projects, and "would like to seek your advise [sic] and guidance on my work program for next FY and discuss my involvement in any projects you deem appropriate."

28. The Applicant and Ms. X met the same day to discuss the upcoming work program. Ms. X observed that the Applicant was having difficulties in integrating into SASDS, and in completing the tasks assigned to her. In reviewing her Results Agreement (RA), Ms. X noted that the Applicant's work program was minimal, and suggested that the Applicant engage in a search for a new position, either inside or outside the Bank. Ms. X suggested that the Applicant would have a light work program to allow her time for a job search, and agreed to assist the Applicant in making contacts and to pay for the Applicant's English lessons. According to the Bank, during this meeting the Applicant "expressed that her experience had been difficult, that she did not fit in, that she had been unable to find a place for herself, that she had been unable to apply her skills, and that she was unhappy." According to the Applicant, during this meeting Ms. X observed incorrectly that the Applicant's contract was due to end in February 2013, and that SASDS could not pay the rest of her contract.

29. Over the following months, according to the Applicant, Ms. X subjected her to "verbal and emotional abuse, and intense pressure and insistence that she leave the Bank." This harassment, according to the Applicant, included "uncomfortable, invasive questions about [the

Applicant's] personal life." The Bank disputes this allegation, and asserts that following the October discussion Ms. X in fact reached out to numerous individuals throughout the World Bank Group in units that might have had a need for the Applicant's skills, and followed up with the Applicant on numerous occasions to see what progress had been made.

30. On 16 October 2012, Ms. X forwarded the Applicant's CV to Mr. A, Vice President and Chief Ethics Officer, noting that the Applicant "is currently in our unit but is looking for a position in the Bank that better matches her skills," and inquiring whether someone from Mr. A's group could meet and advise the Applicant.

31. On 17 October 2012, Ms. X sent an email to Mr. C, Chief Counsel, LEGLE, asking if he could take some time to advise the Applicant, who, Ms. X explained, had joined SAR a few years ago "but her skills are much better suited to LAC and to the legal stream" so was looking for other opportunities in the Bank. Mr. C replied the same day, agreeing to meet with the Applicant. Ms. X forwarded his email to the Applicant, requesting her to follow-up.

32. On 31 October and 15 November 2012, Ms. X sent an email to the Applicant, asking whether she had made any progress on the job search. The Applicant informed Ms. X that she had spoken to Mr. C, and some other people in different units/regions.

33. On 8 November 2012, Ms. X signed off on the Applicant's Results Agreement for 2012-2013. This listed four results for which the Applicant was to be responsible. In her comments, the Applicant stated, "as recommended, I am actually enrolled in an intensive course to improve my verbal and written communication skills for the workplace."

34. In December 2012, feeling "ambushed and distressed" by Ms. X's alleged attempts to force her out of the Bank, the Applicant sought counsel from the Spanish Executive Director. The latter contacted Ms. X, on the Applicant's behalf, to inquire about whether the Bank intended to renege on its commitment to fund her two-year Term contract. At this time, the Applicant also contacted the Bank's Ombudsperson and the Staff Association.

35. From this point on, according to the Applicant, Ms. X avoided characterizing her issues with the Applicant as being related to funding, but her harassment of the Applicant and insistence that the latter leave the Bank did not stop.

36. On 19 December 2012, Ms. X informed the Applicant that a colleague from the Office of Ethics and Business Conduct (EBC) had told Ms. X that there was no position available in EBC at that time, but that she would be happy to talk to the Applicant and provide advice.

37. On 1 January 2013, Ms. X asked Ms. Y to provide feedback on the Applicant's performance.

38. The Applicant states that in January 2013 she received multiple phone calls from Ms. X, insisting that she depart from the Bank and at one point stating that she would "find a way to create a bad performance case against her." The Bank disputes this allegation, and states that no evidence has been produced in support.

39. In an email of 7 January 2013, Ms. X told the Applicant that a colleague from HR had suggested a possible mentor for the Applicant. She suggested that they meet the following week to discuss this and the Applicant's progress with her work. The Applicant did not respond to the suggestion of a mentor.

40. On 14 January 2013, Ms. Y responded to Ms. X's 7 January 2013 request for feedback on the Applicant's work. Ms. Y stated that the Applicant "submitted all her agreed deliverables thus far more or less on time," but that while her outputs were improving, "she often does not incorporate comments from the team." Ms. Y also observed that the Applicant did not seem to have a lot of experience in writing, and that she had expected more proactivity on the Applicant's part, and more editing by the Applicant of one report.

41. Later the same day, Ms. X received an email from Mr. D, forwarding a cost table the Applicant had prepared. Mr. D observed that the Applicant "did not come back with the detailed one which she was supposed to do after our discussion."

42. Also on 14 January 2013, the Applicant informed Ms. X that her job search had been fruitless. Ms. X responded that, in line with their discussion on 11 October, the Applicant's third year was coming to an end and they needed to identify next steps. She informed the Applicant that as she had not yet found another position, the next step would be to define a six-month monitored work program to give the Applicant "a final opportunity to improve [her] performance." She also suggested that the Applicant find a mentor.

43. On 15 January 2013, Ms. X informed the Applicant that if management determined that there were issues with her performance, including a skills mismatch, management could place her on a Performance Improvement Plan (PIP).

44. On 19 January 2013, Ms. Y provided the Applicant with feedback regarding the assignment she had done for her. She stated that the Applicant's hard work was appreciated, but that she had not included key information in her write-ups, that her presentation was not well-sequenced, and that she had not fully incorporated team comments in her deliverables. Ms. Y stated that she would not ask the Applicant to work on other tasks.

45. On 24 January 2013, the Applicant had her Mid-Year Check-In with Ms. X. Four tasks had been assigned in the Applicant's RA. In respect of the first, comments from Ms. Y (the TTL) were to the effect that the Applicant had been unable to complete her task satisfactorily. Regarding the second, Ms. Y indicated that the Applicant had been sloppy in completing basic tasks. The third task was to have been completed by December 2012 but the Applicant had been unable to meet this deadline. In terms of the fourth task, the Applicant had not completed the first element (preparation of a cost table). At this meeting, Ms. X clarified that the unit had a budget to pay for the Applicant's time, "but we do not have a work program for you."

46. On 4 February 2013, Ms. X informed the Applicant as follows:

> Following our discussion at the Mid Year check-in on the 24th January, can you please let me know what you have decided (i.e., resignation, redundancy, or performance plan)? If it is the latter, we need to define your new work program as soon as possible. The previous work program only ran until February. I also need

> to process the corresponding HR Action ASAP as your current term position ends on Feb 7, 2013.

47. The following day, the Applicant informed Ms. X that in fact her contract ended on 7 February 2015, and stated that she hoped they could resolve the misunderstanding in a timely manner.

48. According to the Applicant, the feeling that she was being harassed by her manager and was subject to undue pressure to leave the Bank forced her to seek medical treatment.

49. On 11 February 2013, the Applicant met with Ms. X, Mr. V (Senior HR Business Partner), and Ms. J (Staff Association Staff Relations Officer), to discuss her situation and agree on a way forward. The Applicant and Ms. X agreed that thus far their discussions, notably the meeting on 11 October 2012, had related to "skills mismatch" and the Applicant's suitability to work in an operational unit and SASDS in particular. Ms. X then highlighted a number of performance issues regarding: basic writing functions; drafting of documents and reports; English written and verbal communications; analytical outputs; and generating a work program on social development.

50. At this meeting, the Applicant agreed to complete three tasks. Three staff members from SASDS, Ms. G, Mr. D and Ms. N, were assigned to help and supervise her in carrying out these tasks. The Applicant also agreed to identify a mentor to assist her. A three-month "informal monitored work program" and the prospect of a subsequent, formal PIP were also discussed. On the Applicant's account, at this meeting Ms. X was "very aggressive and rude" towards the Applicant.

51. Ms. X sent a summary of this meeting to the Applicant on 19 February and a reminder on 28 February. The Applicant did not respond to either email.

52. On 13 March, Ms. X sent an email to the Applicant requesting an update on her work program, and inquiring whether she had identified a mentor for herself. The Applicant did not respond substantively to these inquiries.

53. On 21 March 2013, Ms. G provided the Applicant with feedback on her first assignment. She stated that while the Applicant had done some significant research, "overall, however, the content of the paper is not what we had agreed upon." She listed a number of "major problems" with the paper, and concluded that it "would require significant further research and a rewrite to be useful for our work in South Asia." The Applicant did not respond to this email.

54. On 2 May 2013, Ms. X sent an email to the Applicant inquiring about the status of the three tasks that had been assigned to her in February and that were due on 15 May. The Applicant replied on 6 May, copying Mr. T (Sector Director, SASSD), Ms. J and Mr. V. She stated that her focus was to find another job in the Bank, and that she would continue to work on the work plan agreed on 11 February, though thus far she had received "very little feedback or support making it impossible to complete." The Applicant also stated that she did not accept that she was in a "probationary" status during the three-month period, as she had two years remaining on her contract and there had been "no documented problems with [her] performance."

TRANSFER TO SASSD FRONT OFFICE

55. The Applicant met with Mr. T in May 2013. He noted that the Applicant was having difficulty developing a work program with SASDS, and offered to transfer her to the SASSD Front Office. He informed the Applicant that due to the nature of the workflow, the Front Office did not have the potential for a professional staff member at the Applicant's level, that he did not foresee that potential for the future, and that she would need to be proactive in finding work for herself. He stated that SASSD would pay the Applicant's salary until the end of her contract if she could find a job elsewhere in the Bank. The Applicant accepted the offer from Mr. T to relocate to the SASSD Front Office and work under him.

56. From July to September 2013, the Applicant received few assignments; according to the Bank, this resulted partly from the ongoing reorganization and the appointment of a new Vice President for the South Asia Region. Mr. T states that between May and November 2013, the Applicant carried out only one substantive assignment, and did not seek out any further assignments or work. According to the Applicant, she received no significant work assignments from Mr. T or anyone else in the Front Office for the next few months.

57. According to the Applicant, Mr. T failed to provide her with any support or guidance, and at one point admitted that he had forgotten about her and her situation. He also suggested that she did not belong at the Bank. Mr. T denies these allegations. He states, first, that he made inquiries on the Applicant's behalf with the Vice President of EBC and the Director of Operations for the Office of the Integrity Vice Presidency (INT) - neither of whom were interested in the Applicant's candidacy. Second, he states that he and Ms. P (Senior Manager of the Sustainable Development Department South Asia Region), met with the Applicant "at least half a dozen times" to discuss her work program and career options, and that in these conversations he suggested that "her skillset was not a good fit for SASSD" and that she should seek opportunities elsewhere.

58. In September 2013, Mr. T informed the Applicant that Ms. P would handle her situation. Ms. P invited the Applicant to look for other opportunities within the Bank, and advised her that if she could find another unit interested in her services, SASDS would accept the transfer and commit to fully sponsor her time.

59. Also in September 2013, Ms. P met with the Applicant for the 2013 OPE discussion. According to Ms. P, based on their conversation she upgraded one of the OPE proposed ratings from "Partially Successful" to "Fully Successful," so as to give the Applicant the benefit of the doubt.

60. The Applicant's 2013 OPE was finalized on 4 October 2013. It covered the period 1 July 2012 to 30 June 2013. For Results Assessment it included one "Partially Successful" and three ratings of "Fully Successful." The Applicant was also rated as "Fully Successful" for four Core Bank Competencies. The overall comments stated, in relevant part, that:

> Overall, the transition to the Social Development team has been difficult for [the Applicant], and in the final evaluation it was … judged that [her] fit for the work program of the unit was not well aligned to her skill set and work experience.
>
> As a result, in June [the Applicant] joined the Director's Front Office. While [the Applicant] has expressed an interest to continue to work on gender and justice issues, the nature of the work program in the Front Office is such that the work program going forward is likely to be more on the lines of portfolio monitoring

> and occasional research assistance. Taking into account her interests, we are also encouraging her to find appropriate cross-support opportunities in other units or other regions which we will pay for as a professional development opportunity.
>
> [The Applicant] should take advantage of her remaining time in the Bank to attend specific training which would help her in areas of procurement and other parts of project due diligence.

61. These comments were endorsed by Mr. T. The Applicant herself remarked that "this has been an interesting and somewhat challenging review period and I remain interested in doing work on gender issues especially women's issues vis-à-vis justice at country and global levels."

62. On 16 October 2013, Ms. P again spoke to the Applicant about the lack of a clear work program. She introduced the Applicant to a contact in another department, reiterated that SASSD would cover the full costs of a developmental assignment outside the unit, and encouraged the Applicant to seek work opportunities more closely aligned with her interests.

63. On 22 October 2013, the Applicant sent an email to Mr. C (Chief Counsel, LEGLE), acknowledging a meeting with him and informing him that SASSD had committed to pay her salary until the end of her contract while working on a new assignment. Ms. P was copied on this email. Ms. P responded to the Applicant the same day, stating that she had "actually said end June" as the unit would not exist thereafter, and that the Applicant "may want to correct that please." Later that day, Ms. P sent an email to Mr. C, copying the Applicant, stating that:

> I would like to confirm [the Applicant's] email with the caveat that given upcoming changes and the fact that South Asia SD per se will not exist after June 30, I can make the commitment of SASSD picking up [the Applicant's] salary costs only until June 30. C'est la vie!

64. According to the Applicant, here Ms. P "cavalierly reneged on SASDS's earlier offer" to fund the Applicant's position. The Applicant states that the withdrawal of the earlier offer damaged her professional reputation, and impeded any chance she had of obtaining meaningful work for the remainder of her contract. Once Ms. P had "jettisoned SASDS's earlier commitment," the Applicant was unable to find a position outside of her unit.

DISABILITY AND REQUEST FOR PRS REVIEW

65. On 18 November 2013, the Applicant went on Short Term Disability Leave. This was subsequently extended, and remains in effect.

66. Also on 18 November 2013, the Applicant filed a Request for Review with Peer Review Services (PRS). She claimed that: (i) contrary to her contract, she had not received work which would assist in her professional development or guidance and mentoring; (ii) for the preceding year she had been receiving "continuous direct and indirect emotional pressure to abandon the program and the Institution"; (iii) during part of the third and fourth years of her contract she had been set apart and had not received any guidance, mentorship or help; (iv) the Bank had failed to comply with OPE procedures; and (v) the Salary Review Increase (SRI) she received in 2012 and 2013 was not in relation with her performance.

67. On 3 December 2013, PRS dismissed as untimely the Applicant's claims regarding her 2012 OPE and SRI. The same day, PRS stayed the proceedings in respect of the remaining claims to enable the parties to engage in mediation. Mediation between the parties ended, without success, on 16 April 2014.

68. On 2 June 2014, Ms. P filed the Manager's Response before PRS. She maintained that management had complied with all its obligations regarding the Applicant's contract: that SASSD went out of its way to provide the Applicant with opportunities to work with different units and managers with a view towards helping her work program; that management encouraged the Applicant to look for work in other areas of the Bank consistent with her interests and abilities and offered to pay her salary; and that the correct procedures were followed for the 2013 OPE and SRI. She stated that "our intent through this long process has consistently been to help [the Applicant] cope with a difficult situation; however, there was no demand for her skills even when we intervened with various groups across the Bank to find a place for her for which we would pay."

NON-RENEWAL

69. The Bank's new Global Practice (GP) structure was unveiled on 1 July 2014. Under this new structure, the Applicant became mapped to the Social, Urban, Rural and Resilience (SURR) Global Practice. According to the Bank, this focused on global technical experts and specialists with social development background, "which the Applicant did not have; her training as a lawyer was not needed in the SURR GP," and therefore the decision was made not to renew her contract.

70. On 17 September 2014, the Director of the Bank's SURR Global Practice wrote to inform the Applicant that her "professional profile, unfortunately, does not meet the core global technical expertise requirements of our global practice," and that she was therefore being provided with six months' written notice that her appointment would be extended only until 17 March 2015 "after which it will not be extended further."

71. In this letter, the Director noted that the Applicant was currently on disability. He stated that consultations had taken place with Health Services and HR, with the aim of facilitating the Applicant's return to work and her search for employment opportunities in other parts of the Bank. As a result, she would be assigned to a new manager and office space within the same Global Practice but outside the South Asia Region. The letter continued, "the decision not to extend your contract beyond 6 months is based purely on business grounds and has nothing to do with your ongoing Peer Review Case, which you have every right to pursue." It also confirmed that the Applicant would continue to receive disability benefits after her appointment expired, if eligible under Staff Rule 6.22.

72. The Applicant's employment with the Bank terminated on 17 March 2015.

PRS REPORT AND THE TRIBUNAL

73. On 9 January 2015, the Applicant requested an extension of time from the Tribunal in respect of a prospective challenge to the 17 November 2014 non-renewal decision, partly in view of her pending case before PRS. This extension was granted on 21 January 2015, and gave the Applicant until 16 March 2015 to file her Application.

74. On 3 March 2015, the PRS Panel notified the Applicant that it had sent its report in Request for Review No. 162 to the responsible Vice Presidents.

75. On 13 March 2015, one of the responsible Vice Presidents wrote to the Applicant, transmitting the report of PRS in Request for Review No. 162. The Panel concluded, first, that management did not assist the Applicant in developing an effective work program from the time that she was transferred to the SASSD Front Office on 31 May 2013 through 18 November 2013, when she went on Short Term Disability Leave. Second, the Panel concluded that management's miscommunications regarding the Applicant's contract of employment and terms of appointment caused her harm. Third, the Panel found, however, that in terms of the 2013 OPE and subsequent SRI management had provided a reasonable and observable basis and had followed the applicable procedures.

76. In terms of work program, the Panel considered management's efforts to assist the Applicant in three time periods: July through September 2012; October 2012 through May 2013; and May through November 2013. It was only in respect of the third period, when the Applicant was moved to the SASSD Front Office, that management's efforts to assist the Applicant in developing an effective work program were held by the Panel to have been unreasonable.

77. In terms of guidance and mentorship, the Panel observed that "despite the Bank's efforts, there appeared to be a skills mismatch between [the Applicant] and SASSD."

78. In terms of the miscommunications which the Panel found to have caused the Applicant harm, two groups of communications were highlighted: one from Ms. X, and one from Ms. P. First, on 4 February 2013 Ms. X had incorrectly advised the Applicant that she should choose resignation, redundancy or a PIP, whereas in fact the mismatch of the Applicant's skills to the needs of SASDS was a performance management matter, not something to be addressed via redundancy or resignation. Similarly, Ms. X was mistaken in her email of the same day regarding the end date of the Applicant's contract. Second, the Panel noted two communications by Ms. P dated 22 October 2013, in which the latter informed first the Applicant and then Mr. C that SASSD would only pay the Applicant's salary until the end of June 2014. These

communications were contrary to the commitment given by Mr. T, both before and after 22 October 2013, that the department would in fact cover the costs of the Applicant's contract until 7 February 2015. PRS concluded that "these miscommunications contributed to difficulties and obstacles that [the Applicant] faced in managing her career at the Bank," and were inconsistent with the Applicant's contract of employment and terms of appointment.

79. In view of these findings, PRS recommended that the Applicant be awarded compensation in the amount of three months' net salary. In his letter of 13 March, the responsible Vice President confirmed that he had accepted the Panel's recommendations.

80. The Application was filed with the Tribunal on 16 March 2015. The Applicant challenges the non-renewal decision of 17 September 2014, and invokes Staff Rule 9.03, paragraph 6.03 as permitting her to bring this matter directly before the Tribunal.

81. At the time of filing her Application with the Tribunal, the Applicant had not yet received a copy of the PRS Report, or any indication from the Bank regarding the Vice President's decision in respect of that report. In view of the fact that her non-renewal claim, which she brought directly to the Tribunal, and her claims then pending before PRS were "so closely related," the Applicant also requested that proceedings before the Tribunal be stayed pending the outcome of the PRS proceedings.

82. The Application also included a request for provisional relief, namely that the Bank place her on Administrative Leave pending the Tribunal's decision so that she could retain her G-4 visa. The Bank responded to this request on 14 April 2015, proposing that in view of the compelling circumstances of her case, the Applicant be put back on Short Term Disability and placed on Administrative Leave pending certain stipulated events. The Applicant responded the following day, confirming that she would be satisfied with the form of relief proposed by the Bank. The Tribunal approved provisional relief in the form proposed by the Bank on 16 April 2015.

83. On 9 September 2015, the Applicant accepted the offer of the Vice President of compensation in the amount of three months' of her salary for the issues identified by the PRS Panel in its Report.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

THE APPLICANT'S MAIN CONTENTIONS

84. The Applicant submits that discretionary decisions such as the non-renewal of a Term contract are subject to review and remedy if the employee was treated unfairly or denied due process. She claims that the Bank failed to accord her the fair treatment to which she was entitled, that the non-renewal decision was grossly unfair and contrary to Staff Principles 2.1 and 9.1, and should be overturned.

85. The Applicant contends that the Bank took advantage of her labor for three years while the Spanish Government fully funded her JPO contract, and then when it was time for the Bank to honor its commitment management attempted to push her out, harassed her, and failed to give her any meaningful work. The Applicant contends that Ms. X fabricated a bad performance case against her, verbally abused her, and caused the Applicant mental and emotional distress which led to the Applicant taking a medical leave of absence, which in turn reduced her income.

86. The Applicant asserts that Bank management actively obstructed her job search within the Bank by misleading her regarding whether her unit would fund another position. The Applicant was therefore left "without a fair chance at finding a position elsewhere in the Bank."

87. In terms of remedy, if she is not reinstated the Applicant requests that the Bank provide a positive job reference in the event that it receives any requests from prospective employers. She also seeks compensation for reputational damage and harm to her career, the loss of potential benefits and income, the distress caused, and the damage caused to her health. She also seeks compensation for medical expenses incurred, and attorney's fees.

THE BANK'S MAIN CONTENTIONS

88. The Bank states that as SASSD was reorganized into a Social, Urban and Resilience Global Practice in July 2014, it became evident that the Applicant's skillset and experience "did not match the needs of the Global Practice," and as the Applicant's term was coming to an end the decision was made not to renew. According to the Bank, "this was a reasonable exercise of managerial discretion supported by legitimate business reasons and was not tainted by improper motives."

89. In addition, the Bank submits that the Applicant's performance was mixed from the outset. She had been given notice, as part of her first annual OPE cycle with her new unit, that there were areas she needed to work on, but despite management's attempts to provide feedback and deal with the performance issues, she continued to struggle in her role within SASDS and later at SASSD.

90. The Bank maintains that there is no evidence of discrimination or arbitrariness such that might require the non-renewal decision to be disturbed. According to the Bank, the record shows that various managers went out of their way to help the Applicant find relevant work, and discuss with her identified deficiencies in her performance. Regarding the errors in the emails sent by Ms. X in January 2013, and Ms. P in October 2013, the Bank contends that the Applicant suffered no prejudice as a result, while her other allegations of ill-will, harassment or threats by Ms. X "are not substantiated by any written evidence and are refuted by the record that does exist."

91. The Bank further contends that although a Term appointment expires on its own terms, the Applicant was given six months' notice that her appointment would not be renewed, and that "although not required to be offered to someone whose term is not being renewed, [she] was offered assistance in finding another job." According to the Bank, all procedural safeguards required of it were met. On the relief sought by the Applicant, the Bank observes that the Staff Rules do not allow letters of reference to be issued by the Bank, and that in any event, "a

glowing recommendation that Applicant seeks would be inconsistent with Applicant's history of performance."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

SCOPE OF THE DISPUTE BEFORE THE TRIBUNAL

92. According to the Applicant, at the end of her third year at the Bank – i.e. the last year for which she was fully funded by the Spanish Government – her manager, Ms. X, tried to renege on the Bank's commitment to extend the Applicant's contract for a further two years. On the Applicant's account, Ms. X began "a relentless campaign to pressure [the Applicant] to resign from the Bank without justification."

93. However the Applicant does not claim that the Bank did, in fact, renege on its commitment to offer her a two-year Term appointment. The record is clear that such contract was indeed offered to the Applicant, and that she completed the full term of that contract. Her employment was eventually terminated on 17 March 2015, which was one month in excess of the requisite two years.

94. The Applicant claims that she was subjected to a pattern of unfair treatment and mismanagement. However she does not raise this matter, which was before PRS and is now the subject of a settlement between the parties, as a distinct legal claim. Rather, she contends that as the 17 September 2014 non-renewal decision was taken in the context of such treatment and mismanagement, that decision therefore constituted a wrongful exercise of discretion.

95. In view of the settlement reached between the parties, the Bank argues that references to the findings of the PRS Panel should be stricken from the record. The Applicant disagrees, contending that "the findings of the PRS are still valid, relevant, and should be considered as part of the factual context."

96. The Tribunal deems it necessary to consider the matters assessed by PRS. The Tribunal will do so without purporting to review the findings of the PRS Panel or, still less, the settlement subsequently reached between the parties following the PRS Report. Rather, the Tribunal will consider the statements and evidence produced by the parties before PRS in order to make its own assessment of the factual background and context in which the non-renewal decision was taken.

BASES FOR THE NON-RENEWAL DECISION

Relevant staff rules and jurisprudence

97. The matter before the Tribunal is the non-renewal of the Applicant's Term appointment, which commenced in February 2012**,** following the end of her JPO contract, and terminated on 17 March 2015.

98. Pursuant to Staff Rule 4.01, paragraph 2.01(d), a Term appointment is an appointment for a specified duration. The Letter of Commitment which the Applicant received on 10 November 2011 included the standard provision, according to which:

> Your appointment will terminate on February 7, 2015, unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer you a new appointment, but it may do so if agreed to in writing at the time of the expiration of your appointment.

99. The Tribunal has previously explained, in *Mr. X*, Decision No. 16 [1984], para. 35, that:

> A fixed-term contract is just what the expression says: it is a contract for a fixed period of time […]. Whatever may be the character of the work which a member of staff performs, his legal position is controlled by the terms of his appointment. The possibility exists, of course, that the character of the work may encourage a staff member to seek some formal amendment of his standing. But that is a matter of negotiation; such modification cannot come about automatically.

100. The decision to extend the Applicant's contract of employment falls within the Bank's discretion. As the Tribunal held in *Barnes*, Decision No. 176 [1997], para. 10, such decisions, "like any other exercise of discretion by the Respondent, must be reached fairly and not in an

arbitrary manner." Discretionary decisions that 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 therefore a violation of a staff member's contract of employment or terms of appointment (*AK*, Decision No. 408 [2009], para. 41).

101. In the present case, the Bank invokes two bases for the non-renewal of the Applicant's contract. First and foremost, the fact that her skills and interests were not a good fit for the department. Second, performance issues which became increasingly apparent towards the end of the Applicant's Term contract. These will be considered in turn.

Skills mismatch

102. The record indicates that the issue of whether the Applicant's skills and interests were a good fit for the requirements of the units in which she worked, and whether she could therefore have adequate work programs in those units, was raised on numerous occasions. It was first noted well before the end of the second year of her JPO contract (which she identifies as the point in time at which Ms. X's attitude towards her changed markedly), and was highlighted with increasing frequency into the first and second year of her Term contract.

103. During the second year of the Applicant's JPO contract, the SASDI manager declined to extend her contract because her skills and experience did not fit with the work program of SASDI. Her two-year JPO assignment was thus set to lapse in February 2012. The Applicant approached Ms. X in SASDS regarding the possibility of moving to that unit. In their initial meetings regarding a possible transfer, Ms. X conveyed to the Applicant that she would need to create a demand for her skills.

104. As early as April 2012, that is only three months after the move to SASDS, Ms. X met with the Applicant regarding her lack of a full work program, as some of the work which had been envisaged for the Applicant had not materialized. These issues were then noted in the Applicant's 2011-2012 OPE, in which Ms. X observed that the Applicant "has been in the Bank

for close to two years but has yet to find her niche," and "needs to work hard over the next six months to find her area of interest and specialization."

105. That the skills mismatch was a significant issue became even clearer from October 2012, first in Ms. X's email of 11 October which noted that in terms of the Applicant's work program "we have a problem," and second in a meeting held the same day, when Ms. X observed that the Applicant was having difficulties in integrating into SASDS, that the Applicant's work program was minimal, and advised the Applicant to seek a new position. The Applicant does not dispute that such issues were raised during this meeting.

106. On 15 January 2013, Ms. X informed the Applicant that if there were issues with her performance, including a skills mismatch, management could place her on a PIP. On 24 January 2013, during the Mid-Year Check-In, Ms. X informed the Applicant that though the unit had a budget to pay for her contract, "we do not have a work program for you." The issue of an inadequate work program was also mentioned in Ms. X's email of 4 February 2013. On 11 February 2013, at a meeting attended by two other colleagues, the Applicant and Ms. X agreed that the issues and discussions between them thus far had related to a skills mismatch, and the Applicant's suitability to work in an operational unit, and SASDS in particular. On 13 March, Ms. X requested an update on the Applicant's work program. On 2 May, in response to an inquiry regarding her progress on certain tasks assigned to her, the Applicant informed Ms. X and Mr. T that her focus was to find another job at the Bank.

107. These issues remained apparent when the Applicant moved to the SASSD Front Office in May 2013. In arranging for her transfer, Mr. T noted that the Applicant had been having difficulty developing a work program with SASDS. It is common ground that the Applicant had little substantive work to do during her period in the SASSD Front Office (albeit the parties disagree on the reasons for this). In September and October 2013, the Applicant was advised by Ms. P to look for other opportunities within the Bank, and was informed that SASDS would accept a transfer and commit to fully sponsor her time. The Applicant's 2013 OPE noted that "overall, the transition to the Social Development team has been difficult for [the Applicant], and

in the final evaluation it was … judged that [the Applicant's] fit for the work program of the unit was not well aligned to her skill set and work experience."

108. The foregoing strongly supports the Bank's contention that there was a skills mismatch regarding the Applicant and the department in question, such that the non-renewal of her contract was taken for business reasons. This constitutes a reasonable and observable basis for the non-renewal decision.

109. The Bank's new Global Practice structure was unveiled on 1 July 2014. Under this new structure, the Applicant became mapped to the Social, Urban, Rural and Resilience (SURR) Global Practice. According to the Bank, this focused on global technical experts and specialists with social development background, "which the Applicant did not have; her training as a lawyer was not needed in the SURR GP," and therefore the decision was made not to renew her contract. On 17 September 2014, the Director of the Bank's SURR Global Practice wrote to inform the Applicant that her "professional profile, unfortunately, does not meet the core global technical expertise requirements of our global practice," and that she was therefore being provided with six months' written notice that her appointment would be extended only until 17 March 2015 "after which it will not be extended further." The Applicant having been on Short Term Disability Leave since November 2013, as a result, has not worked under the new Global Practice structure. There has been no suggestion, however, that the mismatch between her skills and interests and the requirements of the department, which had been noted and discussed repeatedly by the parties for over two years, would have been any less acute under the new Global Practice structure.

110. The Tribunal has previously stated that "it is difficult to find any basis to claim that the Bank is legally bound to give fixed-term appointees specifically organized opportunities to demonstrate their suitability for renewal of appointment" (*Koçlar*, Decision No. 441 [2010], para. 48). In any event, in the present case there is ample evidence in the record that Ms. X and others made efforts to place the Applicant in contact with colleagues in various other Bank departments, to assist her search for a position which would better fit her skills and interests. The record includes evidence of such communications with: Mr. A, Vice President and Chief Ethics

Officer, on 16 October 2012; Mr. C, the following day; a colleague in EBC on 19 December 2012; and the Vice President of EBC and the Director of INT following the Applicant's move to the SASSD Front Office. There is also evidence in the record that Ms. X raised the option of a mentor for the Applicant on numerous occasions, and that the Applicant failed to respond to these suggestions. In addition, the letter with which the Bank informed the Applicant of the non-renewal of her contract beyond 17 March 2015, also noted that she was currently on disability and advised her that she had been assigned to a new manager and office space so as to facilitate her return to work and search for employment opportunities within the Bank. According to the Bank, the Applicant did not take advantage of the assistance offered here.

Performance issues

111. The Applicant submits that she received positive feedback at the Bank until October 2012, that is, three months before the end of her third and final year fully sponsored by the Spanish Government. According to the Applicant, this was not a coincidence. The Bank submits that the Applicant's performance was mixed from the outset. The record supports the Bank's position.

112. The 10 November 2011 Letter of Commitment provided that the Applicant's appointment was "contingent on continued satisfactory performance."

113. In her first OPE, finalized on 23 August 2010, the Applicant's supervisor, Mr. Z, identified a number of areas in which the Applicant needed to improve ("attention to detail, responsiveness to guidance from peers/TTL and her writing skills in general"). The Bank concedes that the Applicant's performance improved during her second OPE cycle, and in her 2010-2011 OPE her then supervisor, Mr. B, noted her "high levels of professionalism." In the third OPE, finalized on 12 October 2012, Ms. X made a number of positive observations, but noted that the Applicant "would do well to invest time in building her English-writing skills and capabilities, which will be critical to building a career in the Bank." The Applicant did not query these observations. In her Results Agreement for 2012-2013, the Applicant stated that she was enrolled in an intensive course "to improve my verbal and written communication skills for the workplace."

114. The assessments of the Applicant's performance became more negative from early 2013. This is reflected in comments sent by Ms. Y and Mr. D to Ms. X on 14 January 2013; feedback sent by Ms. Y to the Applicant directly on 19 January (including the conclusion that she would not ask the Applicant to work on other tasks); the Applicant's Mid-Year Check-In carried out on 24 January 2013; an 11 February 2013 meeting which was also attended by two other colleagues; and feedback given by Ms. G on 21 March 2013 on the Applicant's first assignment for her.

115. The Tribunal notes that mixed assessments in the Applicant's OPEs were given by three different supervisors: Mr. Z for 2010; Ms. X for 2011-2012; and Ms. P for 2012-2013. Also, the negative feedback on the Applicant's performance of particular tasks was given by a number of TTLs, including Ms. Y, Mr. D and Ms. G. There was, moreover, some consistency in the type of performance issues highlighted by different supervisors and TTLs – in particular, difficulties with drafting, responding to feedback, and English language issues.

116. The Applicant's assertions that some of the negative feedback was influenced by the desire of Ms. X to build a performance case against her have been refuted by the TTLs involved. Ms. G notes that the positive comments which she initially gave regarding the Applicant, and which the Applicant has since highlighted, were made before she had received the draft of the paper which the Applicant had worked on for her. Having received that draft, her assessment of the Applicant's performance was negative. Ms. Y made a similar assessment.

117. Though Ms. X, in requesting direct recruitment of the Applicant to SASDS in December 2011, had spoken positively of the Applicant, her qualifications and contribution to date, it appears that at that point Ms. X had limited experience of working with the Applicant directly. With time, Ms. X's evaluation of the Applicant's skills and contributions became markedly less positive. This was mirrored in the assessments of the Applicant's work by other colleagues.

Relevance of former JPO status

118. The Applicant submits that the non-renewal decision taken in September 2014 was "the culmination of a long course of action aimed at forcing [the Applicant] out of the Bank with no demonstrable performance issues, contrary to the terms and career-development objectives of the

JPO program." She argues that Bank management "failed to provide her support, mentorship, or any opportunities to gain work experience or develop her career, contrary to the terms of her JPO contract and to the career-development objectives of the JPO program."

119. In response, the Bank disputes that the Applicant "had any special entitlements or additional expectations as a former JPO."

120. The Tribunal observes that the Applicant's previous status as a JPO is not material to the non-renewal decision. That earlier status was relevant to her entitlements while on that contract, not thereafter. It does not affect the conclusions reached above on the non-renewal of the Term contract, which the Applicant was given after her JPO contract had ended.

Allegations of unfairness and mismanagement

121. There is some overlap between the submissions which the parties made before PRS (in respect of the Applicant's claims of mismanagement and harassment), and their submissions on the non-renewal decision before the Tribunal.

122. The question of whether the issues identified by PRS (namely management's inadequate assistance in developing a work program between May and November 2013, and its miscommunications) constituted, in themselves, violations of the Applicant's contract of employment and terms of appointment, is not before the Tribunal, however. Nor is the adequacy of compensation offered by the responsible Vice President (three months' net salary) following the recommendations of the PRS Panel. The parties reached a settlement in respect of these issues on 9 September 2015, and it is not open to the Tribunal to consider them as free-standing claims. The parties are in agreement on this.

123. Equally, the Applicant's claims regarding her OPE and SRI, on which the PRS Panel found in favor of the Bank, are not before the Tribunal.

124. What *is* before the Tribunal is the question of whether the issues regarding the work program and the miscommunications were such as to render the non-renewal decision arbitrary or otherwise an abuse of discretion.

125. The Applicant contends that from October 2012 Ms. X began a "relentless campaign" to force her out of the Bank "for no justifiable reason." The Bank submits that Ms. X went out of her way to develop the right work program for the Applicant, tried to mentor the Applicant and help her find opportunities outside of SASDS, and provided her with timely feedback on her performance. On the Bank's account, Ms. X was "an exemplary manager."

126. Moreover, the Bank contends that the Applicant suffered no prejudice from Ms. X's initial misunderstanding, in January 2013, of the department's obligations towards her as a former JPO, as no redundancy action was in fact pursued and the Applicant's term was renewed for another two years. Similarly, the Bank contends that the Applicant suffered no prejudice from Ms. P's erroneous communication to Mr. C of 22 October 2013: according to the Bank, the Applicant cannot show that this mistake in any way interfered with her ability to secure a position in another unit as she had met with Mr. C only once, informally, and has produced no evidence that he was interested in hiring her. The Bank also notes that the mistake of Ms. P was quickly corrected.

127. The PRS Panel concluded that the miscommunications on the part of Ms. X and Ms. P "contributed to difficulties and obstacles [the Applicant] faced in managing her career at the Bank." As noted above, PRS recommended compensation for this harm, and the parties have since reached a settlement on this matter. For present purposes, the question is whether the miscommunications *also* affected the Applicant's prospects of renewal, or rendered the non-renewal decision unfair. On the record before the Tribunal, this question must be answered in the negative.

128. With or without the miscommunication, renewal within SASDS was already unlikely. The skills mismatch and performance issues outlined above, existed both before and after these miscommunications. Even if it is accepted, *arguendo*, that the miscommunications negatively

affected the Applicant's performance from that point onwards, still the skills mismatch persisted and constituted, in and of itself, sufficient basis for the non-renewal decision. The same is true of management's failings regarding the Applicant's work program during her six months working in the SASSD Front Office.

129. Equally, it would be overly speculative to assume that had the said miscommunications not occurred, and had the Applicant successfully identified and secured a position elsewhere in the Bank for the remainder of her Term contract, her performance and skillset would necessarily have led to her being renewed in that new position. In this context, it is noted that while the Applicant claims that during their meeting Mr. C had "confirmed that they were interested in [her] if [she] would be fully sponsored until the end of [her] contract." The Bank has produced a statement by Mr. C which is to the contrary. According to Mr. C, his meeting with the Applicant was "purely informational," and having checked with his unit on the funding implications beyond the end of the Applicant's existing term, he did not pursue the option to have her reassigned to his unit.

130. Again, the foregoing is premised on the consideration that while these failings by management may have created obstacles to the Applicant's management of her career within the Bank, compensation for that harm was recommended by PRS, offered by the responsible Vice President, and has since been agreed between the parties. The question before the Tribunal is whether that harm was *also* such as to render the non-renewal decision unfair. In light of the foregoing, that question must be answered in the negative.

Allegations of harassment

131. The Applicant contends that from October 2012, Ms. X fabricated a bad performance case against her, verbally abused her, and caused the Applicant mental and emotional distress, which led to the Applicant taking a medical leave of absence, which in turn reduced her income.

132. The Bank denies the allegations of harassment, and submits that the Applicant has failed to present proof to substantiate her complaints. On the latter point, the Applicant responds that it

is unfair of the Bank to expect substantiation of her allegations of harassment and ill-treatment, particularly where much of that harassment was verbal.

133. The Bank's policy is clear that staff members are required to treat one another with courtesy, dignity, and respect. A "single incident can be considered harassment if it is so severe that it has a negative impact on the individual or the work environment" (*see CS*, Decision No. 513 [2015], para. 122; The World Bank Group Code of Conduct (2009); Working with Respect in the World Bank Group: Building a Positive Work Environment (2007)).

134. While the difficulties in providing written evidence of verbal exchanges must be acknowledged, there is little in the record to support the Applicant's claims of a campaign of harassment on the part of Ms. X.

135. Neither before PRS, nor before the Tribunal, has the Applicant adduced statements of any witnesses to instances of harassment (some of which the Applicant alleges to have occurred during meetings at which others were present).

136. The documentary evidence which is available does not support the Applicant. Rather than illustrating harassment, as noted above (see paragraph 110) the email exchanges between the Applicant and Ms. X show the latter repeatedly seeking to assist the Applicant, in identifying a mentor, in developing a work program, and in identifying contacts to assist with a possible transfer within the Bank. In addition, while Mr. T has affirmed that by May 2014 the Applicant had a "challenging working relationship" with Ms. X, Ms. G has stated that "my unit's management, especially [Ms. X], took particular effort to help [the Applicant] and encourage her involvement in the work carried out by our unit. After a while, however, it appeared that [the Applicant] lost interest in the day to day work of the unit."

137. The Applicant highlights the 4 February 2013 email from Ms. X to the Applicant, in which the former inquired as to which option the Applicant had chosen between resignation, redundancy and PIP. The Bank concedes that the reference to redundancy in this email was, in the context of a skills mismatch, incorrect. That error does not mean that the email constituted

evidence of harassment, however, particularly given the context of: negative feedback on the Applicant's performance from her TTLs (Ms. Y and Mr. D) in the preceding months; the concerns regarding her work program which had been discussed between Ms. X and the Applicant since April 2012 and had been raised again on 24 January 2013 in the Mid-Year Check-In; and the ongoing discussions between Ms. X and the Applicant regarding efforts to identify an alternative department for the latter. By the time of the 4 February 2013 email, it was already clear that there were serious concerns regarding the Applicant's work program, and elements of her performance, and that, as per the discussions on 14-15 January 2013, efforts were underway to remedy the situation.

138. In that context, and recalling also the Tribunal's previous observation that "criticism or adverse decisions about performance or work assignments does not, in and of itself, constitute harassment …" (*Schiesari*, Decision No. 314 [2004], para. 34), the record does not support the Applicant's claim of harassment.

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