



World Bank Administrative Tribunal

2015

Decision No. 526

**DD,
Applicant**

v.

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

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

**DD,
Applicant**

v.

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

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Stephen M. Schwebel (President), Abdul G. Koroma, and Marielle Cohen-Branche.
2. The Application was received on 13 April 2015. The Applicant was represented by Marie Chopra and Alice C. Hwang 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 13 November 2015.
3. The Applicant challenges the Bank's decision to terminate her employment pursuant to the declaration of redundancy of her position issued on 29 September 2014.

FACTUAL BACKGROUND

4. The Applicant joined the Bank first as an agency temporary employee and then as a consultant. In 2003 she was hired as a staff member and became an Operations Analyst at level GE. She worked within the World Bank Institute (WBI), which was later renamed the Leadership, Learning & Innovation Vice Presidency (LLI). In her role on the WBI Regional Coordination Team (WBIRC) the focus of the Applicant's work was the coordination of WBI country programs and the strengthening of the collaboration between WBI and the Africa, South Asia, the Middle East and North Africa Regions. The Applicant consistently received very positive comments in her Overall Performance Evaluations (OPEs). In 2007, she became the "WBI focal person for Sudan" and the Task Team Leader (TTL) for the Sudan Economic Governance Capacity Building Program. In her 2007-2008 OPE her supervisor mentioned that "in the last two years [the Applicant] consistently operated at a higher level than her current GE level would call for."

5. Initially and around the time the Applicant joined the Bank, WBI was primarily a training institute focused on increasing the Bank's capacity to contribute to development. In late 2008, Mr. S was appointed Vice President and Head of WBI by the then President of the Bank, Mr. Robert Zoellick. Even though it was initially planned to close WBI or merge it with another part of the Bank, Mr. Zoellick decided instead to keep WBI and initiate its major renewal and reorganization, which Mr. S was appointed to carry out. WBI's new focus was on "collaboration, open agenda, and innovation." Training was no longer the core component of WBI. According to the Applicant's manager in her 2009-2010 OPE, at that time, WBI went through a major reorganization effort with three new business lines, an entirely new organizational structure and a large staff turnover. As part of the renewal process, many staff members also received new work programs.

6. The Applicant states that when Mr. S joined WBI in late 2008, she was still the TTL for the Sudan program in WBIRC. At the time, she was organizing a high-level policy workshop for senior government officials, civil society, and academia from Sudan, the fourth in a series of such high-level policy workshops initiated by the Applicant.

7. However, despite the fact that, according to the Applicant's 2008-2009 OPE and communications at the time that there was "strong continued demand" from clients, "immense" capacity-building needs in Sudan, and the professed commitment of Mr. S to "support a strong capacity development program there," the Applicant states that in June 2009, Mr. S informed her that the WBI Sudan program would be cut because of the political situation in Sudan and that, as a result, she would be removed from WBIRC.

Sufficiency of the work program within the WBI Knowledge Exchange Unit

8. When the Applicant left WBIRC, she joined the Knowledge Exchange unit (WBIKE). As her 2009-2010 OPE shows, her work program at the time consisted of tasks relating to the South-South Knowledge Exchange, the Sudan Economic Governance Capacity Building Program, and the Development Marketplace, as well as certain cross-support tasks. She states that while she was officially assigned to WBIKE, she sat with and worked under the Development Marketplace Team in the WBI Innovation Practice Group. Her reporting structure was confusing, she states, because,

under this arrangement, Ms. T, Team Leader for the Development Marketplace Team, was the Applicant's *de facto* day-to-day manager, but the Applicant officially reported to and was reviewed by Mr. H, Manager for WBIKE. She maintains that when, in November 2009, she raised her concerns regarding the reporting structure to Mr. H, the Bank removed her from the Development Marketplace Team entirely (instead of clarifying the lines of reporting), leaving her without a work program.

9. By December 2009, the Applicant had joined the South-South Knowledge Exchange team in WBIKE. The Applicant perceived that management consistently confined her to low-profile, one-off tasks which were not commensurate with her level of skills, experience, and expertise, and assigned significant tasks and leadership roles to other staff members and consultants. The Applicant conveyed this to her manager, Mr. H, in an e-mail dated 31 August 2010. She also maintained that she was denied opportunities for cross-support whereas senior teams across the Bank had called on her skills, experience and expertise to support their operations. The Applicant states that Mr. H did not take steps to help her develop a concrete work program; instead, he continued to allocate work to other team members or consultants instead of the Applicant. As a result, the Applicant states, she tried, on her own, to seek cross-support opportunities outside of WBI to develop her skills.

10. In response to the Applicant's e-mail of 31 August 2010, Mr. H asked her to "put together a portfolio of cross-support opportunities." He acknowledged that he would have to shape an assignment for her in WBIKE. He specified, however, in this respect, that the Applicant would no longer be working exclusively on South-South Knowledge Exchange tasks.

11. In her 2010-2011 OPE, the Applicant noted regarding her assignments that "[t]his year I became more engaged in operational work through my cross support to the Diaspora Program in the Africa region and ICR for Sierra Leone." Mr. H wrote in the OPE that "[o]ver the past year, [the Applicant] divided her time over her work within the WBIKE context and cross-support to the Africa region." He also noted that "[l]ast year, we had agreed that we would position [the Applicant] for the next step in her career by creating space for her to put together a portfolio of cross-support assignments in the operational complex of the Bank, which is where [the Applicant]

wants to go next after 8 years in WBI.” In FY12, the Applicant’s work program consisted of assignments in WBIKE and cross-support tasks, in line with the agreement between the Applicant and her manager.

12. In October 2012, Mr. B was appointed as the new manager of WBIKE. In a statement filed with the Tribunal he explained that, when he became the Manager of WBIKE, he met separately with each staff member to discuss their respective work situation. He states that as the Applicant expressed her view that she had not received proper recognition of her work, he provided her with a new work program in the fall of 2012 which consisted solely of assignments within WBIKE. According to her 2012-2013 OPE, at that time, the Applicant became responsible for various aspects of two Knowledge Hubs, which are institutions or networks that enable countries to learn by sharing and exchanging development experiences, and for the Secretariat of the South-South Knowledge Exchange. The Applicant performed very well in her new duties and, in fact, received an “Outstanding/Best Practice” rating in her 2012-2013 OPE for her work in one of the two Knowledge Hubs, as well as a “Superior” rating for her work on the South-South Knowledge Exchange Secretariat.

13. Mr. B wrote in the Applicant’s 2012-2013 OPE that the year “has been a positive year for [the Applicant]” and that the Applicant is “very thoughtful and makes important contributions in the weekly team meeting as well as in a number of leadership meeting[s], which she attended upon invitation. I value her insights and suggestions which stand out from her peers.” He also mentioned that the Applicant had expressed an interest in moving to operations and that she had successfully passed the “Trust-Fund Accreditation” and that she was working on getting “the accreditation from the Foundations of Bank Operations training.” The Applicant explained in her own assessment in the OPE that the year gave her a “valuable opportunity to work on a diverse set of new projects” and that she was “grateful for the support and guidance” of Mr. B.

14. Nonetheless, the Applicant claims that during her time with Mr. B her work was still marginalized as in the past. Contemporaneous communications of record show that in September 2013 Mr. B proposed that the Applicant “dedicate a sizeable chunk of her work program to eLearning activities with [another manager’s] group (cross-support).” He explained: “The purpose

would be to increase her marketability at a time where Global Practices are going to take shape and managers of [Knowledge Learning and Innovation (KLI)] units within Global Practices are going to establish their teams (between March and June 2014). By adding to her KLI competencies, our shared aim would be to help [the Applicant] transition to a Global Practice.” The Applicant maintains that while Mr. B assured the Applicant that devoting a significant portion of her time to cross-support would not have any implications on her position within WBIKE, the effect was the opposite.

15. The Bank states that Mr. B supplemented the assignments of all his staff with available cross-support opportunities because in the fall of 2013 and after the end of the first fiscal year during which Mr. B was the Applicant’s manager, it became clear that the then on-going Bank-wide reform could affect WBI. According to the statement of Mr. B before the Tribunal, he wanted to ensure that all staff members in his unit were as competitive as possible if they had to apply for new positions. Mr. B states that he and the Applicant worked together to find cross-support opportunities both within WBI and within other parts of the Bank, including tasks within the Africa Region, consistently with the Applicant’s express wish to move closer to, and eventually work in, operations – a wish that she had also expressed in connection with her most recent OPE. In addition, he stated, the business of WBIKE had begun to dwindle: the structure necessary to facilitate knowledge sharing had already been created through initiatives such as the South-South Knowledge Exchange and Knowledge Hubs, and the work was shifting towards maintenance of this structure and its various initiatives.

The 2014 reorganization of WBI

16. In early 2014, it became clear that as a result of an ongoing Bank-wide reform, WBI would be significantly affected and that its reorganization was imminent.

17. In April 2014, Mr. S announced the changes to the staff of WBI during a town hall meeting. He stated, among other things, that in addition to the budget cut impacts, there was a need to move towards a new business direction and a consolidation of the work program. He added that “[t]his denoted a change in focus of our new business plan and deliverables per the new mandate of LLI.”

Furthermore, as of 1 July 2014, WBI would change its name to the Leadership, Learning & Innovation Vice Presidency (LLI) to reflect better its new orientation.

18. On 30 April 2014, a call for voluntary exits was issued for WBIKE (as well as another unit). Two staff members from WBIKE (one of them a GE level staff) volunteered to leave by accepting exit packages. Management, however, concluded that, even with two staff members leaving, further cuts were necessary.

19. On 19 May 2014, an Evaluation Committee comprising the managers in WBI held a meeting which, according to the Bank, had the purpose of evaluating whether staff members in WBIKE and the Capacity Development and Results unit (WBICR), whose positions might be declared redundant due to the reorganization and budget cuts, could be placed in new positions which would result from WBI's new mandates. It was noted in the meeting that WBICR would be abolished while WBIKE would be significantly downsized and reorganized.

20. During the meeting, management evaluated each staff member in the two units against a number of criteria including each staff member's performance and fungibility of skills which incorporated analytical skills, ability to deliver corporate work, managing Monitoring and Evaluation (M&E) work, ability to support LLI work and TTL experience (for GG staff only).

21. The manager of each staff member being evaluated was present at the meeting to "ensure [that] the committee had full information on skills, strengths, weaknesses and an update on efforts to help all staff find positions." The Applicant was one of the staff members evaluated against the criteria. Management decided that her "[s]kills [did] not match any other position in WBI." It recommended that the Applicant be informed that if she did not find another position or volunteer to exit her employment would be made redundant.

The determination that the Applicant's position had to be abolished and her employment would become redundant

22. As a result of the reorganization, a total of 10 positions in WBIKE were abolished: one at level GB, all three at level GE, three at level GF, two at level GG, and one at level GH.

23. On 28 May 2014, Mr. B informed the Applicant orally during a meeting that her position, along with the positions of the other two GE-level staff members in WBIKE, was being abolished because WBI/LLI no longer needed the function.

24. In an e-mail to the Applicant, dated 21 August 2014, Mr. B stated that the management team had conducted a "comprehensive and thorough evaluation" for the Leadership team positions as well as for other positions and that team members were reviewed on the basis of the following criteria: strengths (in terms of skills), skill match, results-orientation, performance, current grade level, and ability to support new LLI work. Two Knowledge Exchange team members were identified as meeting the aforementioned criteria with regard to the specific needs of the Leadership team and were therefore considered as a possible match for the Leadership team. Mr. B then stated that the management team had looked very carefully at the Applicant's skills and strengths but did not find a match in that context.

25. On 28 August 2014, the Applicant met with the Vice President of WBI/LLI, Mr. S. She states that Mr. S attributed the redundancy of the Applicant's position and lack of job placement to her skills mix. The Applicant states that, to her surprise, Mr. S admitted to her that when he joined WBI in 2008, her name was already at the top of a "surplus" list for staff to be made redundant due to her "skills mix." According to the Applicant, he had stated that this was so because even though there was "no performance issue," her degree, a Master's Degree in Public Administration with a concentration in Planning and Local Economic Development, was too general. The Applicant claims that, according to Mr. S, for six years – since 2008 – WBI/LLI had regarded her as someone whose skills were unnecessary within the Bank. In a statement filed with the Tribunal, Mr. S denied the Applicant's allegations and asserted that he was not aware of any "surplus" list.

26. Furthermore, according to the Applicant, in September 2014 the Human Resources (HR) Business Partner, Ms. AB, told the Applicant that the redundancy decision had been made to “execute the ‘3-5-7’ rotation policy” even though that policy did not apply during the WBI/LLI reorganization. The Bank denies that Ms. AB made this statement, and maintains that the “3-5-7” policy was no longer in place when the Applicant’s position was abolished. It also maintains that even when the policy was in place, it only applied to staff at level GF and above and was never a valid reason for a redundancy decision.

27. On 26 September 2014, the Vice President, HR, informed the Applicant that her position had been made redundant due to “restructuring of WBI and creation of a new vice presidency, LLI.”

28. The Proposed Staff Redundancy Memorandum (“Redundancy Memorandum”), dated 25 September 2014 which is an internal Bank document and was provided to the Applicant for the first time when the Bank filed its Answer in the present proceedings, shows that the subdivision of the Staff Rule under which the Applicant’s employment was declared redundant was paragraph 8.02(b) (Position Abolished) of Staff Rule 7.01 (Ending Employment). According to the Redundancy Memorandum, the three GE positions that were abolished provided: analytical support for the formulation of the Knowledge Exchange and Learning Unit (LLIKL); training material to the Art of Knowledge Exchange (eLearning, workshop, toolkit, multimedia components, and online resources); support to the administration of the related workshops; support to the preparation of a major June 2014 conference; and support to various aspects of the Community of Practice on Knowledge Hubs.

29. When describing the position abolished, the Memorandum stated that:

With some WBIKE activities being phased out or cancelled, the work program associated with this particular position shifted towards cross support (3 of the 4 FY deliverables) with units outside the [Vice Presidential Unit (VPU)] or in units which have since left the VPU. The fourth deliverable focused on supporting the Community of Practice on Knowledge Hubs (mainly revamping the member database and comprehensive survey of membership ahead of major June 2014 conference, scanning for/identifying and reaching out to potential resources in 7

organizations regarding the planning and implementation of learning and knowledge sharing activities for the community of practice).

30. It also stated that

[i]n the case of the GE position occupied by [the Applicant], shifts in the workload demand arising in FY14 translated into 3 out of 4 FY deliverables being cross-support activities that fall outside the VPU or with units which have since left the VPU. These activities will not be reassigned within the VPU. The remaining FY14 deliverable focused on a type of support to the Community of Practice on Knowledge Hub that is substantially and materially reduced.

31. On 29 September 2014, the Applicant was provided with a Notice of Redundancy. It stated in pertinent part:

This memorandum confirms your conversation with [Mr. B] in which you were informed that with the concurrence of the Head of the HRS Corporate Operations and Chair of the Severance Review Group, I have determined that your employment has become redundant. This redundancy will take effect October 1, 2014. This decision has been taken in accordance with Staff Rule 7.01, paragraphs 8.02 and 8.03.

32. The Notice did not specify which provisions of the paragraphs applied to the declaration of the Applicant's employment as redundant.

Assistance provided by the Bank to the Applicant

33. The Applicant and the Bank disagree as to the extent of assistance provided to the Applicant before and after the declaration of redundancy.

34. According to the Bank, after the Applicant was informed in May 2014 that her employment would become redundant, she was the recipient of "a great deal" of support from the Bank and WBI management. The Applicant, however, denies this and states that after informing her of the redundancy, management steered the Applicant toward positions that she had no chance of securing while discouraging her from applying to positions in which she expressed interest. Furthermore, she states, the HR officers did not provide any guidance or support to her until she

reached out to them in August 2014. Even then, she claims, HR officers appeared interested only in discussing the Applicant's "exit options." Meanwhile, she states that the Bank hired two new staff members in LLI with similar education to that of the Applicant's and a Short-Term Consultant (STC) to serve as Community Manager of the Knowledge Hubs project – a task for which the Applicant claims that she had the requisite skills and experience.

35. The efforts of the parties to place the Applicant in another position in the Bank were unsuccessful.

36. The Applicant filed her Application with the Tribunal on 13 April 2015. She requests the Tribunal to order: (i) rescission of the redundancy of her position; (ii) reinstatement as a level GE Operations Analyst in LLI or elsewhere in the World Bank with no loss of continuous service; (iii) compensation in the amount of the Applicant's salary and benefits from 1 April 2015 until the date of her reinstatement; (iv) such additional compensation as the Tribunal deems fair and just for the harm to the Applicant's professional reputation and personal life, the loss of potential benefits and income, the intangible damages and distress, and the pain and suffering caused to her; and (v) attorney's fees and costs in an amount of \$29,637.84.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Main Contentions

37. The Applicant contends that: (i) the Bank failed to give her adequate warning regarding issues concerning her career prospects, inform her of problems regarding her skills mix, or provide sufficient training to improve her skills; (ii) the redundancy decision was not justified under Staff Rule 7.01, paragraph 8.02(b); (iii) the Bank failed to follow proper procedures in declaring the Applicant's employment redundant because it failed to notify the Applicant of the exact and correct subdivision of the applicable Staff Rule under which her employment was being terminated; (iv) the Bank failed to satisfy the requirements of Staff Rule 7.01, paragraph 8.03 in selecting the Applicant's position for redundancy; and (v) the Bank failed to try genuinely to find an alternative

position for the Applicant but instead presents a misleading and inaccurate picture of the assistance it provided to the Applicant.

The Bank's Main Contentions

38. The Bank contends that: (i) there was no reason for the Bank to give the Applicant warning regarding any issues concerning her career prospects; (ii) the determination that the Applicant's employment would become redundant was proper and justified under Staff Rule 7.01; (iii) the Bank followed a fair and reasonable procedure by complying with the requirements of due process and providing the Applicant with notice of management's decision to abolish her position; (iv) the Bank provided an extraordinary amount of assistance to the Applicant after she was informed that her employment would become redundant; and (v) the Applicant's request for relief should be denied not only because the Application is without merit but also because the request for relief is disproportionate and unsupported by evidence.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Scope of Tribunal's review of redundancy decisions

39. The decision to declare a position redundant under the applicable Staff Rules is an exercise of discretion by the Bank. Review by the Tribunal is limited to cases where there has been an abuse of discretion, such as where a decision is arbitrary, discriminatory, improperly motivated or carried out in violation of fair and reasonable procedures. (*See Harou*, Decision No. 273 [2002], para. 27; *Martin del Campo*, Decision No. 292 [2003], para. 48; *Taborga*, Decision No. 297 [2003], para. 25.)

40. At the same time, the Tribunal has recognized that it may be "exceedingly difficult" for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion, and that it is incumbent on the Tribunal to require the strictest observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy,

[o]therwise, ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in “the interests of efficient administration.” (*Yoon* (No. 2), Decision No. 248 [2001], para. 28; *Husain*, Decision No. 266 [2002], para. 50; *Harou*, Decision No. 273 [2002], para. 27; *Fidel*, Decision No. [2003], para. 24.)

41. The Staff Rule governing redundant employment in the Bank is Staff Rule 7.01 (Ending Employment), Section 8 (Redundant Employment) which prescribes the requirements for the declaration of redundancies. It states, in pertinent part, that:

Definition of Redundant Employment

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

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

Decision on Redundant Employment

8.03 A decision that a staff member’s employment is redundant will be made by a vice president, or where there is no vice president, the responsible departmental director responsible for administering the position, in consultation with the appropriate Sector Board, Network, or other management group, where applicable, and with the concurrence of the Vice President, Human Resources or his/her designee. Where positions are reduced in number under paragraph 8.02(d) of this Rule, the selection of staff members whose employment is redundant will be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively, taking into account the following factors:

- a. The performance (including professional and work-place behavior) of staff members;
- b. Whether the abilities and experience of staff members can be used elsewhere in the Bank Group; and
- c. The existence of volunteers for termination who are willing to accept severance payments pursuant to paragraph 8.08 of this Rule.

Notice of Redundancy

8.04 Staff members will receive a written notice of redundancy. The notice will state that the staff member's employment is redundant, and that unless the staff member is reassigned, the staff member's employment will be terminated six months from the effective date of the notice of redundancy.

42. In accordance with the Staff Rule and the jurisprudence of the Tribunal, the Tribunal will examine whether the decision to declare the Applicant's employment redundant was made in the interests of efficient administration of the Bank and was a reasonable exercise of discretion by management or whether such decision was substantively or procedurally flawed.

*Reorganization/Redundancy of the Applicant's position/
Legitimate rationale/Proper process*

43. The redundancy of the Applicant's employment in 2014 was the result of a wide reorganization that affected the entire institution and eventually WBI/LLI. The documents of record show that there was a legitimate rationale for the reorganization and the need for redundancies. In this respect, the Redundancy Memorandum states in relevant part:

Possibility of a WBI VPU-wide re-organization emerged in the course of FY14. While the specifics were not known (would depend on size of budget cuts and nature of new mandates),... [i]n April, the scale of the re-organization became clearer.

In April of 2014, the VP [Mr. S] announced in a townhall meeting that in addition to budget cut impacts, there was a need to move towards a new business direction and consolidation of the work program. This denoted a change in focus of our new business plan and deliverables per the new mandate in LLI. This implied that as of 1 July 2014, WBI would be reorganized to LLI (Leadership, Learning and Innovation VPU).

Some units were more affected than others (including WBIKE). As part of the VPU reorganization, the budget for the Knowledge Exchange was drastically reduced. This budget cut is consistent with the migration of the Knowledge Exchange Program from developing training material (very labor intensive at all levels) to rolling out training programs (less labor intensive and requiring fewer staff).

44. Furthermore, in his written statement filed with the Tribunal, Mr. B affirmed, among other things:

[WBI] was to become the Leadership, Learning and Innovation Vice Presidency (“LLI”) and LLI would be given several new mandates and a significantly smaller budget. These new mandates meant a shift in focus to leadership, learning for staff and culture change, and a number of functions were to be redesigned or would migrate to other parts of the Bank with some assignments becoming unnecessary. At the same time, the budget cuts would require a reduction in the total number of staff. For example, some units were abolished or merged. The [Knowledge and Exchange Unit] was particularly affected, and ten positions were identified as potentially redundant unless alternative positions could be found for the relevant staff members or such staff members would accept exit packages offered by the Bank.

45. While it is undisputed that there was a genuine reorganization in WBI/LLI taking place at the time the redundancy of the Applicant’s position was declared and, in this context, work programs and staffing needs were revised, the Applicant has claimed in her pleadings and her responses to the document production in this case that there was no legitimate rationale for declaring her position redundant.

46. At the crux of the Applicant’s case is her claim that she received no written notification of the exact and correct subdivision of Staff Rule 7.01, paragraph 8.02, under which her employment was declared redundant. Instead, she states, she was given a number of contradictory and confusing rationales for the decision. She contends that it was only when the Bank produced the Redundancy Memorandum with its Answer before the Tribunal, that she became aware that her position had been abolished under paragraph 8.02(b) of Staff Rule 7.01. According to her, it was only then that she was able specifically to address the redundancy rationale and establish that the redundancy of her position could not be justified as abolition of post, because the Bank had failed to demonstrate that her position or work functions had been truly abolished. Furthermore, she adds, the other rationale for the redundancy of her position given to her by Mr. B in his e-mail to her of 21 August 2014 and referring to the evaluation of the Knowledge Exchange team members would seem to suggest that the Applicant’s position was declared redundant under Staff Rule 7.01, paragraph 8.02(d). In addition, she states, the alleged reference by Mr. S to her skills mix as a reason for the

redundancy of her position would appear to indicate that her position was declared redundant under paragraph 8.02(c) of Staff Rule 7.01.

47. The Bank appears to admit in its pleadings that the subdivision of the Staff Rule under which the Applicant's employment was declared redundant, namely paragraph 8.02(b), was not included in the Notice of Redundancy given to the Applicant on 29 September 2014. The Bank characterizes this omission as regrettable, an oversight and a "limited" procedural error. However, the Bank states, the Applicant had been informed orally during her meeting with Mr. B that her position was being abolished and the Notice of Redundancy explicitly referred to the Applicant's conversation with Mr. B. The Bank also points out that the Redundancy Memorandum dated 25 September 2014 signed by Mr. S, and according to which the redundancy of the Applicant's position was approved, clearly stated that the Applicant's position was being abolished and referred to Staff Rule 7.01, paragraph 8.02(b). The Bank denies that Mr. B gave a different reason for the redundancy of the Applicant's position when he referred to the 19 May meeting in which management attempted to place staff in new positions. It also denies that Mr. S, Ms. AB, or the Vice President, HR, gave a different reason for the redundancy decision.

48. Furthermore, the Bank justifies the omission of the exact subdivision under which the redundancy of the Applicant's position was declared by stating that the Staff Rule does not specify that the notice of redundancy must refer to a specific subdivision of paragraph 8.02, and contends that the Applicant elevates form over substance. It also states that the Tribunal has found that a staff member must be clearly notified but not that such notification must be in writing and refers to para. 60 of CC, Decision No. 482 [2013].

49. The Tribunal observes that the notification of the correct subdivision of the Staff Rule under which the Applicant's employment was declared redundant is paramount as it is not simply an issue of procedure but, most importantly, one of substance. In its jurisprudence, the Tribunal has underscored the importance of invoking the correct subdivision of the Staff Rule dealing with redundancy. In *Yoon (No. 2)*, Decision No. 248 [2001] the Tribunal held at para. 37 that

the validity of a redundancy decision cannot be based on such casual speculation as to what would eventually happen in the future. Nor can the Tribunal subscribe

to the view that if Staff Rule 7.01, paragraph 8.02(c), is found to be inapplicable then resort to another redundancy regime can just as readily be made. The basic elements of due process and the rule of law mandate that a staff member be clearly notified of the exact and correct Staff Rule under which his or her employment is being terminated. That the Bank must invoke the proper subdivision of the Staff Rule dealing with redundancy is not a mere technicality since each of the situations covered by the different subdivisions may have different procedural and substantive requirements. (*See Arellano (No. 2)*, Decision No. 161 [1997], para. 31.) In the absence of such notification, the staff member would indeed be put at a great disadvantage in preparing her defense and presenting her case to her managers and ultimately through the Bank's grievance system.

50. This precedent was also cited in *CC*, a decision to which the Bank refers in its pleadings. In addition, the Tribunal notes that the Staff Rule clearly states that the notice of redundancy must be in writing and that this was never in dispute either in *CC* or in *Yoon (No. 2)*. Furthermore, notwithstanding the Bank's argument that the Applicant in this case, unlike the Applicant in *CC*, was not provided with different explanations or notifications, the record, in fact, shows that the Applicant appeared to have received at least two different justifications for the redundancy of her position: the verbal one in May 2014 from Mr. B regarding the abolition of her post under paragraph 8.02(b) and another in his e-mail of 21 August 2014 to her. The latter appears to refer to a reduction of types or levels of positions under paragraph 8.02(d), and to the elements that are specified in paragraph 8.03 and are taken into account when redundancies are declared pursuant to paragraph 8.02(d) of Staff Rule 7.01, a matter which will be discussed further below.

51. In the present case, unlike in *Yoon (No. 2)*, the Bank did not invoke the wrong subdivision of the Staff Rule, in its written notice to the Applicant. Rather, the Bank did not invoke any subdivision of the Staff Rule. This omission indeed resulted in considerable confusion for the Applicant and placed her at a disadvantage in preparing her defense before a decision was taken in her case by her managers as well as before the Tribunal. Indeed, as the Tribunal found in *Yoon (No. 2)* the invocation of the correct subdivision of the Staff Rule dealing with redundancy is not a mere technicality because the situations covered by the different subdivisions may have different procedural and substantive requirements.

52. As the Tribunal further found in *Arellano (No. 2)*, para. 31:

The question of identifying the specific provision of Staff Rule 7.01 under which the position of the Applicant was declared redundant is of considerable importance, since the Respondent's obligation vis-à-vis the staff member under paragraph 8.02(d) of Staff Rule 7.01 is different from that under paragraph 8.02(b). In situations where positions are reduced in number, the selection of staff members whose positions are to be declared redundant under Staff Rule 7.01, paragraph 8.02(d), must take into account certain elements specified by Staff Rule 7.01, paragraph 8.03, namely:

- a) the performance of staff members;
- b) whether the abilities and experience of staff members can be used elsewhere in the Bank Group; and
- c) the existence of volunteers for termination who are willing to accept severance payments pursuant to paragraph 8.08.

On the other hand, if the declaration of redundancy is based on paragraph 8.02(b), the right to reassignment of staff members whose positions were abolished is determined by the general principles governing reassignment of staff members whose employment is terminated.

53. Most importantly, the Tribunal emphasizes that the identification of the correct subdivision of the Staff Rule enables it to review both whether the redundancy decision had a legitimate basis and whether fair and transparent procedures were strictly observed in the Bank's implementation of Staff Rules dealing with redundancy.

54. The Tribunal has required that the Bank identify and apply the correct subdivision of the Staff Rule in relation to the declaration of redundant employment. (*See for example, Mahmoudi (No. 2)*, Decision No. 227 [2000], *Yoon (No. 2)*.) In the present case, the Tribunal takes note of the Bank's failure to give written notification to the Applicant of the relevant subdivision of the Staff Rule dealing with redundancy. This failure and a further review of the record leads the Tribunal to question whether the Bank identified and applied the correct subdivision in relation to the redundancy of the Applicant's position.

55. On the one hand, according to the Redundancy Memorandum, the redundancy was justified as an abolition of post under paragraph 8.02(b) of the Staff Rule which prescribes: "A specific position or set of functions performed by an individual in an organizational unit must be abolished."

56. The Redundancy Memorandum also stated:

Taking into account non-replaced vacant positions, 10 WBIKE positions were abolished with respect to the Knowledge Exchange agenda: 1 GB, all 3 GEs, 2 GGs, 1 GH.

57. The Memorandum goes on to describe the tasks assigned to the three GE Analysts that, as it states, are being phased out:

The formulation of the toolkit, eLearning modules, multimedia components and online resources are now completed and delivered. The June 2014 conference will not be repeated in FY15. The nature of the support to the Community of Practice on Knowledge Hub (a small part of the FY14 OPE-recorded tasks for these 3 positions) has moved to a much more specialized space (Art of Capturing) where none of the individuals in 3 GE positions could be repurposed for a meaningful workload and some aspects have been either cancelled (Living Lab initiative) or were one-off (one time comprehensive revamping of member database management through detailed surveying ahead of the June 2014 conference). The success of the June 2014 conference (500 attendees from 75 countries) also means that the amount of desk work required to identify and reach out to organizations to provide learning opportunities for the community of practice is much reduced. The only remaining task is support to the administration of the Art of Knowledge Exchange workshop which is equivalent to 10-20% of one position and not GE level (rather GB).

Reflecting the phasing out of the above tasks (which started in FY14) and the decreasing level of workload, the 3 GE individuals were tasked with multiple cross-support tasks, mostly outside the VPU or with units which have since left the VPU. This was reflected in the 3 GEs' FY14 OPE (List of tasks/results). In the case of the Applicant the cross-support ended up amounting to 3 out of 4 FY14 deliverables.

58. The Tribunal notes that the above description would seem to support the view that the redundancy of the Applicant's post as well as that of the other GE positions was justified on account of a case of underemployment and abolition of functions.

59. On the other hand, a review of the record suggests that before the decision on the abolition of posts, the reorganization in WBI was conducted according to paragraph 8.02(d) and 8.03 of Staff Rule 7.01. The former prescribes:

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

(d) Types or levels of positions must be reduced in number.

60. Furthermore under paragraph 8.03:

8.03 Where positions are reduced in number under paragraph 8.02(d) of this Rule, the selection of staff members whose employment is redundant will be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively, taking into account the following factors:

- (a) The performance (including professional and work-place behavior) of staff members;
- (b) Whether the abilities and experience of staff members can be used elsewhere in the Bank Group; and
- (c) The existence of volunteers for termination who are willing to accept severance payments pursuant to paragraph 8.08 of this Rule.

61. The Tribunal notes the following documents and communications which indicate that the above provisions were applied.

62. First, the Redundancy Memorandum, according to which the Vice President of WBI/LLI had announced that

in addition to budget cut impacts, there was a need to move towards a new business direction and consolidation of the work program. This denoted a change in focus of our new business plan and deliverables per the new mandate in LLI.

Some units were more affected than others (including WBIKE). As part of the VPU reorganization, the budget for the Knowledge Exchange was drastically reduced. This budget cut is consistent with the migration of the Knowledge Exchange Program from developing training material (very labor intensive at all levels) to rolling out training programs (less labor intensive and requiring fewer staff).

63. Further, according to the Memorandum, a call for voluntary exits was issued for WBIKE (as well as another unit). The Memorandum mentioned that the call for voluntary exits yielded two volunteers by mid-May in WBIKE but this was not enough. An Evaluation Committee then reviewed all WBIKE positions.

64. Second, of particularly importance is the Summary of the Evaluation discussion that took place on 19 May 2014 according to which there was a discussion of the staff in WBICR and WBIKE. The record shows that WBICR was abolished altogether as a unit in the new VPU while the Evaluation Committee stated that “WBIKE will be significantly downsized and reorganized.”

65. The Summary also stated:

We worked from the assumption that an M/E function in LLI would require three staff – 1GG and 2 GF, while [Knowledge Exchange] function will require 3GG and 2GF. ...

We reviewed each staff member against a number of criteria including performance, fungibility, delivery, fit for purpose, and a range of technical skills aligned to each job. ... The respective managers were asked to join part of the discussion to ensure the committee had full information on skills, strengths, weaknesses and an update on efforts to help all staff find positions.

66. The Summary then recommended that three staff be retained for the M&E function and five staff for the Knowledge Exchange function. The Tribunal notes that the above language would seem to discuss the identification of the reduced number of types or levels of positions that would be required to carry out the new work program.

67. The Summary also discussed the re-purposing of the remaining staff to other jobs within LLI; staff that would “move on to other things”; two staff that had volunteered to exit; and three staff who if they did not find other positions or volunteer for exit “would be made redundant.”

68. Third, a matrix attached to the Summary of the Evaluation Committee shows that staff of all levels were compared against each other on the basis of the following criteria: performance, strength, results orientation and fungibility of skills which included analytical skills, the ability to deliver corporate work, managing M&E work, ability to support LLI work, and TTL experience for GG staff only. The Tribunal notes that all of these criteria are factors taken into account under paragraph 8.03 when the redundancies are effected pursuant to paragraph 8.02(d), with “fungibility” being described under paragraph 8.03(b). In relation to the Applicant, the matrix stated: “Skills [did] not match any other position in WBI,” also suggesting that judgment about the

skills of the Applicant was made by management in order to decide whether they were such as to permit the Bank Group to carry out its work effectively. This was consistent with the language of paragraph 8.03 of Staff Rule 7.01 which states: “Where positions are reduced in number under paragraph 8.02(d) of this Rule, the selection of staff members whose employment is redundant will be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively.”

69. Fourth, Mr. B’s e-mail to the Applicant of 21 August 2014 stated that the Evaluation Committee had, as part of a thorough and comprehensive evaluation, identified two Knowledge Exchange Team members that met the aforementioned criteria with regard to the specific needs of the Leadership Team and were therefore considered as a possible match for this team. He stated that the Committee had “looked very carefully at the Applicant’s strengths and skills” but had not found a match.

70. A review of the above documents and of the language used in them to describe the manner in which redundant employment was determined, by comparison to the language in paragraph 8.02(d) and paragraph 8.03 of Staff Rule 7.01, lends support to the view that the reorganization in WBIKE was carried out under paragraph 8.02(d) and that certain types of positions were reduced in number in order to carry out “the new business direction” and “the consolidation of the work program.” Even though it was stated in the Redundancy Memorandum that the duties of the Applicant’s position were phased out and thus the position would be abolished under paragraph 8.02(b), the Applicant was at the same time compared to other colleagues on the basis of the criteria set out at paragraph 8.03. The Tribunal’s analysis shows that, at the very least, the Bank appears to have conflated the procedures regarding the declaration of redundancies, and, in particular, that of the Applicant’s position and that the redundancy of her position was not that of a true abolition under 8.02(b) but that of reduction of positions under 8.02(d).

71. One consequence of the fact that the Bank appears to have applied both subdivisions of the Staff Rule to the Applicant’s redundancy is related to the principle enunciated in *Yoon (No. 2)*, namely that the Bank must invoke the proper subdivision of the Staff Rule dealing with redundancy as such invocation is not a mere technicality since each of the situations covered by the different

subdivisions may have different procedural and substantive requirements. (*See Arellano (No. 2)*, para. 31.)

72. The Tribunal has consistently criticized the mixing of procedures in relation to declaration of redundancies. The Tribunal stated at para. 58 of *Martin del Campo*, a decision which dealt with redundancies under 8.02(d):

If the Applicant had been declared redundant because of his deficient performance, the decision would be clearly unlawful. The same would in all likelihood be true if the Tribunal found that the decision had been based on his particular underemployment [under 8.02(b)]; that would be wrong because the stated basis was a compelling need to effect broad cutbacks.

73. Furthermore, the Tribunal stated in *Mahmoudi (No. 2)*, para. 45:

Accordingly, to motivate a redundancy decision under paragraph 8.02(c), it is not enough to observe that a staff member is underemployed. Such a conclusion might justify redundancy under paragraph 8.02(b) (abolition of position), but the fact of underemployment, standing alone, does not lead to an unavoidable inference that the position “has been redesigned.” Managers understandably have discretion to assign staff members in accordance with their perception of suitability and effectiveness. This discretion would be abused if staff members could be forced into redundancy by the mere fact of underassignment. Significant and persistent underemployment is clearly indicative of a problem that needs to be resolved. The Bank cannot afford the opportunity cost of unproductive human resources. The way to resolve that problem, however, cannot be to apply paragraph 8.02(c) – unless the staff member’s position has *truly* been redesigned. It would be an abuse of discretion, let alone language, to conclude that a position must somehow have been unintentionally “redesigned” simply because there is a low demand for the incumbent’s services. The element of conscious deliberation inheres in the concept of a “redesigned position.”

74. In addition, the fact that the Bank did not notify the Applicant of the correct applicable provision of the Staff Rule in her case had the result noted in *Yoon (No. 2)* that “the staff member would indeed be put at a great disadvantage in preparing her defense and presenting her case to her managers and ultimately through the Bank’s grievance system.” In fact, as shown by the pleadings, the Applicant has been forced to respond distinctly to the different procedures applied in her case, whether that under 8.02(d) or that under 8.02(b).

75. In response to an apparent application of paragraphs 8.02(d) and 8.03 in her case, the Applicant has stated that the matrix used by the Evaluation Committee to summarize its review of staff members in WBIKE misrepresents and fails to recognize her experience in several critical aspects. The Applicant takes issue with the description of her performance, her alleged lack of experience in M&E, her supposed limited ability to deliver corporate work, the Bank's failure to recognize the Applicant's facilitation-related work, as well as the Applicant's TTL experience, and the lack of consideration of the Applicant's extensive experience with Regional coordination. She also states in her Application that paragraph 8.03 has not been properly applied as there was no reason justifying why she was not retained instead of the Operations Analyst seconded to her unit who had worked at the Bank only since February 2014 (whereas the Applicant had twelve years of experience as an Operations Analyst and had performed in an excellent manner throughout that time). Moreover, the Applicant cannot understand why another level GE Operations Analyst, to whom she was compared, was placed in the Leadership Team within two weeks of her appointment being declared redundant but no similar effort was made to place the Applicant who had previously done work on leadership issues stemming from work she did in Sudan.

76. In addressing the substance of the foregoing claims, the Tribunal observes that, if the Bank followed the procedure under 8.02(d) to decide on the redundancy of the Applicant's position, the question arises whether the Applicant was compared fairly vis-à-vis other colleagues and particularly those at a higher grade level when she was placed in the same matrix with them. This is so even if, as the Bank states, the matrix was prepared so as to evaluate staff and repurpose them for other positions related to the new VPU mandates.

77. The Tribunal has ruled as follows in *Martin del Campo*, Decision No. 292 [2003] at para. 51 regarding the definition of comparative performance in the cases of reduction of positions under 8.02(d) and paragraph 8.03:

The reference in para. 8.03 to "performance" as a factor to be taken into account when making the selection does not address the issue of whether an individual's performance has been satisfactory or not in the sense of a minimum required standard, but whether an individual is *relatively* more likely to contribute to the Bank's effective operations. If there are two absolutely first-class performers in a

relevant grade, the Bank may nevertheless have to face the unpleasant choice of deciding whose loss would be *relatively* less disruptive of effective operations.

78. Therefore even though the matrix seems to conflict with the Applicant's more positive comments in her performance evaluations for FY12 and 13, the comparison of staff in the matrix would be a case of comparative performance and such comparison would not show that the Applicant's individual performance is not good. Nonetheless, the Tribunal notes that the Applicant's concerns may be justified particularly as her M&E experience appears not to have been recognized at all in the matrix and as the matrix shows that a non-GG level staff was given credit for their TTL experience while the Applicant, also a non-GG level staff, was not.

79. A critical issue still is that of fairness in the process in relation to the fact that the Applicant who is a GE level staff had been placed, as the matrix shows, in a list with staff of a much higher grade and not only with staff of her own grade when comparisons were made in WBIKE to decide whom to retain and in order to carry out the new work program as stated in the Summary of the Evaluation Committee. The Tribunal has been critical of such comparison of candidates during a reorganization in order for them to be retained in positions pursuant to Staff Rule 7.01, paragraph 8.02(d).

80. As the Tribunal stated in *Fidel*, Decision No. 302 [2003], paras. 46 and 47:

[T]here is a logical inference that [a staff member] benefited from being compared to a lower-level cohort (GF) than the one in which he would have been the most recent addition and thus more vulnerable (GG). While there is no proof of improper motive, the circumstances are such that they could have camouflaged personal preferences.

On the procedural level, the Tribunal finds that comparing Mr. X's performance with that of the Applicant, under Staff Rule 7.01, para. 8.03(a), was a violation of proper procedure under the circumstances. The Applicant was improperly compared to a staff member who had virtually been promoted to level GG. Similarly, it was improper to compare the Applicant on the basis of fungibility, under Staff Rule 7.01, para. 8.03(b), with a staff member who was de facto at a higher level, as it was on the basis of this comparison that the Applicant's position was declared redundant and Mr. X's position was retained. ... The Tribunal finds that because of this unfair comparison in the Applicant's case, an apparently

reasonable and legitimate redundancy process was vitiated by irregularities with respect to the Applicant...

81. By conducting the comparisons of staff in the manner that it did, the Bank appears to have prejudiced the Applicant's position.

82. Also regarding her claim of being disadvantaged in preparing a proper defense without knowing the specific basis for the redundancy of her position, the Applicant further points out that she had to prepare an additional defense regarding the abolition of her post. In this respect, the Applicant claims that the Bank hired staff and consultants to perform tasks that the Applicant performed in her position, thus showing that her work functions have not truly been abolished and that she in fact was replaced by such consultants and staff. The Bank stated in its pleadings in relation to one of the STCs who was hired by LLI to act as a Community Manager for the Knowledge Hubs that the tasks of the STC were not part of the Applicant's work program. It states that LLI has for several years hired consultants to perform the relevant tasks due to their highly specialized nature.

83. In relation to the examination of claims of abolition of post, the Tribunal has held in *Brannigan*, Decision No. 165 [1997], para. 23 that:

On the assumption that the purported abolition of a position can properly be justified in the interests of efficient administration, the question still remains whether it has been truly abolished so as to warrant the application of Staff Rule 7.01, paragraph 8.02(b). This is a matter of comparing the "old" position with any relevant "new" position. To demonstrate the abolition of a position it is not enough that there may be some differences between the old and new positions; the differences must be ones of substance. The Tribunal has emphasized in this respect the need for the Bank to show a clear material difference between the new position and the position that was made redundant.

84. In *CC*, para. 49, the Tribunal found:

[T]he Applicant was allowed to apply for these new positions and was indeed shortlisted for one of them. However, like the applicant in *Arellano (No. 2)*, Decision No. 161 [1997], who had made a similar claim, the fact that the Applicant may possess the qualifications required for properly carrying out the responsibilities of the new positions is not conclusive in determining whether the

new positions are merely a continuation of the abolished ones. As the Tribunal also found in that case, at paragraph 34:

It will often be the case that some duties will be carried over from an abolished position to a newly created one, and that a staff member will be able to demonstrate the needed skills in the job application process. But that does not mean that the two positions are the same.

85. The Tribunal called upon the Bank to produce documents and correspondence which reflect or discuss the qualifications of staff members or consultants hired in LLI since 29 September 2014. In response, the Bank produced a total of close to 6000 pages of CVs and Terms of Reference for consultants and documents pertaining to the hiring of staff of grade GF and below. Furthermore, according to a list produced by HR, in the year between 29 September 2014 and 29 September 2015, LLI hired 27 staff and Extended-Term Consultants and issued hundreds of STC contracts. While it is not possible to ascertain that one particular position substantially included all the duties performed by the Applicant in the past, it is notable that a number of the positions included a number of the tasks that the Applicant performed in her position and that many of these tasks were now performed by other staff and various consultants. Even though their qualifications may have been considerable and relevant to the business needs of the Bank, the Applicant's qualifications had also received positive feedback in her OPEs.

86. Furthermore, the Tribunal notes that the fact that since the redundancy of the Applicant's position, the Bank hired a number of staff members and issued hundreds of consultancy contracts may be inconsistent with the Bank's position that the reorganization and the associated budget reduction required the redundancy of the Applicant's position. Therefore a question would arise whether the abolition of the Applicant's position was genuine. The Tribunal however does not need to address this question as it finds that the Bank failed to identify and follow the proper procedure, and notify the Applicant of such, and appears to have conflated procedures in relation to the declaration of the redundancy of the Applicant's position, with adverse consequences for the Applicant.

Lack of skills/Inadequate work program

87. The Applicant has also claimed that management put her on the “path to redundancy” since 2008 as it refused to provide her with a decent work program in WBIKE while closing all cross-support opportunities that were offered to her outside the WBI. According to the Applicant, during a meeting that she had in August 2014 with the Vice President of WBI, Mr. S, he told her that she had been at the top of a surplus list since 2008. The Bank states that these allegations relate to events that occurred several years before the redundancy decision. It explains that WBI underwent a significant reorganization and renewal between 2008 and 2010 which affected the Applicant’s work program along with that of many other staff members and asserts that Mr. S did not tell the Applicant that her employment would become redundant because of her skills mix.

88. The Tribunal notes that in support of its position the Bank has offered a declaration by Mr. S in which he denied that he had told the Applicant that her name had been at the top of a “surplus” list for staff to be made redundant since 2008, or that he had told her that her skills mix was the reason for the redundancy of her position. He stated, among other things, that he gave her advice on her career and told her that she might want to consider pursuing graduate studies. The Tribunal further notes that the Applicant has also offered a declaration in which she states that Mr. S told her that when he took over WBI in 2008, a “skills mix assessment” was done and her name “popped ... right up there.” According to the Applicant, this implied that she was “up there” on a list of people to be let go from the Bank because of a perceived “skill mix issue.” In her declaration, the Applicant also claimed that Mr. S told her that management had moved around other staff with “general skills” like hers and had tried to “sustain” her job for her since that time.

89. In view of the declaration of Mr. S, the Tribunal cannot conclude that Mr. S had told the Applicant that she was in a surplus list since 2008 nor that he had told her during the 28 August 2014 meeting that her skills mix was the reason for the redundancy of her position. Furthermore, in view of the conclusions that the Tribunal reached in this case, it does not find it necessary to pass judgment upon this element of the Applicant’s claims.

The assistance provided to the Applicant before and after the declaration of redundancy

90. The Applicant claims that before and after the declaration of the redundancy the Bank did not genuinely attempt to find an alternative position for her. The Bank disagrees and states that it offered the Applicant significant assistance in helping her to find alternative employment.

91. The Bank points out that between May and August 2014, Mr. B met with the Applicant at least ten times to discuss her career, her resume, and specific job application packages. The Applicant, however, states that not all of these meetings concerned the redundancy of her position or finding an alternative position in the Bank.

92. The Bank also states that the WBI management reached out to other managers throughout the Bank for seven non-advertised positions, three of which were in units to which the Applicant had provided cross-support and that for five of the positions, WBI management offered to pay up to six months' salary to facilitate an opportunity for the Applicant to compete for a permanent position. The Applicant alleges that when she followed up with these managers, they indicated that they were not hiring.

93. The Bank also claims that it informed the Applicant of open positions in LLIKL. The Bank further states that after the Applicant had been notified that her employment would become redundant, she applied for seven positions at GF and GE level. However, it states, the Applicant was only shortlisted for one of the level GE positions which was eventually cancelled.

94. The Bank also points out that it offered the Applicant other assistance from the Transition Support unit, and from another company which provides outplacement and career transition coaching services on behalf of the Bank. It also allowed the Applicant to be placed on administrative leave and to keep her desk. It adds that it also granted the Applicant's request for Special Leave which under Staff Rule 7.01, paragraph 13.02, can only be granted under certain circumstances, as well as the Applicant's request to have her periodic severance payments partially converted to a lump sum.

95. The Applicant, however, denies the Bank's assertions and states that after informing her of the redundancy, management steered the Applicant toward positions that she had no chance of securing while discouraging her from applying to positions in which she expressed interest. For example, she states, on 28 May 2014, the LLI Director of Operations forwarded her a job posting which had Terms of Reference completely unrelated to the Applicant's field. Meanwhile, the Applicant states, in June 2014, she asked her manager, Mr. B, to be considered for placement in LLI's Open Learning Campus to utilize the e-learning skills she developed through her work on WBIKE's Knowledge Hubs project. Mr. B responded that the Open Learning Campus would only recruit at GG, GH, and possibly GF levels, suggesting that the Applicant, a level GE, could not be considered. But the Applicant later discovered in September 2014 that the Open Learning Campus had recruited GD, GE, and GF level staff. Similarly, she states, in July 2014, the LLI Partnership team advertised two Operations Officer positions whose functions were similar to those the Applicant had performed successfully for WBIRC before being assigned to WBIKE; however, she states, upon her inquiry to Mr. B and the LLI Director of Operations both responded dismissively, telling her that the hiring manager was looking for someone with more in-depth knowledge of Global Practices.

96. The Applicant also states that the HR officers did not provide any guidance or support to her until she reached out to them in August 2014 and were only interested in discussing the Applicant's "exit options." She adds that the HR Business Partner, Ms. AB, informed the Applicant on 25 August 2014 that she would not be considered for any new position in LLI because the Bank had already considered all options for the new positions and had not found a fit. Meanwhile, she states, the Bank had hired two new staff members in LLI who had Master's Degrees in Public Policy, similar to the Applicant's Master's Degree, and in October 2014, shortly after the Applicant received formal notice of redundancy, Mr. B replaced her with an STC hired to serve as Community Manager of the Knowledge Hubs project – a task for which the Applicant claims that she had the requisite skills and experience and as to which she had received an "Outstanding/Best Practice" in her 2012-2013 OPE.

97. The Tribunal first notes that it is not clear to what extent the Bank actively assisted the Applicant in securing a position in WBI/LLI before the formal declaration of redundancy of the

Applicant's position. Even though the Applicant denies that her managers offered her substantive assistance in this respect it is difficult to substantiate her claims.

98. Second, in relation to assisting staff in finding employment after the declaration of redundancy, the Tribunal notes that the Bank's obligation is spelled out in Staff Rule 7.01, which states in pertinent part:

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

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

99. The obligation of the Bank to assist staff members in finding alternative employment is prescribed, also, in Principle 7 of the Principles of Staff Employment.

100. The Tribunal has held in *Arellano (No. 2)*, para. 42, that:

The obligation of the Respondent, in this respect, is not to reassign staff members whose employment was declared redundant under Staff Rule 7.01 but to try genuinely to find such staff members alternative positions for which they are qualified. It is an obligation to make an effort; it is not an obligation to ensure the success of such effort. (*See also do Sacramento*, Decision No. 493 [2014], para. 43.)

101. In addition, in *Marshall*, Decision No. 226 [2000], para. 45, the Tribunal noted that "the job-search exercise requires efforts from both sides." Furthermore, in *Ezatkah*, Decision No. 185 [1998], para. 24, the Tribunal held that the Staff Rule imposed an obligation on the Bank

to make an effort to place the staff member in existing or known prospective vacant positions for which he or she was qualified. This implied an obligation at the least

to notify the staff member of the existence of such a vacancy and to let her apply for it. ... Whether the Applicant was finally selected or would have accepted an offer to occupy an alternative position is not material.

102. The Tribunal notes that in relation to finding employment after the declaration of the redundancy it is evident that the Applicant faced difficulties in being selected to positions after applying. This can be attributed to the fact that this was a department-wide reorganization and a number of staff were applying for positions, making it difficult for the Applicant to succeed. However, while the Tribunal has ruled that the Bank has an obligation to provide assistance to a staff member to place her in vacant positions even at a lower level, the evidence is not conclusive that the Bank failed to meet its obligation under the Staff Rule, particularly as it offered the Applicant assistance through resources allocated for this purpose. It is notable that the Bank was also very willing to accommodate the Applicant and grant her request for Special Leave under Staff Rule 7.01, Section 13, even though it was not obligated to do so.

Overall Conclusion

103. The Tribunal finds that the Bank did not follow a proper process and apparently conflated procedures regarding the redundancy of the Applicant's position, to the detriment of the Applicant. Reinstatement of the Applicant is not practicable under the circumstances and is not warranted. The Tribunal will award compensation in the amount of 18 months' salary net of taxes.

DECISION

- (1) The Bank shall pay the Applicant an amount of 18 months' salary net of taxes.
- (2) The Bank shall pay the Applicant's attorney's fees and costs in the amount of \$29,637.84.
- (3) All other pleas are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 13 November 2015