

**Decision No. 348**

**Paula Donnelly-Roark,  
Applicant**

**v.**

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

1. The application in this case was received on 25 October 2005. This judgment is rendered in plenary session, with the participation of Jan Paulsson, President, Robert A. Gorman, Francisco Orrego Vicuña, Sarah Christie and Florentino P. Feliciano, Judges.

2. The Applicant retired from the Bank on 1 January 2004 upon reaching the mandatory retirement age. At the time of her retirement, she was a Senior Social Development Specialist, Grade 24, in the Africa Technical Family Environment and Social Development (AFTES) Unit of the Bank. Before her retirement, the Applicant requested an extension of her employment for a further 20 months, which would have qualified her for an annual pension instead of a lump sum payment. The Bank declined her request, and she now challenges that decision.

3. By way of relief, the Applicant seeks an order:

(a) directing the Bank to make 20 months' contribution to the pension fund with the effect of entitling her to an annual pension; or, in the alternative,

(b) directing the Bank to pay the Applicant compensation and costs in the amount of \$373,116.

**Relevant facts**

4. The Applicant joined the Bank as a Short-Term Consultant in 1992. In September 1993, she became a Long-Term Consultant. On 20 July 1998, she accepted an Open-Ended appointment as a Senior Social Scientist, Africa Technical Family Institutional and Social Policy (AFT). She was then 56 years old.

5. Pursuant to Staff Rule 7.01 (Ending Employment), paragraph 4.03(a), which requires a Regular staff member to retire at age 62, the Applicant's employment was to terminate on 31 December 2003. As of that date, the Applicant would have had some eight years and four months of Regular pensionable service, including past pension credit for Non-Regular Staff (NRS) service.

6. Under the rules of the Bank's Staff Retirement Plan (SRP), a member of the SRP must have had ten years of pensionable service to receive a pension. A person with less than ten years of service would receive a lump sum payment instead of a pension. The Applicant wished to fill the shortfall in her pensionable service by obtaining an extension of 20 months to her appointment.

7. Staff Rule 7.01 (Ending Employment), paragraph 4.03(a), provides that:

Employment of a staff member appointed after July 1, 1974, ends at the end of the month in which the staff member's 62nd birthday falls. A staff member nearing age 62 may request an extension of his or her employment. His or her employment may be extended in the interests of the Bank Group, but not longer than the end of the month in which the staff member's 65th birthday falls. The decision to extend employment will be made by the staff member's manager at the level of vice president or above with the

advice of the staff member's department director and agreement of the Vice President, Human Resources.

8. On 30 December 2002, the Applicant wrote to Mr. Richard Scobey, Sector Manager, AFTES, and other colleagues, setting out a proposed work plan for the following year. She also noted that she would not "be fully vested in the retirement plan" at the date of her "required retirement" and indicated that she had been having discussions with the Bank's Staff Association, during which she was told that "a bridge contract, signed by the VP [Vice President], is often worked out so that full vesting can take place." She requested the opportunity to discuss this with relevant colleagues and her Manager when she returned from leave a month later. She apparently believed that such a "bridge contract" would be readily granted so long as her performance was good.

9. The next day, Mr. Scobey e-mailed Ms. Adega Ouma, Senior Human Resources (HR) Officer, with a copy to Mr. James Bond, Sector Director, Africa Technical Family ESSD [Environmentally and Socially Sustainable Development] Front Office. Mr. Scobey informed Ms. Ouma that he was reluctant to grant the extension because he wanted to use the Applicant's position to accommodate someone else, and because the Applicant "does not provide much value added."

10. On 16 January 2003, Ms. Ouma responded to Mr. Scobey's e-mail advising that:

In exceptional cases, mandatory retirement dates can be extended for strong business reasons if both the [Vice President, Africa Region and Vice President, Human Resources] approve. ... [I]t does not look like [the Applicant's] case would fall in this category since you do not need her skills and the requested extension would be more for personal reasons.

11. On 19 January 2003, Mr. Scobey contacted Mr. Steen Lau Jorgensen, Sector Director, Social Development Department (SDV) (again copying Mr. Bond) inquiring whether there was an opportunity in SDV for someone with the Applicant's skills. Mr. Scobey again stated that although he was sympathetic to the Applicant's request, he was disinclined to grant it because he did not consider that there was a strong business case for the extension. On 21 January 2003, Mr. Jorgensen wrote back that there was no suitable position for the Applicant in SDV, but that he would raise the issue at the Social Development (SD) HR Board for its consideration. After consulting with the SD HR Board, Mr. Jorgensen informed Mr. Scobey that none of the regional SD units had a "business need" for the Applicant's skills.

12. On 17 February 2003, after having consulted HR, Mr. Jorgensen and Mr. Bond, Mr. Scobey wrote to the Applicant advising her that extensions beyond the mandatory retirement age based on "the interests of the Bank Group" are "extremely rare" and that the Social Development Team was "in the process of realigning the work and skills mix" of the Team; they had been "planning for several months" to replace the Applicant's skills. He concluded that the request for extension would not be granted because there was no "business case" for it.

13. On 25 November 2003, the Applicant notified HR that she would be retiring at the end of December 2003. Nevertheless, on 19 December 2003, the Applicant met with Mr. Bond to discuss the extension of her appointment. Mr. Bond confirmed that there could be no extension without a business rationale, but offered to hire her as a consultant after her retirement. He also advised her to see Mr. Callisto Madavo, Vice President of the Africa Region. The same day, the Applicant wrote to Mr. Madavo, formally requesting an extension. She explained that she had raised her request informally with her Sector Manager earlier, and that it had been refused, but that only Mr. Madavo, in his capacity as Vice President, had authority under Staff Rule 7.01 to consider and decide upon an application for a "bridge contract." As Mr. Madavo was on leave, the Applicant met with the Acting Vice President of the Africa Region and the HR Officer in the Africa Regional HR team. This meeting took place on 30 December 2003, the day before the Applicant was due to retire, and the Applicant was advised that her request would not be granted. The Acting Vice President confirmed this in writing on 12 January 2004 in the following terms:

I could not endorse your request for the following reasons. Without a compelling business rationale it

would not be possible to make a case that the extension is in the interests of the Bank Group. ... [W]e have had similar requests in the past from staff, and these were turned down for similar reasons, and to make an exception in your case would create a precedent for the future.

14. On the same day, Mr. Madavo also wrote to the Applicant confirming that her request for an extension would not be approved. In the meantime, her employment had terminated on 31 December 2003. Her mandatory retirement thus became effective as of 1 January 2004, and she received a lump sum payment in lieu of a pension.

15. On 12 May 2004, the Applicant filed her Statement of Appeal before the Appeals Committee. She challenged Mr. Madavo's decision to deny her request as arbitrary. The Bank unsuccessfully challenged jurisdiction. On 11 April 2005, the Appeals Committee, concluding that the Bank did not abuse its discretion in denying an extension of the Applicant's employment, recommended that the Appeal be dismissed. On 28 April 2005, the Vice President of Human Resources accepted this recommendation and advised the Applicant that her claim for relief was denied.

## Summary of contentions

16. The Applicant challenges the Bank's decision to deny her request for an extension of her employment on the grounds that: (1) the Bank applied the phrase "in the interests of the Bank Group" to her in a narrow and arbitrary manner; (2) the denial of extension was unfair; and (3) the Bank's decision was tainted by improper motivation.

### *Arbitrariness*

17. The Applicant claims that the Bank's interpretation of Staff Rule 7.01, paragraph 4.03(a), was unduly narrow, was not supported by the plain meaning of the language and was contradicted by the Bank's own practice. She claims that the Bank's interests would have been served by retaining her in staff status. In addition, Mr. Scobey did not, as required, consult with other managers or relevant staff in the Africa Region before concluding that it was not in the Bank's interests to extend her employment.

18. The Bank contends that the language "in the interests of the Bank Group" in Staff Rule 7.01 refers to the institutional interests of the Bank, and that its practice reflects this interpretation. Although there was no written interpretation of the Staff Rule, on 22 February 1999, Mr. Richard Stern, then Vice President of Human Resources, had expressed in a memorandum to senior management his concern about extensions after reaching mandatory retirement age, and he had reaffirmed the policy that "mandatory retirement should be the normal upper limit on active service and retirements should be fully factored into the staff planning and recruitment processes." Mr. Stern set out the process that management should adopt to control extensions. This policy was implemented with immediate effect. According to the Bank, the Applicant's request for extension arose from her personal needs because she wanted a pension rather than a lump sum payment. Moreover, she bore the onus of showing that she possesses special skills that are difficult to replace, but she has not submitted any supporting evidence to that effect.

### *Unfairness*

19. Invoking general principles of fairness as embodied in the Principles of Staff Employment and the Staff Rules, the Applicant argues that where a rule operates to the detriment of a staff member, the Bank should balance its institutional needs with consideration of the personal circumstances of the staff member. She claims that there was a delay in her becoming a Regular staff member from 1995 until 1998 due to a Bank policy to promote a wider diversity of staff and to bring more African professionals into the Africa Region of the Bank. The Applicant does not directly challenge the delay in her appointment as an Open-Ended staff member, but argues that this prior discrimination should have been taken into account when the Bank considered her request for extension; the failure to do so was unfair. The Applicant argues that in 1998, she was informed that requests for extensions were readily granted if the employee demonstrated good work performance. On this

basis, she had a legitimate expectation that her request for extension would be approved.

20. The Bank submits that the Applicant knew that her appointment would terminate upon her reaching the mandatory age of retirement. The basis of what she described as “widespread Bank practice” was at best nothing more than informal conversations at the time she became a Regular staff. From at least 1999 onwards, the Bank’s practice has been to deny most requests for extension, especially if, as here, such requests are for relatively long periods. The Bank has been frequently faced with requests for extension, but in the previous five years there had been a steady decline in the number of extensions granted. Most of these were of a few days, granted compassionately where the extension greatly benefited an individual and where there were no adverse business consequences for the Bank. The Bank states that the Applicant’s claim for redress from alleged past discrimination is groundless. Finally, the Bank submits that it has applied Staff Rule 7.01, paragraph 4.03(a), consistently to all staff, and did so in the Applicant’s case.

### *Improper motivation*

21. The Applicant claims that her Manager, Mr. Scobey, was improperly motivated when he responded to her informal request to discuss the possibility of an extension and triggered a premature decision. Although she had made significant contributions to the Bank over a long period, Mr. Scobey disparaged her work. A number of people testified before the Appeals Committee to her expertise and to the value of her contributions; yet none of these individuals had been consulted before Mr. Scobey made the initial recommendation not to offer her an extension of her appointment. The Applicant also argues that the process that Mr. Scobey adopted in relation to the application for extension was unfair. The Applicant had not granted him the authority to act on her informal notification of December 2002 to discuss an extension. While she was on vacation, he improperly went “behind her back” to HR and senior management, who did not directly know her or her work. She was thus denied a proper opportunity to make submissions to any of the other managers who were subsequently involved in the decision.

22. The Bank responds that Mr. Scobey was not only entitled to act on the Applicant’s informal request, but that he demonstrated due diligence in consulting the HR Officer and in exploring the possibility of the Applicant being accommodated in another department. The process that Mr. Scobey adopted was fully within the scope of his authority as her Manager. His approach was supported by the testimony of Mr. Jorgensen, Ms. Eleanor Rebollar, HR Manager, and Mr. William Silverman, Program Manager, HR, before the Appeals Committee. The allegation that this was improperly done is not supported by the evidence. At any rate, the Bank observes that it was the Vice President of the Africa Region and not Mr. Scobey who made the ultimate decision.

### **Considerations**

23. The purpose of Staff Rule 7.01 (Ending Employment), paragraph 4.03(a), is to provide explicitly for the circumstances in which a staff member may secure extension of employment upon reaching the age of retirement. The Applicant submits that this Rule should be interpreted to mean that in taking the extension decision, the Bank must consider both the interests of the Bank as an institution and the interests of its staff members. The Bank, however, points out that, in order to correct what the Bank perceived to be indiscriminate approval of applications for extension, HR prepared guidelines for the proper interpretation and application of the Staff Rule, and these were set forth in Mr. Stern’s e-mail memorandum of 22 February 1999 to senior management and HR Team Managers:

[E]xtensions beyond mandatory retirement are permitted when they are in the interests of the Bank Group and when authorized by the staff member’s vice president. The operating assumption is that, with proper staff planning and attention to work program needs, extensions should be very much the exception ... .

The Bank argues that, as these guidelines prohibit extensions unless the Bank considers that its own interests would be served, the “interests of the Bank Group” must be distinguished from and elevated above the interests of an applicant.

24. The Applicant, in turn, contends that fair enforcement of rules requires them to be “clearly written and

available,” so that the 1999 Stern memorandum should be disregarded. The Bank counters by citing *de Merode*, where the Tribunal stated that “[t]he practice of the organization may also, in certain circumstances, become part of the conditions of employment. Obviously, the organization would be discouraged from taking measures favorable to its employees on an *ad hoc* basis if each time it did so it had to take the risk of initiating a practice which might become legally binding upon it.” (*de Merode*, Decision No. 1 [1981], para. 23.)

25. The Tribunal is “bound to decide on the basis of law” (*Setia*, Decision No. 134 [1993], para. 31). The Tribunal finds that the Bank’s interpretation of Staff Rule 7.01, paragraph 4.03(a), is reasonable in light of the guidelines set out in the Stern memorandum. The Bank has consistently applied these guidelines. It is not necessary that the Rule itself be formally amended to incorporate the guidelines. The Tribunal considers that the Applicant’s interpretation of the phrase “in the interests of the Bank Group” runs counter to the purpose of the Rule. There may be circumstances in which the interests of an organization would include those of its employees as stakeholders in the enterprise, but it has not been shown that such circumstances exist in this case.

26. The principal factual dispute between the parties is whether the Applicant’s skills were so rare and specialized that they would be difficult to replace upon her retirement, and that, even on the “business interests” model, it was thus in the interests of the Bank to retain her in employment. To interfere in the Bank’s evaluation in this respect would trespass on the Bank’s legitimate authority to determine its direction and the skills mix that it deems necessary. The Tribunal will intervene only if there is sufficient evidence that the Bank went about the assessment of requirements in an unlawful or unfair manner.

27. The Applicant’s submission that the Bank violated the Staff Rules when it declined to grant her an extension in spite of her talents is not persuasive. The Applicant’s managers exercised lawful authority to reorganize the unit and to redefine the scope of the duties of its staff. In matters involving assessment of technical competence of staff, or evaluation of staff performance, the Tribunal will not substitute its judgment for the discretionary decisions of management. (*Oraro*, Decision No. 341 [2005], paras. 39, 59.) The fact that a retiring staff member’s skills have been valuable to the Bank in the past does not insulate him or her from the risk that the relevant work group requires a new skills mix that the staff member does not possess. (*Mahmoudi* (No. 2), Decision No. 227 [2000], para. 24.)

28. In any event, the Applicant’s submission that her satisfactory past performance should guarantee extension beyond retirement contradicts the clear language of the Staff Rule, which requires such extensions to be “in the interests of the Bank Group.” It may be taken as given that it would never be in the interests of the Bank to extend the contract of a staff member whose work performance had been unsatisfactory. It follows that good performance is a necessary but not sufficient condition for extension. As the Tribunal held in *McKinney*, Decision No. 187 [1998], para. 16, “good performance evaluations ... alone cannot suffice to overcome the clear termination date set forth in the contract of employment.” More recently, the Tribunal held that performing to an expected level does not entitle a staff member on a Fixed-Term contract to renewal of that contract or variation of its terms. (*Rittner*, Decision No. 339 [2005], paras. 30-33.)

29. As noted in the 1999 Stern memorandum, retirements and replacements should be anticipated. It appears that as early as the end of December 2002, when the Applicant made her informal request to Mr. Scobey, he had already been planning for her retirement at the end of the following year. As he wrote to Mr. Jorgensen, “[I] would like to use her position to recruit skills that are presently missing in AFTES relating to project level social analysis and PSIA [Poverty and Social Impact Analysis] work.” The Tribunal will not consider whether the Bank made the wisest decision, but only whether or not it was an abuse of discretion. The Tribunal “cannot judge whether a given policy could have been wiser” (*Lavelle*, Decision No. 301 [2003], para. 28). The same principle applies to discretionary decisions. Even if the Applicant had excellent skills, this does not mean that the decision was an abuse of the Bank’s discretion.

30. The Applicant also asserts, in connection with her claim of arbitrary treatment, that the Bank should have considered that her service would fall short of the minimum period for eligibility for a pension upon her retirement. She does not assert that she was unaware of the mandatory retirement but rather that this did not

at first concern her because it was only in 2003 that she became aware that it had become more difficult to secure extensions. The Tribunal observes that during the period that the Applicant was in NRS status, she had the opportunity to invest in her own retirement plan. In 1998, when she was appointed to Regular staff status, she was already 56 and she knew that unless her contract of employment was extended she would not receive a pension upon her retirement. The Applicant thus took the job knowing of this limitation upon her entitlement to benefits.

31. The Applicant submits that when deciding whether to extend her employment the Bank ought to have taken account of the reasons for her short service. She argues that her employment in Regular staff status had been improperly limited by reason of discrimination because of her nationality, and therefore that management's failure to redress the prior discrimination amounted to unfair treatment. The argument lacks foundation. First, it is not established that the Bank's delay in converting her employment was improperly based on a prohibited discriminatory ground. The Bank as an international organization is encouraged to make its recruitment decisions with due regard to the geographical diversity of its staff. The circumstances of the Applicant's employment with the Bank *before* 1998 are, moreover, not relevant to the current proceedings. At the end of 2003, the Bank was required to consider the Applicant as someone who had eight years of service and to ignore what might have been the reason(s) for her having less than 10 years of pensionable service. To do otherwise would be to permit the Bank to prefer the Applicant on the basis of her nationality in order to avoid retirement, and would amount to a breach of the principle of equal treatment. In any event, the Applicant should have challenged the alleged unfairness in delaying her appointment at the time this claim arose and not many years later when the inevitable consequence of that alleged unfairness occurred. The Tribunal has on many occasions "insisted on the importance of the statutory limitations." (*Mitra*, Decision No. 230 [2000], para. 11.)

32. The Applicant further contends that she was in any event entitled to rely on the doctrine of legitimate expectations recognized in administrative law. The Tribunal has had occasion to consider legitimate expectations as an aspect of fairness, and has held that "those who invoke its operation oppose a change in policy and had at the very least 'relied, and have been justified in relying, on a current policy or an extant promise.'" (*Lavelle*, Decision No. 301 [2003], para. 26 (citing *R v. North and East Devon Health Authority, ex parte Coughlan* [2000] 3 All ER 850, 871-2, para. 65.)) In relation to the expiry of a Fixed-Term contract, the Tribunal has held that such a contract cannot be extended by operation of the doctrine of legitimate expectation unless "circumstances are shown which reasonably warrant the inference by a staff member that the Bank in fact made a promise to extend or renew his or her appointment 'either expressly or by unmistakable implication.'" (*Rittner*, Decision No. 339 [2005], paras. 30-33.)

33. For the purposes of reviewing Bank decisions relating to employment extensions, there is no material difference between a contract of employment that terminates automatically by its own terms and one that ends when the incumbent reaches mandatory retirement age. The principles in *Rittner* thus apply in this case. The Applicant states that she asked several colleagues, including sector managers, what options were available to her, and she alleges that "[t]here was a strong consensus expressed that extension contracts to 'bridge' time gap would be easy to get as long as the person's performance was 'good'." The Applicant has not demonstrated that the assurances on which she relies were given to her by a person with any authority to do so, and that she acted on those assurances. The Tribunal concludes that the Applicant has not established that she had a legitimate expectation that her appointment would be extended.

34. As for the Applicant's next major contention, the Tribunal finds that her allegation that the decision of her Manager was tainted by improper motive is not supported by the evidence. It is not established that Mr. Scobey referred to the Applicant as a "troublemaker," nor that he "prefers young untrained staff in lieu of competent staff professionals." The fact that, upon her retirement, Mr. Scobey declined to authorize payment of a consultancy fee which she considered commensurate with her experience and skills is not enough to warrant a finding that he was improperly motivated or that he denigrated her skills. In addition, three other managers were also involved in making the decision not to extend her employment. There is no evidence that they were improperly motivated against her or improperly influenced by Mr. Scobey. In fact, the Applicant testified before the Appeals Committee that it was not her position that "either the personal intent of the Vice President's office or the personal intent of the Director's office and the Director was to take either discriminatory or arbitrary

action.”

35. The Applicant's final principal claim is that “[a] consistent pattern of sabotage perpetrated by Mr. Richard Scobey clearly manipulated the request process so that it became impossible for the Applicant to receive a fair hearing.” The Bank's rules set forth no particular procedure for how a request for extension should be made or in what manner a manager ought to respond. The Applicant stated in her letter to Mr. Scobey of 30 December 2002 that she wanted to discuss her proposal with him on her return from vacation a month later. The Tribunal cannot see how Mr. Scobey's acting on the Applicant's informal request without first having consulted her was duplicitous.

36. The Bank guidelines embodied in the 1999 Stern memorandum mandate early intervention. Mr. Scobey had direct knowledge of the Applicant's skills and had access to her work record. He was not keen to extend her employment in the Unit that he managed. There is nothing reprehensible in this. He nevertheless sought other opportunities for her, elsewhere in SDV. This too cannot be criticized. The fact that the Applicant did not know that he had acted on her request does not make his conduct unfair. Nor does it justify the assertion that his conduct amounted to a consistent pattern of sabotage against her. Her claim that her Manager's conduct was surreptitious, bordering on dishonorable, is not justified. Although the chief target of the Applicant's reproach is Mr. Scobey, she also states, citing several other managers, that “each manager used the narrow ‘business interest’ rationale to wipe the fairness issue off the table.” There is no proof that these several managers “sabotaged” her interests.

37. The Tribunal concludes, in light of Staff Rule 7.01, paragraph 4.03(a), that the Bank's decision not to extend the Applicant's appointment beyond her mandatory retirement was a proper and valid exercise of the Bank's discretionary authority. No convincing evidence was tendered to support the allegations of abuse of discretion, arbitrariness, violation of procedural requirements and improper motivation.

### **Decision**

The Tribunal hereby dismisses the application.

/S/ Jan Paulsson  
Jan Paulsson  
President

/S/ Nassib G. Ziadé  
Nassib G. Ziadé  
Executive Secretary

At Washington, DC, 26 May 2006