



World Bank Administrative Tribunal

2017

Decision No. 567

**EG,
Applicant**

v.

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

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

**EG,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 6 September 2016. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 13 October 2017.

3. The Applicant challenges the following: (i) the Bank's breach of a promise to grant the Applicant a one-year Extended-Term Consultant (ETC) contract; (ii) the non-renewal of the Applicant's Short-Term Consultant (STC) contract; and (iii) the Bank's refusal to provide a letter of reference to the Applicant.

FACTUAL BACKGROUND

4. The Applicant worked for the Bank as an STC with the Operations Risk Management, Environmental and Social Services Advisory Team (OPSOR-ESSAT), Operations Policy and Country Services Vice Presidency (OPCS), from 18 August 2014 to 30 June 2015. From 14 December 2015 to 21 June 2016, the Applicant held another STC contract in the Energy Global Practice, Latin America and the Caribbean (GEN04).

Alleged promise of an ETC contract

5. On 8 January 2015, the OPSOR Chief Officer emailed the Applicant's supervisor stating:

As there is a bit of budget left over since we have had seven positions unfilled since Aug 1, shall we try to give [the Applicant] an ETC? [I]f so can one of you draft a TOR [terms of reference]? We will have to get [the OPCS Vice President] to clear.

6. The same day, the Applicant's supervisor responded saying, "Yes. I will work on it."

7. Over the next few days, the Applicant worked with her supervisor to draft the ETC terms of reference. On 13 January 2015, upon the suggestion of the Applicant's supervisor, the Applicant met with the OPSOR Chief Officer to discuss the scope of the ETC contract, including specific work duties.

8. On 14 January 2015, the Applicant met with her supervisor to discuss the final details of the ETC contract, including the salary. Later that day, the Applicant emailed her supervisor a draft of her terms of reference. After slightly revising the draft, the Applicant's supervisor sent the terms of reference to the OPSOR Chief Officer.

9. The Applicant claims that her supervisor called her on 16 January 2015 to inform her that the OPSOR Chief Officer had approved the terms of reference as submitted, and that her supervisor orally promised the Applicant the ETC appointment. The Applicant further claims that the two rejoiced over the good news, and that her supervisor congratulated her and proposed that they celebrate over a bottle of wine during their upcoming trip to Nigeria. The Applicant also claims that her officemate at the time overheard the Applicant thank her supervisor for the ETC offer.

10. After the phone call, on 16 January 2015, the Applicant emailed her supervisor stating:

Many thanks for calling me with such great news on my ETC! [Y]ou certainly made my day :) As we discussed, please find attached a salary table for fees. Happy to further discuss so [sic] at your convenience. Thanks again and I very much look forward to working with you!

11. The record does not contain any response from the Applicant's supervisor.
12. On 16 January 2015, the OPSOR Chief Officer met with the OPCS Vice President to discuss OPCS strategic staffing for fiscal years (FY) 2015 to 2017. This exercise included the following three phases: first, priorities for FY2015 to FY2017 in OPCS were developed; second, the required staffing in OPCS was reviewed in line with agreed priorities; and third, each unit in OPCS, including OPSOR, prepared a unit-specific strategic staffing submission for the OPCS senior management team's consideration.
13. In late January 2015, the Applicant went on mission to Nigeria with her supervisor.
14. On 27 January 2015, according to the Bank, the Applicant's supervisor spoke to the OPSOR Chief Officer on the phone to request an update on the Applicant's ETC appointment. The OPSOR Chief Officer asked the Applicant's supervisor to inform the Applicant that there was a real likelihood that the ETC position would no longer be feasible due to anticipated budget cuts in the ongoing strategic staffing exercise.
15. On 30 January 2015, still on mission in Nigeria, the Applicant's supervisor conveyed the OPSOR Chief Officer's message to the Applicant. The Applicant claims, however, that her supervisor could not provide a definitive answer, and rather indicated that she would speak with the OPSOR Chief Officer upon her return because the Applicant's supervisor wanted the ETC offer to be honored.
16. On 12 February 2015, after meeting with the OPSOR Chief Officer and the OPSOR Director, the Applicant's supervisor met with the Applicant to inform her that the proposed ETC appointment was no longer possible due to "headcount." The Applicant claims that, in response, she noted that she had worked more days than were stipulated in her STC contract and had not applied to other jobs in reliance on the ETC offer.
17. On 13 February 2015, the OPSOR Chief Officer spoke with the Applicant. While the Bank claims that the OPSOR Chief Officer explained to the Applicant that the proposed ETC position

was no longer feasible due to budget cuts, the Applicant alleges that the OPSOR Chief Officer did not give the Applicant a definitive answer regarding her ETC contract but merely added to the growing cloud of uncertainty. The Applicant contends that the OPSOR Chief Officer advised her to approach Human Resources (HR) to explore the possibility of a 40-day extension of her STC contract, whose 150-day limit was coming to an end, and told her that if that possibility would not work, her STC contract would be extended next fiscal year.

18. Later that day, the Applicant sought advice from an HR Senior Business Partner regarding the possibility of the 40-day extension of her STC contract. The HR Senior Business Partner explained that the 40-day extension was available only for STC staff already working in the Fragile and Conflict-Affected Situations (FCS) program. The Applicant submits that the HR Senior Business Partner informed her that ETC contracts would be phased out the next fiscal year and suggested that she speak with the OPCS Vice President to discuss the proposed ETC contract in the absence of the OPSOR Director and the OPSOR Manager.

19. On 16 February 2015, as a follow-up to her meeting, the HR Senior Business Partner emailed the Applicant to provide her with a website link on the Bank's intranet that contained more information on the 40-day FCS exception. The HR Senior Business Partner urged the Applicant to check with her supervisor and managers if this would be a possibility in her case. The HR Senior Business Partner advised the Applicant to stop working if there were no more days to charge under her STC contract and urged the Applicant to charge all her unclaimed days.

20. On 20 February 2015, the Applicant met with the OPCS Vice President and his Special Assistant to discuss the ETC offer. The Bank states that the OPCS Vice President explained to the Applicant that there was a hiring freeze in OPCS pending the outcome of the strategic staffing exercise, and that a position could not have been offered to her as decisions on individual positions could only be made after this exercise was concluded. The Applicant disputes this assertion.

21. On 5 March 2015, the Applicant emailed the OPCS Vice President to thank him for meeting with her. In this email, the Applicant stated:

I would like to take this opportunity to thank you for your kindness in meeting me on Feb. 20. I highly appreciate the time that you and [the Special Assistant to the OPCS Vice President] took to listen to my situation.

If I may ask, I wonder whether you might have made a decision regarding my ETC? As we agreed, I had a closer look at my remaining days and when I return from this mission I'll have about 5 days left.

22. The OPCS Vice President responded the same day, stating: "I would like to help to the extent possible and have raised the matter with [the OPSOR Director] to review what may be the options that could give you more time." The OPCS Vice President suggested that the Applicant reach out to the OPSOR Director once she had returned from her mission.

23. On 6 March 2015, the Applicant emailed the OPSOR Director to request a meeting upon her return from mission and to discuss options regarding her contract. Specifically, the Applicant stated that she would only "have about 5 days left upon [her] return and unfortunately [would] have to make a decision on leaving the country soon." She added:

[...] I wonder whether you have made a decision regarding my ETC? I truly hope such offer can be honored as that will grant me the opportunity to continue contributing to the team while also having a bit more stability [...].

24. On the same day, the OPSOR Director responded to the Applicant, stating:

Thank [sic] your message. We are handling HR issues at the departmental rather than VP level. [The OPSOR Manager] is looking at options and will get back to you.

25. On 6 March 2015, the OPSOR Manager also responded to the Applicant and stated:

I will handle this. We are trying to find a solution feasible under our HR guidelines. Please come by to talk as soon as you get back.

26. On 9 March 2015, the Applicant emailed the OPSOR Manager to remind her that she would only have about five days left upon her return from mission and requested that they start a dialogue on the options regarding her contract via email. The OPSOR Manager immediately responded, noting:

We are looking at the possibility of getting you an exception to the STC contract limits to allow you to stay on for the rest of the fiscal year. Give me a call to discuss.

27. The Applicant replied the same day, noting:

Many thanks for your prompt response. I have been looking at available options inside the WBG for STC extensions/exceptions to the 150 days limit, and the only opportunity to do so is if I were to work onwards for FCS countries. This option will need the approval of [the Senior Director of the Fragility, Conflict and Violence, GCFDR], overseeing FCS.

Unfortunately, in my current STC assignment with OPSOR, I have not worked with FCS countries. I have only worked with Nigeria but in the context of the safeguards review/II phase consultations. So this is one of the reasons why I've kindly been asking to have my ETC offer honored by OPSOR [...].

28. Later that day, on 9 March 2015, the Applicant and the OPSOR Manager spoke on the phone. The Applicant emailed the OPSOR Manager after the phone call to decline the OPSOR Manager's offer to extend her current STC contract for 40 days. The Applicant noted:

You mentioned over the phone the interest to extend the STC and also grant me another STC next FY. [...] But your kind offer also shows the existing need of a full work program for me which will translate in me working full time as I have been since last summer. Hence, why TORs for my ETC were discussed and prepared between myself, [the Applicant's supervisor] and [the OPSOR Chief Officer] with their approval and submitted to [the OPSOR Director].

[...] I would like to continue with my current TORs on the review and update of safeguards and those agreed in my ETC. Working now with FCS countries, while also exciting, will be a change on the agreed TORs. In addition, and as we also discussed, I have not worked with FCS countries as part of my current assignment with OPSOR.

29. On 10 March 2015, the OPSOR Manager acknowledged receipt of the Applicant's email and noted the Applicant's decision to decline her offer of extension. The OPSOR Manager further stated:

As you recognize yourself we have been trying to help out under the circumstances, but have no other option to put forward at this stage.

30. On 12 March 2015, the OPSOR Manager and the OPSOR Director met with the Applicant. While the Bank claims that the OPSOR Manager explained to the Applicant that no ETC offer could have been made to her because there was an OPCS-wide hiring freeze while the strategic staffing exercise was ongoing, the Applicant asserts that the OPSOR Director informed her that her ETC offer could not be honored because of “headcount.” The Applicant alleges that the OPSOR Manager berated her for being an ungrateful employee and not agreeing to pursue the 40-day extension of her STC contract. The Applicant also alleges that the OPSOR Manager advised her not to speak up if she wanted any contract with OPSOR.

31. On 13 March 2015, the Applicant emailed the OPSOR Manager to reiterate her decision not to pursue the extension and requested that her ETC offer be honored. Later that day, the OPSOR Manager confirmed by email that OPSOR was not able to offer the Applicant a new ETC contract. The OPSOR Manager specifically stated:

I would like to confirm the message that was conveyed to you by [the OPCS Vice President] and [the OPSOR Director]; i.e. we are not able to offer you an ETC at this point.

I would also like to note that having reviewed the correspondence you had forwarded me and having gone over the past discussions that you had with your colleagues, I do not believe that anybody had made you an offer for an ETC.

Non-extension of the Applicant’s STC contract

32. The Applicant met with the Ombudsman on 18 and 27 March 2015 to share details regarding the ETC offer and the hostility she alleges to have endured from the OPSOR management. According to the Applicant, the Ombudsman told her that he would speak to her managers individually and instructed her not to charge her unpaid STC days pending the outcome of those discussions.

33. The Applicant asserts that her meeting with the Ombudsman triggered a series of retaliatory acts by her supervisor. The Applicant claims that her supervisor excluded her from an email of 19 March 2015 addressed “[t]o the members of the ESS8 [Environment and Social Standard 8 on cultural heritage] Working Group.” The Applicant also claims that she was excluded from

subsequent communications regarding ESS8 even though she had been an integral part of this working group from the beginning of her STC contract.

34. On 31 March 2015, the Applicant emailed her supervisor stating: “You had mentioned I should save some days for that mission [in Paris], so I’ll gladly follow your instructions on how to proceed.” The Applicant’s supervisor immediately responded that “[the mission] is planned to take place on April 27 and 28. There is no need for you to save days for the mission, as I, with help from one or two others, will act as rapporteur.”

35. Sometime in early 2015, the Applicant asserts that her supervisor promised to provide her with a letter of reference at the end of her STC contract. However, the Applicant claims that on 7 May 2015 her supervisor told her that she would not provide the Applicant with the letter in question unless she reconsidered the 40-day extension initially proposed to her.

36. On 8 May 2015, the Applicant met with the OPSOR Chief Officer and the OPSOR Manager. The Applicant asserts that her managers yelled at her for having spoken with the OPCS Vice President and the Ombudsman and informed her that they would not pursue the 40-day extension of her STC contract. The Applicant claims that her managers told her that they would not be renewing her STC contract for the next fiscal year.

37. Later that day, on 8 May 2015, the OPSOR Manager emailed the Applicant stating:

This is to confirm the message [the OPSOR Chief Officer] and I just conveyed to you during our meeting today.

Please be advised that based on our present business needs, we will not pursue a 40[-]day extension to your contract. I trust this clarifies the OPSOR management’s position.

Please make sure you submit all your days and expenses immediately to ensure proper payment under your present contract.

38. On 19 May 2015, the Applicant’s supervisor emailed the Applicant stating:

Just checking in. At this point, I think you should hand in your time sheet for OPSOR. They're getting close to closing out the accounts for FY15, and they really need you to file your days. If you do get extra days, I assume you will be working somewhere else – and can work out the arrangements with the other employer.

39. On 29 May 2015, the OPSOR Director emailed the Applicant stating:

As you know, your STC contract with OPCS is set to expire and I understand from your supervisor [Applicant's supervisor] that all your work in your TOR has been completed. We note that you have not submitted any claim since March 2 despite several reminders, and you still have 25 unclaimed days. We would like to ask you to do so immediately, your ongoing discussions with the Ombudsman notwithstanding.

You will be able to submit all your payment requests until June 29th 2015.

Also, please note that following ending of your contract you will be required to return all Bank assets lent to you and that your email account will closed [sic].

40. On 1 June 2015, the Applicant's supervisor reiterated that the Applicant should submit her claims by 5 June 2015.

41. On 9 June 2015, the OPSOR Director emailed the Applicant reiterating that:

We note that you still have not submitted your final bill despite of [sic] several reminders. [...] As is common practice in such cases, we have been advised to accept your supervisor's statement in lieu of your submission for accounting purposes and will initiate full payment on your contract next week.

Please note that following closure of your contract you will be required to return all Bank assets lent to you and that your email account will closed [sic].

42. On 24 June 2015, the Applicant filed a Request for Review before Peer Review Services (PRS) challenging the Bank's decision not to offer her an ETC contract with OPSOR-ESSAT and the Bank's decision not to extend her STC contract for FY2016. The Applicant also alleged that management had retaliated against her and created a hostile work environment for inquiring about the status of her alleged ETC offer with the OPCS Vice President and for using the Internal Justice Services (IJS).

43. On 17 July 2015, the Applicant emailed her supervisor asking for the letter of reference promised to her. On the same date, the Applicant's supervisor responded, "[o]nce you have gone through the Conflict Resolution System process, I will prepare a letter."

44. On 5 January 2016, PRS conducted a hearing. Among the witnesses were the Applicant's supervisor, the OPSOR Chief Officer, the OPSOR Director, the OPSOR Manager, the OPCS Vice President, and the HR Senior Business Partner.

45. On 5 February 2016, the PRS Panel, in its Report in Request for Review No. 252, found that management had acted consistently with the Applicant's contract and terms of appointment, that it had followed appropriate procedures, and had acted in good faith. However, it found that "the Bank's rationale for withholding the letter of reference was not justifiable" and "therefore recommend[ed] that management provide [the Applicant] with the promised letter of reference." In reaching this conclusion, PRS noted that "it was unfair for management to withhold the letter of reference just because [the Applicant had] availed herself of PRS and that [the Applicant] could have benefitted from having the letter of reference for her job search, particularly when witness testimony supported that the department was generally pleased with [the Applicant's] performance and professionalism." The Bank accepted the PRS Panel's recommendation on 2 March 2016. The Applicant was notified of this decision on 7 March 2016.

46. The Applicant filed her Application before the Tribunal on 6 September 2016. The Applicant seeks: (i) a one-year ETC contract or equivalent at grade GF with the Bank in a unit other than OPSOR-ESSAT; (ii) compensation equal to the salary scale originally agreed upon by OPSOR-ESSAT for the Applicant's ETC contract; (iii) a letter of reference that accurately reflects the Applicant's excellent work for OPSOR-ESSAT; (iv) compensation in an amount the Tribunal deems fair and just for: a) the harm to the Applicant's career, professional reputation, and personal life; b) the loss of potential benefits and income; c) the intangible damages and distress; and d) the pain and suffering caused to the Applicant; and finally (v) legal fees and costs in the amount of \$66,684.08.

47. On 11 January 2017, the Bank issued a letter of reference to the Applicant.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

ALLEGED PROMISE OF AN ETC CONTRACT

The Applicant's contentions

48. The Applicant claims that on 16 January 2015 her supervisor made an express promise or, at the very least, an “unmistakable implication” to offer her a one-year ETC appointment in OPSOR. The Applicant submits that the promise was made orally, and that the email of 16 January 2015 memorializes the promise and clearly states the Applicant’s understanding that her supervisor had formally offered her an ETC appointment whose terms of reference and salary scales had been discussed and approved the prior week. The Applicant adds that her supervisor’s lack of response to this email strongly indicates that her supervisor also believed she had promised the Applicant an ETC contract.

49. The Applicant asserts that she had every reason to think that her supervisor had the authority to promise her an ETC appointment on behalf of the Bank because she was her “main contact with respect to recruitment for, and discussions about” both her STC and offered ETC contracts. The Applicant further asserts that, as she was informed by her supervisor that the OPSOR Chief Officer had approved the ETC terms of reference, she had no reason to doubt that her supervisor had obtained the required approvals before extending an offer for an ETC contract, including the approval from the OPCS Vice President.

50. The Applicant claims that she relied on her supervisor’s promise for an ETC appointment with OPSOR-ESSAT and did not look for other jobs until the OPSOR management made clear in March 2015 that it would not honor the offer, and that this delay in job search resulted in material injury for which she must be compensated. The Applicant states that she also relied on her supervisor’s promise of an ETC contract when her supervisor requested that she continue to perform work without charging her days to OPSOR, and she accepted in the belief that she would continue working with the same unit as an ETC.

The Bank's contentions

51. The Bank submits that it never extended an offer of appointment or made an express or implied promise of an ETC contract to the Applicant. The Bank asserts that the Applicant's supervisor and the OPSOR Chief Officer in good faith made a proposal to offer an ETC contract to the Applicant in early January 2015 but made clear that it was conditional upon the approval from the OPCS Vice President and the outcome of the OPCS strategic staffing exercise. The Bank further asserts that there is no basis in the record to warrant the inference that a legally valid promise of an ETC contract was made, and that it is unreasonable for the Applicant to conclude that the email of 16 January 2015 alone constitutes contemporaneous written evidence of a promise, when this email merely reflects the Applicant's own perception that she had received "great news on [her] ETC" from her supervisor.

52. The Bank denies that the Applicant's supervisor had made or could make, on behalf of the senior OPCS managers, promises for an ETC contract because she lacked the authority or mandate to do so: a lack of authority of which the Applicant was aware. The Bank asserts that the OPSOR Manager had overall responsibility for approving the Applicant's STC contract and related payments and was the one with actual authority to make recruitment decisions.

53. The Bank contends that the Applicant cannot claim detrimental reliance because she knew as early as 30 January 2015 from her supervisor that the proposed ETC position was no longer possible, and the uncertainty in which the Applicant alleges to have been did not affect her job search within the Bank. The Bank further claims that the Applicant was not induced by an alleged promise of an ETC contract to reject or dismiss other concrete offers of employment from other potential employers. The Bank denies having put pressure on the Applicant to "continue work for [OPSOR] without charging all her days" and claims that the HR Senior Business Partner expressly advised the Applicant on two separate occasions "to stop working" if she had no remaining days under her STC contract.

THE NON-RENEWAL OF THE APPLICANT'S STC CONTRACT

The Applicant's contentions

54. The Applicant contends that the non-renewal of her STC contract was arbitrary, unfair, in bad faith, and improperly motivated by retaliation. The Applicant disputes the Bank's assertion that the non-renewal was due to budget cuts in OPCS and asserts that the non-renewal of her STC contract was in retaliation for having spoken with the OPCS Vice President and the Ombudsman. The Applicant alleges that her meeting with the OPCS Vice President and the Ombudsman triggered the following retaliatory and hostile acts by the OPSOR management against her: (i) the Applicant's supervisor removed the Applicant from her work in the ESS8 working group and excluded her from the mission to Paris; (ii) the OPSOR Chief Officer, the OPSOR Manager, and the OPSOR Director refused to acknowledge the Applicant's presence if she passed or greeted them in the hallway; (iii) the Applicant was repeatedly singled out and harassed to submit her claims of payment on her STC contract before the 29 June 2015 deadline; and (iv) the Bank made the Applicant work unpaid days after her 150-day STC contract had ended. Finally, the Applicant submits that her supervisor's refusal to provide her with a letter of reference at the end of her STC contract, despite having agreed to do so, was also an act of retaliation for having started proceedings before PRS.

The Bank's contentions

55. The Bank submits that its decision not to offer the Applicant an ETC contract or to renew her STC contract in OPSOR was justified by business needs and legitimate budgetary constraints that resulted from the OPCS strategic staffing exercise. The Bank asserts that the OPCS management was tasked with reducing its budget as part of the Bank-wide corporate strategic staffing exercise, and in so doing it made a reasonable and observable decision to prioritize its limited resources towards retaining more senior and permanent staff, as well as staff with social development expertise, which the Applicant did not possess, and which were most critical to ensuring OPSOR's effective delivery of its work program. The Bank denies giving assurances to the Applicant, in writing or otherwise, that her STC contract would be renewed for FY2016.

56. The Bank submits that the Applicant's allegations of retaliation are broad, vague, unsupported by the record, and reflect the Applicant's misconceived perceptions. The Bank submits that there is no evidence to substantiate the Applicant's allegations that the Applicant's managers verbally abused her, threatened her not to have recourse to IJS, and harassed the Applicant to submit her claims for payment. The Bank asserts that it reasonably reassigned the Applicant's duties in OPSOR because the Applicant had informed her managers by early March 2015 that she only had five remaining days under her STC contract.

57. With regard to the letter of reference, the Bank denies having objected to providing a reference to the Applicant or having made its provision contingent upon the completion of the PRS proceedings. The Bank contends that the Applicant's claim for a letter of reference has become moot, as the Bank issued a letter of reference for her in January 2017. The Bank explains that the delay was due to the changes in personnel and the internal restructuring within OPCS. The Bank asserts that despite the delay, the letter of reference of January 2017 "accomplishes the objective of providing the Applicant with an effective job reference." The Bank further asserts that the letter of reference was duly issued by the current Director of Operations, Standards, Procurement and Financial Management unit (OPSPF), successor unit of OPSOR, and provides an accurate and fair description of the Applicant's work in OPSOR, summarizes her strengths and accomplishments, and indicates that she carried out her work "satisfactorily."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

ALLEGED PROMISE OF AN ETC CONTRACT

58. The scope of review by the Tribunal in cases involving breach of promise is well established. In *AI*, Decision No. 402 [2010], para. 27, the Tribunal reiterated that:

The Tribunal, when reviewing a claim of breach of promise, examines "whether there was in fact a promise made by [the Bank] ... and if so the nature of the promise." *Bigman*, Decision No. 209 [1999], para. 6.

59. In *Bigman*, the Tribunal, relying on the email exchanges between the parties, found that the Bank, through an official with the apparent authority to do so, had unequivocally made a legally valid promise of conversion of the applicant's fixed-term appointment to a regular one, conditional on his satisfactory performance. *See* paras. 6-11.

60. In *Kopliku*, Decision No. 299 [2003], para. 10, the Tribunal stated that:

Another restriction upon the Bank arises when circumstances warrant the inference by a staff member that the Bank has indeed made a promise to extend or renew his or her appointment either expressly or by unmistakable implication.

61. The Tribunal emphasized in *Chavakula*, Decision No. 277 [2002], para. 15, that:

[E]vidence that a promise [...] was made [...] would in any event have to be proven unequivocally as was required in prior cases. (*See Bigman*, Decision No. 209 [1999], paras. 6-7; and *Brebion*, Decision No. 159 [1997], paras. 27, 35-38.)

62. The Applicant claims that the Bank's failure to offer her an ETC appointment was a breach of a promise given to her in January 2015. The question that the Tribunal must therefore address is whether there was a legally valid promise made to the Applicant either expressly or by unmistakable implication that she would be given a one-year ETC appointment.

63. The Applicant points to the phone call and the subsequent email of 16 January 2015 as the primary proof that her supervisor promised her an ETC appointment. In the email in question, the Applicant thanked her supervisor "for calling [her] with such great news on [her] ETC!" adding, "you certainly made my day." The Applicant ended the email noting, "[t]hanks again and I very much look forward to working with you!" The record does not contain any response from the Applicant's supervisor. To the Applicant, the email of 16 January 2015 memorializes the promise and the Applicant's belief that she had been offered an ETC appointment. It is also the Applicant's assertion that the lack of response from her supervisor strongly indicates that her supervisor also believed she had promised the Applicant an ETC appointment.

64. The Tribunal finds that the language in the email of 16 January 2015 cannot reasonably support the conclusion that an unequivocal promise of an ETC appointment was made to the

Applicant. In fact, that email indicates the understanding of the Applicant alone, and the absence of a reply from her supervisor cannot be construed as giving rise to a legally valid promise.

65. The Bank refers to the email of 8 January 2015 as proof that the OPSOR Chief Officer made clear that any confirmation of an ETC appointment would require the approval of the OPCS Vice President. In the email of 8 January 2015, the OPSOR Chief Officer states: “[...] shall we try to give [the Applicant] an ETC? [...]. [W]e will have to get [the OPCS Vice President] to clear.” The Tribunal finds that the text of this email is unambiguous in that any offer of an ETC appointment was made contingent upon the approval of the OPCS Vice President.

66. The Applicant claims that she had no reason to doubt that her supervisor had obtained the OPCS Vice President’s approval before promising her an ETC appointment on 16 January 2015. It is, however, evident from the record that the Applicant was aware that any final decision on the proposed ETC appointment was conditional upon the approval of the OPCS senior management because she contacted the OPCS Vice President and the OPSOR Director in early March 2015 to inquire about the proposed ETC contract. In fact, in an email of 5 March 2015 sent by the Applicant to the OPCS Vice President, the Applicant asked “whether [the OPCS Vice President] ha[d] made a decision regarding [her] ETC?” The record shows that the Applicant was notified on 13 March 2015 of the final decision of the OPCS Vice President and OPSOR management regarding the proposed ETC appointment.

67. The Applicant also claims that her supervisor acknowledged before PRS that an offer of an ETC appointment was made. Pursuant to the Tribunal’s order for document production, the Bank produced the PRS recording in Request for Review No. 252. Having reviewed the witnesses’ statements before PRS, the Tribunal observes that nothing in the record states expressly or without ambiguity or even supports an inference that an ETC appointment was promised to the Applicant. On the contrary, the witnesses’ understanding is that no promise was made, merely a proposal to explore the possibility of an ETC appointment, and that any confirmation of such appointment would require the prior approval of the OPCS Vice President.

68. In light of the above, the Tribunal finds that the Applicant's claim that a legally valid promise of an ETC appointment was made is not supported by the record. By not offering an ETC contract to the Applicant, the Bank, therefore, did not breach any obligation. In view of this conclusion, the Tribunal need not consider the Applicant's remaining claims in this regard.

THE NON-EXTENSION OF THE APPLICANT'S STC CONTRACT

69. The Tribunal has stated that there is no right, absent unusual circumstances, to the extension or renewal of temporary appointments. *See CP*, Decision No. 506 [2015], para. 36, citing *Kopliku*, para. 9. The Tribunal has, however, established that "[t]he Bank's decision not to renew a contract at the expiration of its predetermined terms, however discretionary, is not absolute." *Barnes*, Decision No. 176 [1997], para. 10. *See also CS*, Decision No. 513 [2015], para. 70. Non-renewal decisions, "like any other exercise of discretion by the Respondent, must be reached fairly and not in an arbitrary manner." *Id.*

70. In considering whether the Bank properly exercised its discretion in deciding not to renew a contract, the Tribunal stated in *AK*, Decision No. 408 [2009], para. 41, that:

Discretionary decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or which lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment.

71. Staff Rule 7.01, paragraph 3.01, further states that:

A staff member's appointment shall expire on the completion of an appointment for a definite term, as specified in the staff member's letter of appointment, or as otherwise amended.

72. The Bank submits that its decision not to renew the Applicant's STC contract for FY2016 in OPSOR was justified by business needs for different skills in OPSOR and legitimate budgetary constraints that resulted from the OPCS strategic staffing exercise. The Applicant's contention is that the budget cuts invoked by the Bank are contradicted by OPSOR's proposal to increase GH- and GF-level staff and the hiring of multiple STC staff in 2015.

73. The Tribunal observes that OPCS underwent a strategic staffing exercise for FY2015-FY2017 with the purpose of aligning staffing resources with OPCS priorities in response to the Bank-wide corporate strategic staffing exercise. The OPCS exercise consisted of a three-phase approach which started in September 2014 and ended in March 2015. The record shows that phase 3 of the exercise required that all OPCS units, including OPSOR, submit specific proposals on staffing reduction. OPSOR submitted its proposal on 14 and 15 January 2015, which was discussed at the meeting of 16 January 2015. The OPSOR proposal suggested the reduction of 3 ETC positions but also recommended to increase positions at Grade GH and GF by the end of FY2017. The staffing exercise resulted in a reduction of 13% of OPSOR's staffing budget and a total reduction of 13 positions in OPCS.

74. The Tribunal further observes that the OPCS strategic staffing exercise resulted in a shift in staffing needs and types of skills within OPSOR. The Bank's decision to increase senior staff within OPSOR, to manage the large numbers of staff, and to prioritize staff with the social development skill-set to meet the gap in the unit is justified on this basis. In *Koclar*, Decision No. 441 [2010], para. 45, the Tribunal held that "[t]he changing demands of the Bank require that it adapt to meet evolving needs and circumstances; the Bank is free to make changes to its staffing needs in accordance with the Staff Rules." The Tribunal has also recognized management discretion in "[i]dentifying the skills that are suitable for these changing needs and who is the most suitable staff to perform these tasks." *DM*, Decision No. 542 [2016], para. 49. The Tribunal accepts the Bank's discretion in deciding its staffing needs and proper use of its budget and finds that this discretion was not abused.

75. Furthermore, the Tribunal notes that the Bank adopted a new Environmental and Social Standards Framework in August 2016, the components of which required new and adapted skills in safeguards policies within the Bank. For OPSOR, the new Framework meant that changes in its staffing and skill-set were required in order to successfully implement the new reforms. As evidenced by the record, the Applicant's main experience within the Bank concerned the Bank's traditional safeguards policies, which were gradually replaced from FY2016 with the policies contemplated in the new Framework.

76. Pursuant to the Tribunal's order for document production, the Bank submitted the terms of reference of approximately sixty STC contracts filed in OPSOR from January to December 2015. The Applicant identified five terms of reference for FY2016 which she claims are "virtually identical" to hers. The Tribunal examined all the terms of reference and observes that these consultancies correspond to different job types and families, durations, and levels.

77. Regarding the five terms of reference identified by the Applicant, the Tribunal observes that two STC staff referred to by the Applicant were hired by OPSOR in February and March 2015, respectively, to provide support to the OPSOR Environmental and Social Standards team while the Applicant was still working in the unit. The third consultant identified by the Applicant was specifically hired to work on safeguards projects in the Africa region and was offered a 20-day contract in OPSOR from September to December 2015, several months after the non-renewal of the Applicant's STC contract. The fourth consultant to which the Applicant refers was hired for 20 days, and, contrary to the Applicant's assertions, had a limited number of deliverables in comparison with the Applicant. Regarding the fifth consultant hired for 150 days in FY2016, the Tribunal notes that she was hired to provide support for the Latin American and the Caribbean region. In the Tribunal's view, none of these STC staff appears to have been hired to replace the Applicant in her functions in OPSOR.

78. The Tribunal further observes that as the Applicant was firmly convinced that a legally valid promise of an ETC appointment had been made to her, she did not accept the solutions proposed by the OPSOR management. The record shows that the Applicant rejected the 40-day extension proposed to her in early March 2015 and preferred to pursue the ETC appointment she believed had been promised to her. As demonstrated above, the need for the Applicant's skills had gradually diminished, and it was highly probable, as evidenced by the terms of reference, that any STC extension for FY2016 would have considerably reduced the number of days of her consultancy, a solution that would likely have also been rejected by the Applicant given her preference to pursue an ETC contract.

79. The Tribunal finds that the reasons advanced by the Bank not to renew the Applicant's STC contract for FY2016 are supported by the record.

80. The Tribunal will now address the Applicant's contention that retaliatory motives were behind the non-renewal of her STC contract for FY2016.

81. The Tribunal observes that retaliation is prohibited under the Staff Rules. In *Bauman*, Decision No. 532 [2016], para. 95, the Tribunal held that

[a]s the Tribunal has frequently observed, the Staff Rules are clear that retaliation against any person "who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System" is prohibited. *See* Staff Rule 3.00, paragraphs 6.01(g) and 7.06, and Staff Rule 8.01, paragraph 2.03; *see also* CS, Decision No. 513 [2015], para. 104; *Sekabaraga (No. 2)*, Decision No. 496 [2014], para. 60. This prohibition extends also to retaliation against any person who is believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken.

82. The Bank's "Living Our Values: Code of Conduct" describes retaliation in the workplace as follows:

Retaliation is "any direct or indirect detrimental action recommended, threatened, or taken because an individual engaged in a [protected activity]." (SR 8.02) It undermines trust among staff members as well as between staff and management and can have a debilitating effect on morale and workplace productivity. This can lead to serious consequences for the World Bank Group: nobody will bring issues forward if they fear retaliation.

Retaliation in the workplace encompasses a range of behavior, from something as small as a remark to something as serious as an administrative action affecting a staff member's work program or employment. When taken as a means of retaliation, other examples can include: reprimand, discharge, suspension, demotion, denial of promotion, and denial of transfer. Any staff member who in good faith raises a concern is protected from retaliation. Consult the applicable policies for detailed information on the retaliation protections afforded to staff by the World Bank Group.

83. The standard of proof for any claim of retaliation is that an applicant must make a *prima facie* case to show the retaliatory motives behind the impugned decision. *See Bodo*, Decision No. 514 [2015], para. 77. However, as stated in *Bauman*, para. 99,

“[i]t is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation” (*AH*, Decision No. 401 [2009], para. 36). The Tribunal has also recognized that “[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes.” (*O*, para. 49.)

84. Once the Applicant has established her *prima facie* case “the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner.” *DJ*, Decision No. 548 [2016], para. 58, citing *de Raet*, Decision No. 85 [1989], para. 57.

85. The record shows that the Applicant engaged in protected activities when she met with the Ombudsman on 18 and 27 March 2015 in the context of the proposed ETC offer and to raise allegations of retaliation and hostile treatment from the OPSOR management. The Applicant also engaged in protected activities when she initiated proceedings before PRS in June 2015. The record also shows that the OPSOR management and the Applicant’s supervisor knew of the Applicant’s protected activities. The Applicant’s supervisor’s statement before PRS that “[w]e were all aware of the fact that [the Applicant] had gone to the Ombudsman. We were all aware that [the Applicant] might go to the [Conflict Resolution System]” attests to this fact.

86. Based on the record, the Tribunal finds that the Bank has demonstrated by clear and convincing evidence that its decision not to renew the Applicant’s STC contract for FY2016 had an observable and reasonable basis.

LETTER OF REFERENCE

87. The Applicant’s final contention is that the Bank retaliated against her by refusing to issue her a letter of reference on her good performance despite her supervisor’s assurance to do so.

88. It is undisputed that the Applicant’s supervisor promised to provide a letter of reference to the Applicant in early 2015. However, when the Applicant requested that her supervisor provide her with the letter in question, the Applicant’s supervisor responded, “[o]nce you have gone

through the Conflict Resolution System process, I will prepare the letter.” The Applicant’s supervisor confirmed this statement during her testimony before PRS in January 2016. The Applicant’s supervisor also stated before PRS that she withheld the letter of reference because “I do not agree with some of the allegations that you have in this [referring to the PRS Request for Review]. I don’t agree with it. And I think at this point the best thing to do is to complete this process and then I will prepare such letter and I will keep my word.” The record shows that the letter of reference was only issued on 11 January 2017.

89. The Tribunal observes that Staff Rule 2.01, paragraphs 5.05 and 5.06, on confidentiality of personnel information, provides that:

5.05 When a current or former staff member names the Bank Group on an employment or other application, a letter of verification may be released by the Bank Group without the authorization of the staff member or former staff member.

5.06 Individual staff members of the Bank Group may provide letters of reference for current or former staff members if the letter states clearly that they are speaking on a personal basis and not on behalf of the institution.

90. Staff Rule 2.01 makes clear that a letter of reference for current or former staff members may be provided by supervisors in their personal capacity and not on behalf of the institution. In this case, the Applicant’s supervisor promised to issue a letter of reference, but when she learned that the Applicant had recourse to the IJS, she conditioned so doing on the conclusion of the PRS proceedings initiated by the Applicant. In fact, the letter of reference was provided a year and a half later. In view of this significant delay, and the reason for it, which can be construed as a measure of retaliation, the Tribunal holds that the Applicant is entitled to receive compensation.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of \$25,000.00;
- (2) The Bank shall contribute to the Applicant’s legal costs and fees in the amount of \$22,000.00; and
- (3) All other claims are dismissed.

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

/S/Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 25 October 2017