



World Bank Administrative Tribunal

2018

Decision No. 578

**EM,
Applicant**

v.

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

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

**EM,
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 Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Ahmed El-Kosheri, Abdul G. Koroma, and Marielle Cohen-Branche.

2. The Application was received on 22 September 2017. The Applicant was represented by Marie Chopra and Alice C. Hwang of James & Hoffman, P.C. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 May 2018.

3. The Applicant alleges that the Bank breached its promise to resolve her "permatemp" situation, abused its discretion in failing to renew her short-term consultant (STC) contract, failed to communicate with her clearly regarding the removal of her work program, and failed to treat her fairly as required by the Principles of Staff Employment.

FACTUAL BACKGROUND

4. The Applicant commenced employment at the Bank on 14 July 2008 as an STC in Unit X, a unit of one of the Bank's Vice Presidential Units (VPUs). With the exception of two extended-term consultant (ETC) contracts with the Bank from July 2009 to July 2010 and October 2011 to October 2012, the Applicant held successive STC contracts from 14 July 2008 until 30 November 2016 when her STC contract was not renewed and, as a result, her employment with the Bank ended.

5. The Applicant's work program in the VPU included providing advisory services on integrity risks, performing compliance work, and organizing training and outreach programs. In

addition, the Applicant served as the focal point or liaison for the Latin America and Caribbean region (LCR). The Applicant's manager, Ms. AB, was a Director while her supervisor and head of Unit X, Mr. Y, was a Lead Specialist.

6. In December 2014, the Vice President of the VPU in which the Applicant worked invited his staff to meet with him individually.

7. On 29 January 2015, the Vice President met with the Applicant. During this meeting, they discussed the issue of her "long-term STC contractual arrangement with [the VPU]." The Applicant shared her concerns that "she had been performing core responsibilities on contractual appointments in the same unit for a prolonged period of time, while colleagues performing the same work held full-time staff positions." The Vice President informed the Applicant that he would consider the matter. According to the Applicant, the Vice President encouraged her to "reach out if she did not hear back from him."

8. On 2 February 2015, the Applicant sent the Vice President an email following their meeting. She stated:

I just wanted to send a brief email to thank you for the meeting and interesting discussion we had last week in regards to [Unit X's] current and future work program and the compliance work. I also wanted to thank you for taking a keen interest in my contractual arrangement with [the VPU] and my professional development. I sincerely appreciate it!

9. On 12 March 2015, the Applicant sent an email to the Vice President. She stated: "I am following up on your suggestion during our recent meeting to contact you in March to discuss the prospects of a more stable career [...] in [the VPU], after almost seven years of short term consulting arrangements in the Vice Presidency." The Applicant requested a meeting with the Vice President the following week to "discuss developments that are pertinent to [her] situation."

10. On 24 March 2015, the Applicant and the Vice President met. According to the Applicant, they discussed her work which she asserted fulfilled Unit X's ongoing and existing business needs. Following the conversation, the Vice President asked the Applicant to send him an email, with

senior management of the VPU in copy, explaining her long-term STC situation so he could bring the matter to their attention.

11. On 24 March 2015, the Applicant sent an email to the Vice President, copying senior management, explaining her work throughout the years and requesting “a resolution to [her situation].” Those in copy included Ms. AB, the Applicant’s manager, and Mr. Y, the Applicant’s supervisor.

12. On 31 March 2015, the VPU submitted a revised staffing plan for Fiscal Years 2015 through 2017 (FY15–17) to the Human Resources (HR) Vice Presidency. The plan resulted from the Bank-wide Strategic Staffing and Expenditure Review which introduced staffing and budget constraints.

13. On 15 April 2015, the Vice President informed the Applicant that he and senior management of the VPU had discussed her situation and he had decided to open a position in her unit, to which she should apply.

14. On 16 April 2015, the Vice President sent an email to staff in the VPU with an update on the Strategic Staffing Plan and the indicative budget envelope for the next three fiscal years. The email documented a list of ongoing and upcoming vacancies, and the Vice President announced that he had authorized the creation of an “additional E-level position” in Unit X, which would be advertised in due course. In submitting this update the Vice President “acknowledged that the timing of filling any existing or future vacancies within this updated plan will be guided by [the VPU’s] budget envelope for FY16–18.”

15. On 7 May 2015, the Applicant met with the Vice President. She expressed concern that the grade assigned to the new position was too low and she perceived it as a demotion. The Applicant stated that she would not submit an application for the position. According to the Applicant, the Vice President replied that it was the “best we could do,” observing that there was no policy requiring management to create the position at the GF level merely because management created the position to bring her “on board.” The Applicant states that during the conversation the Vice

President “indicated he had ‘gone to war’ with the process for her and would not change the grade-level of the position, but reiterated that she should apply for the position.”

16. On 30 October 2015, the Applicant and her manager, Ms. AB, met to discuss the Applicant’s individual career development. The Applicant inquired about the position announced by the Vice President and asserts that Ms. AB discouraged her from applying, stating that the position was not for her.

17. On 9 December 2015, the Applicant emailed the Vice President, expressing that she looked forward to the announcement of the new job opening and the opportunity to participate in the recruitment process. The Applicant alluded to her meeting with Ms. AB noting that she had informed her manager of her intention to apply for the GE-level position. The Applicant thanked the Vice President for his “active interest and continued commitment towards a fair resolution regarding [her] now eight-year tenure in [the VPU] as a consultant.” The Applicant did not receive a response.

18. On 27 January 2016, the Applicant emailed the Vice President, noting that her situation had “not changed in any way,” and requested a meeting. She stated: “It has been roughly a year after the one-on-one meeting we had, during which you recognized the unfairness of my very long STC contractual arrangement in [the VPU] and took an active interest in resolving it.” In response, the Vice President suggested that they meet with Ms. AB and Mr. Y.

19. On 3 February 2016, the Applicant filed a complaint with the Office of Ethics and Business Conduct (EBC) against a Senior Operations Officer who was a member of Unit X. The Applicant alleged harassment and discrimination.

20. On 26 February 2016, the Vice President again announced in a staff-wide email that the VPU was planning to post the previously approved GE-level position in Unit X. He also informed staff that, due to the unit’s budget constraints, the VPU “will have to operate below the full complement of 97 staff positions envisioned in [the HR-approved 2015 Position Plan] [...]”

21. On 11 March 2016, the Vice President met with the Applicant; her manager, Ms. AB; and her direct supervisor, Mr. Y. The Vice President summarized his communications with the Applicant, confirmed that he had decided to open a GE level position and suggested that the Applicant submit an application. Ms. AB and Mr. Y agreed that they would draft the terms of reference (TOR) and proceed with the recruitment for that position.

22. On 1 June 2016, Mr. Y sent an email titled “STC for [Applicant]” to Ms. AB with the Vice President in copy. The email concerned the extension of the Applicant’s STC contract. Mr. Y stated:

In follow-up to our conversation before leaving for mission, we discussed how to handle the fact that [the Applicant’s] contract is expiring by the end of June. Considering the situation, we discussed possibly extending a shorter term contract to [the Applicant], which would allow her to apply for the e-level position while being employed with [the VPU]. You also suggested that we discuss the matter with [the Vice President] upon my return and before the deadline for extending STCs, i.e., June 3rd.

In your absence, I briefly discussed the matter with [the Vice President]. He was positively inclined to extend a shorter term contract, say, for 4-months, which should allow for completing the hiring process and for bringing on board the staff member. I have as part of my regular oversight discussed with [the Applicant] her work program, and will stipulate concrete deliverables for the 4-month period, if you agree. These include: (1) Finalization of the [...] summaries and preparation of reports for GPs; (2) Conflict of Interest note/assessment tool; and (3) LCR work/transition to [the GG-level colleague].

23. On 2 June 2016, management of the VPU extended the Applicant’s contract for four months, until 31 October 2016. The Applicant was informed that one of the reasons for the extension was to provide her with the opportunity to apply for the GE-level position while remaining in the VPU.

24. Sometime in June 2016, management of the VPU removed and transferred the Applicant’s work with the unit’s LCR portfolio to a GG-level colleague in the VPU.

25. On 30 June 2016, the VPU posted a GE-level Risk Analyst position in Unit X.

26. On 26 July 2016, the Applicant timely submitted her application for the position.
27. On 4 August 2016, the Applicant communicated with EBC expressing her view that the harassing and discriminating treatment she received from the Senior Operations Officer was ongoing. She also stated that it had come to her attention that the Senior Operations Officer was “actively trying to manipulate the selection process for a position that my unit recently advertised to make sure that the position is steered to a candidate of his preference.” The Applicant stated: “This is extremely serious as it may directly affect my chances for being fairly treated in a competitive environment.”
28. On the same day, the Applicant sent an email to Mr. Y enquiring about the LCR portfolio as a matter of urgency. The Applicant stated that she had heard that a GG-level colleague was working on the LCR portfolio. The Applicant received no response.
29. On 17 August 2016, the Applicant sent another email to Mr. Y indicating that she had been trying to reach him by telephone and email. The Applicant provided him with a summary of her work, including LCR-related tasks.
30. On 8 September 2016, the Applicant was informed that she was “no longer the LCR [Unit X] focal point.”
31. On 19 September 2016, Mr. Y informed the LCR Region that the GG-level colleague was assuming responsibility for the LCR preventive work portfolio and thanked the Applicant for her work on the project.
32. On 22 September 2016, an EBC investigator contacted the Applicant and informed her that he had spoken with her supervisor, Mr. Y, who confirmed that he had “taken certain measures to make sure that [the Senior Operations Officer] would not be involved in the hiring for the [GE-level Risk Analyst position].” The EBC investigator relayed that Mr. Y stated that he had also spoken with the Senior Operations Officer about this officer’s behavior and stated that he, Mr. Y,

would continue to monitor this behavior. The Applicant was told: “Based on the issues presented in this matter and [Mr. Y’s] intervention, we are closing this case.”

33. On 12 October 2016, the selection advisory committee for the recruitment of the GE-level Risk Analyst position, which was chaired by Mr. Y, met to discuss the recruitment process for the position.

34. On 24 October 2016, the Applicant sent Mr. Y an email enquiring about the extension of her STC contract which was due to expire at the end of that month.

35. On 25 October 2016, management of the VPU extended the Applicant’s contract by a month, until 30 November 2016.

36. On 27 October 2016, the Applicant filed Request for Review No. 366 with Peer Review Services (PRS) challenging, among other matters, the “unfairness of [her] contractual arrangement in the [VPU].” The Applicant also asserted that management discriminated and retaliated against her in connection with: (1) the ongoing inaction/omission to appropriately address her consecutive STC appointments in the VPU despite the Vice President’s promise to address the situation; (2) the grade level, selection criteria, timing of posting, and prolonged hiring process of the Risk Analyst position; and (3) the lack of timely notification on significant changes to her work program.

37. On 16 November 2016, following the review of all candidates by the selection advisory committee, a shortlist was proposed which was approved by Ms. AB, the Applicant’s manager. The Applicant was not shortlisted.

38. On 25 November 2016, the Bank-wide Strategic Staffing Steering Group informed management of the VPU that its FY17–19 strategic staffing plan was assessed as “not affordable budget wise,” and that a temporary hiring freeze was recommended.

39. On 28 November 2016, the Applicant met with Mr. Y and learned that her contract would not be renewed when he asked her: “What are your plans after this?”
40. On 30 November 2016, the Applicant’s employment with the World Bank came to an end.
41. In December 2016, management of the VPU cancelled the GE-level Risk Analyst position.
42. On 28 April 2017, the PRS Panel submitted its report. With respect to the Applicant’s claims about her consultant status, the Panel found that “the written and verbal communications [from the Vice President to the Applicant] did not constitute an explicit promise that [the VPU’s] management would appoint [her] to a Term position or advertise a position that matched her current responsibilities.” The Panel recognized that there were some commonalities between the selection criteria for the Risk Analyst position and the Applicant’s work experience and demonstrated skills.
43. The Panel then considered whether management followed Bank policies in the recruitment process for the Risk Analyst position, and found that the recruitment process “appeared to have the objectivity, transparency, rigor and diversity set forth in the Bank’s guidelines and World Bank Administrative Tribunal precedent.”
44. The Panel, however, concluded that management did not treat the Applicant fairly and reasonably pursuant to Principle 2.1 of the Principles of Staff Employment because the changes to her work program and the nonrenewal decision were not clearly communicated to her. To compensate the Applicant for the Bank’s failure to follow a fair and proper process in this regard, the Panel recommended that the Bank compensate the Applicant in the amount of 30 days of her former STC daily rate.
45. The Panel noted that there was no evidence to support her claim of discrimination in connection with management decisions, and that there was insufficient evidence to reach a conclusion on retaliation. The Panel observed that there was no indication that EBC conducted a

review of the Applicant's allegations of retaliation and decided to share its report with EBC for "appropriate review, if necessary."

46. On 22 May 2017, the Bank accepted the PRS Panel's recommendations, including the recommendation to compensate the Applicant in the amount of 30 days at her former STC daily rate for the failure to treat her fairly and reasonably regarding the nonrenewal of her STC contract and the changes associated with her TOR. The Applicant accepted the Bank's offer of compensation in the amount of 30 days at her former STC daily rate.

47. On 22 September 2017, the Applicant filed this Application with the Tribunal. She contends that the Bank breached its promise to resolve her "permatemp" situation, abused its discretion in failing to renew her STC contract, failed to communicate with her clearly regarding the removal of her work program, and failed to treat her fairly as required by the Principles of Staff Employment. The Applicant also contends that management of the VPU retaliated against her for her use of the Bank's conflict resolution system. As compensation, the Applicant requests "such additional amount as the Tribunal deems fair and just for the harm to [her] career, 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]." She also seeks legal fees and costs in the amount of \$37,131.41.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contentions

48. The Applicant contends that the Bank made and breached a promise to resolve her "permatemp" situation. According to the Applicant, the Vice President's actions and words over the course of a series of meetings in early 2015 reasonably warranted the inference that he had promised to address the unfairness of her "permatemp" situation by opening a term position in Unit X that matched her qualifications and responsibilities, for which she could fairly and reasonably compete. The Applicant argues that the Bank does not deny that the Vice President "specifically told [her] the position was the 'best we could do' to bring [her] 'on board,' or that

the [Vice President] admitted at the PRS Hearing that he wanted to ‘provide a pathway’ for [the Applicant]—not anyone else in [Unit X]—to apply for a position.”

49. According to the Applicant, the Bank breached that promise: (1) when the posting of the new position was delayed by fourteen months; (2) through the inclusion of highly technical selection criteria that “neither matched [Unit X’s] business needs nor [the Applicant’s] background”; and (3) by including input for the position’s TOR from the Senior Operations Officer against whom the Applicant had filed an EBC complaint. The Applicant asserts that by failing to post a position for which she could fairly compete the VPU failed to fulfill its promise to rectify her “permatemp” situation and, thus, “exercised its discretion in an arbitrary manner [...]”

50. The Applicant also argues that, in violation of its obligation to treat staff fairly, the Bank failed to timely communicate its decision to reallocate the LCR portfolio, which amounted to a significant change in her work program. The Applicant notes that, despite the transition of the LCR portfolio to another staff member, she continued to perform LCR work because she was unaware of the change. She further notes that Mr. Y failed to respond to her repeated inquiries about whether she was still responsible for that portfolio.

51. Further, the Applicant avers that the Bank abused its discretion in failing to renew her STC contract. The Applicant contends that she held a fair and reasonable expectation that the Bank would continue to renew her STC contract. The Applicant maintains that the decision not to renew her contract was arbitrary and carried out in violation of a fair and reasonable procedure. According to the Applicant, the Bank’s repeated renewal of her contract to perform ongoing core work for Unit X belied the “short-term” label it put on her contracts. The Applicant maintains that the fact that recruitment for the Risk Analyst position was in progress means she could not have had constructive notice of the nonrenewal of her STC contract.

52. The Applicant also raises allegations of retaliation by management of the VPU. According to the Applicant, she was retaliated against for filing an EBC complaint against the Senior Operations Officer and for filing a PRS case. First, the Applicant asserts that management manipulated the TOR for the new position to exclude her from fairly competing for the position.

The Applicant notes that management admitted to having had input for the TOR from the Senior Operations Officer despite the assurance from her supervisor to EBC that the Senior Operations Officer would have no involvement in the hiring process. Second, the Applicant asserts that the decision not to renew her STC contract was motivated by retaliation for her filing PRS Request for Review No. 366. The Applicant contends that, once she filed her PRS case, renewals of her contract ceased. The Applicant notes that this occurred despite the fact that nothing had changed, at that point, in the recruitment of the GE-level Risk Analyst. Since management provided no explanation for the “about-face,” the Applicant contends that the nonrenewal of her contract was clearly retaliatory. The Applicant maintains that she has made a *prima facie* case of retaliation and the Bank has failed to demonstrate a reasonable basis for the nonrenewal decision.

53. Finally, the Applicant contends that the Bank failed to treat her fairly by: (1) refusing to renew her contract “even though hiring for the Risk Analyst position had not been resolved”; (2) removing the LCR portfolio from her work program—after she had performed the work for years; and (3) retaliating against her for filing an EBC complaint and a PRS case. The Applicant avers that, in short, the Bank’s treatment of her “was egregious and a gross violation of Staff Principles 2.1 and 9.1.” The Applicant also rebuts the Bank’s assertions that it has made “unique accommodations” and treated her generously. It is the Applicant’s contention that Unit X obtained her labor on its core and long-term business needs at a bargain rate. According to the Applicant, Unit X “did not have to pay her the compensation and benefits it paid to her colleagues who performed similar functions.”

The Bank’s Response

54. The Bank asserts that the Vice President, through words or actions, neither made a legally valid promise to the Applicant nor breached any promise. The Bank contends that the support and solicitude of the Vice President towards the Applicant about her STC contracts do not constitute an unequivocal and unambiguous promise to: (1) “address the unfairness of her ‘permatemp’ situation by opening a term position in [Unit X] that matched her qualifications and responsibilities, for which she could fairly and reasonably compete”; (2) convert the Applicant’s STC appointment to a more permanent appointment; or (3) appoint her to a GF-level position.

Further, the Bank asserts that, if there were a legally valid promise, “it was that a position will be created in [Unit X] in due course, i.e., when budget and [Unit X’s] staffing envelope permits, for which she could apply.” According to the Bank, this “(so-called) promis[e] was kept when eventually such a position was created.” The Bank asserts that the Applicant simply misperceives or mischaracterizes the Vice President’s support.

55. With respect to the nonrenewal of the Applicant’s STC contract, the Bank contends that the Applicant had both actual and constructive notice that her STC appointment was going to end with the selection of a candidate for the Risk Analyst position. The Bank asserts that the Applicant’s last letter of appointment explicitly provided that her “appointment will terminate accordingly unless it is extended or a new appointment is made.” The Bank notes that even the Applicant “recognizes that the maximum duration of an STC contract is not a guarantee that a staff member must be fully engaged in work for the entire duration [...]” Under these circumstances, the Bank asserts that it was unrealistic and unreasonable for the Applicant to expect that her STC appointment would survive the recruitment of the new position. The Bank notes that the Applicant cannot claim that it is unfair for her to have held STC appointments for a long time and, at the same time, claim that it is unfair for her STC appointment to end.

56. The Bank does not address the Applicant’s contention that management of the VPU failed to communicate the significant change in her work program in violation of principles of fairness. Regarding the Applicant’s claims of retaliation, the Bank argues that the Applicant has failed to proffer evidence to support a *prima facie* claim of retaliation. According to the Bank, the Applicant’s claim that the drafting of the TOR was tainted by input from the Senior Operations Officer is unsubstantiated. The Bank asserts that, after becoming aware of the Applicant’s complaint to EBC, management of the VPU extended her STC appointment twice, respectively in June 2016 and October 2016. In addition, the Bank avers that management had a reasonable and observable basis for the creation of the new position and that the development of its TOR was informed by Unit X’s business needs and not through manipulation to exclude the Applicant from fairly competing.

57. Finally, the Bank contends that the Applicant has benefited from consistent and continuous support, and unique accommodations from management and the Vice President. The Bank notes that the “Applicant has equal responsibility for her own career development,” and that it is not the Bank’s policy to convert the STC appointment of every staff member who has held such an appointment for a long time to a more permanent appointment. The Bank notes that, although the Applicant contends that STC appointments are unfair and discriminatory, “she does not contend that [the process was] misapplied to her.” The Bank maintains that it has discretion in deciding its staffing needs and the proper use of its limited budget. The Bank contends that in any event the claim about the new position is moot since the position was cancelled and no legally valid promise to appoint the Applicant to that position exists.

Staff Association Amicus Curiae

58. In supporting the Application, the Staff Association notes that the Bank employs more than 19,000 STCs or Short-Term Temporaries (STTs) over the course of a year, amounting to more than 6,000 full-time equivalent positions (FTEs) in an institution that employs approximately 16,000 full-time employees. Of these, the Staff Association estimates that “somewhere between 800 and 1000 STCs perform what are essentially full-time positions, year after year, without receiving the benefits or job security that come with regular employment [...]”

59. The Staff Association is of the view that “staff doing the same work [should] be afforded the same rights and protections,” and argues that “staff performing core functions should be employed as regular staff, with the benefits and protections that entails.” According to the Staff Association, even if, in the narrow view of the VPU, the Bank followed the letter of the rules given the limited rights that are accorded to STCs, it is precisely for this reason that it is imperative that staff be hired under the appropriate contract type, so that similarly situated staff are subject to the same rules and principles.

60. The Staff Association further submits that, even applying the more limited rights and protections afforded to STCs, management’s failure to take reasonable steps to remedy the Applicant’s situation despite promising to do so “constitutes a clear violation of the Applicant’s

contract, as does the failure to give adequate notice of her contract termination, and the apparently retaliatory nature of that decision.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

Existence of a Promise

61. The first question which the Tribunal must address is whether there was in fact a promise made by the Vice President to the Applicant and, if so, the nature of that promise. *See Bigman*, Decision No. 209 [1999], para. 6. As was emphasized in *Chavakula*, Decision No. 277 [2002], para. 15, evidence that a promise was made would “in any event have to be proven unequivocally [...]” Similarly, in *Moss*, Decision No. 328 [2004], para. 45, the Tribunal expressed the need for “an unequivocally proved promise, a clear and irrefutable commitment or assurance [...]”

62. At the same time, in the absence of such an unequivocal statement, there may be circumstances which lead to the inference of a promise. In *Kopliku*, Decision No. 299 [2003], para. 10, the Tribunal held that: “Another restriction upon the Bank arises when circumstances warrant the inference by a staff member that the Bank has indeed made a promise [...] either expressly or by unmistakable implication.”

63. Thus, in order for the Tribunal to find the existence of a promise, the record must show either an “unequivocal” statement which amounts to a promise or circumstances which lead to the “unmistakable implication” that a promise was made.

64. Even though the Bank asserts that the Vice President did not make a “legally valid promise” to the Applicant, it is noted that the Bank nevertheless concedes that, if such a promise were made, it would have been a promise that “a position will be created in [Unit X] in due course, i.e., when budget and [Unit X’s] staffing envelope permits, for which she could apply.” This is not inconsistent with the Applicant’s allegation of a promise, given that the Applicant does not claim that the Vice President promised to convert her contract to a permanent position or appoint her to a particular grade level. Rather, the substance of the promise alleged by the Applicant is the

creation of a position for which the Applicant could legitimately compete to address the fact that the Applicant has been on STC contracts for eight years consecutively. It is evident then that the only difference between the Bank's acknowledgment of a possible promise and the Applicant's claim of a promise is that the Applicant adds that the Vice President promised to create a position which matched her qualifications and responsibilities.

65. Upon a review of the record, the Tribunal is satisfied that there is evidence to support the Applicant's claim that the Vice President promised to create an opportunity for her to legitimately compete for a position in Unit X. The record shows a correlation between the advertisement of the GE-level Risk Analyst position and the interactions between the Applicant and the Vice President. Of relevance is the fact that the Bank does not dispute that the Vice President stated clearly during the PRS Hearing that he expressed "empathy" for the Applicant's situation when they met and "[s]ubsequently, he authorized the creation of a position within [Unit X] based on business needs." In addition, the Vice President stated that "this provided [the Applicant] with the opportunity to compete for a Term position" and that he also encouraged her to apply for the position. The Vice President also stated that he met with the Applicant's manager, Ms. AB, and supervisor, Mr. Y, and told them that "he thought that [the VPU] could create a position in [Unit X] to support the office and provide an opportunity for [the Applicant] to compete for a position." The Bank also does not contest the Applicant's statement that the Vice President told her that management created the position to bring her "on board." Satisfied that evidence of a promise exists, the Tribunal is equally satisfied that the one who made this promise, the Vice President, was an official with the authority to make a legally valid promise and capable of taking action attributable to the Bank. *See Bigman*, para. 20.

66. However, the Tribunal considers that there is insufficient evidence on the record to support a conclusion that the position promised by the Vice President was intended to match the Applicant's qualifications and responsibilities. By the Applicant's own account, the Vice President informed her on 7 May 2015, after the position was announced, that the GE level position was the "best we could do." According to the Applicant, the Vice President told her that there was no policy requiring management to create the position at the GF-level merely because management created the position to bring her "on board." The Applicant also states that during the conversation

the Vice President “indicated he had ‘gone to war’ with the process for her and would not change the grade-level of the position, but reiterated that she should apply for the position.” These statements, uncontested by the Bank, lend support to the inference that the GE-level position was created to address the Applicant’s “permatemp” situation. However, they also establish that the Vice President did not promise to create a position that was a replica of the Applicant’s qualifications and responsibilities.

67. To obtain a clear record of the Vice President’s intentions and conversations, which he admitted having with management of the VPU about the Applicant’s situation, the Bank was ordered to provide all documents and correspondence from 24 March 2015 to 30 November 2016 between the Vice President and management of the VPU including the Applicant’s manager and supervisor that reflect, discuss, or relate to: (1) the status of the Applicant’s employment with the VPU; (2) the creation of a position in Unit X; and (3) the TOR for the GE-level Risk Analyst position.

68. The Tribunal observes that the documents submitted by the Bank do not correspond to the Tribunal’s order. In addition, it is observed that the Bank has not provided an explanation for its failure to meet its obligation to produce the documents ordered. The documents provided by the Bank were documents produced by the Applicant’s manager, Ms. AB, in response to a request from PRS in 2017 and were not in any manner produced in response to the Tribunal’s specific order. As a result of PRS’s focus, the response given by Ms. AB does not correspond to the request for documents that discuss the creation of the position in Unit X or the initial terms of reference for the GE-level Risk Analyst position.

69. Accordingly, the Bank has failed to provide evidence to rebut the Applicant’s submission that there was a promise. Hence, the Tribunal, on the evidence before it, concludes that there was a promise, albeit a promise that did not include the creation of a position to match the Applicant’s qualifications and responsibilities. While the Applicant has been unable to demonstrate that the Vice President’s promise included a commitment to establish a position that matched her qualifications and responsibilities, such information, if it existed, would be in the Bank’s exclusive

possession. The Tribunal finds that the Bank's failure to produce the documents requested or submit an explanation cannot be construed in the Bank's favor.

Breach of the Promise

70. The Tribunal will now consider whether the Bank breached the promise made to the Applicant. It is the Applicant's contention that the Bank breached that promise: (1) when the posting of the new position was delayed by fourteen months; (2) through the inclusion of highly technical selection criteria that "neither matched [Unit X's] business needs nor [the Applicant's] background"; and (3) by including input for the position's TOR from the Senior Operations Officer against whom the Applicant had filed an EBC complaint. The Applicant on the one hand asserts that, by failing to post a position for which she could fairly compete, the Bank failed to fulfill its promise to rectify her "permatemp" situation and, thus, "exercised its discretion in an arbitrary manner [...]." The Bank on the other hand contends that, if a promise were made, that "(so-called) promis[e] was kept when eventually such a position was created."

71. Two preliminary remarks are merited. First, the Tribunal observes that there was no time commitment attached to the creation of the GE-level Risk Analyst position. The Vice President did not promise to create a position within a specified time, nor did he add a specific time frame to his announcements made to the VPU. Second, the record shows that the Senior Operations Officer's involvement in establishing the TOR for the Risk Analyst position took place in May 2016. Although EBC investigators cautioned Mr. Y against involving the Senior Operations Officer in the GE-level Risk Analyst recruitment process in March 2016, the Senior Operations Officer's involvement took place prior to the guarantee provided by Mr. Y, in September 2016, that the Senior Operations Officer would no longer be involved in the recruitment process. The Tribunal finds therefore that the Applicant has not substantiated how either of these two issues amounted to a breach of the promise made by the Vice President.

72. To assess whether the Bank breached the promise made, information on what was intended to form the TOR for the GE-level position and whether the actual TOR posted deviated from the Vice President's intent is useful. Evidence of this would be contained in documents and

correspondence between 24 March 2015 and 30 November 2016 between the Vice President and management that reflect, discuss, or relate to the TOR for the GE-level Risk Analyst position. The Bank was ordered to produce the aforementioned documents; however, the documents produced did not fully address the order, and the Bank once again did not provide any explanation for its failure to fully comply with the Tribunal's order. The Tribunal notes that the documents provided were email messages from 24 to 31 May 2016 between the Applicant's manager, Ms. AB; the Applicant's supervisor, Mr. Y; and other unit colleagues regarding the draft TOR for the GE-level Risk Analyst position. The Bank, however, did not submit the annexes referenced in the messages, which would have been beneficial as they would have revealed any differences between what was initially envisaged and what was ultimately advertised.

73. The Tribunal also ordered the Bank to provide all records of the selection advisory committee for the recruitment of the GE-level Risk Analyst position that detail: (1) the composition of the committee; (2) the selection criteria; (3) the process for recruitment to the GE-level Risk Analyst position; and (4) any notes explaining why the Applicant was not shortlisted for the position. In its document production, the Bank failed to provide any notes on why the Applicant was not shortlisted for the position. The Bank also failed to explain why it did not properly and fully respond to the specifics of the Tribunal's order.

74. In reviewing the selection criteria and the background of those who were shortlisted, it is not apparent why the Applicant was not shortlisted for an interview, especially as the Vice President intended to create a pathway for the Applicant to compete for a term position, or as the Applicant asserts, and the Bank does not disprove, to create a way to bring the Applicant "on board." The TOR for the Risk Analyst position lists, under hard skills, "strong knowledge of and experience with visualization software (e.g., Tableau), databases (e.g., SQL), and statistical packages (e.g., Excel, SPSS, and SAS)." It also requires advanced knowledge of Microsoft (MS) Office software including MS Word, MS Excel, and MS Powerpoint. Finally, it notes that knowledge of "MS Project, MS Access and ACL," as well as "Bank and/or [VPU] systems such as CMS, SAP, Business Warehouse, Business Intelligence, etc." would be an advantage. The Applicant's CV notes that her computer and technology skills include SPSS and World Bank

proprietary databases, as well as Microsoft Office (Word, Excel, Access, Powerpoint, Visio, and Project).

75. The TOR further required an undergraduate degree in law, criminal justice, criminology, business or public administration, accounting, information technology, journalism, business intelligence, or other relevant area. It adds that a “Masters’ degree will be considered a plus.” The Applicant holds an undergraduate degree in law, a Bachelor of Science degree in mass media and communications, and a Master of Science degree in communications. It is noted that the five shortlisted candidates had diverse backgrounds in statistics, international affairs, international development, government and policy, and econometrics.

76. Furthermore, the TOR required the candidate to have a minimum of four years of relevant research/analytical experience “preferably in (i) areas related to the investigation of fraud, corruption, and/or staff misconduct; and/or (ii) Bank Group operations (or other similar multilateral or bilateral development organization), or equivalent combination of education and experience.” At the time the GE-level Risk Analyst position was advertised, the Applicant had eight years of experience working on fraud and corruption investigations at the Bank. It is observed that, while all of the five shortlisted candidates were lauded for their data analytics skills, only one had experience working at the World Bank or a similar multilateral or bilateral development organization.

77. The Tribunal notes, however, that while some tasks in the TOR appear similar to the Applicant’s duties in Unit X there is substantial focus on data analysis and data management in the TOR and this is reflected in the selection of the candidates. However, it is not clear what instructions were provided to the selection advisory committee given that the record includes an email from Ms. AB on 31 May 2016 during the creation of the TOR in which she asked Mr. Y to finalize the draft TOR with “a view of making it a bit more generic in terms of data analytics that can evolve over time[.]” It is not known why the advertised TOR does not appear to correspond to Ms. AB’s request for more generalization in terms of data analytics. The Bank did not produce the initial drafts of the TOR nor did it produce the comments of the committee regarding the Applicant, if such comments exist.

78. On the basis of the record before it, the Tribunal considers that, since the GE-level position was advertised as an opportunity for the Applicant to reasonably compete for a term position in the VPU, her exclusion by the selection advisory committee on the basis of data analytics skills may have eliminated her chances, even though she appears to have met many of the job requirements including some which were considered to be advantageous. While the Applicant may not have been the successful candidate, since she met the criteria, shortlisting her would have accorded her an opportunity to legitimately compete for the position and would have been the fulfilment of the promise made to her by the Vice President. She was deprived of this opportunity and the Bank has failed to provide the explanations for that decision. As was held in *Desthuis-Francis*, Decision No. 315 [2004], para. 23, “[l]ack of a demonstrable basis commonly means that the discretionary act was done capriciously and arbitrarily.” On the basis of the evidence on the record and in light of its jurisprudence, the Tribunal finds a breach of promise.

The Bank’s Failure to Treat the Applicant Fairly

79. The Tribunal will now address the Applicant’s contention that the Bank failed to treat her fairly in the redistribution of her work program and the nonrenewal of her STC contract. Pursuant to Principle 2.1 of the Principles of Staff Employment, the organizations shall “at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members.” A “basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work.” *Garcia-Mujica*, Decision No. 192 [1998], para. 19. This is a general obligation on the Bank Group (*see CS*, Decision No. 513 [2015], para. 100), and applies with respect to termination decisions as well as any other adverse decisions.

80. With respect to the reallocation of the Applicant’s LCR portfolio, the Bank does not challenge the Applicant’s assertions and the Tribunal finds that the Applicant’s claims are substantiated by the record. The record shows that the Applicant contacted her supervisor, Mr. Y, several times seeking clarification of her work program regarding the LCR portfolio but he did not respond. During this time, Mr. Y had already appointed the GG-level colleague to replace the Applicant in June 2016 but failed to communicate this critical fact to the Applicant. Although the

Applicant has already received some compensation for this claim as a result of the PRS process, the Tribunal considers that additional compensation is merited given the extent to which the principle of fairness was disregarded and the fact that the failure to provide the Applicant proper notice of changes to her work program also violated the requirements of due process.

81. With respect to the nonrenewal of the Applicant's STC contract, the Applicant's Letter of Appointment dated 12 October 2015, which governed her employment from 13 October 2015 until 30 June 2016 under Mr. Y's supervision, provides that the "World Bank will make every effort to give you as much notice as possible" of any changes to her appointment. As with *DK*, Decision No. 552 [2017], the Tribunal will rely on the record to determine whether the Bank indeed made an effort to provide the Applicant with a reasonable amount of time to "allow her to make necessary arrangements regarding her career and, most important for STC staff under a G-4 visa status like the Applicant, to make arrangements regarding her immigration status in the United States." *See DK*, para. 132.

82. The evidence on record reveals that the Applicant was not provided with a reasonable amount of notice of the nonrenewal of her contract. Given that her STC contracts had been continuously renewed over the preceding eight years sometimes at short notice, there was no indication to the Applicant that the renewal of 25 October 2016 was to be her last. The Applicant was only informed two days prior to the end of her contract that her contract would not be renewed when her supervisor casually asked her what she would do "after this." Such treatment of a staff member is not only improper but also a violation of due process. Having served consecutively on STC contracts for eight years, the Applicant deserved to have been provided with more advance notice of the nonrenewal decision to enable her to make the necessary arrangements, particularly taking into account her G-4 visa status.

83. The Tribunal is not persuaded by the Bank's argument that the Applicant should have known that her contract would end upon the appointment of the GE-level Risk Analyst. The record shows that the Applicant believed and understood that the GE-level position was created to remedy her "permatemp" situation. It was therefore reasonable for the Applicant to consider, without any information to the contrary, that she may be the person selected to that position. This is buttressed

by the fact that her contract was extended twice to permit her to apply and compete for that position. The Applicant was not notified, at the time her contract was to end, that the GE-level position was going to be cancelled. To the Applicant, for all intents and purposes, she was still under consideration for the position. Furthermore, given the Bank's argument that the GE-level position was created to address other specific unit needs and not solely the Applicant's work program, it could not have been immediately apparent to the Applicant that if she were not selected her services at the Bank would no longer be required.

84. The Tribunal finds that the Applicant was not treated fairly by the Bank, and this is exacerbated by the fact that the Applicant's managers knew, at least as of 16 November 2016, that the Applicant was not shortlisted for the position. Instead of notifying her at that time, they gave her only two days' notice that her contract would not be extended. The Tribunal finds that the Bank disregarded the Applicant's rights to appropriate notice of the nonrenewal of her contract in violation of the terms of her contract and the Bank's obligations to treat staff fairly pursuant to Principle 2.1 of the Principles of Staff Employment.

Allegations of Retaliation

85. The Tribunal will finally address the Applicant's allegation of retaliation. It is the Applicant's contention that two adverse employment decisions, namely the nonrenewal of her contract and decision not to shortlist her for the position, were in retaliation for her PRS case and the EBC complaint she made against her colleague, the Senior Operations Officer. Retaliation for the use of the Bank's conflict resolution system is prohibited by Staff Rule 3.00, paragraph 7.06. In *O*, Decision No. 337 [2005], para. 47, the Tribunal explained that any applicant alleging retaliation must discharge his or her burden of proof by:

[E]stablish[ing] facts which bring his or her claim within the definition of retaliation under the Staff Rules. An applicant bears the onus of establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse action. A staff member's subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation[.]

86. That a staff member is not shortlisted for a particular position is not automatic grounds for a retaliation claim. The Tribunal reaffirms that “no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position.” *Riddell*, Decision No. 255 [2001], para. 23. Furthermore, the “decision to select an applicant for a particular position, or to include him or her in a list of candidates, is discretionary and the Tribunal will not overturn such a decision unless it finds that it is tainted by bias or abuse of discretion.” *Id. See also EJ*, Decision No. 572 [2017], para. 57. The Tribunal’s sole preoccupation in this regard is to determine

[...] whether the Bank’s decision was the product of bias, prejudice, arbitrariness, manifest unreasonableness, or unfair or improper procedure. Thus, if the Bank’s conclusion regarding the Applicant’s qualifications for selection [...] altogether lacks support in factual evidence or reasonable inference, that conclusion must be found to be an abuse of discretion. *Jassal*, Decision No. 100 [1991], para. 37.

87. Similarly, with respect to contract renewal, this is a discretionary decision which would be overturned if the Tribunal finds that the exercise of the discretion was “arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack[ed] a reasonable and observable basis, constitut[ed] an abuse of discretion, and therefore a violation of a staff member’s contract of employment or terms of appointment.” *DO*, Decision No. 546 [2016], para. 33, citing *AK*, Decision No. 408 [2009], para. 41; *Desthuis-Francis*, para. 19; *Marshall*, Decision No. 226 [2000], para. 21; *de Raet*, Decision No. 85 [1989], para. 67.

88. The record shows that the Applicant filed her case with PRS on 27 October 2016, two days after the extension of her contract for one month. This would be the Applicant’s last contract extension. Less than a month later the Applicant was not shortlisted for the GE-level position. The Applicant’s supervisor, Mr. Y, was aware of both the Applicant’s PRS case and the deliberations of the selection advisory committee since he chaired that committee. So was the Applicant’s manager, Ms. AB, who oversaw the recruitment process and was the responding manager in the PRS case.

89. With respect to the EBC complaint, the Applicant filed this complaint against the Senior Operations Officer in February 2016. The Applicant asserts that both Ms. AB and Mr. Y were aware of her complaints, and this is confirmed by the record. According to the EBC Case Closure

Memo, the Applicant had discussed the behavior of the Senior Operations Officer with Ms. AB approximately a year earlier.

90. On 21 March 2016, EBC interviewed Mr. Y and advised him to exclude the Senior Operations Officer from the recruitment process for the GE-level Risk Analyst position given his poor relationship with the Applicant. The EBC investigators subsequently met with Mr. Y on 14 September 2016. In that conversation Mr. Y acknowledged that he had spoken to the Senior Operations Officer about his behavior and had begun to see some improvements. Mr. Y also stated that the Senior Operations Officer would not “have any involvement in the recruitment/interview process for the GE level Risk Analyst position for which [the Applicant] was intending to apply.”

91. It is further known from the record that the Senior Operations Officer was involved in the development of the TOR for the Risk Analyst position between 24 and 31 May 2016. According to email records, the Senior Operations Officer provided comments on the draft TOR, which Ms. AB requested Mr. Y to incorporate into the draft. However, there is no evidence that he was included in the process after September 2016, when Mr. Y committed to EBC that the Senior Operations Officer would be excluded from the process. That the Senior Operations Officer was excluded from the process is confirmed by the fact that Ms. AB expressed, in her Manager’s Response during the PRS process, that subsequently removing the Senior Operations Officer from the recruitment for the GE-level Risk Analyst position was not advisable from a business perspective. She stated:

The TOR [was] finalized by [Mr. Y] and approved for posting by the Manager [...]. Thus, [the Senior Operations Officer] and [...] ended up playing a limited role in the formulation of the ToR, though their greater involvement would have been reasonable (and indeed advisable from a business perspective) given the fact that the Risk Analyst is expected to work closely with both individuals. [The Applicant’s] complaints about their necessary involvement in the development of the ToR also begs the question of what were [the Applicant’s] expectations regarding her ability to work with [the Senior Operations Officer] and [...] had she been the successful candidate for the GE position. It is indeed unclear how she expected to successfully fulfil the duties of the GE Analyst without being willing or able to work rather closely with 2 of the 3 of [Unit X’s] GG Level Preventive Focal Points.

92. The Tribunal finds that the record does not contain a *prima facie* case of retaliation. However, there is evidence to suggest that the complaints the Applicant made against the Senior Operations Officer resulting in his exclusion from the recruitment process were a factor which may have affected the decision not to shortlist the Applicant to the GE-level Risk Analyst position. The Applicant has convincingly demonstrated that a member of the selection advisory committee knew of her complaints at the time the shortlisting or the consideration of her shortlisting took place. In addition, as per Ms. AB's comments during the PRS process, management was concerned about the Applicant's ability to work with the Senior Operations Officer if she were appointed to that role given her complaints about him. While evidence of the retaliatory intent connected to the use of the conflict resolution system is absent, the Tribunal is satisfied that the Applicant has demonstrated that the decision not to shortlist her may have been tainted by improper motivation and extraneous considerations. *See Husain*, Decision No. 266 [2002], para. 44. If there were legitimate concerns about the Applicant's ability to work with the Senior Operations Officer, these should have been brought to her attention.

93. As demonstrated above, the Applicant's background was sufficiently connected to the description of the GE-level Risk Analyst and the Bank has not provided any explanation for why the Applicant was not shortlisted. The burden is now on the Bank to provide a reasonable and observable basis for the decision not to shortlist her for the position.

94. With respect to the decision not to renew the Applicant's STC contract, both Mr. Y and Ms. AB were responsible for this decision. The Bank was ordered to provide documents regarding the decision not to extend the Applicant's contract but failed to provide such documents or an explanation. Given that there are email communications concerning the renewal of the Applicant's other STC contracts, it is not plausible that similar email messages do not exist with respect to the final decision not to extend the Applicant's STC contract. In any event, it is the Bank's responsibility to provide such documents in its possession, or to provide an explanation for the absence of such documents.

95. Having found that the Applicant has demonstrated that the decisions not to renew her STC contract and not to shortlist her were improperly tainted by management's concerns about the

Applicant's ability to work with the Senior Operations Officer because of her EBC complaint about him, the question remaining is whether the Bank has presented a reasonable and observable basis for the impugned decisions. The Tribunal finds that it has not.

96. According to the Bank, after becoming aware of the Applicant's complaint to EBC, the VPU's management extended her STC appointment twice, respectively in June 2016 and October 2016. In addition, the Bank avers that management had a reasonable and observable basis for the creation of the new position and for the development of its TOR, which was informed by Unit X's business needs and not through manipulation to exclude the Applicant from fairly competing.

97. Indeed, the record shows that the Applicant's contracts were extended to enable her to apply for the GE-level Risk Analyst position while still employed in Unit X. However, the adverse decisions the Applicant challenges are not addressed by the Bank—namely the decision not to shortlist her to the Risk Analyst position and the decision not to extend her contract. The Bank has provided no response to the Applicant's claim that there is no reasonable explanation as to why she was denied the opportunity to fairly compete for the position through the shortlisting process. While the Tribunal respects the Bank's managerial discretion in these decisions, a reasonable and observable basis for those decisions is nevertheless required. Given that the Bank has also not provided the documents requested nor explained why these documents have not been produced, the Tribunal cannot exclude the possibility, as demonstrated by the Applicant, that the decision not to shortlist the Applicant was wrongfully influenced by management's concerns about the working relationship between the Applicant and the Senior Operations Officer or its view that having to exclude the Senior Operations Officer from the recruitment process, on EBC's recommendation, was not advisable from a business perspective.

98. With respect to the nonrenewal of the Applicant's STC contract, the Tribunal finds that the Bank has also not addressed the Applicant's contention that there was no basis for this decision given that she had outstanding work products and the budgetary limitations alluded to by the Bank did not affect the VPU's variable budget which funds STC contracts. Indeed, as with other exercises of managerial discretion, the Bank is at liberty to determine how to allocate its budget. However, when appearing before the Tribunal, the Bank is obligated to state its case and

substantiate its contentions with the reasonable and observable rationale for its decisions. Failing to do so, is “evidence of arbitrariness.” *Desthuis-Francis*, para. 23.

99. The record contains evidence that the decisions concerning the Applicant’s STC contract and the Risk Analyst position may have been influenced or tainted by concerns about the Applicant’s working relationship with the Senior Operations Officer. Rather than address the concerns the Applicant raised about the Senior Operations Officer through the performance management process as recommended by EBC, it appears that the option of ending the Applicant’s employment was instead adopted. The Tribunal will therefore award compensation to the Applicant in this regard.

100. A final word on retaliation is warranted. As previously stated, EBC remains the appropriate avenue to undertake an investigation into a retaliation claim. In *Bodo*, Decision No. 514 [2015], para. 78, the Tribunal held that:

Given the severity of allegations of discrimination and retaliation, thorough investigations of the facts are imperative, and staff members should avail themselves of the investigative body that is the Office of Ethics and Business Conduct (EBC).

101. The record shows that, after PRS referred the Applicant’s retaliation claims to EBC for consideration, EBC contacted the Applicant but was unable to schedule an intake interview due to the Applicant’s unavailability. The case was ultimately closed on 6 June 2017, as EBC did not receive a response from the Applicant. The Tribunal deems it necessary to reiterate its observations in *Sekabaraga*, Decision No. 494 [2014], para. 42, and reiterated in *Bodo*, para. 78, that such serious allegations merit investigation by EBC prior to asserting them before the Tribunal.

Concluding Remarks

102. The Tribunal has found that a promise was made to the Applicant to create a position which the Applicant could reasonably apply and compete for as an attempt to resolve the Applicant’s “permatemp” situation. It was a legally valid promise made by an official with the authority to bind the organization. However, this promise did not include a commitment to match

the Applicant's qualifications and responsibilities. By not shortlisting the Applicant, the Bank limited her ability to effectively compete for the position, amounting to a breach of the promise made by the Vice President. However, the Tribunal is cognizant of the fact that the GE-level Risk Analyst position was ultimately cancelled. All that the Applicant can reasonably be ascertained to have lost was the opportunity to compete for a position which was cancelled. In addition, the Tribunal has found that the Bank treated the Applicant unfairly in the reallocation of her LCR portfolio and the failure to communicate the nonrenewal of her contract in a timely manner. Although the Applicant has already received compensation for these infringements, the Tribunal notes that the treatment of the Applicant, after a long service at the Bank on consecutive STC contracts, was particularly egregious and she has not yet been compensated for the Bank's violation of due process. Finally, the Tribunal finds that the Applicant has demonstrated that the decisions not to renew her STC contract and not to shortlist her were improperly tainted by concerns about her working relationship with the Senior Operations Officer as a result of her complaints against him to EBC. Although there is insufficient evidence on the record to substantiate an allegation of retaliation for use of the conflict resolution system, the Bank has failed to present a reasonable and observable basis for its decisions. Accordingly, for these infringements of the Staff Rules and the Applicant's terms of employment, compensation is duly awarded to the Applicant.

103. Finally, the Tribunal wishes to stress that the Bank did not meet its obligation to respond properly to the Tribunal's order for the production of documents or provide any justification for the absence of certain documents. As was held in *Salle*, Decision No. 10 [1982], para. 35, "[i]t is incumbent upon both the Applicant and the Respondent to provide the Tribunal with all the available evidence in order to allow it to pass judgment upon the Applicant's allegations of non-observance of his conditions of employment[.]" The Bank is obliged to provide documents which are exclusively in its possession and which are deemed relevant by the Tribunal. Documents such as those identified in the Tribunal's order are the kind of evidence which is particularly difficult for staff members to access and verify. The Tribunal expects the Bank to ensure its document production is responsive to the Tribunal's specific orders. Consistent with the Tribunal's practice demonstrated in *BI*, Decision No. 439 [2010], para. 50, compensation is duly awarded to the Applicant.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of 180 days net of taxes at her last STC rate for the reasons set forth in paragraph 102 above;
- (2) The Bank shall pay the Applicant the amount of \$30,000 for the reasons set forth in paragraph 103 above;
- (3) The Bank shall pay the Applicant's legal fees and costs in the amount of \$30,000; and
- (4) All other claims are dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 May 2018