

## Decision No. 342

**H,  
Applicant**

**v.**

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

1. The World Bank Administrative Tribunal has been seized of an application, received on February 28, 2005, by H against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Bola A. Ajibola (President of the Tribunal) as President, Robert A. Gorman and Francisco Orrego Vicuña, Judges. The Applicant made a request for anonymity to which the Respondent did not object. The Applicant's request for anonymity was granted by the Tribunal. The Applicant's request for oral hearings was denied. The usual exchange of pleadings took place and the case was listed on September 23, 2005.

2. The Applicant was declared redundant in the year 2000, but negotiated with the Bank a mutually agreed separation (MAS), dated February 28, 2001, that provided for a limited additional period of employment, principally in order that the Applicant might pursue a job search within the Bank. The MAS, and the Applicant's time-limited service thereunder, were subsequently extended. In October 2002, the Applicant took an appointment as Senior Advisor in the office of the Executive Director (ED) for Saudi Arabia, a position that is not technically within the Bank's employ and which results in the staff member's termination of Bank employment. The Bank, however, had given the Applicant a guarantee of re-employment (a "re-entry guarantee"), but only for the ten-week period remaining in the earlier MAS, which the Bank and the Applicant had first agreed would be held "in abeyance" while he was in the office of the ED, and which the Bank later "nullified" because the Applicant believed that having a record of an MAS in his personnel file was making it difficult for him to secure a Regular position within the Bank.

3. The Applicant contends that the Bank acted improperly in requiring that he enter an MAS as a condition of avoiding his redundancy, and in maintaining the terms of the MAS both before and after his service in the ED's office. He also contends that it was improper to limit his re-entry guarantee to only ten weeks of employment. Finally, he asserts that, although the time period for challenging his redundancy is long passed, he has been unfairly treated by members of the Human Resources Vice Presidency (HR) from the time of his redundancy and through his several years while working under the MAS and re-entry guarantee, so that he has been rendered unable to secure employment within the Bank for which he regards himself as well qualified. The Applicant seeks a rescission of the decision to terminate his employment, a good faith effort to place him in a suitable position, termination of his Bank service only upon compliance with the Staff Rules dealing with redundancy, appropriate compensation for unpaid salary, and moral damages. He also requests costs in the amount of some \$24,000. The Respondent asserts that the Applicant's employment terminated on December 1, 2004, through an agreed "retirement," at the end of the period contemplated by the MAS and its amendments, and by the re-entry guarantee.

### **Factual Background**

4. The Applicant joined the Bank in 1985, and his appointment was regularized in 1988. After working for some ten years in the Africa Region, the Applicant in 1998 transferred to the East Asia and Pacific Region (EAP) Financial Sector Group (EASFS), where he became a Principal Financial Economist (Level H). On June 26,

2000, the Applicant was notified that his employment would be declared redundant effective June 30, 2000 because of a reduction in the number of positions, under Staff Rule 7.01, para. 8.02(d). He was given six months to look for alternative employment. Failure to find alternative employment would result in his employment being terminated on February 28, 2001. On October 27, 2000, the Applicant filed Appeal No. 584 with the Appeals Committee challenging the Bank's decision to declare him redundant, principally on the grounds that his then supervisor had taken improper factors into account in lowering his ratings and that the Sector Board had neglected its responsibilities. In the meantime, he applied for at least 14 jobs, but was not selected for any of them. It bears noting here, as it will be noted below, that any challenge to the validity of the Applicant's redundancy is well out of time; it was not considered by the Appeals Committee and will not be considered by the Tribunal, except to the extent that the redundancy exercise may possibly shed light upon more recent motives and conduct that are timely being challenged here.

5. In February 2001, as the Applicant's six-month job-search period was drawing to a close, Mr. Herlihy, Director, Corporate Finance Department (FINCF) in the Strategy, Finance and Risk Management Vice Presidency (SFR), offered the Applicant a six-month Temporary assignment. On February 28, 2001, before accepting Mr. Herlihy's offer, the Applicant requested that the Bank replace his redundancy with an MAS having a termination date of August 31, 2001 – an extension of six months – with the Applicant, *inter alia*, "retiring" from Bank service if in the meantime he was unable to obtain an Open-Ended or Term position or be reassigned to a Regular position. He also proposed that he would be given no severance payments (severance payments are commonly paid to staff members declared redundant), and that he would withdraw his appeal challenging the redundancy decision. Although an MAS normally contained these restrictions upon a staff member, it carried several considerable advantages as well, for example: the departing staff member may subsequently be re-employed by the Bank (not generally the case with staff declared redundant who receive severance benefits), as illustrated by the six-month FINCF offer to the Applicant; this extended period of temporary employment affords the staff member additional time to search (with the assistance of supervisors and HR staff) for permanent employment elsewhere within the Bank; and the staff member signing an MAS without receiving severance benefits is normally entitled to the unreduced retirement benefits available upon early retirement under the so-called Rule of 50 (for retirees of that age).

6. On the same day as the Applicant's request, February 28, 2001, he and the Bank entered into the MAS with the conditions proposed by the Applicant, and on March 2, the Applicant withdrew Appeal No. 584 challenging the decision to declare his position redundant. On March 1, 2001, Mr. Herlihy confirmed by e-mail his offer to employ the Applicant in FINCF "on a 6 month temporary assignment" until August 31, 2001, and he stated that "at this point, Corporate Finance can make no commitment beyond the 6 month period." Mr. Herlihy also encouraged the Applicant to continue to seek other employment opportunities. In August 2001, as the Applicant's assignment was coming to an end, Mr. Herlihy indicated that he would like to keep the Applicant in FINCF but that he would have to check with HR. He spoke with the HR Manager for his unit, Ms. Baptist, who informed Mr. Herlihy that the Applicant would have to compete with other candidates for a Level H position.

7. In response to an e-mail from the Applicant dated August 30, 2001 – one day before his six-month appointment was to end – the Applicant was given a one-year extension, until August 31, 2002, to afford him time to look for another position as well as to compete for positions within FINCF. This was formalized on September 7, 2001, in a memorandum from Ms. Baptist stating, *inter alia*, that "[a]ll other terms and conditions referred to in your MAS Memorandum dated February 28, 2001 will remain the same. There will be no further extensions or changes to your Mutually Agreed Separation." She reiterated that the Applicant released all claims against the Bank arising out of previous circumstances or Bank decisions. In October and November 2001, the Applicant asked both Mr. Herlihy and Ms. Baptist whether his MAS could be nullified and whether he might be appointed to a two-year Fixed-Term appointment, but the response was in the negative, accompanied by a suggestion that the Applicant apply for two then open positions at Level G and Level H; if he were successful in securing such a position, his new appointment would displace the MAS by the latter's own terms. The Applicant was once again reminded that FINCF was not in a position to extend his assignment beyond August 31, 2002. He applied for one or both of the Level G and H positions, but was unsuccessful.

8. On June 12, 2002, the Applicant wrote to Ms. Baptist explaining that Mr. Herlihy would not regularize his

contract or give him a Fixed-Term contract, and that his failure to find a job would force him to leave the U.S. and would imperil his family by requiring them to return to Pakistan. In response, Mr. Herlihy agreed to “a final three-month extension” of the Applicant’s assignment in FINCF from August 31, 2002 to November 30, 2002 to provide him with additional time for a job search. He stated that he could neither offer the Applicant a Regular position nor further extend his assignment beyond November 30, 2002. (The Tribunal notes that this date was one year and nine months beyond the date on which the Applicant’s employment was initially to be terminated pursuant to his redundancy.) This three-month extension was memorialized by Ms. Baptist in a memorandum dated July 1, 2002, which was captioned “Final Addendum to your MAS” and which expressly continued all other terms and conditions of the February 28, 2001 MAS. The Applicant signed the addendum on August 28, 2002. Between that time and the fall of 2002, the Applicant unsuccessfully applied for at least five open positions at the Bank.

9. On September 3, 2002, the Applicant informed Ms. Baptist that he had received a tentative offer to work as a Senior Advisor in the office of the ED for Saudi Arabia. Because Senior Advisors in ED offices are not Bank staff, the Applicant would have to resign from the Bank in order to take up the assignment. The Applicant stated to Ms. Baptist that the ED was going to request that the Bank give the Applicant a re-entry guarantee. Mr. Perlin, Senior Vice President, SFR, decided to give the Applicant a ten-week re-entry guarantee at the end of the Senior Advisor assignment. He based this ten-week period on the remaining time the Applicant had left in his FINCF assignment pursuant to the amended MAS, and he added a couple of more weeks to signal the Bank’s support for the Applicant’s job-search efforts. The Applicant explained in an October 3, 2002 e-mail to Mr. Perlin that the limited re-entry guarantee (which the Applicant had hoped would be for three months) would provide a critical safety net and that it was a “generous gesture.”

10. The ED for Saudi Arabia formally offered the Applicant a position as Senior Advisor on October 3, 2002. This was followed by a considerable number of e-mails between the Applicant and Mr. Grassley, Manager of the Ending Employment Unit, with respect to the Applicant’s employment terms when he was later to return to FINCF. An exchange on October 10, 2002 is particularly illuminating. The Applicant wished to have all references to an MAS eliminated from his personnel file, because he believed that these “raised questions during short-listing of jobs I have applied for”; he stated that “I know you have kindly offered to cleanse the records as far as possible of references to the MAS. However, as you said[,] you cannot assure me that a Personnel officer looking at my file will not find out that an MAS is in existence.” Mr. Grassley, however, pointed out that the Applicant had signed an MAS that clarified the terms and conditions with regard to the Applicant’s “temporary Finance assignment,” and that the Bank “is not willing to cancel this agreement. If you were able to obtain a full, open re-entry without any limits, the Bank would be willing to consider cancelling the MAS. Your limited re-entry to Finance is, in actuality, a continuation of the MAS and not a separate agreement.” Mr. Grassley continued: “By maintaining the current MAS, and Finance kindly agreeing to put the remaining 10 weeks in abeyance until the end of the Sr. Advisor appointment, you maintain your option to obtain another job within the Bank Group. I think this is a generous offer by Finance, and the Bank is happy to support the delay in finishing the MAS.”

11. Mr. Perlin signed the ten-week limited re-entry guarantee agreement on October 17, 2002. Among other things, the memorandum stated: “Should you be unable to find a term or open appointment by the end of the 10 weeks, you will retire from Bank service with no severance benefits. All other terms and conditions referred to in your memorandum date[d] February 28, 2001 and subsequent memorandums will remain the same.” The phrase “Mutually Agreed Separation” was not used, obviously in response to the Applicant’s persistent requests to that effect. The Applicant signified his written acceptance of these terms on October 21, 2002.

12. In a memorandum dated October 18 from Ms. Baptist, also signed by the Applicant on October 21, she stated that “Finance has agreed to put your MAS into abeyance, until the end of your assignment as sr. advisor,” but that if the Applicant did not secure another Term or Open-Ended appointment by the end of his service for the ED, “Finance will provide a limited re-entry of (10) weeks for the purpose of job search,” which will complete the remaining time “of your mutually agreed separation.” She continued, “As stated in your MAS, should you be unable to obtain an open or term appointment” in that remaining ten-week period “of your MAS, you will retire from Bank service and receive those benefits specified in your MAS.” As was consistently done in

connection with previous MAS amendments, the October 18 memorandum stated that “[a]ll other terms and conditions referred to in your MAS Memorandum dated February 28, 2001 and subsequent amendments will remain the same.”

13. The Applicant assumed his new position as Senior Advisor to the ED for Saudi Arabia effective October 16, 2002. Late in 2002 and early in 2003, there were extensive e-mails and meetings between the Applicant and either (or both) Ms. Sierra, Vice President, Human Resources (HRSVP), and Mr. Bowyer, Manager, HR Service Center. In these exchanges, the Applicant persisted in contesting the continuation of his MAS, which he once again claimed was in his personnel records and interfered with his appointment to other posts within the Bank; and he raised questions about his redundancy of more than two years before and his contemporaneous waiver of severance benefits. He claimed that both that waiver and the MAS were a product of coercion by the Bank, that the MAS was incompatible with his post-redundancy appointment to work in FINCF, and that the MAS was in any event automatically nullified upon his leaving the Bank's employment to assume the post with the Saudi Arabian ED. He asked that the MAS be expressly nullified and that the re-entry guarantee be extended from ten weeks to six months.

14. Mr. Bowyer ultimately agreed to eliminate the MAS, while retaining unchanged the substance of that agreement between the Applicant and the Bank. On May 15, 2003, Mr. Perlin signed a new re-entry guarantee agreement that reflected the same agreement that he had initially signed on October 17, 2002, including the reference to “a limited re-entry to the Finance Vice Presidency ... for not less than ten (10) weeks,” and the statement that “[s]hould you be unable to find a Term or Open-Ended appointment by the end of the 10 week period, or any extension thereof, you will retire from Bank service with no severance benefits.” After repeated discussions about the precise language, Ms. Sierra on July 11, 2003 issued a memorandum to the Applicant confirming that “the February 28, 2001 Mutually Agreed Separation (MAS) memorandum and its subsequent amendments are hereby nullified.”

15. Only two months later, on September 12, 2003, the Applicant filed a Statement of Appeal with the Appeals Committee. He challenged the Bank's decision to provide him with a ten-week re-entry guarantee following his service with the ED, the decision nullifying the MAS agreement of February 2001, and a pattern of unfair and illegal behavior that culminated in those two decisions. The Appeals Committee held oral hearings on July 27, 2004, and rendered its Report on September 14, 2004, rejecting the Applicant's appeal with respect to those decisions. It also held that it had no jurisdiction over the Applicant's request to “resubmit” his earlier appeal, withdrawn in March 2001, challenging the initial redundancy decision. The Appeals Committee did, however, recommend that someone in HR review the Applicant's personnel records to assure that there was no reference therein to the MAS, and review those personnel records with the Applicant and provide him with career counseling. Mr. Zhang, the Managing Director, MDS (Office of the Managing Director), accepted these recommendations, and the Bank has affirmed in this proceeding that it took those recommended actions; although offers of assistance in finding a position were allegedly made by HR to the Applicant in December 2004, the Applicant apparently did not avail himself of those offers and the discussions broke off in disagreement.

16. Meanwhile, in April 2004, while his appeal was pending before the Appeals Committee, the Applicant informed the new Vice President of SFR, Mr. Wilton, that his position in the Saudi ED's office was about to end, and the Applicant renewed his pleas to return to the Bank for six months to find another job. Mr. Wilton informed the Applicant that there was no suitable opening for him in SFR. As matters eventuated, the Applicant was given a developmental assignment with the IFC (which was paid for by Mr. Wilton's unit), and Mr. Wilton extended the Applicant's ten-week re-entry term to six months. He informed the Applicant that, barring the latter's finding a Term or Open-Ended appointment by the end of that period, the Applicant would have to retire without severance payments and without further funding from SFR.

17. The Applicant's position in the office of the Saudi ED, which began in October 2002, ended after roughly one year and eight months in June 2004. His developmental assignment with the IFC began on June 21, 2004 and ended on November 19, 2004, at which time he transferred to the SFR roster. During those two periods of more than two years, the Applicant unsuccessfully applied for 12 positions within the Bank. He retired from the



Bank on December 1, 2004, and he soon thereafter assumed a position as a Consultant with the Bank's Quality Assurance Group, where he is apparently still engaged.

18. On February 28, 2005, the Applicant filed this application with the Tribunal. His claims are less than clear. Although, for example, he contests "the decision to restrict my re-entry guarantee to 10 weeks" as lacking any "rational basis," he immediately acknowledges that "that issue became moot" in view of the six months of employment he served upon leaving the office of the Saudi Arabian ED and before retiring from the Bank. Moreover, although it is undisputed that any challenge to the Applicant's redundancy is well out of time, and any reference thereto is merely to substantiate a claim of more recent "unfair and illegal" conduct by the Bank, the Applicant makes repeated claims and devotes extensive analysis concerning the validity of his redundancy.

19. It is, however, possible for the Tribunal to extract what it believes to be the Applicant's principal contentions. First, he claims that the Bank abused its discretion by continuing to insist upon the validity and continuation of the terms of the 2001 MAS and its amendments; among the principal reasons he gives is that he was coerced into agreeing to the MAS and that his Bank employment was altogether severed when he began to work with the Saudi Arabian ED in October 2002. Second, he claims that the Bank abused its discretion by limiting his re-entry guarantee to ten weeks upon the conclusion of his work with the Saudi Arabian ED. It appears that the Applicant believes that because of the "nullification" of the MAS and thus the time limits (initially ten weeks and then six months) upon his tenure, his new position in FINCF (through a developmental assignment in the IFC) should have been treated as Open-Ended, so that it could be terminated only through the usual Staff Rules, and in particular the rules relating to redundancy. Third, the Applicant contends that the administration of his MAS, and particularly its use to create "noise" about his work record and to interfere with his employment opportunities, have been a product of arbitrary and indeed invidious conduct on the part of several persons working within HR. The Respondent's counterarguments will be considered by the Tribunal in the context of the analysis immediately below.

## Discussion

### *The Validity of the Mutually Agreed Separation (MAS)*

20. The Applicant claims that the MAS of February 28, 2001 was legally ineffective, so that, *inter alia*, there was no proper time limit to his future employment with the Bank and the reference to the MAS in the Applicant's personnel record wrongly interfered with his being appointed to several positions for which he applied.

21. The Applicant contends that the MAS was void *ab initio* because he was coerced to agree to it, on the last day of the job-search period that followed upon his redundancy. In addressing this contention, the Tribunal notes that the Applicant's efforts to avoid promptly leaving the Bank for reasons of redundancy were thorough and repeated; that he does not deny that he was aware of the proffered terms and understood the six-month limit being placed upon his future service; that the only coercion experienced by the Applicant was his preference for more favorable terms in the MAS; and that the Applicant could readily have left the Bank pursuant to his redundancy had that been preferable to the proffered MAS terms.

22. The Tribunal recalls that, by signing the MAS, the Applicant received several significant benefits that would not have been available to him had he left the Bank with the typical redundancy entitlements: he was able to serve on a Short-Term assignment in FINCF (which, through extensions, lasted for 21 months); he thus also extended his job-search period (and applied for more than a dozen positions); he preserved the option of returning to the Bank as a Consultant (for which he would not have generally been eligible under the Bank's redundancy rules) and, in fact, he is presently so serving since his "retirement" in December 2004; and, particularly noteworthy, he was afforded the opportunity to collect an unreduced pension at age 50 under the Staff Retirement Plan.

23. The Tribunal has held that a staff member's preference for more favorable terms does not render coerced and invalid an individually negotiated contract knowingly and voluntarily entered into by the staff member. The Tribunal's pertinent precedents have for the most part dealt with provisions whereby a staff member agrees to waive, release or relinquish claims against the Bank for pre-existing decisions. Such a release provision was

also included in the Applicant's MAS in the instant case, and was – along with the provision for a six-month Temporary appointment – a particular source of the Applicant's dissatisfaction, given that he had already filed an appeal against his redundancy at the time he negotiated and signed the MAS, and he therefore had to waive that appeal thereafter.

24. As the Tribunal stated in *Mr. Y*, Decision No. 25 [1985], paras. 26 and 33:

In an enterprise employing as many staff members as does the World Bank Group, it is inevitable that there will be claims of improper treatment .... It would unduly interfere with the constructive and efficient resolution of these claims if the Bank could not negotiate – in exchange for concessions on its part – for a return promise from the staff member not to press his or her claim further.

... Even though the Applicant may have felt under some pressure to sign the release, it was no more than the pressure derived from the fact that he was urgently seeking an extension of his special-leave period and other perquisites and that he appears to have regarded those additional benefits as more important than the release of his claims against the Respondent. That, however, is the kind of balancing of priorities that inheres in every settlement, and it cannot properly be regarded as duress.

More recently, the Tribunal held in *Courtney*, Decision No. 144 [1995], para. 52:

The Tribunal also notes that the negotiations over the terms of the agreement lasted more than a year, during which the Applicant discussed at length the terms of the MAS agreement, assisted throughout by his legal counsel. The fact that the Applicant continued, before finally signing the MAS agreement, to ask for more benefits than those incorporated therein, and that the Respondent did not agree to most of such additional benefits, does not detract from the fact that the Applicant had decided to agree to the separation package as offered by the Respondent. Such bargaining between the parties to a negotiated settlement is inherent in the process of negotiation and cannot subsequently be invoked in support of a claim of duress.

25. The Tribunal concludes that these precedents are fully applicable here, and that the Applicant's claim that his agreeing to the MAS was coerced is without merit.

26. The Applicant's next major challenge to the MAS is that it was automatically terminated upon his taking on an appointment as Special Advisor to the Saudi Arabian ED. The Applicant is indeed correct in his contention that, pursuant to the Executive Directors' Handbook, his assuming the Special Advisor position constituted new employment independent of the Bank and terminated his status as an employee of the Bank.

27. But that does not mean that contracts lawfully entered into between the Bank and a staff member, and which purport to settle their relationship in the future, automatically become void and of no effect when that staff member temporarily leaves the Bank's employ. Such an outcome would come as a most unwelcome surprise to staff members (the Applicant included) who anticipate that the Bank will honor its obligation to pay a variety of post-termination benefits, most obviously including pension payments.

28. Sometimes the Applicant and HR representatives used the term "MAS," but sometimes – in deference to the Applicant's repeated requests – that term was left unmentioned. But there was absolutely no doubt that the MAS terms were, in their substance, meant by both parties to carry forward to the period following the Applicant's term as Special Advisor. For example, during the Applicant's first week as Special Advisor, in October 2002, Ms. Baptist of HR and he signed a memorandum stating that "Finance has agreed to put your MAS into abeyance, until the end of your assignment as sr. advisor," and that "[a]ll other terms and conditions referred to in your MAS Memorandum dated February 28, 2001 and subsequent amendments will remain the same."

29. In the spring and summer of 2003, in the midst of the Applicant's term as Special Advisor, negotiations with HR reinforced the understanding that the substance of the MAS – including a ten-week limitation on the appointment and the opportunity to search for a new position – would continue upon any return by the Applicant to Bank service. On May 15, 2003, Mr. Perlin signed a new re-entry guarantee agreement that

incorporated the same basic terms as before, and in particular an affirmation that the Applicant would have to retire without severance benefits if he failed to secure a Regular position within ten weeks of his re-entry. Although in a memorandum dated July 11, 2003, Ms. Sierra stated that “the February 28, 2001 Mutually Agreed Separation (MAS) memorandum and its subsequent amendments are hereby nullified,” it is the conclusion of the Tribunal, against the background of the negotiations just summarized, that this was a concession in form only, in response to the Applicant’s repeated assertions that reference in his personnel file to the MAS was harming his ability to secure other positions within the Bank.

30. For similar reasons, the Tribunal rejects the Applicant’s argument that the MAS was terminated, by its own terms, when in August 2001, he was given a one-year extension to the initial six-month appointment in FINCF. He claims that this was a “term appointment” which would displace the MAS, including its short-term duration provision. But this argument is unconvincing, for at least two reasons. First, the parties clearly treated the one-year extension in FINCF as precisely that, a temporary continuation of the Applicant’s six-month appointment and not an independent Term appointment, which in any event would have required a more elaborate process of application and selection. Second, as will be discussed more fully below, regardless of the impact of the one-year extension upon the “retirement” provision in the initial MAS, that retirement provision – as reduced from six months to ten weeks – was also a central feature of the re-entry agreement signed by the Applicant in May 2003 and taking effect at the end of his term as Special Advisor to the Saudi Arabian ED. After the Applicant’s return to Bank employment, initially on a developmental assignment at the IFC, he was given no Term or Open-Ended appointment that would override the requirement that he retire on the stipulated date of December 1, 2004.

31. Finally, the Tribunal observes that, although the Applicant was persistent in his belief that the MAS was viewed by hiring supervisors as a stain upon his record as they considered his applications for a number of Bank positions, there is no evidence in the record to sustain this belief. No one in the hearings before the Appeals Committee confirmed that the Applicant’s personnel file was consulted by hiring supervisors, and HR representatives denied that the MAS was even placed in the Applicant’s personnel file, and that any HR staff informed any hiring managers about it. Although there was some reference in the hearings, and repeated references in the Applicant’s pleadings, to “noise” emanating from his files and affecting him adversely, that “noise” has never been precisely delineated. Moreover, the Applicant himself acknowledged, in a July 9, 2002 e-mail to Ms. Baptist, that his difficulty in securing other employment in the Bank was likely attributable to his 2000 Overall Performance Evaluation (OPE) from East Asia and Pacific Region and his 2001 OPE from Corporate Finance, which he characterized as respectively “negative” and “a bit lukewarm.”

32. In sum, it is the conclusion of the Tribunal that the Applicant’s MAS was valid from the outset, that the later explicit “nullification” of the MAS was a matter of form and not of substance, that the substantive terms of the MAS (including the ten-week limit on re-entry, to be discussed further below) continued to be applicable at the end of the Applicant’s term as Special Advisor to the Saudi Arabian ED, and that there is in any event no evidence that the MAS was referred to by hiring managers or contributed to the loss of potential appointments by the Applicant.

#### *The Validity of the Limited Re-Entry Guarantee*

33. The Applicant contends that, because of the nullification of his MAS, when he returned to Bank service after his period as Special Advisor to the Saudi Arabian ED he did so without any ten-week limitation upon his period of service, that he was entitled to all of the protections in the Staff Rules relating to termination of service, and that his employment could therefore be terminated only through application of the redundancy and severance-pay provisions of those Rules.

34. Much of what the Tribunal has already discussed relating to the Applicant’s MAS goes far toward addressing his claims regarding the re-entry guarantee. Beginning in February 2001, when the initial MAS was signed, there was a negotiated limitation upon the time period which the Applicant could use to seek Regular employment within the Bank, failing which he would “retire” from Bank service. Initially providing for a six-month period, the MAS – after a number of extensions and additional periods of work by the Applicant – was determined by the Bank to afford him only ten additional weeks of service, and HR incorporated that ten-week

term – as a “re-entry guarantee” – into the agreement signed by the Applicant while serving as Special Advisor.

35. The Applicant argues that because this brief re-entry guarantee derived from the initial MAS, which he contends was null and void, the guarantee itself was null and void as well, and that he was entitled to serve without any fixed limit. The Tribunal's conclusion to the contrary regarding the efficacy of the MAS applies here as well. The ten-week re-entry guarantee was reasonably carried forward from the valid MAS, and it was in any event explicitly agreed to by the Applicant.

36. Although the Applicant contends, in addition, that the terms of the re-entry guarantee were an abuse of the Bank's discretion, the Tribunal cannot accept this argument. When the Applicant commenced his service as Special Advisor in the office of the Saudi ED, his employment status with the Bank terminated and the Bank had no obligation whatever to re-employ him at the end of his term there. The Bank, however, was willing to agree to put the returning Applicant to work for a ten-week period, during which he would be able to use the Bank's search resources to look for further employment. Given the lack of any obligation for the Bank to do so, the history of the MAS and its repeated extensions, the calculation of the time remaining under those extensions, and the benefits made available to the Applicant, the re-entry guarantee cannot reasonably be viewed as an abuse of the Bank's discretion. It was in fact a product of the Bank's efforts, over a period of several years after the Applicant's redundancy decision, to afford him a reasonable opportunity to search for other employment within the Bank. The Applicant can hardly complain that the Bank acted in a manner that was capricious or arbitrary.

37. Indeed, the Tribunal notes that, at the time when the Bank informed the Applicant that he would be given a re-entry guarantee for a period of only ten weeks – the time remaining to him under the MAS – the Applicant requested, if the Bank was not amenable to an indefinite guarantee, that it extend the guarantee from ten weeks to six months. When the Applicant returned to Bank service from his period working in the ED's office, he was given precisely that – a six-month developmental assignment with the IFC, rather than a ten-week assignment in Corporate Finance. If the Applicant at the time requested a six-month re-entry guarantee, it is difficult for the Tribunal to sustain his contention now that it was an abuse of discretion for the Bank to give the Applicant an appointment for exactly that period of time after his service as Senior Advisor came to an end.

38. Perhaps in recognition of this, the Applicant goes further and in effect claims that the Bank before terminating his employment in 2004 had to comply with the redundancy rules and, *inter alia*, to award him severance pay. The Tribunal finds this contention frivolous. The Applicant had already been found redundant in 2000, and he had signed an MAS waiving any challenge to that redundancy decision. Rather than being severed from the Bank altogether, the Applicant was given one Temporary assignment after another in order to maximize his job-search opportunities. He understood clearly that the Bank's discretionary re-entry guarantee was for a defined and brief period of time. It would be altogether inconsistent with these arrangements, and altogether unreasonable, to require the Bank to undertake a redundancy exercise yet again at the end of that period.

39. The Applicant argues that he was in any event entitled to an indefinite re-entry guarantee because this was the practice for staff members leaving to undertake Senior Advisor assignments in ED offices, and he points to two staff members given such indefinite guarantees. The Respondent, however, points out that the two individuals fell within the Bank's discretionary practice of giving a re-entry guarantee only to a staff member already holding a permanent position and only when the department in question is interested in retaining that person's skills. The Tribunal finds that there was no unconditional entitlement to a re-entry guarantee, and that the two instances cited by the Applicant are clearly distinguishable. The Bank did not abuse its discretion when it concluded that the Applicant did not meet the mentioned criteria, particularly in view of his having recently been declared redundant, his successive Temporary appointments, and his inability to qualify for other vacancies within the Bank.

40. In sum, the Tribunal concludes that it was neither an abuse of discretion nor otherwise unreasonable or unlawful for the Bank to limit the Applicant's re-entry guarantee initially to ten weeks and, when he left the office of the Saudi Arabian ED, to six months, and then to require him to “retire” in light of his inability to find



alternative employment within that period.

*Alleged Interference by HR with the Applicant's Employment Opportunities*

41. The third major complaint put forward by the Applicant relates to the allegedly improper behavior of representatives of HR, whom the Applicant believes interfered with a fair consideration of him for several positions within the Bank throughout the time of his Temporary employment under the MAS and the re-entry guarantee. He purports to identify a number of incidents allegedly revealing HR's bias and negative treatment, going back at least to the decision to declare the Applicant's employment redundant at the time he was working in EAP.

42. The Applicant spends undue length in attacking his redundancy decision, with respect to both its substance and its process. The Applicant had challenged that decision, reached in the year 2000, in his appeal to the Appeals Committee, but this challenge was subsequently waived by the Applicant when he signed the MAS in February 2001. The redundancy decision cannot be contested here. In any event, it appears clear that the reason for the Applicant's redundancy was not any vendetta by representatives of HR, but rather a 40 percent budget deficit and a reasonable determination by EAP management to change its business priorities and reduce staff.

43. The only justification for referring to the circumstances of the redundancy is to support the claim of arbitrary or invidious treatment by HR with respect to the two decisions already discussed – the decision by the Bank to enter into and implement the MAS, and the decision to offer a re-entry guarantee of limited duration after the Applicant served as Senior Advisor in the ED's office. The Tribunal notes that those two latter decisions have already been found above not to have been invalid, improper or an abuse of discretion – apart from any proof of wrongful motive as alleged by the Applicant.

44. The Tribunal finds no convincing proof of such wrongful behavior on the part of the several HR representatives involved in the instant case. There is little or no proof, for example, that any HR representative discussed the Applicant with the managers who were involved in considering his various applications for employment within the Bank. Although the Applicant asserts that a number of different rumors of misbehavior on his part were circulated and interfered with his employment opportunities, these assertions find little or no support in the record, including in the hearings before the Appeals Committee. When Ms. Sierra, the HR Vice President, urged the Applicant to provide her with details about the job opportunities that were lost because of improper communication to hiring managers, the Applicant failed to do so.

45. The Applicant's repeated accusations that these representatives were somehow responsible for creating "noise" about his performance, particularly through the placement and retention of the MAS in his personnel file, are also altogether undetailed and unsubstantiated. Moreover, the Respondent asserts – without reliable contradiction by the Applicant – that the MAS, about which he was so resistant, was never placed in his file so as to be available to hiring managers considering his various employment applications. Those managers did, however, have access to the Applicant's prior OPEs and, as noted above, even he has acknowledged that his 2000 and 2001 OPEs were, respectively, negative and lukewarm.

46. The Applicant makes much of the intervention of Ms. Baptist in his allegedly imminent appointment to a position in FINCF in June 2001, near the end of the Applicant's Temporary appointment there after his redundancy had nearly been implemented. However, for one thing, the Applicant's claim that Mr. Herlihy had given him assurances of an extended Regular appointment in FINCF was denied by Mr. Herlihy and appears significantly to overstate what was said to the Applicant. For another, it is clear that Ms. Baptist did not speak ill of the Applicant to Mr. Herlihy but merely advised Mr. Herlihy of the prevailing requirement that, apart from exceptional cases, appointments to the Level H position sought by the Applicant were to be preceded by the preparation of a job description, an advertisement and a competition among interested job candidates. The Tribunal concludes that this was an altogether reasonable position for Ms. Baptist to take, and that it did not constitute an improper interference on her part with the Applicant's job opportunities – even though he ultimately applied for the position but was not selected.

47. The Tribunal notes that the Applicant sets forth no persuasive explanation as to why representatives of HR were predisposed against him. To the contrary, far from there being an interference on the part of HR representatives, the record supports the view of the Respondent that at least a half dozen of them tried to be helpful to the Applicant in his search for other positions within the Bank. For example, with respect to two of his principal alleged adversaries, Ms. Vazquez sent job leads to the Applicant and explored different employment options with him, and Ms. Baptist provided him with extensive support, guidance and career advice while he worked in FINCF.

48. Indeed, the support of HR and of the Applicant's managers is conspicuously confirmed by the MAS and re-entry guarantee, which provided the Applicant with repeatedly extended periods of employment for the principal purpose of facilitating his search for sustained employment at the Bank. The Tribunal is unconvinced by the Applicant's contentions that his efforts in seeking permanent employment were intentionally undermined by the Respondent.

## **Conclusions**

49. The Tribunal having considered the Applicant's various arguments and contentions, it concludes that they should be rejected.

## **Decision**

For the above reasons, the Tribunal decides to dismiss the application.

/S/ Bola A. Ajibola  
Bola A. Ajibola  
President

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

At Washington, DC, November 4, 2005