

**Decision No. 344**

**Vernetta M. Hitch,  
Applicant**

**v.**

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

1. The World Bank Administrative Tribunal has been seized of an application, received on June 6, 2005, by Vernetta M. Hitch 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's request for oral hearings was denied. The usual exchange of pleadings took place and the case was listed on October 27, 2005.

2. The Applicant is primarily contesting the Bank's decision not to select her for the position of Program Assistant in the Bank's Energy and Water Department (EWD). The Applicant principally claims that she was discriminated against on the basis of race, age and gender and that the selection process was tainted by irregularities.

**The relevant facts**

3. The Applicant joined the Bank in 1984 as an Agency Temporary. In this capacity the Applicant worked in various offices of the Bank as, respectively, a secretary, word-processor, MIS coordinator and staff assistant.

4. In 1995, the Applicant was taken into a then-existing Bank program known as the Bank Contract Temporary Staff Program (CTAP). Through CTAP, she worked for several years as an ungraded staff assistant while holding a series of Bank Long-Term Temporary appointments.

5. In December 2000, the Applicant was offered a one-year Term appointment. During 2001, she rotated through CTAP between several Bank units as a Team Assistant (Level GB).

6. In January 2002, the Applicant was hired as a Program Assistant (Level GC) in the Transport and Urban Development Department (TUD), Urban Unit (TUDUR) on a two-year Term appointment.

7. During 2003, following an assessment of its ACS staffing requirements, TUD decided to create two Open-Ended Program Assistant positions to support a new area of business. The Applicant's position was to be redesigned. At the end of July 2003, TUD advertised the two Program Assistant positions at Level GC, with identical responsibilities and skills requirements, including Web management, experience in database management and a preference for knowledge of a major language. The Applicant was also informed that, as a result of the position redesign, her Term appointment was not going to be converted or extended.

8. The Applicant applied for the two Open-Ended positions and was interviewed in December 2003, but she was not recommended for either position. The Applicant then raised a number of complaints about her non-selection for the positions, arguing *inter alia* that she had been discriminated against on the basis of race and gender.

9. In December 2003, the Applicant and TUD entered mediation. At the conclusion of the mediation process, the Director, TUD, and the Applicant signed, on February 4, 2004, a Memorandum of Understanding (MOU). By its terms, the Applicant was placed on administrative leave through June 30, 2004.

10. In the meantime, in November 2003, EWD posted on JobWorld (the Bank's Vacancy Information System) an advertisement for a Program Assistant position, Level GC. The closing date for the position was November 24, 2003. The Applicant, along with 15 other persons, applied for the job.

11. On December 3, 2003, a Panel composed of a Knowledge Management Assistant, EWD, Water and Sanitation Unit (EWDWS), a Lead Energy Economist, EWD, Energy Unit (EWDEN), and Ms. K (Senior Executive Assistant, EWD, Office of the Director (EWDDR)) shortlisted four candidates, including the Applicant, for interviews. A Selection Panel was then formed, with Mr. T (Lead Energy Specialist, EWDEN), Ms. B (Program Assistant, EWDEN), Ms. L (Operations Analyst, EWDDR), and Mr. A (Lead Energy Specialist, EWDEN, to sit in when Mr. T was not present) as members.

12. On January 9, 2004, Mr. P, at the time Program Assistant, South Asia Sector (SAS) Units, Rural Development Sector Unit at the Bank's New Delhi Office, inquired with the Human Resources (HR) Analyst, Networks HR Team (HRSNW), about the possibility of applying for the above-mentioned position of Program Assistant (Level GC) at EWD. Even though the closing date for the application had expired, Mr. P's application was admitted and his name was added to the shortlist.

13. On January 29, 2004, the Applicant found out that interviews for the EWD position had been scheduled but that she had not been included in them, although she was aware that she had been shortlisted. The Applicant brought the matter to the attention of both Mr. D (Senior HR Officer, HRSNW) and Ms. K, asking for an explanation as to why she had not been scheduled for an interview. Later that day, Ms. B informed the Applicant that she had been shortlisted and that her interview was set for February 5, 2004.

14. On February 5, 2004, Ms. B, Ms. L and Mr. A interviewed the Applicant. No one from HR was present during the Selection Panel's interviews with the Applicant or Mr. P. In addition, the Selection Panel had not received any selection criteria for the interview of the candidates.

15. On March 3, 2004, Mr. T asked Ms. V (HR Officer, HRSNW) whether it was appropriate to take into account his direct knowledge of one of the candidates' abilities and competencies when making an evaluation for the position. Ms. V responded affirmatively, and encouraged him to share his comments with the Selection Panel. She further stated that the information should be objective and should include an explanation of the reasons behind his evaluation.

16. Also on March 3, 2004, Ms. K sent an e-mail to the hiring manager, this being the Director, EWDDR (hereinafter "the Director"), with copies to Mr. D and Ms. V, in which she explained that the Selection Panel had met to discuss the two top candidates, Mr. P and the Applicant, and also to "try to iron out their differences." In this e-mail, Ms. K also expressed her preference for Mr. P as being "young, energetic, willing to do whatever it takes to get the job done." She further pointed out that the Applicant "is an American, 20 years with the Bank in various jobs, but always on term contract." Ms. K also indicated that Mr. T was "adamantly against the American" because he had previously worked with the Applicant and "was not impressed."

17. Mr. T had not interviewed the Applicant prior to these discussions within the Selection Panel but based his opinions on his past work experience with her. According to his testimony before the Appeals Committee, his concerns about the Applicant included her ability to deal with stress and her ability to communicate and follow instructions. He asserted that these concerns were echoed in two letters of recommendation submitted by the Applicant.

18. Mr. A, however, who had interviewed the Applicant and worked with her during 1995 and 1996, apparently had a positive opinion of the Applicant.

19. The Director replied to Ms. K's e-mail the same day, on March 3, 2004, and indicated that both he and Ms. K would make the final decision, not the Panel. He also indicated that "diversity as per our compact will play a role here," and suggested waiting for the Selection Panel's recommendation before making the final decision.

20. On the same day, Mr. D from HR sent an e-mail to the Director in which, among other things, he agreed with the Director's approach, i.e., that the Selection Panel's role was to recommend candidates and that the Director, as the Unit manager, would make the final decision. Mr. D also provided him with some background about the Applicant, to whom he referred as the "African American," to consider when making his decision. Mr. D indicated that the "African American" was 57 years old and that for 18 of her 20 years with the Bank had worked as a "temp." Mr. D further expressed his preference for "young, dynamic staff who are quick starts and have the urge to go an extra mile," but cautioned that they had to be fair to the Applicant. He expressed concern that Mr. T's approach was based on inadequate information about the Applicant.

21. The Director thanked Mr. D for the "clarification" and stated that he did not want the Selection Panel to come up with one candidate only, but instead to recommend two names.

22. On March 4, 2004, after completing the interviews with the applicants for the position of Program Assistant at EWD, the Selection Panel made its report to the Director and recommended both Mr. P and the Applicant. The overall recommendation was that:

The needs and skills vary across the workgroup. [Ms. B] needs someone who is proficient in SAP; [Mr. T and Ms. L] need someone who is strong in Power Point and Excel. We recommend that you personally interview the two top candidates ([Mr. P and the Applicant]) and make the final decision based on your assessment of the needs of the department and the energy unit.

23. While on mission in New Delhi, the Director received the Panel's report and interviewed Mr. P on March 5, 2004. Upon his return to the Bank's Headquarters in Washington, on March 11, 2004, the Director interviewed the Applicant. Ms. V, the HR Officer, also attended the interview. There is disagreement between the Applicant and the Respondent regarding the length and quality of this interview.

24. On March 12, 2004, the Director informed Mr. D of his decision and noted that:

Both candidates fulfill the criteria of the job description, however, based on a comparative analysis of the two, my selection is [Mr. P]. Based on the needs of the energy anchor, as well, I believe that [Mr. P] will be able to assist the energy staff in their daily needs (SAP, ppt, excel, word documents, etc).

I recommend that [the Applicant] be kept in the ACS pipeline for other openings.

25. On March 13, 2004, the Director informed the Applicant that she had not been selected for the position, and encouraged her to apply for other ACS positions in the Bank. Consistent with the terms of the MOU, on June 30, 2004, the Applicant's employment with the Bank terminated.

26. On July 12, 2004, the Applicant filed an appeal before the Appeals Committee challenging the decision not to select her for the Program Assistant position in EWD. On December 7, 2004, oral hearings took place. The Appeals Committee inquired, among other things, as to whether the Applicant had expressed any concerns in the past that her race and/or age might have been reasons for her not having been selected for other positions. The Manager, Support Staff Recruitment Unit, who used to manage CTAP, confirmed, among other things, that the Applicant had raised allegations of racial discrimination when she had applied for positions that she did not obtain.

27. The Appeals Committee issued its Report on January 4, 2005. It concluded that the Director's decision was not arbitrary and that the Director had not discriminated against the Applicant in making his decision. It also concluded that although it did not find any irregularities or violations of Bank procedures in the selection process, it was troubled with the manner in which the selection process had been conducted mainly in the following respects: (a) the Selection Panel was not provided with clear guidance and direction in identifying and selecting a candidate; and (b) the Applicant was never interviewed by Mr. T.

28. The Appeals Committee found that, based on the totality of the evidence, the process followed by the Director for the selection of a Program Assistant had been appropriate and in accordance with Bank procedures. The Appeals Committee recommended that all of the Applicant's requests be denied.

29. On January 6, 2005, the Vice President, HR, notified the Applicant that he had accepted the Appeals Committee's recommendations.

30. On June 6, 2005, the Applicant filed an application with this Tribunal.

31. The Applicant requests as compensation the "[p]ayment of annual wages including benefits, taxes and annual cost of living increases effective July 1, 2004 through July 28, 2008 (mandatory retirement date) plus punitive damages [for] mental and physical anguish." She also requests that "[m]anagement be reprimand[ed] and held accountable for recruitment violation and managerial abuse," and that she be awarded costs in the amount of "\$100,000 – 250,000."

## Considerations

32. The Tribunal notes that the Applicant makes a number of claims in her application. In her pleas, she does not identify one or two decisions that she seeks to challenge, but instead lists all of her claims as decisions contested. It would appear that the Applicant has not isolated the object of her claim. This Tribunal has ruled in the past, however, that "it is its duty, as it is the duty of every international tribunal, 'to isolate the real issue in the case and to identify the object of the claim ...; this is one of the attributes of its judicial functions' (*Nuclear Tests (Australia v. France)*, Judgment of December 20, 1974, *I.C.J. Reports* 1974, p. 262)." (*Gilani*, Decision No. 261 [2002], para. 16, citing *McNeill*, Decision No. 157 [1997], para. 26.)

33. What the Applicant is in fact challenging before the Tribunal is her non-selection to the Level GC position of Program Assistant at EWD. She claims that her non-selection was an abuse of discretion because it was based on personal bias as well as gender, age and racial discrimination. She further claims that the selection process was tainted with several irregularities, both substantive (such as discrimination) as well as procedural.

34. Before addressing the Applicant's main claims as they are identified above, the Tribunal will dispose of two claims that the Applicant raises for the first time in her pleadings before the Tribunal.

35. First, the Applicant raises complaints relevant to the MOU that she signed on February 4, 2004. According to the evidence in the record, the Tribunal notes that these claims had been settled by the MOU itself. If the Applicant for some reason believed that the Bank had not honored the terms of the MOU, she could have challenged this alleged non-compliance before the Appeals Committee within 90 days from discovering the alleged non-compliance. (See, e.g., *Malik*, Decision No. 333 [2005], para. 21.) However, when the Applicant filed her Statement of Appeal on July 12, 2004, she did not raise any claims arising out of her MOU. As these claims have not been challenged in a timely manner before the Appeals Committee, they cannot now be reviewed by the Tribunal because, among other reasons, the Applicant failed to exhaust internal remedies pursuant to Article II(2)(i) of the Tribunal's Statute. (See, e.g., *Moss*, Decision No. 328 [2004], para. 37.)

36. Second, the Applicant has made the claim that the Appeals Committee's Report was not justified, and that she encountered unjust delay, abuse and discrimination by the Appeals Committee.

37. In accordance with its Statute, the Tribunal notes that its task is to pass judgment upon whether the Bank has violated the contract of employment or terms of appointment of the Applicant. (Tribunal's Statute, Article II(1). See also *Lewin*, Decision No. 152 [1996], para. 45.) The Tribunal is not a court of appeal from the Appeals Committee and does not review the manner in which the Appeals Committee dealt with a case before it. The proceedings before the Tribunal are entirely separate and independent, despite the fact that recourse to the Appeals Committee is a condition precedent to the commencement of proceedings before the Tribunal. (*de Raet*, Decision No. 85 [1989], para. 54.) The Tribunal will not address, therefore, the Applicant's claims against

the Report of, and the process before, the Appeals Committee.

38. Having disposed of these preliminary claims, the Tribunal will now address the Applicant's main claims that: (i) the Director's decision not to select her to the EWD Program Assistant position was an abuse of discretion because there was evidence of bias and discrimination by the Director towards the Applicant; and (ii) the selection process was tainted with a series of irregularities that rendered invalid the decision not to select the Applicant to the EWD position.

### **Abuse of discretion in non-selection decision/Scope of review**

39. The Tribunal has defined in several judgments its scope of review with regard to the selection of a candidate for a position. (See, e.g., *de Raet*, Decision No. 85 [1989], para. 67, and *Jassa*, Decision No. 100 [1991], para. 30.) In *Jassa*, the Tribunal held at para. 37:

It is not for the Tribunal, in assessing the validity of the selection or non-selection of a staff member, to undertake its own examination of that staff member's record, or a criterion-by-criterion assessment of his or her qualifications. That is for the Bank to do in the first instance, subject to review by the Tribunal only for abuse of discretion. But the Tribunal is charged with determining whether the Bank's decision was the product of bias, prejudice, arbitrariness, manifest unreasonableness, or unfair or improper procedure.

40. Furthermore in *Riddell*, Decision No. 255 [2001], para. 23, the Tribunal found 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. 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.

41. An initial review of the record shows that the Selection Panel properly submitted to the Director on March 4, 2004 its final report recommending two candidates (the Applicant and Mr. P). The Director, in turn, reviewed and endorsed the recommendations with respect to the desired qualifications of both candidates. He then interviewed Mr. P on March 5, 2004, and the Applicant on March 11, 2004. As the Director subsequently explained in his e-mail of March 12, 2004 to the Senior HR Officer, Mr. D, and to Ms. V, he decided to select Mr. P based on a comparative analysis of the two candidates as well as on the needs of the energy anchor. In his testimony before the Appeals Committee, the Director reiterated that the Applicant's non-selection was based solely on job-related and business-needs considerations, and that when he chose between two qualified candidates, Mr. P had "the edge" in relation to the needs of the energy anchor. The Tribunal will not substitute its judgment for that of the hiring manager in this respect absent evidence of abuse of discretion, which the Applicant claims existed in this case because the non-selection decision was a product of bias and discrimination.

### **Discrimination**

42. Before the Appeals Committee and the Tribunal, the Applicant made claims of age and racial discrimination. In her reply, the Applicant raised for the first time claims of gender discrimination as well. She claims that, as all the candidates except for Mr. P were female like herself, the Director showed that he was biased against females by selecting Mr. P.

43. At the outset, and because a report on "Racial Equality in the Bank Group" is part of the record, the Tribunal would like to emphasize that according to its jurisprudence "it is necessary for an applicant to introduce facts supporting a claim of individualized wrongdoing which amount to a violation of his or her own terms of employment." (*Njovens*, Decision No. 294 [2003], para. 17, citing *Nunberg*, Decision No. 245 [2001], paras. 43-44). Furthermore, the Tribunal re-affirms its jurisprudence that "discrimination takes place where staff who are in basically similar situations are treated differently." (*Crevier*, Decision No. 205 [1999], para. 25.)

44. An examination of the record shows that of the four candidates who were ultimately shortlisted and interviewed, two were Indian nationals (one being Mr. P), one was an Uzbeki national, and one was American

(the Applicant). The Applicant was 57 years old and most of the remaining candidates were in their thirties. Apparently, except for Mr. P, all of the candidates were female.

45. Regarding the claim of gender discrimination, the Tribunal notes that it was not presented to the Appeals Committee. As it was not challenged in a timely manner before the Appeals Committee, it cannot now be reviewed by the Tribunal for failure of the Applicant to exhaust internal remedies under Article II(2)(i) of the Tribunal's Statute.

46. The testimony before the Appeals Committee of the members of the Selection Panel reveals that none of the members was aware of any race-based or age-based comments made during the selection process. More importantly, the Applicant herself testified that she was not aware of any race-based or age-based comments made during the interview process. In support of her claim of discrimination, the Applicant indicates that she was treated in a discriminatory manner by the Director in his interview of her – as she was never substantively interviewed by him due to his intimidating, demoralizing and inhuman treatment of her – and that, unlike the interview of Mr. P, her interview was extremely short. She states that Mr. P was scheduled for “a 1-hour dinner appointment,” while she was scheduled for “a 15 min. bathroom break.” The Applicant, in describing her interview, further testified that the Director asked her only a few questions, did not make “eye contact” with her, interrupted her, expressed twice his desire to leave, and wiped his hands on his pants after he shook her hand. The Director has denied the Applicant's allegations. According to the testimony of Ms. V, the HR Officer who was present during the interview, there was nothing unusual about the interview, except for the fact that it was a little shorter than other interviews. Ms. V expressed the opinion that the interview was thorough. The Tribunal does not find sufficient evidence in the record to substantiate the Applicant's allegation that the Director discriminated against her during the interview.

47. The Applicant further asserts that certain e-mails circulated between the Director, Mr. D and Ms. K during the interview process showed discrimination based on “age, race and slander [sic].” In these e-mails, the Applicant is compared to Mr. P. The first of these e-mails is one sent by Ms. K to the Director on March 3, 2004, in which she informed him of a disagreement among Selection Panel members regarding the recommendation of two candidates, namely Mr. P and the Applicant. She expressed her preference for Mr. P by writing:

I would like to take the Indian Part II male, young, energetic, willing to do whatever it takes to get the job done. The other candidate is an American, 20 years with the Bank in various jobs, but always on term contract...

48. She then added:

[Mr. T] is adamantly against the American as she [the Applicant] had worked with him years ago, and he was not impressed. He wants it made clear the new ACS would be working with him and the others, and they want someone with a lot of knowledge and enthusiasm.

49. That same date (March 3), the Director responded as follows to Ms. K's e-mail:

At the end of the day, you and I will have to make the decision, not the panel, and diversity as per our compact will play a role here. Let's see what we get from the panel, but we have the last word based on recommendations.

50. Mr. D, the Senior HR Officer, was apparently sent a copy of Ms. K's e-mail. He replied to the Director, agreeing with the Director's approach and providing him with background on the Applicant, to whom he referred as the “African American” of about “57 years old.” He also expressed his preference according to the needs he perceived for the department, wishing for “young, dynamic staff who are quick starts and have the urge to go an extra mile.” He tried, however, to balance Mr. T's negative evaluation of the Applicant, as described in Ms. K's e-mail, by stating that there was a need to be fair to the “African American.” He further stated that he was concerned that Mr. T's approach was “based on inadequate information about the staff member.” Mr. D explained later, in his testimony before the Appeals Committee, that he had intervened with this e-mail to the Director because he had wanted to give a fair chance to the Applicant to be interviewed and considered by the Director.

51. In response to this e-mail, the Director immediately thanked Mr. D for his clarification and expressed his wish for the Panel to recommend to him two names for his consideration.

52. The Tribunal is troubled by the statements made in the above-mentioned e-mails of Ms. K and Mr. D. The Tribunal first finds entirely unacceptable the impersonal references to the Applicant as "African American" and to Mr. P as "Indian." The Tribunal finds even more troubling the evidence in the e-mails of Ms. K and Mr. D, as well as in their testimony, that it would be preferable that "young" and "energetic" or "dynamic" persons who were "quick starts" willing "to go an extra mile" be selected to the position of Program Assistant. These were all attributes that Mr. P allegedly presented. The logical conclusion to be derived from these statements, especially as they compared the Applicant to Mr. P, is that the Applicant was not as willing "to go an extra mile" and, definitely, was not "young" and "energetic."

53. The Tribunal notes that it is the unfortunate stereotyping of this kind that gives rise to claims of racial and age discrimination. Especially undesirable, when comparing candidates during a selection process, are references made to age and race in a manner which results in singling out or setting apart one person; there, the impression is created that extraneous factors are being taken into account when making important employment recommendations or decisions. This is all the more so in a multinational organization like the World Bank which, under its Principles of Staff Employment, has as its mandate the hiring of high-caliber employees and the fostering of their equal treatment by disallowing unjustifiable differentiation on the basis of age, culture and gender while, at the same time, respecting the need for diversity.

54. In this case, even though the reasonable inference is that age did play a role in Ms. K's and Mr. D's preferences for recommending or selecting a successful candidate, their preferences were never conveyed to the Selection Panel and thus never influenced the recommendation of that Panel. Their comments were sent only to the Director, who responded immediately to Ms. K, with a copy to Mr. D, that "diversity as per our compact will play a role here." Indeed, the Director's efforts to assure a strong diversity program within his department were established before the Appeals Committee through his own testimony and that of the Director of the Bank's Diversity Program. Therefore, despite Ms. K's and Mr. D's preferences as expressed in their e-mails, there is no evidence that extraneous factors such as age and race were taken into account by the Director in the final selection decision. On the contrary, it has been established that his decision was based on the applicants' respective qualifications and legitimate diversity considerations.

### **Bias/Undue influence in general**

55. The next related and equally important questions for the Tribunal to address are whether there is evidence that Ms. K's and Mr. D's e-mails created a general bias against the Applicant before the Director received the recommendation of the Selection Panel, whether those e-mails improperly predisposed the Director during his interviews with the candidates and in his final selection decision, and whether there is any other evidence of such bias.

56. The record shows that the Director himself was aware that prior knowledge of the Selection Panel's deliberations would be improper because it might affect an objective assessment on his part. Before the Appeals Committee, the Director stated: "I don't know about what happened in the [interview] committee, and this is internal to the committee, and I am not supposed to know about it either." Despite his unquestionably good intentions to remain objective and his lack of solicitation of any comments during the process, the record shows that the Director became fully aware of what had happened in the Selection Panel one day before receiving their report with the recommendations on the top candidates, and at least a week before interviewing the Applicant. Through Ms. K's and Mr. D's e-mails, he also became aware of their preferences as well as of the preferences of one of the members of the Selection Panel, Mr. T.

57. In examining Ms. K's e-mail to the Director, the Tribunal finds especially troubling the fact that the selection preferences expressed therein were based either on an unfounded assessment of the Applicant's skills and capabilities, or on a lack of such assessment altogether. With regard to the latter, the Tribunal notes that Ms. K testified that she had based her strong preference for Mr. P not on her own objective knowledge of the

Applicant or of Mr. P, but on the recommendation of Mr. P by a third party (i.e., a colleague at the New Delhi World Bank Office) whom she greatly trusted.

58. Then, in order to support further her preference for Mr. P in her communication to the Director, Ms. K referred to a great extent to Mr. T's negative evaluation of the Applicant. The Tribunal does not, however, find that Mr. T's negative view of the Applicant was well founded, particularly because it was based on an unfavorable experience which had taken place a decade before (1993-96).

59. Despite the efforts of Ms. K, Mr. T (through Ms. K's e-mail) and Mr. D, discussed above, to influence the Director at an early stage in the selection process, the Tribunal does not find clear evidence in the record that the Director's final selection decision was tainted by such improper influence. In his final report, the Director based his selection of Mr. P on objective reasons and, as already noted, there is no evidence that extraneous reasons were taken into account in his final selection decision. Based on the foregoing analysis, the Tribunal finds that the Director properly exercised his discretion in not selecting the Applicant for the position of Program Assistant.

### **Procedural irregularities**

60. The Applicant makes a number of assertions regarding the existence of irregularities in the selection process. These relate to Mr. P's submission of an application late in the process, whether the Interview Panel and the Selection Panel were the same entity, and the alleged absence of HR during the selection process.

61. A major claim of the Applicant is that Bank employment policies and procedures were violated when Mr. P was allowed to apply for a position approximately 60 days after the closing date for the submission of applications. The Respondent clarifies that the closing date for any vacancy posting through the Bank's JobWorld operates only to preclude further candidate-generated applications; however, additional applicants may be solicited by the hiring department from possible candidates brought to its attention, and added to the shortlist of candidates to be interviewed. The Respondent further states that this allows for situations to be addressed in which the response to a vacancy posting is low or where the candidates who have applied are not a strong group, or where diversity is a consideration or, as in this case, where another strong candidate surfaces during the vetting process.

62. The question is, therefore, whether there was a violation of procedure that ultimately favored Mr. P because he submitted his application after the closing date and failed thereby to take part in the shortlisting process, thus bypassing a step in the competition.

63. A review of the requirements for filing an application after a position has been advertised on the Bank's JobWorld reveals the following:

JobWorld is a formal means of making public (advertising) a manager's need to fill a job requisition, i.e. job. One of the many steps in this process is to actively accept applications from potential candidates for a specific period of time, e.g. 14 days. During this period the job is said to be "open" and one can submit his or her application for the job. Prior to the open date the particulars of the job have not been finalized and thus the job is not ready for advertising. After the end of the open period the next stage of the job fulfillment process must be started which typical [sic] does not have any provision for accepting additional applications.

64. A review of the requirements described in the above guideline shows that additional applications for vacancies are not normally accepted after the period for the submission of applications closes. The word used in the JobWorld statement is "typical[ly]." The use of this word means that on certain occasions and under certain circumstances there is an exception to this guideline so that additional applications may be accepted later than the closing date. The Respondent has adequately explained above what these occasions are.

65. The HR Officer, Ms. V, testified before the Appeals Committee that it is not an uncommon practice to include qualified candidates after the closing date for the submission of applications advertised in the

JobWorld. The Senior HR Officer, Mr. D, testified that it is a practice in the Bank to ask for additional candidates to be added to the list after the closing date for the submission of applications, for example to “beef up” the pool of applicants or to introduce more diversity.

66. The Tribunal is troubled by the testimony of the HR Officers that what seems to be an exception to the written rule regarding the time for submission of applications seems to have become a rather common practice in the Bank, virtually displacing what the written rule provides. It would appear that this contradictory treatment of deadlines for the submission of applications – at times according to the stricter written rule and at times according to a less strict practice, of which apparently not every staff member is aware – can open the door to misunderstandings and disparate treatment of staff, and can result in injustices. As the Tribunal has found in the past, the Staff Rules are not written for the sake of formality alone, and procedures are set in order to ensure that fairness and impartiality are respected. (*K. Singh*, Decision No. 188 [1998], para. 21.)

67. Notwithstanding the above, the Tribunal notes that, despite Mr. P’s apparent bypassing of one step in the competition process (i.e., shortlisting), the particular circumstances of his case can reasonably be found to fall among those for which the exception is provided in the written rule prescribed on JobWorld. The Tribunal cannot determine with clarity whether the reason Mr. P was allowed to fall under the exception was for diversity purposes or because he was simply a very strong candidate who surfaced during the vetting process. The Tribunal will not, however, substitute its judgment for that of the Respondent in this respect, and there is no evidence of bias or improper motive in adding Mr. P to the list of shortlisted candidates. Furthermore, the record shows that Mr. P was subjected to the same procedure as other candidates for the position at the interview and selection stages of the competitive process. He, too, was required to submit an application, along with a curriculum vitae, and his references were checked; he was interviewed by the Selection Panel and was ultimately interviewed by the Director. The Applicant has not proven that there was an irregularity in this part of the process.

68. In further challenging the selection process, the Applicant claims that the Interview Panel also served as the Selection Panel, although the two are separate entities and that, contrary to the Bank’s recruitment policy, the Director served as the sole member of the Selection Panel. She also makes the related claim that no representative from HR chaired the Interview or Selection Panels, and that HR refused to participate in the process even though the HR Officer was contacted by the Secretary of the Selection Panel (Ms. B).

69. The Applicant clearly errs when she draws a distinction between what she characterizes as the Interview Panel and the Selection Panel. These were obviously the same entity, i.e., the Selection Panel which conducted the interviews. A review of the entire selection process shows that, first, a shortlisting committee was properly formed consisting of three staff members all from EWD, two of which were ACS staff. Once a shortlist of candidates – of which the Applicant was one – was created, a Selection Panel composed of Messrs. T and A, and Mmes. L and B was set up. As the Respondent correctly points out, care was taken so that there was no overlapping membership between the shortlisting committee and the Selection Panel, and that a wide array of EWD staff were involved in the process. The functions of the Selection Panel, as the Respondent explains in its pleadings, were to check the references of the shortlisted candidates who would be interviewed, hold the interviews and make recommendations to the hiring manager, in this case the Director. The record also shows that the Director was not part of the Selection Panel, but was instead the hiring manager.

70. Despite the Respondent’s clear explanation of the entire selection process in its pleadings before the Tribunal, the Tribunal notes that neither the Applicant nor the members of the Selection Panel, nor Ms. K, had such a clear understanding of the process at the time it was utilized. The testimony before the Appeals Committee of the Secretary of the Selection Panel, Ms. B, is particularly illuminating in this respect. Ms. B testified that there was no initial briefing of the Selection Panel as to the procedure to be followed, that there was no one from HR present on the Panel, and that the Selection Panel never received any selection criteria from HR before the interviews. She testified that the Selection Panel members got the interview forms late in the process and only from Ms. K. According to Ms. B, different members of the Panel interviewed Mr. P and the Applicant because of the members’ individual obligations to go on missions. Ms. B testified that the Panel was actually going to recommend one name, but due to an intervention by Mr. T felt compelled to add a second

name to the recommendation. She also admitted that at the end of the interviewing process, it was “cloudy” because she did not know what to do and whether the Panel’s duty was simply to recommend a candidate to the hiring manager or to make a final selection.

71. In view of Ms. B’s testimony, it is clear that the Respondent’s assertions that care was taken to ensure that the EWD HR team members were consulted and involved as necessary, and that all was on the correct procedural track, are not adequately supported by the record. A further review of the record shows that HR was involved only at a late stage of the interview process. The first HR Analyst involved in the case had to go on medical leave. According to Ms. V’s testimony, Ms. V was then pulled into the process during the final discussions of the Selection Panel. The record further shows that it was Mr. T who asked her to come in and clarify the process for the Panel, and that he too posed questions to her. Ms. V corroborated Ms. B’s testimony that the Selection Panel was confused as to whether the decision to be made by them was the final selection decision. She also testified that she had clarified to the Selection Panel that it only had to give a fair chance to each candidate and to make recommendations to the hiring manager. She admitted that it is a good practice for HR officers to attend Selection Panel interviews, but also explained that this did not happen in the instant case since the HR Analyst in charge was hospitalized and Ms. V was called in later. Ms. V further mentioned that she was present only during the Director’s interview of the Applicant and not also during the interviews conducted by the Selection Panel.

72. Undoubtedly, as in every case, a more timely and rigorous involvement and guidance by HR might have helped to avoid the conflicts in the Selection Panel and would have guaranteed a thorough evaluation of all candidates on equal terms. In this particular case, even if the lack of guidance early in the interview process by HR as a neutral party were understandable as resulting from unfortunate events, it nevertheless had an even greater and detrimental impact. Ms. K, who had already been a member of the shortlisting committee, became involved at this stage in order to distribute the evaluation forms; this in turn caused Mr. T to report to her directly about both the conflicts in the Panel and his personal preferences. (He did, however, admit in his Appeals Committee testimony that he did not realize that this was inappropriate.) As discussed above, Ms. K promptly informed the hiring manager of the situation, of Mr. T’s negative attitude toward the Applicant, and of her own preference for Mr. P, one day before the hiring manager had the chance to see the report issued by the Selection Panel, and at least one week before he had the chance to interview the Applicant.

73. Mr. D testified before the Appeals Committee that there was an HR practice of communicating information and preferences to the hiring official before he or she interviewed the candidates, even though this was not a preferred policy of HR. He also admitted that this practice did violate HR rules to some extent, and that it would be preferable for outsiders to preserve and keep information to themselves until after the hiring official had interviewed the candidates and had sought additional information in order to be able to come to a decision.

74. There is therefore no question that the selection process in which the three different entities involved (i.e., the shortlisting committee, the Selection Panel and the hiring manager) were to remain independent of each other according to the Bank’s Job Selection Procedures – in order to ensure the selection of the most highly qualified candidate based on objective criteria – was seriously compromised. Any effort by Ms. V or by Mr. D (through his e-mail to Ms. K and the Director) to reinstate adherence to guidelines and conformity with due process appears to have been made too late. The Tribunal finds that the procedure which resulted in the Applicant’s non-selection was tainted by a significant irregularity in this respect.

75. In sum, the Tribunal finds that the Bank failed to follow proper procedures in the Applicant’s case in the following respects:

- (i) clear guidelines and selection criteria were not given to the Selection Panel at the beginning of the interview process;
- (ii) HR representatives were not significantly involved until a late stage of the interview process;
- (iii) the Selection Panel members had no clear understanding as to whether they had a duty to

recommend two candidates or to select only one; and

(iv) the hiring manager received information on others' preferences regarding the interviewed candidates before receiving the Selection Panel's report and before interviewing the candidates himself.

76. Because it has been established that there were serious procedural irregularities in the selection process which led to the non-selection of the Applicant, the Tribunal will award remedies to the Applicant. The Tribunal does not consider that it would be appropriate in this case to order the rescission of the decision not to select the Applicant, particularly as the Applicant has left the employ of the Bank according to the terms of her MOU. Instead, the Respondent should be required to pay to the Applicant as compensation for the injury she has suffered the equivalent of one (1) year's net salary.

### **Decision**

For the above reasons, the Tribunal decides that the Respondent shall pay to the Applicant compensation assessed at one (1) year's net salary, including costs.

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

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

At Washington, DC, November 4, 2005