



World Bank Administrative Tribunal

2013

Decision No. 485

**Amira Iqbal,
Applicant**

v.

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

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

**Amira Iqbal,
Applicant**

v.

**International Bank for Reconstruction and Development,
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1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Ahmed El-Kosheri, Andrew Burgess and Abdul G. Koroma.

2. The Application was received on 8 February 2013. The Applicant was represented by Veronika Nippe-Johnson and Stephen C. Schott of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges the Bank's decision not to select her for the position of Resource Management ("RM") Assistant, Level GD, Global Partnerships and Trust Fund Operations ("CFPTO") and raises allegations of career mismanagement and retaliation.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 1982 as a secretary in the Bank's country office in Islamabad, Pakistan, where she worked for 10 years. She then secured a position at the Bank's headquarters in Washington DC, where she has worked in various administrative functions for 18 years, at Level GC. At the time of this Application she served as a Financial Assistant at the Concessional Finance and Global Partnerships ("CFP") Vice Presidency ("CFPVP"), at Level GC.

5. In March 2008, the Applicant provided cross support on resource management services tasks from her then unit, Global Partnership & Trust Fund Policy Unit

(“CFFTP,” which is now “CFPTO”) to the RM group in CFPVP. Since that time, the Applicant’s work increasingly comprised full-time RM tasks. In early 2009, her supervisor and Chief Administrative Officer in CFPVP requested that Human Resources (“HR”) assign her in the RM Network. HR responded that in order for staff to be assigned to the RM Network they would need to be at least at Level GD. The Applicant’s supervisor informed her verbally that she would not be included in the RM Network or promoted to Level GD because she lacked the required two years of experience in RM work.

6. In October 2009, the Applicant was officially assigned to the CFPVP (rather than the RM Network) and her title was changed from Co-Financing Assistant to Financial Assistant. In February 2010, her supervisor created an RM Assistant position at Level GD and asked the Applicant, who by that time had acquired the two years of RM experience, to prepare her application. In March 2010, CFPVP advertised a two-year position of RM Assistant at Level GD and the Applicant applied for it. However, when the Vice President (“VP”) found out that the vacancy had been advertised without his clearance he asked that the vacancy be cancelled, explaining that there was no “business need” or budget for the position. On 1 April 2010, the Applicant’s then supervisor left CFPVP to begin a new assignment with the Office of the Vice President, External Affairs.

7. In July 2010, the Applicant filed a request for review with Peer Review Services (“PRS”) challenging the Bank’s alleged failure to promote her to Level GD and assign her to the RM Network. The PRS recommended that her requests for relief be denied. In his testimony before PRS, her former supervisor acknowledged the Applicant’s progress in performing the RM responsibilities in her position from March 2008 through January 2010. The PRS panel also noted that the Applicant had been a good performer, fulfilling the responsibilities currently of a Level GD position, and acknowledged that, in the future, she had the potential for such a position and to be assigned to the RM Network.

8. The Applicant’s 2010 and 2011 Overall Performance Evaluations (“OPEs”) included positive reviews of her performance of RM tasks, and suggested training courses

to put her in a position to progress in the RM field. However, discussions in 2011 with HR and her new supervisor, Mr. J (Adviser, CFPVP), about initiating a job evaluation or re-grading of her position proved fruitless as it was confirmed, after a review of the RM function in CFP, that there was no business need to change her job grade.

9. In early September 2011, it was announced that Mr. K, the Director of Concessional Finance and Global Partnerships, Financial Management (“CFPFM”) would become the new Director of CFPTO effective December 2011. On 30 September 2011, upon the retirement of a staff member, a Level GD position became vacant in CFPTO. In discussions about the replacement for that position, the VP stated that there was no need for a Level GD RM staff position in CFP, but that a combined Terms of Reference (“TOR”) for Administrative and Client Services (“ACS”) and RM could be considered for the new person. Mr. K shared the VP’s view and wanted to convert one of the ACS positions to an RM Assistant position, with a mix of ACS and RM responsibilities. He thereafter drafted a TOR for the position and sent it to the RM Board for clearance.

10. On 13 October 2011, CFPTO advertised a three-year term appointment position for a Resource Management Assistant at Level GD. Mr. K was the Hiring Manager for the position. At that time the VP did not approve the posting, explaining that CFP managers were free to initiate hiring processes without his approval as long as they were replacing staff and there was no change in the head count or grade slots, as was the case with that vacancy.

11. One of the staff interested in the position was Ms. H, a Program Assistant hired by Mr. K in 2009 in his previous department (CFPFM). Mr. K was familiar with her work and impressed with her performance. A year before assuming his position as Director, CFPTO, Mr. K had sent an e-mail message dated 8 December 2010 to Ms. Y, Senior HR Officer, who was then also the HR Officer for the RM Network, stating that Ms. H had expressed an interest in the RM Network. He explained that she had “a BA in accounting and an MA in Business Administration” and that, while her role in CFP was an ACS one, this role had an RM component to it and she would like to explore whether she should go

through further training so as to become eligible to join the RM Network. Ms. Y had responded the next day informing Mr. K that the assignment of staff was defined by the job they performed. She added that while, based on his note, Ms. H had the qualifications to join the RM family, she would need to apply and be selected for an RM position. Ms. Y also suggested that one way for Ms. H to become more competitive in respect of RM positions would be to undertake a developmental assignment in the RM Network.

12. A total of 59 applications were submitted for the position of the Resource Management Assistant, including those of Ms. H and the Applicant. On 16 November 2011, a Shortlisting Committee (“SLC”) was convened to review the applications. The SLC consisted of Mr. J, as chair; two RM Officers, from the Corporate Planning and Analysis unit (“CFRPA”) and from CFPVP, respectively, and a Conferences Associate, International Development Association, Resource Mobilization.

13. On 17 November 2011, Mr. J sent an e-mail message to Mr. K informing him of the SLC’s recommendations. The SLC had recommended six candidates to be shortlisted, among whom were the Applicant and Ms. H.

14. Subsequently, the Human Resources Committee (“HRC”) of the RM Sector Board reviewed the candidates. On 5 December 2011, a Senior Program Assistant, HR, Networks Team (“HRSNW”) (“HR Senior Program Assistant”) sent an e-mail message to Mr. K informing him of the HRC’s decision. She stated:

The HR Committee reviewed the ... candidates as well as your input and agreed to the following proposed candidates. Kindly note, *there are 3 out of 6 proposed candidates, who met the required relevant education and work experience. Therefore, you may proceed with the interviews for the cleared candidates as indicated below.*

The following candidates were cleared for the shortlist:

1. [Mr. P]
 2. [the Applicant]
 3. [Ms. R].
- (Emphasis added.)

15. Immediately upon receiving the HR Senior Program Assistant's e-mail message, Mr. K replied with a question regarding Ms. H, who the HRC had not included in the shortlist. He stated that he had previously asked Ms. Y to "assess" Ms. H's educational credentials and work experience and that Ms. Y had "confirmed" that Ms. H had the qualifications to join the RM family. He cut and pasted Ms. Y's 9 December 2010 e-mail message into his message stating that, on this basis, he was requesting that Ms. H "also be cleared for the interviews."

16. The next day, Mr. K had a phone conversation with the Chair of the HRC during which he spoke to her about Ms. H and forwarded to her the e-mail message that he had sent to the HR Senior Program Assistant the previous day. The Chair of the HRC responded to him immediately that she would look into the matter as the HRC would be meeting the following day.

17. Mr. K states that on 7 December 2011, he had another e-mail exchange with the Chair of the HRC during which she informed him that "[Ms. H] is cleared – you will get a formal response from [Ms. Y]." That same day, Ms. Y sent an e-mail message to the HR Senior Program Assistant asking her "to proceed with the shortlisting of [Ms. H] to this position." Thereafter, Ms. H was added to the shortlist.

18. The interviews were scheduled for 12 and 13 December 2011. As two Human Resources Officers had difficulties participating in the planned interviews as promised, the Manager, HR Corporate Team, agreed that the interviews be conducted without HR representation.

19. The interview panel for the position included the Manager, CFPTO, as interview panel chair; a Program Assistant, CFPTO; a Business Process Analyst, CFPTO; an Operations Analyst, CFPTO; an RM Assistant, Human Development Network; and an RM Analyst, Sustainable Development Network.

20. On 12 and 13 December 2011, the four candidates were interviewed. On 15 December 2011, after getting the approval of the other members of the interview panel, the interview panel chair sent the interview report to Mr. K stating that the panel had discussed all four interviewed candidates and had come up with a unanimous recommendation for him to interview Ms. R and Ms. H. The interview report stated, among other things:

the Panel unanimously ranked [Ms. R] as the best candidate, with [Ms. H] and [the Applicant] tied as distant second suitable candidates. However, between the two and for the below considerations, the Panel's recommendation is for the Hiring Manager to regard [Ms. H] as more versatile than [the Applicant] and, therefore, a better match for the job.

21. The report stated with regard to Ms. R:

[Ms. R] was assessed as a solid, steady performer in both RM and ACS work. Since CFPTO is a service-provider, there is strong pressure associated with the job in terms of meeting urgent and complex client demands: [Ms. R] exhibited the necessary resilience and drive to thrive in this environment. If selected, the Panel felt that [Ms. R] could seamlessly integrate in the new Team and quickly assume the required Office Manager role (ACS coordination and coaching); together with providing strong value in the required RM support to the front-office.

22. The report stated with regard to Ms. H:

[Ms. H] was found to be able to move across the continuum of ACS and RM work – a necessary requirement to succeed in the job. *Although [Ms. H's] specific RM experience was assessed as less rounded than the other three candidates, in light of her excellent performance and the pride displayed in her current ACS position, the Panel felt that she has strong motivation and potential to grow further in the RM area as well, assuming a growing level of responsibilities. An added advantage is [Ms. H's] current role as Program assistant to the incoming Director, which would help smoothing out the transition for both of them, and shorten the learning curve considerably. (Emphasis added.)*

23. With regard to the Applicant the report stated:

[The Applicant] was found to be knowledgeable and fungible in both ACS and RM work. An added benefit is her intimate knowledge of the [Vice Presidency] and CFPTO, where she had previously worked, as ACS, in the Partnerships group. *However, since she had already made a move that has brought her into a full-time RM position in the front-office, as Financial Assistant, the Panel felt that assuming this position could be a step back for her.* As such, the Panel recommended that [the Applicant] be given positive feedback on her interview, jointly with the advice to continue furthering her professional growth within the 'core' RM stream, focusing on suitable career advancement opportunities, possibly outside of CFP – where she has worked for a considerable number of years – in order to broaden her Bank experience. (Emphasis added.)

24. On 16 December 2011, Mr. K interviewed the two candidates recommended by the interview panel and on 18 December 2011, he sent an e-mail message to Ms. Y informing her of his interview of the two candidates, and his intention to offer the position to Ms. H. He also sought confirmation from her and another HR Officer that due process had been followed in the recruitment from an HR Corporate Team and RM Board perspective. On 19 December 2011, the HR Officers expressed their agreement with the recruitment process. On 20 December 2011, Mr. K informed the Applicant that she had not been selected for the position.

25. A few days later, the Applicant found out that Ms. H had been selected for the position. On 25 January 2012, the Applicant met with her supervisor, Mr. J, and an HR Officer and expressed her disappointment that she had not been selected for the position, particularly as her TORs were almost identical to the job posting, as well as her concerns that Ms. H had been pre-selected for the position. The possibilities for a developmental assignment, consideration for promotion, and a request for a job evaluation were also discussed.

26. On 1 February 2012, the Applicant sent an e-mail message informing CFP staff that Ms. H had been selected for the RM Assistant position taking over her responsibilities and that Ms. H, rather than the Applicant, would henceforth be the point of contact for RM matters. Several more meetings took place in February and March

2012 between the Applicant, her managers, and the HR Officer to discuss the selection process and the Applicant's TOR.

27. The Applicant's 2012 OPE included mostly "Fully Successful" ratings, one "Outstanding/Best Practice" and one "Partially Successful" rating regarding her support to the RM Officer and her RM duties. Her supervisor, Mr. J, stated in his overall comments that the Applicant had performed well during the first seven months of the OPE period but that she had been rated "Partially Successful" because she did not perform some of the components of her TOR after so informing management on 1 February 2012. He added that she had been performing adequately in other RM related tasks up until 1 February 2012. His other comments regarding the Applicant's work were positive. The Applicant's salary increase ("SRI") for that year was 1.25%, and her SRI rating was 3.1. This was a decline from previous years.

28. On 8 February 2013, following an unsuccessful request for review of her non-selection with PRS, the Applicant filed an application with the Tribunal contesting the decision not to select her for the position of Resource Management Assistant, Level GD, CFPTO. The Applicant requests the Tribunal to order: (i) two years' salary as compensation for her unfair and wrongful treatment by the Bank in the selection process, her moral injury and personal distress, as well as for her professional harm suffered by the Bank's career mismanagement; (ii) promotion *in situ* to Resource Management Assistant at Level GD and review of her salary; (iii) any other relief deemed fair and appropriate by the Tribunal; and (iv) costs in the amount of \$22, 412.30.

THE CONTENTIONS OF THE PARTIES

The Applicant's main contentions

29. The Applicant first contends that the selection process was flawed because the Hiring Manager had a preferred candidate for whom he advocated and for whom he directly intervened. The Applicant states that the reversal of the initial decision of the HRC not to include that candidate in the shortlist followed his misleading directive to the

HR Senior Program Assistant as well as his impressing upon the Chair of the HRC the importance of Ms. H's case to him, as the lack of documented reconsideration of Ms. H's case by the HRC confirms.

30. Second, the Applicant contends that Ms. H's selection for the position was not based on a fair and transparent assessment of the candidates' skills, knowledge, experience and performance record against the job requirements. She states that the comparison of the three short paragraphs written up on Ms. R (the top-rated candidate), Ms. H and the Applicant reflect the use of haphazard and inconsistent evaluation criteria. The Applicant also points out that in the final and least transparent step in the process, Mr. K chose Ms. H immediately after his own follow-up interviews without ever explaining his rationale and without seeking any further feedback or input from anyone. The Applicant also claims that the Bank failed to provide her with the opportunity to compete in a fair selection process and should be sanctioned for procedural irregularities in accordance with the Tribunal's precedents.

31. Third, the Applicant contends that her career has been mismanaged because she remained at Level GC for an "incredible 18 years" and her many attempts over the years to advance her career have been denied to her by a succession of managers in her Vice Presidency and HR.

32. Fourth, the Applicant claims that she was subjected to retaliation since she availed herself of the PRS process twice, pointing out, among other things, that her FY2012 OPE was formulated much more negatively than her previous OPEs, and her SRI was lower than that of other years.

The Bank's main contentions

33. The Bank first contends that, contrary to the Applicant's allegations, there was no preferred or pre-selected candidate for the position. It states that, according to its policy, the hiring managers and their appointed committees prepare the shortlist of candidates to

be interviewed and the HR Officers may be invited to participate. It adds that even though Mr. K had the authority to augment the shortlist, he did not do so by fiat but sought clarification and confirmation before proceeding with the interview stage of the selection process. In addition, the Bank states that Mr. K felt obliged as Ms. H's manager to ensure that she received fair treatment and consequently advised the RM Network that Ms. Y had previously confirmed that Ms. H could enter the RM Network given her academic credentials and work experience.

34. Second, the Bank states that Ms. H's selection for the position was based on a fair and transparent assessment of the candidates' skills, knowledge, experience and performance records against the job requirements. It points out that a short interview report can provide a sufficiently detailed basis to justify a selection decision. It adds that a thorough evaluation of all candidates is required and not a criterion-by-criterion assessment as suggested by the Applicant.

35. Third, the Bank asserts that the Applicant has not exhausted internal remedies with regard to the claim of career mismanagement and, that in any case, her claim is not borne out by the facts. The Bank points out that the Applicant is not alone among staff in her frustration at the paucity of opportunities for promotion in the Bank, and that it is constrained by its policies and cannot promote a staff member solely because he or she has been at a particular grade for a long time.

36. Fourth, the Bank responds that the Applicant has not exhausted internal remedies in respect of her allegation of retaliation, and has not established a direct link in motive between any employment action and her use of the Conflict Resolution System.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

37. The main question for the Tribunal to consider in this case is whether the selection process was carried out in violation of a fair and reasonable procedure and whether there was not a fair and reasonable assessment of the candidates.

38. Regarding its scope of review of the Bank's decisions to select or not select a candidate to a particular position, the Tribunal made clear in *Riddell*, Decision No. 255 [2001], para. 23, that:

With regard to decisions to select staff members for positions, the Tribunal has held:

[A] decision by the Bank to select a staff member for a particular position rests within the Bank's discretion, and may be overturned by the Tribunal only when it concludes that this discretion has been abused. "The Administration's appraisal in that respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure," *Suntharalingam*, Decision No. 6 [1981], para. 24. The Tribunal will not set aside a decision by the Bank unless it was "reached in an arbitrary manner, involving, for example, unfairness, failure to allow the Applicant to state his case, or other departures from established procedures, bias, prejudice, the taking into consideration of irrelevant factors or manifest unreasonableness," *de Raet*, Decision No. 85 [1989], para. 67.

(*Jassal*, Decision No. 100 [1991], para. 30.) It is clear from the above jurisprudence, 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.

The shortlisting process

39. The Applicant claims that the main purpose of the shortlisting process, i.e. the objective screening by "a multiple-person panel" of the candidates against the selection criteria, was violated in this case. Furthermore, she alleges that the principle of transparency in the shortlisting process was also violated, because Ms. H, who had been

initially excluded by the HRC, was immediately included upon the Hiring Manager's intervention and without any documentation of a reconsideration of her case by the HRC.

40. The Tribunal has addressed the need to observe the principles of objectivity, transparency, rigor, diversity and fairness in the selection process (both shortlisting and interviewing) in a number of judgments. (*See e.g. Jassal*, Decision No. 100 [1991]; *Riddell*, Decision No. 255 [2001]; *Hitch*, Decision No. 344 [2005]; *Perea*, Decision No. 326 [2004]). Regarding the application of these principles in the shortlisting process, the Tribunal noted most recently in *BK*, Decision No. 444 [2010], at paragraph 46:

Principle 4.1 of the Bank's Principles of Staff Employment states that the purpose of the Bank's "recruitment policy shall be to seek to attract staff members of the highest caliber appropriate to job requirements." In this regard, the Tribunal notes that the Bank's Shortlisting Guidelines state that the shortlisting process should be guided by principles such as "objectivity," "transparency," "rigor," and "diversity." The Guidelines also state that the objective is to:

Create a short-list of candidates considered to be the best qualified to put forward for interviews. Shortlisting is screening a long list of candidates against the selection criteria for the job. The short list of candidates should also represent the diversity and fungibility requirements of the sector. A Hiring Manager will typically convene a shortlisting committee (SLC) of up to 4 people, with at least one from outside the hiring unit. Shortlisting results must be documented.

41. The Tribunal further found in *BK* at paragraph 56, regarding the shortlisting process:

The principles of "objectivity," "transparency," "rigor," and "diversity" cannot be implemented unless the SLC is composed of staff members from more than one unit in addition to an HR Officer. These objectives in recruitment are realized if the Bank makes its shortlisting process uniform with clear guidelines and when the composition of a shortlisting committee is diverse. *Furthermore, staff members' confidence in the shortlisting process will be enhanced by the Bank's proper and contemporaneous documentation of the deliberations of the SLC in as*

much detail as practicable. Contemporaneous and detailed documentation of SLC deliberations is also a guarantee of a transparent, sound and fair recruitment process. (Emphasis added.)

42. In the instant case, the record shows that the process was as follows. The SLC comprised four people, at least one of whom was from outside the hiring unit, in compliance with the Shortlisting Guidelines. Following proper process, the SLC recorded the results of its meeting which it sent to the Hiring Manager, stating that six of the 59 candidates fulfilled the requirements for the position. As an additional step required for such positions, the list of six candidates was reviewed by the HRC of the RM Board which cleared three out of the six shortlisted candidates for interview on the grounds that these were the three candidates with “the required relevant education and work experience.” The Applicant was one of these three candidates but Ms. H was not. The HRC properly recorded its findings and decision in an e-mail message of 5 December 2011 from an HR Senior Program Assistant to the Hiring Manager, Mr. K. The Hiring Manager immediately inquired why Ms. H had not been included in the shortlist, stating that, a year ago, Ms. Y, a Senior HR Officer for the RM Network, after assessing the educational credentials and work experience of Ms. H, had confirmed that Ms. H had the qualifications to join the RM family. On this basis, he requested that Ms. H be cleared for the interviews. Thereafter, the record shows that the Hiring Manager talked to the Chair of the HRC who responded to him that she would look into the matter at the HRC’s meeting the following day. The following day she informed him that Ms. H had been cleared. Ms. Y then instructed the HR Senior Program Assistant to add Ms. H to the shortlist.

43. The Applicant alleges that Mr. K tried to influence the HR Senior Program Assistant to include Ms. H on the shortlist by not making an accurate representation to her of his communication with Ms. Y during December 2010. The Applicant states that Ms. Y had not actually assessed Ms. H’s educational credentials and work experience at the time, as Mr. K stated, but had based her view of Ms. H’s qualifications to join the RM family only on Mr. K’s statements to her. The Applicant states that Ms. Y had suggested at that time that if Ms. H wanted to become more competitive for RM jobs she

could undertake a developmental assignment in the RM sector. The Tribunal takes note of the Applicant's point, but also notes that Mr. K cut and pasted Ms. Y's e-mail message of 9 December 2010 to him into his message to the HR Senior Program Assistant. This enabled the HR Senior Program Assistant, the HRC, or any other reader, to see what Ms. Y had, in fact, said at the time.

44. Second, Mr. K intervened to have Ms. H included in the shortlist of candidates to be interviewed. Ms. H was added to the final shortlist upon his request immediately after his conversation with the Chair of the HRC. There is, however, no contemporaneous communication or documentation of record showing the HRC's reason for adding Ms. H to the shortlist. The Tribunal called upon the Bank to produce documentation regarding HRC's deliberations and conclusions leading to that decision but the Bank was only able to produce explanations that Ms. Y gave to the Bank's counsel in May 2013, following the Tribunal's order.

45. The Tribunal observes that the exercise of a hiring manager's right to augment a shortlist should entail, at a minimum, some contemporaneous communication showing the objective criteria on the basis of which the candidates were included in the final shortlist for interviews, in preference to others, particularly if they were first excluded and then added. This is even more so if such addition to a shortlist at the request of a hiring manager has been made after a review and decision of the relevant Sector Board (or its HRC) clearing only a number of the candidates initially nominated by the SLC. The lack of any contemporaneous and detailed documentation regarding the alteration of the HRC's decision in this case raises questions as to the observance of the guarantees of a transparent, sound and fair recruitment process which the Tribunal has found in its jurisprudence to be required for the shortlisting process.

46. In offering a first explanation to the Bank's counsel in May 2013 of the HRC's alteration of its original decision to exclude Ms. H from the shortlist, Ms. Y stated that:

[Ms. H] was added to the shortlist at the request of the manager. The [SLC] initially considered that, although she [met] the minimum

requirements, there were other candidates that were a better fit to the profile.

47. The Tribunal notes that Ms. Y's statement that Ms. H met the minimum requirements for the position is not consistent with the HRC's stated reason for not including Ms. H in the shortlist, namely, that only three of the six candidates nominated by the SLC – not including Ms. H – met the minimum requirements.

48. In a second statement, upon request for further clarification by the Bank's counsel, also in May 2013, Ms. Y maintained that many shortlisted candidates have the minimum qualifications and that, in order for the HRC to clear the best candidates, it uses the criterion of who is a better fit for the position and looks at comparative strength of the candidates. She stated in this respect:

Let me clarify this further. The HRC has to clear the short-list to the position and, in doing so, they make sure the candidates meet the minimum qualifications and they look at those who represent a better fit. Normally the list of staff meeting the minimum qualifications can be quite long so there is a need to look at comparative strength. In some cases, the manager can ask the HRC to reconsider a candidate and check if [she or he] can be added to the list. The HRC will look at the case and get back to the manager. In this case, the HRC reconsidered the candidate recommended by the manager and since she met the required qualifications, she was added to the list.

49. The Tribunal considers that this explanation seems to suggest first that when comparing the Applicant's strengths to Ms. H's, the Applicant (and the other two originally cleared candidates) was a stronger candidate than Ms. H in the HRC's view and that, for this reason, the latter was not initially cleared. Furthermore, it does not show the reason on the basis of which the HRC, even though it considered that Ms. H had the minimum qualifications, initially excluded her only to add her later, upon the request of the Hiring Manager, "since she met the required qualifications." This subsequent explanation without the provision of any detailed and contemporaneous documentation of the HRC's review of the Hiring Manager's request and the subsequent inclusion of Ms. H in the final shortlist casts doubt on the objectivity of the reason for the

HRC's apparent decision that Ms. H represented a "better fit." The Tribunal finds that the inconsistency between the HRC's initial explanation and Ms. Y's subsequent explanations, coupled with the lack of contemporaneous documentation of the HRC's reasoning for the inclusion of Ms. H in the final shortlist, lends support to the Applicant's claim that the Hiring Manager's intervention was decisive in this respect and that proper process was not followed.

The interview process

50. The Applicant claims that Ms. H's selection for the position was not based on a fair and transparent assessment of staff skills, knowledge, experience and performance record against the job requirements; that the summaries on each candidate in the interview report reflect the use of haphazard and inconsistent evaluation criteria; and that if the interview panel had used the Bank-provided "Candidate Assessment Forms" recommended for use under the Bank's Guidelines, a transparent and objective ranking process for each candidate against the advertised selection criteria would have been ensured and would have provided a record reviewable by the Tribunal.

51. The Bank's Guidelines on interviewing and selecting candidates require that the hiring manager and panel interview the shortlisted candidates, that the candidates be rated, and that interview reports be prepared. The Guidelines provide samples of such "Candidate Assessment Forms" with ratings as to the "technical" skills and "people" skills of the candidates as well as overall ratings and recommendation as to which candidates should be selected. The Tribunal found in *Perea*, Decision No. 326 [2004], paras. 53 and 55, that selection decisions will be made based on a comparative assessment of staff skills, knowledge, and performance record against job requirements and that such assessment should be recorded. The Tribunal held at paragraph 57 of that judgment, that it was

unable to determine how comparisons were made to select candidates on a competitive basis for reassignment, whether and, if so, how performance assessments were considered, or how the Respondent met the guidelines it

had established for the process. In this regard, the Tribunal considers that there was a lack of coherence and transparency in regard to the selection process ... The Respondent failed to provide a fair procedure.

52. Furthermore, in relation to another position for which the applicant had applied, the Tribunal expressed at paragraph 72 of the judgment its concern about “the absence of any interview/evaluation report indicating why the Applicant was considered less qualified for the position than the other candidate” and concluded at paragraph 74 that “the selection process was lacking in transparency, and was arbitrary and an abuse of discretion.” In *BK (No. 2)*, Decision No. 452 [2011], the interview panels did not use the matrices or forms suggested by the HR officer and the Bank’s Guidelines but, instead, prepared their own reports which consisted of a narrative comparing the candidates’ skills and competencies primarily on the basis of the interviews, and recorded an overall ranking for each candidate. The Tribunal found that the principles of “objectivity,” “transparency,” “rigor,” and “diversity” applicable to the shortlisting process may also be applied to the interview process and held at paragraph 42:

The Bank’s process requires, at a minimum, that a report of the results of the panel interviews should be prepared and should “clearly document the Panel’s findings and identify the top candidates....” In the present case, the record demonstrates that there was *contemporaneous and detailed documentation of the deliberations of the interview panels, and the Interview Summary and Interview Report provided a comparison of the candidates relative to the selection criteria.* (Emphasis added.)

53. Noting, among other things, that the interview report and summary clearly delineated the qualifications and skills of the interviewed candidates, the Tribunal upheld the Bank’s decisions in that case. Accordingly, matrices or prescribed candidate assessment forms are not required provided the principles set out in *BK (No. 2)* and *Perea* are observed.

54. The interview report in the present case raises questions as to whether these principles were observed and whether all the candidates were assessed properly against the same selection criteria. The Tribunal notes that while the summaries regarding Ms. R and Ms. H referred to their performance, there was no reference to performance as such

in the summary regarding the Applicant. There was no specific mention of the Applicant's experience, but only reference to her knowledge and fungibility. While there was mention of the core behavioral competencies of both Ms. R ("resilience" and "drive") and Ms. H ("pride" and "strong motivation"), there was none as to core behavioral competencies of the Applicant. (See paragraphs 20-23 above.)

55. Furthermore, the Tribunal notes that some statements by the interview panel do not appear to have a clear and observable basis. When the panel made its recommendations to Mr. K in which it ranked both the Applicant and Ms. H as a distant second to the best candidate, it recommended that Ms. H be interviewed instead of the Applicant because Ms. H was more "versatile" than the Applicant and therefore a better match for the job, even though it had also described the Applicant as "fungible." Most important, the Tribunal is troubled by the statement in the evaluation of the Applicant that "the Panel felt that assuming this position could be a step back for her" (see paragraph 23 above). Even if one was to accept the interview panel's explanation that the Applicant had "already made a move that had brought her into a full-time RM position in the front office," the Tribunal is perplexed as to how a position that would offer the Applicant the promotion to Level GD which she had desired and pursued for so long through requests for promotion and job evaluation would be a step back for her. The Tribunal therefore is not satisfied that all the candidates were assessed fairly against the same criteria or that statements in the interview report in relation to the Applicant were sufficiently supported.

56. The Applicant has also made the claim that Mr. K's choice of Ms. H over the recommended candidate, Ms. R, immediately after his own follow-up interview, shows that he did not exercise his discretion reasonably. The record shows that, after the interview panel had recommended that the Hiring Manager interview Ms. R and Ms. H, and recommended Ms. R as the top candidate, the Hiring Manager simply informed Ms. Y and other HR Officers that the panel had recommended that he interview two candidates, that he had done so, and that he was planning to offer the position to Ms. H. No other explanation was given. The Tribunal is mindful that the Hiring Manager had

worked with Ms. H, knew her capacities, and understandably may have judged that she would be an especially good “fit” to continue working with him. However, while a hiring manager’s discretion to select one suitable candidate over another will not normally be questioned, the lack of transparency surrounding the decision and the absence of contemporaneous documentation of the basis of that decision is problematic.

57. The Bank has cited the Tribunal’s decision in *CA*, Decision No. 475 [2013] in support of Mr. K’s selection of the second most suitable candidate. In that case, the hiring manager had taken into account (i) the assessment of the interview panel; (ii) feedback from Team Heads in the unit; (iii) feedback from reference checks; and (iv) guidance from a Senior Human Resources Officer, and the information received from these sources was contained in the record before the Tribunal. The actions of that hiring manager stand in clear contrast to those of the Hiring Manager in this case, in which the record before the Tribunal does not shed any light regarding the basis of the decision. The fact that Mr. K’s selection came on the heels of a process that was otherwise not fully compliant with proper procedures raises further questions.

58. On balance, the Tribunal is not satisfied that a fair assessment of the candidates had been conducted during the shortlisting, interview and final selection processes, or that the principles ensuring a transparent, sound and fair recruitment process established in its jurisprudence have been observed in this case.

59. In *King*, Decision No. 131 [1993], para. 59, the Tribunal stated that it “cannot be sure that if the requirements of procedural due process had been followed, the result ... would have been the same.” (*See also van Gent*, Decision No. 11 [1982], paras. 27-28.) The Tribunal held in *Medlin*, Decision No. 319 [2004], para. 34 that “due process is an inherent requirement in the employment relationship, and therefore it may be appropriate to penalize procedural irregularities even if they did not ultimately lead to a different substantive outcome.” Therefore, given the deficiencies in the process as well as the other circumstances in this case, and even though the possibility exists that the Applicant

might not have been selected for the position absent those deficiencies, the Tribunal finds that an award of compensation to the Applicant is warranted.

Career mismanagement

60. The Tribunal finds, first, that the Applicant's claim of career mismanagement is admissible because it is related to the principal claim of non-selection. (*See Prasad*, Decision No. 334 [2005], para. 39 citing also *Barnes*, Decision No. 176 [1997], para. 29 and *Chhabra*, Decision No. 139 [1994], para. 57.) Indeed the Applicant's claim of career mismanagement relates directly to her challenge of the decision not to select her to the RM Assistant position at Level GD. As the record shows, she has been striving throughout her career in the Bank and particularly since March 2008 to secure a position at the GD Level through the assumption of additional RM responsibilities, training, and recognized good performance at a higher level, through repeated discussions with her supervisors and requests for job evaluations and promotion to that level, and even by filing an earlier request for review before PRS of her non-promotion to a similar position.

61. On the merits of her claim, the Tribunal finds, however, that the Applicant has not substantiated her claim that her career has been mismanaged. There was neither a mismatch of her skills to the position to which she was initially assigned nor a promise for promotion that was revoked leaving her unclear about her career prospects. (*See e.g. Chhabra*, Decision No. 139 [1994]; *Taderera-Marimbe*, Decision No. 454 [2011].) A previous request by the Applicant for a job evaluation was unsuccessful as the VP decided that there was no business need for an upgrading of her position or for the creation of a Level GD RM Assistant position in her unit at the time. Such decisions are within the discretion of the management of the unit. The Tribunal also notes that the Applicant was hopeful for selection to an RM Assistant position at Level GD advertised by her former manager, but he apparently had mistakenly not sought clearance by the VP who later cancelled the vacancy on the ground of lack of a business need. This matter, however, has been already addressed in a previous request for review by her to PRS and is not at issue in this Application.

62. However, the Tribunal notes, first, that the Applicant has been praised by her former and current supervisors on her performance, particularly with regard to the execution of RM duties. Her former manager who had advertised the RM position that was ultimately cancelled testified before PRS that he believed that the quality of her work in the RM Team was good and that the RM Sector Board's approval of the position indicated that it agreed that the responsibilities of the position were appropriately considered Level GD. The PRS in both its reports recognized the possibilities for the Applicant to attain a Level GD position and inclusion in the RM Network. Most importantly, as her current case shows, after training and execution of RM responsibilities for a long period of time, the Applicant was deemed qualified to be included in a small number of candidates in a shortlist to be interviewed for an RM Assistant position at Level GD. The interview panel considered her knowledgeable and fungible in both ACS and RM work. Furthermore, it has been found that irregularities affected the selection process for the position to which the Applicant was not selected. Therefore the Tribunal calls upon the Bank to make efforts to support the Applicant's career advancement and promotion.

Retaliation

63. Irrespective of the Bank's arguments regarding inadmissibility of the Applicant's claims of retaliation, the Tribunal finds that the Applicant has not proven her claim on the merits. The Tribunal notes that the Staff Rules prohibit retaliation against staff members who use the Conflict Resolution System and under Staff Rule 3.00 such retaliation amounts to misconduct. However, as the Tribunal has found in its well-established jurisprudence and recently, in *AH*, Decision No. 401 [2009], para. 36:

It is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation.

64. An examination of the facts of the case shows that the Applicant received a “Partially Successful” rating in her OPE with respect to her support of the RM Officer and her RM duties and some negative wording in the supervisor’s overall comments section, although she also received positive comments for her work. Her supervisor attributed this rating to her refusal to perform some components of her TOR after so informing management on 1 February 2012. The record shows that the Applicant had sent an e-mail message on that day to all the staff of CFP informing them that, as Ms. H had been selected for the RM Assistant position, taking over her responsibilities, all RM matters should henceforth be addressed to Ms. H. The record also shows that several meetings took place thereafter to discuss the Applicant’s TOR. The Applicant’s SRI was lower than other years, presumably to account for the “Partially Successful” rating in her OPE. Therefore the Tribunal finds that the Bank has demonstrated that the Applicant’s OPE rating and the negative wording in her supervisor’s overall comments, as well as her SRI, were to be attributed to her refusal to perform certain tasks under her TOR and not to the challenge of her non-selection before PRS. As the Applicant has not succeeded in showing clearly a direct link between the alleged motive of her supervisors and the adverse action in her OPE and SRI or what she calls “reprimands by her managers,” her claim of retaliation fails.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of seven months’ salary net of taxes for the irregularities in the selection process.
- (2) The Bank shall contribute to the Applicant’s attorneys’ fees in the amount of \$17,930.
- (3) All other pleas are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Olufemi Elias

Olufemi Elias

Executive Secretary

At Washington, D.C., 3 October 2013