

Decision No. 328

**Komalam Moss,
Applicant**

v.

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

1. The World Bank Administrative Tribunal has been seized of an application, received on May 21, 2004, by Komalam Moss against the International Bank for Reconstruction and Development. The Tribunal has also been seized of a second application, received on May 25, 2004, by the same Applicant. On May 27, 2004, the President of the Tribunal decided to consolidate the two applications. 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, Jan Paulsson (a Vice President of the Tribunal) and Francisco Orrego Vicuña, Judges. The usual exchange of pleadings took place and the case was listed on October 27, 2004.

2. The May 21 application contests the decision of the Respondent not to pay the Applicant for the overtime that she worked. The May 25 application complains that the Respondent: (a) denied the Applicant a permanent position as earlier promised; (b) terminated her employment prematurely in retaliation for her having filed an appeal in another case and for having rejected a coterminous position (expiring with the exhaustion of its funding); (c) defamed the Applicant to the detriment of her career; and (d) abused its power in her most recent Overall Performance Evaluation (OPE) while she was in the Agricultural and Rural Development Department (ARD).

The relevant facts

3. The Applicant joined the Bank on a Temporary appointment in June 1988 as a Secretary, Level 13, in the Country Economics Department. Her appointment was soon thereafter regularized. Her successful career at the Bank included assignments at the Human Resources (HR) teams of the Latin America and Caribbean Region and the Africa Region. In due course, she was promoted to Level C. In September 2001, she became a Program Assistant in the Office of a Managing Director (MDH) under the supervision of an Executive Assistant. Among her duties in MDH were the re-organization of the filing system, paper flow management in general, and other work that had been pending for years. The Applicant found the work environment in that office abusive and requested urgent reassignment.

4. On September 4, 2002, the Applicant met with the HR Manager of Corporate Team 2 (HRSC2). The latter agreed to help the Applicant on an urgent basis, and to that end contacted the Manager of the Contract Temporary Assignment Program (C-TAP), who places Administrative and Client Support (ACS) staff in Short-Term assignments, to ask about a Temporary placement for the Applicant while the HR team searched for a permanent position. Although the Applicant was not part of C-TAP, the Manager of C-TAP placed the Applicant in ARD on a Temporary assignment starting September 23, 2002. This assignment was to last initially for three months, with the possibility of being extended up to six months. The Applicant herself admitted in her testimony before the Appeals Committee that she had been temporarily placed in ARD, and that she was supposed to continue looking for a job through the Job World Vacancy System.

5. The Applicant's immediate supervisor in ARD was the Office Manager of ARD who had also joined ARD in September 2002. Upon joining ARD, the Office Manager noted that ACS staff in ARD were required to do a lot of communication packages, publications and mass mailings. She also came to the view that there were too

many high-level ACS staff and not enough lower-level staff to help with the routine mailings and packages. She believed, therefore, that there was a need for lower-level ACS staff and, to this end, she started preparing a proposal on a strategy for the ACS Team and Office Management functions.

6. During her assignment in ARD, the Applicant's duties included providing general administrative support in various parts of ARD on an *ad hoc* basis and, particularly, assisting Ms. X, Senior Water Resources Management Specialist, on the Bank-Netherlands Water Partnership Program (BNWPP). Part of the Applicant's duties also included assisting Mr. Y, Senior Water Resources Advisor, in the preparation of a Water Resources Strategy Paper.

7. On September 30, 2002, the Sector Manager, ARD, informed all ACS staff in ARD that overtime requests would have to be approved by the Office Manager first and then should be submitted to her.

8. In December 2002, after receiving very positive feedback from the Applicant's colleagues and supervisors, the Office Manager rated her performance in ARD as outstanding in all competencies and decided to extend her assignment for three additional months.

9. In an e-mail to the Manager of the C-TAP Program dated December 20, 2002, the Office Manager stated:

In summary, Komalam is the type of ACS which the institution not only needs but could use as a best practice. She is definitely a staff member who has the behaviors, skills and abilities aligned in complete harmony to add value to any office. She works independently, yet manages to easily shift into a "team" mode. As an additional source of information, she was recommended for a spot award by 5 different individuals for three different tasks.

The Office Manager then added:

As you know, we would gladly offer her a permanent position if one were available. Unfortunately, I am completely staffed. However, some of my ACS staff have advised me that they are actively pursuing positions elsewhere in the institution in order to expand their career development. Although not a common practice within the ACS network, if you would like to discuss the possibility of a "swap" of positions, this may be one way of addressing the problem.

10. According to the Applicant, the Sector Manager of ARD was very anxious to retain her and told the Office Manager to find a vacancy for the Applicant. This assertion is denied both by the Office Manager and the Sector Manager of ARD.

11. During the Applicant's time in ARD, the HR Manager and HR Officer, HRSC2, continued to search for a permanent position for the Applicant. On December 9, 2002, an opening was advertised in ARD's Program of Forests (PROFOR). ARD was looking for a highly motivated, skilled and innovation-seeking individual to assist in the creation and management of the PROFOR Secretariat. The job of the Program Assistant was designated as coterminous, which according to Staff Rule 4.01 ("Appointment") is defined as an Open-Ended or Term appointment if it is 100-percent funded from sources other than the Bank Group's administrative budget. According to the same paragraph, the Bank Group may terminate the appointment after one year, if the funding source terminates or reduces the funding for the position. The Respondent states that the PROFOR position was first advertised as a Term position, and was funded both by the Bank and by trust funds donated by various large, bilateral development agencies. The position would be maintained as long as the outside donors provided funding for PROFOR; this was anticipated to be the case for at least three to five years.

12. ARD did not receive many qualified applicants through the Job World Vacancy System. As the Applicant was well suited for the job, ARD decided to offer it to her. The Applicant, however, had not even applied for the job and turned down the offer. She did not want to accept a coterminous Term job. She was also concerned about a personal disability. The record indicates that in mid-1999 the Applicant had gone on sick leave for about 18 months as she had developed carpal tunnel syndrome and a frozen shoulder.

13. In December 2002 and January 2003, the HR Manager and HR Officer continued to search for a permanent position for the Applicant. A job at Level C in the Quality Assurance Group (QAG) was identified and offered to the Applicant. Although the position would be initially Temporary, it had the potential of becoming permanent. The Applicant turned it down because, according to her, the job involved too much repetitive motion, which would aggravate her carpal tunnel syndrome, and because the job was not at the level at which she was capable of performing.

14. In December 2002, the Applicant was asked to assist the BNWPP team to prepare for an annual conference called Water Week, which was scheduled for March 4-6, 2003. Ms. X was in charge of the event. A large group of staff was mobilized to help with the project. Among the main duties of the Applicant were: (a) the coordination of the registration of the participants; and (b) putting together binders with all of the papers that would be presented at the Conference. The Applicant claims that the registration for Water Week was difficult to manage because of the unexpected increase in registered participants and the lack of coordination for the event among Ms. X, the Office Manager and a Consultant working at ARD.

15. The other major assignment that the Applicant had to complete while in ARD was the reformatting and editing of the Water Resources Strategy Paper. In January 2003, the Applicant was asked to reformat and edit the Water Resources Strategy Paper so it could be easily placed on the Bank's website immediately after its approval by the Board of Executive Directors on February 25, 2003.

16. During January 2003, the Office Manager became concerned about the amount of time that the Applicant was spending at the office and inquired whether she needed help from other staff. She reminded the Applicant that all overtime had to be approved in advance. On February 10, 2003, the Applicant requested overtime payment for 26 hours in the month of January. The Respondent states that the Office Manager had been made aware of the overtime in advance and had approved it. The Applicant, however, alleges that there were several instances when permission for overtime was approved after the work was done.

17. Around that time and in anticipation of Ms. X's departure on mission in mid-February 2003, the Applicant spoke with Ms. X to discuss her assignments and workload. At the end of their conversation, the Applicant believed that she had secured Ms. X's approval to work whatever overtime was needed to complete her assignments during Ms. X's absence. But Ms. X testified that she did not formally authorize overtime for the Applicant in February 2003 and did not pre-authorize a "blank check" for the Applicant to work overtime as needed while Ms. X was on mission.

18. In February 2003, the Office Manager and the HR Officer of HRSC2 approached the Applicant to ask her to reconsider taking the position in PROFOR, but the Applicant declined it for a second time. The Applicant states that the Office Manager told her that HR was putting a lot of pressure on her to offer the PROFOR job to the Applicant. The Applicant was given until February 11, 2003 to respond to the offer. That was also when the Respondent's answer was due before the Appeals Committee in another appeal filed by the Applicant. The Applicant alleges that the Sector Manager of ARD was very uncomfortable about the fact that the Applicant had filed this appeal, but both the Office Manager and the Sector Manager testified that they did not find out about the Applicant's appeal until at least a month later. The Office Manager also denies that she put pressure on the Applicant to accept the PROFOR job.

19. In an additional effort to find the Applicant permanent employment in ARD at a Level C position, HR Officers discussed the possibility of HR funding such an assignment in ARD for its first 18 months. The Vice President of Environmentally and Socially Sustainable Development (ESSD) was not interested in this prospect. He was, however, willing to offer her the PROFOR position, and suggested that HR offer the Applicant a re-entry guarantee to HR when the term of the coterminous position ended.

20. When Ms. X returned from mission on February 23, 2003, she found that the Applicant had not finished reformatting the Water Resources Strategy Paper even though it was due the next day. She then urged the Applicant to complete the job by the next day, which led the Applicant to do overtime. At that same time, Ms. X

also learned that the Water Week Conference materials, for which the Applicant was responsible, were not yet copied because of a miscommunication between the Applicant and another Consultant at ARD. Five hundred copies had to be made in a short time and, despite everyone's efforts, the binders with the materials were not ready before the end of the week before the Conference. The Office Manager asked several ACS staff to work overtime with the Applicant to complete the binders the day before the Conference. Around midnight on Monday, March 3, 2003, the Applicant asked the others to leave and worked alone until 3:00 a.m. When the Office Manager asked her why she had worked so late, the Applicant said that she had decided to place binders on the individual chairs for the participants because Ms. X had authorized her to do so.

21. Around the same time, i.e., at the end of February 2003, Ms. Z, a Program Assistant at Level C in ARD, announced that she intended to transfer to another unit in the Bank. According to the record, the Office Manager suggested to the Sector Manager of ARD, among other options, to consider the Applicant for the position since it was a permanent position and the transition would have been easy.

22. By an e-mail to the Senior HR Officer of ARD dated February 27, 2003, the Office Manager commented on the Applicant's performance by saying that the Applicant's drive for results was "a bit off the page" and that her "work/life balance is totally off."

23. The Office Manager then went on to propose two scenarios regarding the vacancy in ARD to be considered by the Sector Manager and the Director of ARD. According to the first scenario, ARD would work with one less Grade C staff member; all ACS work programs would be restructured around the new work program assignments creating ACS teams; and an ACS position would be restructured into an Office Assistant position at Grade A or B, depending on their needs. The second scenario provided that ARD would advertise for a Grade C position through a competitive process and if the Applicant were interested, she could apply. The Office Manager recommended that the first scenario be followed as it would hold some challenges but, at the same time, it would create a better team synergy and would help capitalize more on the current skills mix of the Department. On March 3, 2003, the Office Manager informed the ARD's ACS staff of the two options and solicited thoughts and comments from them.

24. Before the Appeals Committee, the Sector Manager of ARD testified that the management of ARD ultimately chose to downgrade Ms. Z's position to Grade A in order to achieve a better balance in their ACS staff composition as well as for budgetary benefit. The Senior HR Officer of ARD also testified that retaining the higher-level ACS position would not have met the work program needs of ARD.

25. On March 4, 2003, the Senior HR Officer of ARD met with the Applicant. The Applicant was very disappointed when he offered her for the third time the coterminous position in PROFOR, and explained to him her inability to accept it due to her status and her physical disability. The Senior HR Officer of ARD informed the Applicant that although the PROFOR position was a coterminous position, if she accepted it she would be allowed to maintain her Open-Ended staff appointment status. While the Applicant claims that the Senior HR Officer of ARD twisted her arm to accept the position, he states that he was simply enthusiastic when he met with her because he believed that he had a solution to her concern about the position being coterminous.

26. The next day, March 5, 2003, the Office Manager met with the Applicant to inform her that her assignment with ARD would end on March 31 because the two staff members for whom she worked (Ms. X and Mr. Y) would leave on April 1. She also stated that the current vacancy would be restructured into an Office Assistant, Grade A position in order for the Department to be more effective and efficient in delivering its future work programs.

27. The Applicant alleges that after terminating her assignment, ARD management immediately hired others to complete her work. In support of her allegation, the Applicant attaches to her pleadings a vacancy announcement dated April 14, 2004 for a Level C-D Executive Assistant in ARD. Of record, also, is an e-mail from the Director of ARD dated June 15, 2004 and showing that the position of a Team Assistant in ARD was offered to a C-TAP Temporary to start on July 1, 2004.

28. When on March 10, 2003, the Applicant submitted to Ms. X a request for overtime of 92 hours in February, Ms. X replied: "This looks OK. I hope you will not ever have to do such overtime again." Most of the Applicant's request for overtime was related to the registration for Water Week. The Applicant had also included 9 hours of overtime for the month of March.
29. On March 12, 2003, in response to a question of the Senior HR Officer of ARD whether the Applicant had received prior approval by her managers to work overtime, the Office Manager stated that the Applicant did not have such approval.
30. In an e-mail to ARD's ACS staff dated March 27, 2003, the Office Manager requested them to advise her of any overtime that they had not submitted. On March 31, 2003, the Applicant submitted two overtime requests to the Office Manager, one for 92 hours for the month of February and one for 9 hours for the month of March.
31. On April 1, 2003, the Office Manager notified Ms. X that she had looked at the Applicant's list of overtime and noted that she could account for 38 hours of overtime which she had pre-approved. She asked Ms. X if she had given pre-approval for overtime. Ms. X responded that same day that she had approved the 9 hours of overtime related to the binders for Water Week, which the Office Manager had also pre-approved, and that while on mission in February she had not approved anything. She further stated that because the Applicant had not started working on the desktopping for the Water Sector Strategy, Ms. X had asked her to start working on it immediately, which caused the Applicant to work more overtime. Ms. X stated that she did not realize that the Applicant would charge for this time. She stated that "[n]ot charging overtime myself, I am not quite used to the concept." Ms. X suggested, however, that the payment be made rather than getting back to the Applicant retroactively, because it should have been detected that "something was not quite right already at that point."
32. On April 3, 2003, the Office Manager, although acknowledging that the Applicant had indeed worked the full amount of hours which she was requesting as overtime, suggested that the Applicant be paid for 38 hours of overtime and that the rest of the 101 hours that she had submitted be allocated to compensatory leave. The Applicant declined the Office Manager's suggestion.
33. On April 23, 2003, in an e-mail to the Applicant, the Office Manager stated that the Management Team of ARD had discussed the Applicant's previous request for 101 hours and had agreed to pay her for 50 hours of overtime. For the remaining hours, ARD would provide the Applicant with compensatory leave. She pointed out that staff could not determine on their own when overtime should be performed. She stated that the Office Manager: (a) needed to ensure that there was a justification and link between the overtime and ARD's business needs; (b) would have a better indication of the overall workload and deadlines of all ACS staff; and (c) would ensure that all ACS staff had the same opportunities to perform overtime should there be a business need. The Office Manager added that she found it difficult to justify all the Applicant's overtime when other ACS staff who had followed the procedures were refused overtime because she either had not validated the business need or had provided assistance which obviated the need.
34. On May 8, 2003, the Applicant declined the alternative offered by management, stating that she had indeed obtained advance authorization for the overtime from her manager, Ms. X. She also indicated that she had left ARD, hence compensatory leave would not be beneficial to her.
35. In June 2003, the Applicant filed appeals challenging ARD management's decisions to deny her a Regular position and to terminate her Temporary assignment in ARD, as well as the decision to deny her full payment for 101 hours of overtime that she had worked in February and March 2003. The Appeals Committee consolidated the two appeals and held a hearing on December 2, 2003. In its Report issued on January 16, 2004, the Appeals Committee recommended with respect to the Applicant's overtime claim that the Bank compensate the Applicant according to the terms of its offer, i.e., to make payment of 50 hours of overtime in money and the remaining hours in compensatory leave. The Appeals Committee further recommended that all other requests of the Applicant be denied. The Vice President of HR accepted the Committee's recommendations.

Considerations

Preliminary objections

36. The Respondent has raised preliminary objections regarding two of the Applicant's claims. In addition to her main claims, the Applicant alleges an abuse of power in the OPE completed during her assignment in ARD. The record contains a number of documents related to this claim. The Respondent, however, has pointed out that this claim is currently before the Appeals Committee in a separate appeal. The Applicant does not dispute this. The Tribunal accordingly finds that this claim is not ripe for adjudication.

37. The Applicant also challenges a "decision" by which the Respondent "[m]aligned my name by spreading abroad that I have a work/life balance problem which has led to my not being shortlisted for positions by the ACS Board." Such decisions, she asserts, affected her career growth. The Respondent objects to this claim on jurisdictional grounds, among other things, because the Applicant did not exhaust prior internal remedies. A review of the record, including the Appeals Committee transcripts, shows that although the Applicant generally expressed her discontent because the Office Manager accused her of having a work/life balance problem, she did not challenge before the Appeals Committee such alleged defamatory remarks, nor contested any specific decisions related thereto. The Tribunal therefore dismisses this claim as inadmissible for failure of the Applicant to exhaust internal remedies under Article II(2)(i) of the Tribunal's Statute.

The Applicant's assignment in ARD

38. The Tribunal will now examine the merits of the first of the two main claims made by the Applicant. First, the Applicant asserts that ARD made a promise to give her a permanent position in the unit when such would become available, but broke that promise; when a permanent position at her level became available, ARD decided to downgrade it instead of offering it to her. Secondly, the Applicant asserts that ARD offered her, and subsequently put pressure on her to accept, only a coterminous position. When she rejected it, ARD retaliated against her by terminating her employment prematurely. In addition, the Applicant claims that ARD terminated her employment prematurely in retaliation for her having filed an appeal in another case.

39. The Tribunal has had occasion to consider many claims by staff members serving on Fixed-Term, Term or Temporary appointments to have their appointments extended or regularized. Most recently, in the case of *Schlemmer-Schulte*, Decision No. 316 [2004], para. 29, the Tribunal stated:

A staff member appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. ... As the Tribunal has held before, in *Mr. X*, Decision No. 16 [1984], para. 35: "A fixed-term contract is just what the expression says: it is a contract for a fixed period of time." Accordingly, the Bank need not provide reasons for the non-reappointment of a person serving for a temporary and fixed term. "Absent unusual circumstances, the individual should be fully aware of the reason why his or her appointment does not continue beyond the stipulated date: because the parties so agreed...." *McKinney*, Decision No. 187 [1998], para. 10.

40. It is clearly established that the Applicant's employment was Temporary. The Sector Manager and Office Manager of ARD, as well as the HR Officer and the HR Manager who were helping the Applicant to find permanent employment at the Bank, all testified that the Applicant's employment in ARD was Temporary. Indeed, it was on an emergency basis that the Applicant had been placed in ARD with the intervention of the C-TAP Program Manager, because she could not stay at her previous position at the MDH Office. Moreover, the Applicant herself has admitted that she was aware that her assignment in ARD was Temporary for three months initially, to be extended up to six months after the completion of a three-month evaluation. The involved HR officials have said that it was precisely because of the Temporary character of the Applicant's assignment in ARD that continuous efforts were made while she was in ARD to find permanent employment for her in the Bank. These efforts culminated in the Applicant being offered a position in PROFOR and a position in QAG, both of which the Applicant ultimately rejected.

41. The Tribunal has also addressed in its jurisprudence the conditions upon which a Fixed-Term or Temporary appointment may be converted or extended. In *Kopliku*, Decision No. 299 [2003], para. 10, the Tribunal noted that it is possible that

circumstances warrant the inference by a staff member that the Bank has indeed made a promise to extend or renew his or her appointment either expressly or by unmistakable implication. "[T]here may be something in the surrounding circumstances which creates a right to the renewal of a consultant appointment." *Carter*, Decision No. 175 [1997], para. 13. But absent such assurances on the part of the Bank, simply performing to an expected level of performance does not entitle a staff member on a Fixed-Term contract to renewal or extension.

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

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

42. In addition, the Tribunal has found that even if an applicant were to be considered to fill a certain position, a selection process would have to be followed and the applicant would still be expected to compete with other candidates in order to be selected to that position. (See *Riddell*, Decision No. 255 [2001], para. 23.)

43. Notwithstanding her own admission that she was aware of the Temporary character of her appointment, the Applicant believes that she was entitled to fill a permanent position in ARD which was vacated at the end of February 2003 after another ACS staff member at the level of the Applicant (i.e., Level C) transferred to a different unit. According to the Applicant, the claim to her entitlement finds its source in the statement made by the Office Manager, ARD, on December 20, 2002 to the Manager of the C-TAP program during a three-month evaluation of the Applicant's performance in ARD, in which her performance was rated as outstanding. But the statement that created the promise of a permanent position in the Applicant's mind was:

[W]e would gladly offer [the Applicant] a permanent position if one were available. Unfortunately, I am completely staffed.

44. The Office Manager has explained that this statement was simply given as a recommendation to help the Applicant find another position in the future and that she had no intention of hiring the Applicant to a permanent position at that point. In addition, she admitted before the Appeals Committee that even if there had been a vacancy available at that time she could not have simply offered the position to the Applicant, but would have gone through a proper procedure by advertising it and interviewing other candidates. She further admits that when she made the December 20, 2002 statement, an additional motivation was to help other ACS staff to move and rotate to other units, perhaps by swapping positions with other staff members. She testified that the only need for a Level C position in the unit was in order to help temporarily with Water Week or in order to assume the PROFOR position.

45. The Tribunal finds that as in other cases in which applicants have claimed a promise of an extension or conversion of an appointment, the Respondent expressed only a possibility of offering the Applicant a permanent employment. What seems to be lacking in the Applicant's case is the element of an unequivocally proved promise, a clear and irrefutable commitment or assurance to offer her a permanent position when one became available. Such elements were present in the cases of *Bigman*, Decision No. 209 [1999], and *Brebion*, Decision No. 159 [1997], where the applicants were successful. The Tribunal finds that the statement of the Office Manager referred to no more than the possibility that a vacancy would materialize in the future when, perhaps, one of the ACS staff members would move out of the unit. Furthermore, even if the Applicant were to be considered for the vacated position, or any other permanent position, she would have to show that she met the requirements of the position after participating in a competitive selection process, something that the Applicant should have known as she had been working in different positions in the Bank for a long time.

46. It is clear that the Respondent made considerable efforts to offer the Applicant permanent employment. One such effort resulted in HR finding the Applicant a position in QAG which, even though it would initially start as Temporary, had the potential to become permanent. HR also tried to obtain for the Applicant a permanent position in ARD, and even volunteered to pay for the first 18 months of this permanent assignment. This was eventually rejected by the Vice President, ESSD, because it did not fit with ARD's needs for lower-level staff. But most importantly, ARD offered the Applicant the coterminous position in PROFOR. Although the Applicant did not want to accept it because of her disability and because this position would not be permanent, HR addressed this latter concern by allowing the Applicant to keep her Open-Ended status. This option would permit the Applicant to stay in the Bank and look for another position when the funds for the PROFOR position terminate. In case she was unable to find another position in the organization, upon the termination of the PROFOR position, she would be able to receive redundancy benefits like any other Open-Ended staff member.

47. This offer was no worse than the one which the Applicant was hoping to receive, namely filling the vacated Level C position in ARD. As the Sector Manager of ARD testified, a Level C position would have the imminent danger of being declared redundant in the future because, as it was explained, the unit's business needs required the hiring of lower-level ACS staff. In fact, the Respondent protected the Applicant by not offering her a position susceptible to being abolished in the future for business needs.

48. Moreover, unlike the applicant in *Bigman*, the Applicant cannot claim any injury resulting from having to forego the other options offered to her because she was expecting the materialization of an alleged promise of permanent employment. On the contrary, as the record clearly indicates, she turned down these offers for reasons that were unrelated to any such promise.

49. The Applicant also claims that the downgrading of the Level C position was a pretext in order not to offer her a permanent employment in ARD as promised. Absent the evidence of a clear promise to offer the Applicant the vacated position, the Tribunal notes that the Respondent had the discretion to downgrade such position to meet legitimate business needs. In this respect, the Tribunal has held in *Medlin*, Decision No. 319 [2004], para. 28: "It is a Bank prerogative within its discretion to evaluate jobs and functions." And also at para. 26:

The Applicant's managers have a discretion to organize [a department] and to define the scope of the requirements for all of its jobs. ... The determination that it had no business need for a [certain grade] position was not an abuse of managerial discretion.

(See also *Mahmoudi* (No. 2), Decision No. 227 [2000], para. 24; *Ezatkhah*, Decision No. 185 [1998], para. 14; and *Garcia-Mujica*, Decision No. 192 [1998], para. 10.)

50. As seen above, there is abundant evidence in the record through the testimony of the Sector Manager, the Office Manager and other ACS staff, as well as that of the Senior HR Officer, that there was a business need for change in the staffing of ACS staff since the moment the Office Manager joined ARD in the fall of 2002. In fact, there is enough evidence showing that the senior management in the Department was aware and approved of that change. It is with that change in business need in mind that the Office Manager recommended the downgrading of the vacated position which the Applicant believes should have been offered to her. Although the Office Manager initially discussed it with the Sector Manager and the Director, ARD, the possibility of advertising the vacated Level C position and allowing the Applicant and other candidates to apply for it through a competitive process was only a preliminary suggestion and did not materialize. To downgrade the position was a managerial decision which was legitimately exercised in order to satisfy the business need of the Department at the time. The Tribunal does not find evidence of an abuse of discretion in this regard. Moreover, the Tribunal is satisfied that the termination of the Applicant's assignment was properly based on the lack of work program needs, as both the staff members for whom the Applicant worked while in ARD (i.e., Ms. X and Mr. Y) were being transferred outside ARD.

51. The Tribunal finds untenable the Applicant's claims that the decision not to offer her a permanent Level C position when one became available amounted to retaliation, and that the Respondent "forced" her to accept the PROFOR position. As the Tribunal found in *Lysy*, Decision No. 211 [1999], para. 71, "[a] finding of improper motivation cannot be made without clear evidence." The Applicant has not provided evidence supportive of her claim that the Office Manager and the Sector Manager of ARD knew that she had filed an appeal in another matter, and that it is for that reason that the Office Manager notified her on March 5, 2003 that her appointment would be terminated. According to their testimony before the Appeals Committee, the Sector Manager and the Office Manager did not know of the Applicant's appeal until later, i.e. mid-March 2003. Even if they knew earlier, the Applicant has not proved any connection between this presumed knowledge and the decision to terminate her employment. In fact, it does not seem plausible if the Sector Manager and the Office Manager were unhappy with the Applicant's filing of an appeal in early March 2003, that they would nevertheless have offered her the PROFOR position for a third time on March 4, 2003. Both the Applicant and the Respondent were aware and do not deny that the Applicant's appointment with ARD was Temporary and would, at best, last for only six months, i.e. from September 2002 to March 2003.

52. Moreover, the Applicant has not shown any plausible connection between her denial of the offer of the PROFOR position for the third time on March 4, 2003 and the notification of the termination of her assignment in ARD the next day. On the contrary, the record shows that consistent and continuous efforts were made to offer her the PROFOR position and to design such position with terms that would make it attractive to her. None of these efforts can be interpreted as forcing the Applicant to accept that position, nor can the termination of her Temporary assignment in ARD be seen as retaliation for not accepting such a position.

53. In sum, the Tribunal finds that the Respondent did not violate any promise to offer the Applicant a permanent position or abuse its discretion in terminating the Applicant's Temporary employment. The Applicant was not treated unfairly in this respect. In addition, the Respondent made good faith efforts to offer the Applicant alternative employment.

Overtime claim

54. The Applicant's other main claim before the Tribunal is for payment of overtime worked. There is no dispute that the Applicant worked all the hours that she claims as overtime. The overtime pertains to work done in February and March 2003, mainly in preparation for and during the Water Week Conference. The Applicant claims that Ms. X authorized all overtime necessary, without giving a limit or a figure for the preparation of Water Week, before going on mission for a good part of February. She adds that she also informed the Office Manager of this fact when the Office Manager asked her if Ms. X had authorized the overtime. But Ms. X denied issuing such a "blank check" approval except for the overtime of 9 hours in March 2003.

55. The Respondent claims that only 38 out of the 101-104 hours of the overtime claimed by the Applicant were pre-approved by the Office Manager, and that the Applicant knew of the overtime policy of first requesting pre-approval but chose to stay in the office for long hours without checking with the Office Manager in advance. The Respondent has nevertheless agreed to pay for 50 hours of overtime work and offers compensatory leave for the remainder of the hours that were not pre-approved. The question, therefore, is whether the Respondent properly denied payment in cash for the remaining hours.

56. Overtime in this regard is governed by Staff Rule 6.03, paragraph 2.02:

Overtime work must be authorized in advance by a manager or by a staff member designated by a manager to authorize overtime work.

This makes it abundantly clear that pre-approval of overtime by a designated manager is mandatory. The Applicant cannot and does not claim ignorance of the Staff Rule and particularly the need for the overtime to be pre-approved by the Office Manager. Her claim that at times overtime was paid even if it had not been pre-approved does not excuse her failure to have all overtime pre-authorized under the Staff Rule. The Applicant's argument that the Office Manager could have made an effort to ensure that the overtime had been pre-

authorized, or to communicate with Ms. X more effectively to dispel any doubts regarding the need for the Applicant's overtime in February, does not overcome the Applicant's own failure in this regard. However, as the Respondent has offered to pay the Applicant 50 hours of overtime and the remainder in compensatory leave, the Tribunal expects the Respondent to pay the Applicant the 50 hours of overtime worked and adequate compensation for the hours which it was prepared to offset with compensatory leave.

Decision

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

/S/Bola A. Ajibola

Bola A. Ajibola

President

/S/ Nassib G. Ziadé

Nassib G. Ziadé

Executive Secretary

At Washington, DC, November 12, 2004