

Decision No. 316

Sabine Schlemmer-Schulte,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Bola A. Ajibola (a Vice President of the Tribunal) as President, Elizabeth Evatt (a Vice President of the Tribunal), Robert A. Gorman, Jan Paulsson and Sarah Christie, Judges, has been seized of an application, received on October 29, 2003, by Sabine Schlemmer-Schulte against the International Bank for Reconstruction and Development. The Applicant's requests for witness testimony and for documents were denied on May 7, 2004. The usual exchange of pleadings took place. The case was listed on May 11, 2004.

2. The Applicant had worked ably in the Legal Department ("LEG") of the World Bank for some six years under a Term appointment with a number of extensions. Her employment terminated according to its terms on the stipulated expiration date, March 29, 2002. Having exhausted her remedies within the Bank in a timely fashion, she now challenges this termination, contending principally that it violated several assurances given to her by the General Counsel and the Managing Counsel of LEG that her appointment would be regularized upon demonstrated satisfactory performance, and that it also violated a number of the Respondent's procedural rules. The Applicant seeks reinstatement to at least her previous position with appropriate upward salary adjustments, promotion thereafter to Lead Counsel after one year of satisfactory performance, and compensation including for "career interruptions and frequent relocation."

3. The Applicant joined the Bank in December 1994 as a Consultant at the International Centre for Settlement of Investment Disputes ("ICSID"). In April 1996, she accepted a two-year Fixed-Term appointment to work as a Counsel, Level 22, in LEG. The formal letter of appointment, which she signed, stated:

Your appointment will terminate at the end of [the two-year] period unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of the appointment.

4. During her early service in LEG, the Applicant worked primarily under the supervision of the then Senior Vice President and General Counsel, whom she assisted in research and writing in connection with his books and papers. She also worked on various legal and policy issues. In her Overall Performance Evaluation ("OPE") for the one-year period ending March 31, 1998, the General Counsel assessed the Applicant's performance as "excellent over-all." On April 1, 1998, the Applicant's Fixed-Term appointment was extended for two years, until March 31, 2000.

5. In October 1998, the then General Counsel resigned from that position. From that time until the fall of 1999, the Applicant worked directly with the Acting General Counsel as well as other managers and colleagues in LEG. She was, however, not placed within any particular division in the department, but worked on various issues, including the Inspection Panel, child labor, corruption, trade and labor standards, human rights, and powers and roles of Management and the Board. The Applicant's OPE covering the period January 1, 1998 through March 31, 1999, prepared by the prior General Counsel, assessed her work as "generally superior." He noted: "I believe [she] is qualified now to be integrated in the Legal Department in any higher position the new General Counsel sees fit." In the summer of 1999, in addition to her other assignments, the Applicant began

working as a Senior Counsel on the Commodity Risk Management Initiative ("CRMI").

6. In the fall of 1999, a new Vice President and General Counsel was appointed. He did not assume his post until December 1999. Before assuming office, he paid a call upon his predecessor, who introduced him to the Applicant. The brief interchange among the three is one of the major events upon which the Applicant rests her claim of a promise of regularization. In her application, the Applicant presents her version of the conversation:

Mr. Shihata [the previous General Counsel] suggested that Mr. Tung hire Ms. Schlemmer-Schulte to work under him directly for a year to test her performance and thereafter employ her in another division of the Department in which she would then continue working. Mr. Tung agreed to employ Ms. Schlemmer-Schulte according to Mr. Shihata's suggestion pending solely her performance which Mr. Tung would evaluate within a year.

7. The testimony offered before the Appeals Committee by Mr. Tung – in response to questioning by the Applicant herself – presents a very different picture of their introductory meeting in the fall of 1999:

I made no such agreement. ... Somebody makes a suggestion and I haven't even taken my position, this is before I've taken – do I agree to that? I don't even know this place yet. I haven't walked in – I am not the general counsel yet. I have been offered the position. I took it. I'm coming in. And then you say I agree to it? I think that would be far-fetched for any rational person to be saying ... [I]f I make a suggestion to my successor how to do that, I may well do that because I think that, you know, I want to impart as much of my experience and perspective to the benefit of my successor and the department. But I wouldn't expect that person to agree to it. To the extent you perceived it, that's your perception, but the record should not say I agreed to it. That's preposterous.

Because of the most unfortunate death of the previous General Counsel soon thereafter, the Tribunal cannot benefit from his recollection of the pertinent events.

8. There is, however, a roughly contemporaneous e-mail exchange – dated November 6 and 8, 1999 – between the Applicant and the incoming General Counsel that sheds some light on the Applicant's interpretation of events. The Applicant wrote: "I am glad that you finally decided to come to the Bank and lead our Department. ... I believe you will ... help the Bank face its current and future challenges in a legally sound, creative, and, from a policy point of view, wise manner. I am happy to assist you in this task and am sure that I can learn a lot from you in this work." The General Counsel, before actually having undertaken his work in that capacity, responded: "[T]hank you for your kind and encouraging email. I will indeed need your support and guidance as I lead this group of talented lawyers!" In her application, the Applicant asserts that this exchange of e-mails "implies that an agreement on [her] continued future in the Legal Department under Mr. Tung had been reached," apparently dependent only on her continuing satisfactory performance.

9. On April 1, 2000, the Applicant's Fixed-Term appointment was replaced by a Term appointment and her employment was extended for another year until March 31, 2001. As a result of a comprehensive Human Resources Policy Reform in 1998, the Applicant's Fixed-Term Appointment could not be renewed with that title; after July 1998, Fixed-Term staff could be extended only under newly created Term appointments (but only for a maximum of four years).

10. In April 2000, under the direction of the new General Counsel, LEG's structure underwent a "renewal," which was meant, *inter alia*, to increase efficiency, identify skill gaps and surpluses among staff and optimize use of resources. An important element of the renewal was "porosity," which encouraged lawyers to work across divisions or practice groups and to express their interest in working part-time in more than one such group.

11. According to the Respondent, the Applicant's skills and work did not fit well into any particular practice area. The Applicant takes issue with that characterization, asserting, among other things, that she continued working on institutional and policy issues, which remained core matters for LEG. In any event, the Applicant was assigned in July 2000 to the Cofinancing & Project Finance Practice Group ("LEGCF") because her largest project (CRMI) fell under LEGCF's mandate. She was also assigned to work with the Chief Counsel for Policy

and with the Chief Counsel for Institutional Affairs.

12. In July 2000, the recently appointed Managing Counsel for LEG, with responsibilities for administration and staffing within the department, made efforts to “pull together” a work program for the Applicant from different practice groups. After several months, however, at a meeting with the Applicant in November 2000, the Managing Counsel (according to his testimony before the Appeals Committee) informed the Applicant that his preliminary assessment was that her skills and work program did not fit well with the staffing needs and priorities of LEG.

13. The Applicant places considerable weight upon an incident in October 2000, at a luncheon to celebrate her birthday, at which both the General Counsel and his predecessor were present. In the course of the luncheon, the Applicant asserts that, in the context of making public expressions of gratitude, she thanked the General Counsel for taking her on and for securing her future, to which he replied: “I trusted [Mr. Shihata’s] judgment. When [he] told me that you are a good lawyer, I have never had any doubts in what he said to me.” The Respondent does not deny this interchange, but asserts that it cannot reasonably be regarded as an assurance of regularization.

14. Because her Term appointment was scheduled to expire on March 31, 2001, the Applicant met with the Deputy General Counsel in late November or early December of 2000 to discuss her employment situation. The Deputy General Counsel suggested that she prepare a note with a list of her assignments, and options that she would like management to explore regarding her employment opportunities within the department.

15. In response, the Applicant on December 4, 2000, sent a memorandum to the Deputy General Counsel and the Managing Counsel entitled “Regularization or Extension of My Employment Contract.” In that memorandum, the Applicant noted:

As my fixed-term appointment will expire at the end of March 2001, I would like to ask for either being regularized, or, in case regularization is impossible, for an extension of my contract for at least another year in the light of the fact that I have so far not looked for any other job opportunities outside the Bank as Management has never expressed an intention to discontinue my repeatedly renewed employment with the Bank.

In the December 4 memorandum, the Applicant also described her principal past assignments in LEG, expressed a desire to work on policy and institutional affairs, human rights and trade law, and suggested several options regarding her future employment, including “regularization or 1 to 2 years extension” and writing speeches for the General Counsel.

16. In reaction to that memorandum, the Managing Counsel on December 18, 2000, e-mailed the General Counsel and the Deputy General Counsel (but not the Applicant) concerning the Applicant’s future in LEG. He noted that she had been working in a number of areas, including the Inspection Panel, the CRMI, corruption, child labor and human rights. In addressing the question whether this “is a body of work that is a high priority for us, and to which we want to devote resources,” he concluded that each of these tasks was either of an uncertain future, or done on an ad hoc basis, or best incorporated in the agenda of an ongoing team. He continued in his e-mail:

[I]t is not clear to me that Sabine is the right person, even if we accept that all these activities are priorities for us. She is largely isolated from the rest of the department and much of her time is being spent on writing projects or speech-writing that could be handled by [the General Counsel’s] assistant when we have that person in place.

As to whether there are “other roles we want her to play,” the Managing Counsel concluded, “I don’t see any other obvious role.” He also stated:

Sabine’s strong preference is to stay with Legal, even for a limited period if we are not willing to convert her appointment to open-ended. She has only three months left under her contract, and that is not much time to find another position if we were not willing to renew. I understand that she is the breadwinner for her family.

I suggest we discuss this week.

There was such a discussion among the General Counsel, Deputy General Counsel and Managing Counsel. They all agreed with the latter's assessment that the Applicant's skills and interests did not match the needs and priorities of LEG.

17. At essentially the same time, on December 20, 2000, the General Counsel signed the Applicant's OPE for the period April 1, 1999 through March 31, 2000. Although his ratings of the Applicant's work were very positive, the General Counsel noted that "[w]hen the Legal VPU was reorganized pursuant to a renewal process, it was difficult to find the right niche" for the Applicant, given her prior role as "personal legal assistant" to the previous General Counsel, but that she was recently assigned to the Environment and International Law Practice Group, given her expertise in the latter field, "where I hope her knowledge and skill will be optimally utilized."

18. In January 2001, the Managing Counsel informed the Applicant that her Term appointment would not be extended beyond its expiration on March 31, 2001. Although the Applicant has asserted that she was not given any reason for the non-renewal, the Managing Counsel asserted before the Appeals Committee that he had told the Applicant that LEG was required to meet a number of business needs under tight budgetary constraints, and that her work program was not within LEG's priorities.

19. In response to the Applicant's resulting request for a meeting with the General Counsel, such a meeting was held on February 6, 2001, with the Managing Counsel in attendance as well. The Applicant contends in her application that, in anticipation of this meeting, she consulted with the Chief Counsel, Procurement & Consultant Services about an opening in the latter's practice group – "as an alternative to a debate" with the General Counsel "over her 'regularization.'" At the meeting of February 6, the General Counsel agreed to extend the Applicant's contract for an additional nine months, to the end of December 2001.

20. The discussion at the meeting of February 6, 2001 is perhaps the principal foundation of the Applicant's claim before the Tribunal. There is sharp disagreement as to the nature of the then nine-month extension given to her by the General Counsel, and in particular as to whether it was meant to be terminal or merely probationary with a view toward regularization. The Applicant claims that the General Counsel initiated the meeting with a statement to the effect that "I want to regularize you" after another nine months of probation and fully satisfactory performance under the supervision of her immediate managers and the overall supervision of the Managing Counsel.

21. Both the General Counsel and the Managing Counsel deny that any such promise was made or understanding reached at the February 6 meeting. The General Counsel testified before the Appeals Committee:

To the contrary ... the meeting was to say her contract would not be extended beyond March of 2001. But because of the situation that Sabine had presented, which was at the point she was the sole breadwinner, she needed more time to look for a job, that she basically requested for more time because obviously, whether it was in December or January or February, March 31, whatever the end date of her contract would be, would be too short a time. And, therefore, a decision was made at that time, given Sabine's situation, to give her nine months, to the end of the calendar year, to December, so that she would have adequate time to look for another job. So regularization would never have come into a conversation where we're talking about not extending it and then giving her an extension to give her time to look for a job.

The Managing Counsel, who testified before the Appeals Committee later in the day and by telephone, confirmed this account:

I do not recall any discussion at that meeting of regularization. I certainly don't recall Mr. Tung saying anything that would imply that regularization was a possibility. Indeed, that would have been very, very surprising to me because it would have been entirely inconsistent with the basis on which we had started the meeting.

22. Whatever may have been the parties' understanding after the meeting of February 6, 2001, it is undisputed that on the following day, the Applicant and the General Counsel, apparently at the latter's initiative, agreed to a further extension until March 29, 2002. In response to an inquiry from Human Resources, the Applicant sent an e-mail to the Managing Counsel on March 1, 2001, stating: "I would appreciate it if my contract extension with possibility of regularization could be processed asap." The same day, the Managing Counsel sent an e-mail to the Senior Resource Management Officer for LEG, stating that the General Counsel "has agreed to the extension of Sabine's contract for an additional period of twelve months. Please arrange for the extension to be formalized." Copies of that e-mail were sent to the Applicant and to the General Counsel. During 2001, the Applicant continued to work on the CRMI, institutional affairs and legal publications.

23. On November 1, 2001, the Managing Counsel met with the Applicant and informed her that her Term appointment would not be extended beyond its expiration date of March 29, 2002. The Applicant told him, however, that it was her understanding that she would be regularized at the end of that Term appointment, to which he responded that he had no memory of any assurances having been given to that effect. On November 9, 2001, the Managing Counsel sent an e-mail to the Applicant, in which he stated:

[O]ne of the key features of a term appointment is that continued appointment beyond the specified period of the appointment is at the discretion of the VPU. Though the Bank is not required to give reasons for non-renewal of a fixed term contract, as I explained to you when we met, the current VPU resource constraints, both budgetary and the staff ceiling, and the VPU priorities in terms of where we are allocating scarce staff positions, have contributed to our decision not to renew your contract.

24. The Applicant responded with a memorandum requesting another meeting and pointing out, *inter alia*, the Bank's failure to give her any indication during the year 2000 that her work was below standard, the promise of regularization at the February 6, 2001 meeting, her family's moving into a house in July 2001 in reliance on that promise, and the possibility that her termination would raise an issue of gender discrimination.

25. In an e-mail dated January 10, 2002, the Managing Counsel stated that the purpose of the February 6, 2001 meeting had been to discuss an extension of the Applicant's contract "in deference to your request for further time given your personal circumstances," that no promise or assurance had been given of any additional extensions or of regularization, and that the extension to March 2002 had been given "purely as an accommodation to you to permit you sufficient time to look for a new job, as you indicated how difficult it was to find a job outside the Bank." The Managing Counsel also stated that the February 6 meeting had been preceded by discussions with other members of the management team, leading to the conclusion that the Applicant's skills did not represent a "good fit" with the staffing needs of LEG, given the department's "changing priorities."

26. On March 29, 2002, the Applicant's Term appointment expired in accordance with its express terms.

27. Following unsuccessful mediation efforts, the Applicant filed an appeal with the Appeals Committee on April 25, 2002, challenging the decision not to renew her Term appointment. A full hearing was held, at which the Applicant was afforded the opportunity to question the General Counsel, the Managing Counsel and several of her other supervisors. Thereafter, a Panel of the Appeals Committee, in a report dated April 10, 2003, unanimously recommended that all of the Applicant's claims be dismissed as lacking in substance. The Vice President of Human Resources accepted the Panel's recommendation, and the Applicant filed her application with the Tribunal on October 29, 2003.

28. The Tribunal must decide the legality of the Bank's decision not to extend the Applicant's Term appointment in LEG beyond March 29, 2002. The Applicant contends that extension and regularization were promised to her, explicitly, on several occasions. The alleged promisor on the three principal occasions was the General Counsel himself, a Vice President of the Bank and the head of her department. The first occasion was in the fall of 1999 when, before assuming the post, he visited the Bank to meet with his predecessor and was introduced to the Applicant. The second occasion was on October 11, 2000, at a birthday luncheon for the Applicant, in the company of several other celebrants. The third was on February 6, 2001, when alleged assurances were given by the General Counsel in the company of the Managing Counsel.

29. In several prior judgments, the Tribunal has considered the rights of staff members serving on Fixed-Term or Term appointments, and in particular their right to extension and/or regularization as a result of supervisory assurances or of contextual circumstance. In *Kopliku*, Decision No. 299 [2003], paras. 9 and 10, the Tribunal stated:

9. The legal principles that govern this case have been well established in the jurisprudence of the Tribunal. A staff member appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. Staff Rule 7.01, para. 3.01, states: "A staff member's appointment shall expire on the completion of an appointment for a definite term, as specified in the staff member's letter of appointment, or as otherwise amended." 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 and have stipulated to that effect in the employment contract." McKinney, Decision No. 187 [1998], para. 10. Even so, the decision not to extend a Fixed-Term contract, like all decisions by the Bank, must be reached fairly and not in an arbitrary manner. As the Tribunal held in *Barnes*, Decision No. 176 [1997], para. 10: "[T]he Bank's decision not to renew the contract at the expiration of its predetermined term, however discretionary, is not absolute and may not be exercised in an arbitrary manner." It may not be based, as the Tribunal has stated as an example, "on considerations unrelated to the functioning of the institution, such as racial discrimination." *Carter*, Decision No. 175 [1997], para. 15.

10. Another restriction upon the Bank arises when 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. As the Tribunal concluded in *McKinney*, Decision No. 187 [1998], para. 16: "Whenever a person is initially employed by the Bank, it is assumed that his or her performance will prove to be satisfactory. Performing at that level cannot reasonably give rise to an expectation of greater employment rights than those expressly provided in the contract of employment."

30. It thus becomes necessary to assess the evidence to determine whether the Respondent, through its General Counsel, "made a promise to extend or renew [the Applicant's] appointment either expressly or by unmistakable implication."

31. With respect to the alleged assurance by the incoming General Counsel in the fall of 1999 that he would continue to use the Applicant's services in his office and then place her permanently in another practice group, the Tribunal finds it highly unlikely that such an assurance would have been given by him – or reasonably perceived by the Applicant – in the circumstances. At the time of the meeting with his predecessor, he had not yet assumed operational responsibilities or even become fully familiar with them; he had never met the Applicant before or familiarized himself in any respect with her qualifications or experience; and if he was aware of anything in these respects it was that the work profile of his predecessor (in particular, the research and writing of scholarly books and articles) and his own likely work profile were considerably different. Moreover, a brief courtesy call – free of any apparent work agenda – is hardly the setting from which the Applicant was entitled to infer that serious human-resource decisions were intended to be made.

32. The Applicant's inclination to perceive a commitment on the part of the General Counsel without adequate justification is reflected in their e-mail exchange of early November 1999, in which the General Counsel (prior to his formal assumption of duties) responded to the Applicant's good wishes by stating that he would "indeed need your support and guidance as I lead this group of talented lawyers!" The Applicant's argument that this perfunctory response "implied that an agreement on [her] continued future in the Legal Department under Mr. Tung had been reached" is surely unconvincing.

33. The same is true of the alleged “assurance” of permanent employment given by the General Counsel at the Applicant’s birthday luncheon in October 2000. Under the circumstances, one could hardly expect anything from the General Counsel but favorable comments. Indeed, it appears that his brief compliments were actually directed at his predecessor, who was at the celebration, more than at the Applicant herself: “I trusted [Mr. Shihata’s] judgment. When [he] told me that you are a good lawyer, I have never had any doubts in what he said to me.” That the Applicant places any weight at all upon such social pleasantries, as an indicator – let alone as an assurance – of an Open-Ended appointment to follow upon her Term appointment ending five months later, casts serious doubt upon her recollection and interpretation of events more generally.

34. It is noteworthy that less than two months later, on December 4, 2000, the Applicant sent a memorandum to the Deputy General Counsel and the Managing Counsel in which she noted that “my fixed-term appointment will expire at the end of March 2001” and in which she stated: “I would like to ask for either being regularized, or, in case regularization is impossible, for an extension of my contract for at least another year in the light of the fact that I have so far not looked for any other job opportunities outside the Bank” This is clearly not the language of an expectation of regularization, let alone of a perceived entitlement, but is rather the language of a request – and of a request for a confined extension for a confined purpose: seeking employment elsewhere. That reflects not only upon the Applicant’s understanding of the declarations by the General Counsel in the fall of 1999 and in October 2000, already discussed above, but also upon the important meeting that took place in early February 2001.

35. As noted, there is a sharp conflict in the versions proffered of the meeting of February 6, 2001, although there is no question that the meeting ended with a nine-month extension of the Applicant’s Term appointment following its scheduled end the following month. The Applicant asserts that the General Counsel, from the outset of the meeting, spoke in terms of an extension of a probationary nature, with her appointment to be made Open-Ended in the event of the Applicant’s satisfactory performance during that nine-month period. The Respondent, on the other hand, states that the extension, initially through December 2001, was granted solely to accommodate the Applicant’s urgent request and need for additional time to search for new employment, after the March 31, 2001 termination of her employment.

36. With the record evidence in sharp conflict regarding what was said at the February 6, 2001 meeting, it might facily be concluded that the Applicant has failed to satisfy her burden of proving that assurances of regularization had indeed been given by the General Counsel or by the Managing Counsel. But there is more than adequate evidence to buttress the conclusion that no assurances of Open-Ended employment were given that day.

37. First, there is the Applicant’s December 4, 2000 memorandum, just discussed, in which she asked the Deputy General Counsel and the Managing Counsel for a contract extension of at least another year to allow her time to search for employment outside the Bank. Second, there is the January 2001 communication made to the Applicant by the Managing Counsel informing her that her Term appointment would not be extended beyond its March 31, 2001 expiration date. The Applicant’s memorandum and the message delivered by the Managing Counsel served as the very premise for the February 6, 2001 meeting. It would take a sharp and clear reversal of that premise for the meeting to have had the outcome depicted by the Applicant. The Tribunal concludes that there is inadequate evidence of such a reversal.

38. Third, it is telling that throughout the twelve-month period during which the Applicant allegedly believed herself to be on probation, it appears that not one of the three practice-group leaders for whom she worked understood that the Applicant was on probationary status and was to have her work specially monitored and assessed by them, or that the end of the probationary year would bring an evaluation upon which her future career at the Bank would depend. And it is even more telling that the Applicant never raised any of these issues with them. For a staff member who now claims that she simply continued her various tasks assuming that they would be rated at her past high level of performance, her complete passivity, and her supervisors’ lack of awareness of her status, are difficult to explain if all were in the midst of a true probationary exercise. Her endorsement of an additional three-month extension during her conversation of February 7, 2001 with the General Counsel further supports the conclusion that the Applicant understood this extension not as

probationary, but rather as a period for a potentially difficult job search in the U.S. and perhaps in her native Germany.

39. At only one point in this chronology could one question the clarity with which the Respondent communicated with the Applicant about the status of her appointment. As noted above, in response to an inquiry from Human Resources, the Applicant on March 1, 2001, sent an e-mail to the Managing Counsel in which she stated: "I would appreciate it if my contract extension with possibility of regularization could be processed asap." This was very soon after the meeting of February 6, 2001, and the grant of a full year's extension of the Applicant's appointment. In his e-mail the same day to the LEG Senior Resource Management Officer, with a copy to the General Counsel and the Applicant, the Managing Counsel asked that the twelve-month extension be formalized. It should have been fairly clear to the Managing Counsel that the Applicant still believed that there was a "possibility of regularization" and that the one-year extension was indeed not altogether final. He could have used his e-mail to reiterate to the Applicant that she should have no expectation of regularization. But the Tribunal concludes, given all of the other clear expressions on the matter to the Applicant that a "possibility" of regularization is a far cry from the "assurance" that the Applicant argues for here.

40. It is therefore clear to the Tribunal that the Applicant was not given any reasonable basis to believe that the General Counsel had promised or assured her of an Open-Ended appointment to take effect after March 29, 2002, and that she has therefore failed to satisfy the requirements of proof set forth in *Koplika*. Far from the Applicant satisfying this burden of proof, the record all but compels the contrary conclusion, i.e., that the Applicant was frequently apprised that her employment would end according to its terms, first on March 31, 2001 and then on March 29, 2002, without extension or regularization by virtue of satisfactory service.

41. The Bank was entitled to rely upon the termination date for her appointment as expressly set forth in the Applicant's official personnel documents. The Applicant's letter of appointment of April 1996, to a two-year Fixed-Term appointment, stated that "[t]he World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of the appointment." Personnel Action Forms, signed by the Respondent, were issued manifesting precisely such an extension, first on April 1, 1998, and then again on April 1, 2000; on the latter occasion, the form referred to a Term appointment (different from the Applicant's previous Fixed-Term appointment) to end on March 31, 2001.

42. In light of her qualifications and experience, the Applicant should have understood the language of her letter of appointment, and should have been aware of the terms of her own Personnel Action Forms. She claims that there are certain technical flaws in the latter – particularly in the April 2000 shift from a Fixed-Term to a Term appointment (flowing from the Human Resources Policy Reform of 1998), and in the Bank's purported failure to secure her consent to that change. The Tribunal concludes, however, that these challenges lack merit and involve a misreading of the pertinent staff rules. They are, in any event, well out of time. Even less discussion is warranted of the Applicant's contention that she was discriminated against because of her nationality and because of the fact that she was a woman carrying responsibilities for the financial upkeep of her family. There is no evidence to support these claims of unlawful discrimination.

43. The Applicant attempts to emphasize that the various tasks on which she worked in LEG provided her with a full and continuing work program and that much of the work in which she specialized constituted a "core" part of the Bank's legal work. She challenges the Respondent's characterization of much of her work as intermittent and *ad hoc*. The Tribunal notes that these issues were explored by both parties at length in the pleadings only because the Managing Counsel – although he could lawfully have declined to give reasons for the Applicant's non-regularization and simply let her appointment lapse according to its stipulated expiration date – explained to her on more than one occasion that there was no "fit" between her work interests and skills and the work program and priorities in LEG.

44. The reasons given by the Respondent for non-regularization were clearly related to the efficient and effective functioning of the institution, in particular the operations of LEG. For example, the Managing Counsel

wrote to the Applicant in November 2001 that “the current VPU resource constraints, both budgetary and the staff ceiling, and the VPU priorities in terms of where we are allocating scarce staff positions, have contributed to our decision not to renew your contract.” Nearly a full year before that, when deciding whether the Applicant might play a future role in LEG, and after consulting with the various group heads for which she worked, the Managing Counsel (in an e-mail dated December 18, 2000) examined the principal areas on which the Applicant had experience, expertise and interest and concluded that the Applicant’s work could be handled under different arrangements within LEG.

45. The Tribunal cannot find that any of these conclusions constituted an abuse of discretion.

Decision

For all of the foregoing 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 London, England, June 18, 2004