



World Bank Administrative Tribunal

2014

Decision No. 496

**Claude Rugambwa Sekabaraga (No. 2),
Applicant**

v.

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

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

**Claude Rugambwa Sekabaraga (No. 2),
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, and Mahnoush H. Arsanjani.
2. The Application was received on 15 October 2013. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. In his Application, the Applicant raised numerous claims of, among other things, discrimination, harassment and retaliation during his appointment with the Bank. The Bank raised a preliminary objection to the admissibility of all but three of the Applicant's claims on the ground he had failed to exhaust other remedies available within the Bank Group within the prescribed 120-day period. Following an exchange of pleadings on the preliminary objection, in Decision No. 494 [2014], the Tribunal held four of the Applicant's claims, involving allegations of discrimination and retaliation, to be admissible. This judgment addresses the merits of those claims.

FACTUAL BACKGROUND

4. In Fiscal Year (FY) 2009, the Bank launched the Health Systems Strengthening (HSS) program for the implementation of its Health, Nutrition and Population (HNP) strategy.
5. The HSS program provided funding and a specialized team of health specialists and health economists operating from two hubs, Nairobi and Dakar, along with staff in Washington, DC. These HSS hubs provided policy advice, technical support and capacity building, mainly in

African countries. They also undertook operational work that involved preparing project documentation, tracking disbursements and procurement, and engaging in discussion with partners.

6. In March 2009, the Applicant joined the Bank as an Extended Term Consultant (ETC) to work as a specialist in the field of HSS and in particular, Results Based Financing (RBF), a mechanism used to increase the impact of projects by providing financial incentives that are conditional on reaching agreed performance goals. His initial appointment was for one year. His duty station was Nairobi, Kenya.

7. On 27 March 2010, the Applicant's ETC appointment was extended for another year.

8. On 28 March 2011, the Applicant accepted a one-year Coterminous Term appointment as a Senior Health Specialist, Level GG, with the Africa Region's HNP Unit (AFTHE) in the Bank's Kenya Country Office. His Letter of Appointment stated:

Your appointment will terminate at the end of this one-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. However, since your appointment is a Coterminous Term appointment under Staff Rule 4.01, you are advised that your appointment may be terminated, after the first year, as decided by the World Bank, if the source of the funding for the position terminates the funding. In such case, the World Bank will make every attempt to give you as much notice of termination as possible.

9. Staff Rule 4.01, paragraph 2.02 (as applicable until 30 September 2013) provided that a Term appointment is "coterminous" if it is "100 percent funded from sources other than the Bank Group's administrative budget" and the "Bank Group may terminate the appointment after one year if the funding source terminates or reduces the funding for the position."

10. In September 2011, the Applicant met with the Bank's Ombuds Services Office. He complained that he was suffering discrimination in that, among other things, he had not received a performance evaluation related to his service as an ETC. The record contains no direct

evidence on the more detailed nature of the Applicant's complaints, but suggests at least one complaint related to the fact that when the Applicant was offered a Term appointment in March 2011 he was offered an annual salary that was lower than the salary he had received as an ETC.

11. In late February 2012, the Bank's senior management resolved that the Bank should move away from the HSS hub model and instead mainstream the HSS work in the HNP team because, among other things, the costs of the hub model were not considered proportionate with its effectiveness.

12. On 9 March 2012, in light of the Bank's decision to move away from operating the HSS hubs, the Applicant's manager Mr. E met with the Applicant and his HSS hub colleagues individually to discuss the duty stations to which they would be assigned in future. Whereas certain of his HSS hub colleagues were offered reassignment to Washington, DC, it was decided that the Applicant's duty station would continue to be Nairobi.

13. On 28 March 2012, the Applicant's Term appointment was extended for another year.

14. On 14 August 2012, the Applicant filed a complaint with the Bank's Integrity Vice Presidency (INT) alleging favoritism for non-governmental organizations (NGOs) in tendering processes on RBF projects and mismanagement of grants in the Bank's Africa Region.

15. On 27 August 2012, the Applicant requested security clearance from the Rwanda Country Manager for travel to Kigali, Rwanda to attend a conference. Clearance was ultimately granted on 7 September 2012 and the Applicant was able to travel on mission as planned.

16. On 26 September 2012, the Applicant applied for the position of Sector Director, HNP (HDNHE). In October 2012, the Applicant was informed that he had not been shortlisted for the position.

17. On 4 October 2012, the Applicant sent a clearance request for mission travel to Naivasha, Kenya to Mr. K, Acting Sector Manager (HNP), copied to the Applicant's Sector Manager

(HNP), Mr. D. The Applicant proposed to facilitate a technical working group in Naivasha at the invitation of the Government of Kenya. For reasons that are in dispute, the Applicant did not receive a response to his request for clearance until 9 October, the day the technical working group began its meeting. The Applicant ultimately cancelled his mission having decided to contribute to the working group by e-mail.

18. On 15 October 2012, the Applicant filed a request for review with Peer Review Services (PRS), challenging, among other things: (i) the Bank's delayed clearance for his mission travel to Kenya and Rwanda; (ii) his "unequal treatment" in his choice of duty station; and (iii) the Bank's decision not to shortlist him for the positions of Sector Manager, Africa HNP (AFTHE) and Sector Director, Human Development (HDNHE). He claimed discrimination, harassment and retaliation in the context of these actions and decisions.

19. On 16 November 2012, PRS notified the Applicant that it lacked jurisdiction in respect of certain of the disputed matters because he had not filed a request for review within 120 calendar days of having received notice of them. These matters related to: (i) unfair or non-existent performance evaluations in 2009–10, 2010–11, 2011–12; (ii) delays in clearance for mission travel to Burundi; (iii) renewal of the Applicant's contracts for one year only for the following contractual years (March 2009, March 2010, March 2011 and March 2012).

20. On 4 December 2012, the Applicant's Sector Manager, Mr. D, reminded him by e-mail that his appointment would expire under its own terms on 27 March 2013.

21. On 8 February 2013, the Applicant filed an application with the Tribunal. On 14 February 2013, the Tribunal notified the Applicant that this application was "clearly irreceivable as [he had] not exhausted internal remedies."

22. On 27 March 2013, the Applicant's Coterminous Term appointment came to an end.

23. On 27 June 2013, the PRS Panel issued a report which found that the Bank had acted consistently with the Applicant's contract of employment and terms of appointment and recommended that his requests for relief be denied.

24. On 15 October 2013, the Applicant filed his present Application with the Tribunal.

25. On 2 December 2013, the Bank filed a preliminary objection contending that most of the Applicant's claims should be dismissed by the Tribunal on the ground the Applicant had failed to seek relief in respect of them by exhausting other remedies available within the Bank Group within the prescribed 120-day period. The Bank submitted that only three matters raised by the Applicant were admissible and properly within the jurisdiction of the Tribunal.

26. In Decision No. 494 [2014], the Tribunal determined that four of the matters raised in the Application were admissible.

27. The Applicant seeks a public apology and a commitment to fight discrimination in the Bank from those staff members involved in the alleged discrimination, harassment, and retaliation. He also seeks reinstatement to the Bank's employment or, alternatively, \$4 million compensation. He requests that staff members he alleges to have been involved in discrimination, harassment and retaliation contribute 10% of their salaries to the payment of compensation awarded.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

28. The Applicant claims that the Bank discriminated against him (i) in the designation of his duty station in 2012; (ii) by not shortlisting him for the position of Sector Director (HDNHE) in September 2012; (iii) by delaying clearance for mission travel to Rwanda on 7 September 2012 and Kenya on 8 October 2012; and (iv) by retaliating and discriminating against him when it decided not to renew his Term appointment. He does not identify an alleged prohibited ground of discrimination in respect of these claims, save for the claim relating to non-renewal of his Term

appointment in respect of which he alleges discrimination on grounds of race as well as retaliation.

29. Principle 2.1 of the Principles of Staff Employment provides that the Bank “shall not differentiate in an unjustifiable manner between individuals or groups within the staff.” Staff Rule 3.00 (“Office of Ethics and Business Conduct (EBC)”), paragraph 6.01(e) makes clear that wrongful discrimination by Bank staff members including “on the basis of age, race, color, sex, sexual orientation, national origin, religion or creed” constitutes prohibited misconduct. Staff Rule 3.01 (“Standards of Professional Conduct”), paragraph 4.01 states that supervisors’ treatment of staff shall not be influenced by “the race, nationality, sex, religion, political opinions or sexual orientation of the supervisor or the staff member.”

30. The Tribunal has made clear that it will not hesitate to rescind discretionary decisions if there is evidence of discrimination on prohibited grounds. *AI*, Decision No. 402 [2010], para. 39. Moreover, it is long established that decisions which are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or which lack a reasonable and observable basis, constitute an abuse of discretion and will be set aside. *See AK*, Decision No. 408 [2009], para. 41; *Desthuis-Francis*, Decision No. 315 [2004], para. 19; *Marshall*, Decision No. 226 [2000], para. 21; *de Merode et al.*, Decision No. 1 [1981], para. 47.

31. The Tribunal has recognized that it may be challenging to obtain evidence to support a discrimination claim. Statements indicating discrimination on the part of the decision-maker and other forms of direct evidence are likely to be available only in the most egregious cases. Claims must often rely principally on circumstantial evidence from which discrimination may be inferred. In a case like the present, an applicant carries the initial burden of establishing a prima facie case of discrimination. If the applicant meets this burden, the Bank then must provide a non-discriminatory rationale for its decision. The applicant may then challenge the Bank’s stated rationale and provide evidence to show that it is a pretext for a discriminatory decision. *AI*, para. 41.

32. The first question then is whether the Applicant has established a prima facie case of racial discrimination. There is no magic test; the proof needed to establish a prima facie case will vary from case to case, depending on the facts and circumstances of each case. As indicated by the Tribunal in *Bertrand*, Decision No. 81 [1989], para. 20, the Applicant must at least provide “detailed allegations and factual support” for his claim of racial discrimination. He makes out a prima facie case of racial discrimination if he adduces evidence of a situation from which the Tribunal can reasonably infer such discrimination. *See AI*, para. 42.

Budgetary pressure and the closure of the HSS Hubs

33. The Applicant alleges that “artificial budget constraints” were put in place to justify, among other things, the non-renewal of his appointment. He refers to the fact that the Bank continues to work on RBF initiatives and contests the Bank’s assertions that funding for his work had diminished.

34. The Bank states that its need for the Applicant’s services was affected by its decision to move away from the HSS hub model of service delivery and contends that the Applicant “deduces from high-level budgetary decisions a conspiracy not to renew” his appointment.

35. Since budgetary issues and the closure of the HSS hubs are asserted by the Bank as principal reasons for the allocation of the Applicant’s duty station in 2012 and the non-renewal of his contract in 2013, it makes sense to first examine whether these assertions are supported by the record.

36. The Bank submits that:

The HSS hubs were initially funded from the President’s Regional Re-prioritization Fund (“RRF”), as well as from other sources of alternative financing, such as the [Health Results Innovation Trust Fund (HRITF)] in Applicant’s case. ... By 2012 it became clear that funding from the RRF would dry up, and that the HSS program would need to be funded by the Africa Region going forward. ... The Africa Region however was experiencing some budgetary constraints, and could only provide limited financial support in FY13. The HRITF funding was also limited to a two-year period, and it was expected

that it would come to an end on April 1, 2013. ... As a result, from July 2012 onwards, a large part of the HSS program budget needed to be provided through Work Program Agreements (“WPA”), whereby funding would be received for work done by the HSS hub staff to support country offices and programs. ... A WPA is an agreement between a requesting unit (which provides funding, in this instance the country offices) and a responsible unit (which carries out the work, in this instance the HSS hubs) to deliver a specified set of deliverables. In FY14 no financial assistance was available from the Africa Region and the budget for the HSS hubs was cut entirely.

...

In order to cope with the dwindling budget, in FY13, the work of the HSS hubs started to be integrated, or ‘streamlined’, with the country based [Health Nutrition and Population (HNP)] work. ... Accordingly, HSS staff started doing more general HNP operational work that would be covered by WPAs. Eventually, in FY14, the HSS work was absorbed entirely into the general operational work program of the HNP sector, and there was no longer a demand for RBF advice provided in isolation from Bank operations. HSS work continued to be provided by a number of HNP staff members, decentralized or based in Washington D.C. and integrated into the operational work of the Africa Region. The HSS hubs had become obsolete.

37. A 6 March 2012 management proposal in the record addresses the decision made by management to reduce financial support for the HSS hubs. It states that in light of limited resources in FY13 “a decision has been made by management to reduce financial support for the hubs while maintaining the HSS program”; that effective FY13 “the full cost of country support from the HSS program will be covered by country WPAs”; and that the HSS program “would continue, but no Hub positions would be funded directly.” A budget document in the record (“FY10-FY14 Regional Programs & Regional United Budget Allocation”) also indicates that the budget for the HSS program was reduced from \$2.5 million in FY12 to \$1 million in FY13 and that it was phased out completely in FY14.

38. There is also contemporaneous e-mail correspondence which supports the Bank’s account of events. On 28 February 2012, Ms. C, Sector Director (Human Development, Africa Region), e-mailed managers reporting on a decision by senior management to move away from the HSS hub model for budgetary reasons. On 9 and 16 March 2012, the Applicant’s manager Mr. E e-mailed fellow managers reporting on discussions he had had with the affected hub staff about the changes due to the “fiscal context of the Region.”

39. The Bank has also provided administrative documents related to the HRITF grant that funded the Applicant's position. These indicate that the grant was active from February 2011 and could only cover costs incurred prior to 1 April 2013. The Bank states that no more funding was available under "this grant for activities after" 1 April 2013.

40. The record supports a finding that the HSS hubs were in fact closed for budgetary reasons following a decision of the Bank's senior management. It is apparent that WPA funded work became key to the HSS program. There is also some evidence of uncertainty about the availability of HRITF funding for the Applicant's position after 1 April 2013. Nothing in the record suggests that the Bank's reference to these budgetary issues and the closure of the HSS hubs is a pretext for discriminating against the Applicant.

The allocation of the Applicant's duty station in March 2012

41. The Applicant claims that he was discriminated against in that, whereas other staff were "interviewed in order to discern their preference for reassignment to" Washington, DC in March 2012, he was only presented the option of working from home in Rwanda or working out of the Kenya Country Office for the duration of his assignment. He states that he chose to work from the Kenya Country Office. In his Reply, the Applicant says that his manager Mr. E initially offered to make his duty station Washington, DC or Rwanda, that he chose Washington, DC and cancelled the lease on his residence, but that three days later, Mr. E told him that he would not work from Washington, DC but remain in Kenya.

42. The Applicant contends that the process of duty station allocation was not transparent and was marked by "favoritism and discrimination." He says all HSS staff other than himself met individually with Ms. C, Sector Director. He states that she refused to meet with him and that it is "clear" that she discriminated against him "in discussing the allocation of duty stations." He goes on to say that he complained about the lack of transparency of the process, and the favoritism and discrimination he suffered, to the Africa Region Vice President; the Vice President, Human Resources; and the Bank Group President. He says he received no "feedback" from them.

43. The Bank contends that the duty station options available to each staff member were dependent “on various factors, notably the appointment type, the duration of the contract, the nature of the work performed by the staff member and his/her skills, the funding for each position ... as well as the new business model whereby staff members needed to provide services under WPAs.” The Bank states that, as a coterminous staff member whose position was funded by the HRITF, the “Applicant was given the choice of either telecommuting from Kigali, Rwanda (his home country) or staying in Nairobi for another nine months until the end of his Coterminous Term Appointment” and “was also given the option to move to Washington, D.C. ... if his appointment was renewed in March 2013, which was still uncertain at the time.”

44. According to the Bank, the Applicant was in a different situation from his HSS colleagues because: (i) none of the other HSS hub staff members held coterminous appointments (“Three staff members had Open Ended Appointments and three staff members had Term Appointments of varying duration, and their positions were funded by the Africa Region budget and thereafter through the WPAs.”); (ii) the HRITF funding for the Applicant’s appointment was coming to an end on 1 April 2013 and it was uncertain whether other sources of funding would become available; (iii) the Applicant’s Coterminous Term appointment was due to expire on 27 March 2013; (iv) the RBF work in which the Applicant specialized was no longer required as a separate and self-contained field of expertise (“RBF as well as all the other components of HSS work had to be incorporated and streamlined into the standard operational work related to the specific needs of each member country, as agreed under the WPAs.”); and (v) the Applicant travelled frequently for his work in the Africa Region so his work could better be completed from Nairobi.

45. The Bank states that, due to the closure of the HSS hubs, the only viable option to fund the Applicant’s future work was through WPAs. It states that the Applicant lacked “knowledge and experience in the Bank’s operational work” and “did not have the background and experience required to carry out WPA funded work in the HNP sector.” It also states that it considered the limited duration of his contract and that “it seemed unreasonable at that point in time to allow drastic changes in [the] Applicant's duty station for the remainder of his Coterminous Term Appointment.” The Bank contends that “[o]nly in an effort to ensure fairness

and flexibility in the working arrangements, did management remain open to an option for the Applicant to move to Washington D.C. at the end of his Coterminous Term Appointment, in case this would be renewed.”

46. In its Answer, the Bank stated that the Applicant’s expertise was in RBF and that, unlike his hub staff colleagues, he was not involved in the Bank’s operations more generally. In its Rejoinder, however, the Bank accepts that the Applicant was “to a limited degree” involved in project implementation but contends that he was not involved in the more general management and oversight of Bank operations “required ... to integrate his position with HNP operational work following the closure of the HSS hubs.”

47. On this point, the Applicant submits that he in fact had experience relevant to the Bank’s operations derived from the support he provided to Bank projects, including project design and implementation in Sierra Leone and Kenya, and from his experience in planning, policy and capacity building in the Rwandan Ministry of Health. He also contends that by comparing the “training in [B]ank operations of HSS staff retained as Task Team Leader” and his own experience the Tribunal may assess the extent of the discrimination against him.

48. The Tribunal notes, however, that the table attached to the March 2012 management proposal indicates that whereas the work of the Applicant’s hub colleagues was fully or partly funded by WPAs, the Applicant’s work was fully funded by HRITF. While it is apparent the Applicant undertook a limited amount of operational work, the record indicates that he did not undertake as much operational work as his hub colleagues, perhaps due to his specific focus on RBF matters. The Bank points out that many staff members take the operational training referred to by the Applicant. This training does not in itself establish that he had substantial experience of Bank operations.

49. The Bank states that “[a]fter discussing each individual case with the affected staff members, it was decided that of the four staff members in the Nairobi HSS hub, two would stay in Nairobi, one would move to Washington D.C., and one would retire (and not be replaced).” The Bank submits that it did not discriminate against the Applicant “primarily due to the fact

that, apart from [the] Applicant, there were no other staff members holding coterminous appointments.”

50. While treating similarly situated staff members differently in the absence of a justifiable reason is one form of unlawful discrimination (as recently reiterated in the cases of *Sisler*, Decision No. 491 [2014] and *McIntosh*, Decision No. 488 [2014]), discrimination also takes place where a decision is based on a prohibited ground such as age, race, color, sex, sexual orientation, national origin, religion or creed.

51. The Tribunal notes that in an e-mail to his own managers of 9 March 2012, the Applicant’s manager, Mr. E, reported that he had spoken to “all [his] hub colleagues” that day regarding the abolition of the hubs. He recalled that “these were difficult, frankly sad discussions but all were appreciative that we took the time to explain the circumstances and the fiscal context of the Region ... [and] the contribution the hubs and they have made” He stated that the Applicant “seemed to think telecommuting from Kigali for the next FY would be OK. He would like to have some access to the Kigali country office facilities but would work from home. After 1 year, assuming his contract is extended, [he] would consider moving to Washington.”

52. An e-mail from Mr. E to his managers of 16 March 2012 noted that the hub team members had all “individually been spoken to again” and set out the duty stations from which they would work in future. It mentioned that the Applicant would remain in Nairobi and noted that his appointment was due to expire in March 2013.

53. The Bank states that Ms. C, Sector Director, as well as “most other individuals involved in the decision-making process” have left the Bank so that it cannot provide information regarding the Applicant’s claim that Ms. C met with his hub colleagues but refused to meet with him. The Tribunal is satisfied, however, that the record establishes that the Applicant had individual meetings to discuss his duty station with his manager Mr. E as did all of his hub colleagues.

54. The record also indicates that, as the Bank claims, the coterminous nature of the Applicant's appointment was a principal driver behind his managers' decision not to offer him reassignment to Washington in 2012. Notably, Ms. C, Sector Director, stated in an e-mail of 15 March 2012, copied to, among others, Mr. E, that only three members of hub staff, and not coterminous staff (such as the Applicant), would be reassigned to Washington.

55. The Tribunal has reviewed *in camera* an unredacted version of the table attached to the management proposal for the future of the HSS program drafted in March 2012. This suggests that the staff members who were offered reassignment to Washington were undertaking a substantial amount of WPA funded work.

56. The record indicates that the principal factors behind the decision not to offer the Applicant reassignment to Washington were that his coterminous appointment was dependent on the HRITF grant (the continuance of which was in doubt after 1 April 2013) and that he had not been undertaking WPA funded work. These factors are related to the Bank's business needs and do not relate to any prohibited grounds.

57. The Tribunal wishes to observe that it is not clear from the record that the Applicant's managers ensured that he received a clear explanation as to why certain of his colleagues were offered reassignment to Washington, DC when he was not. It is well known that the Bank uses a range of appointment types to provide it with a flexible complement of staff. Although it no longer uses Coterminous Term appointments, most staff appointed since 2008 serve on Term appointments. A consequence of this may be that when organizational changes are made, staff members on Term appointments who have worked alongside staff members on longer Term or Open-ended appointments for years may be treated differently principally because of their different types of appointment. This may well leave some staff members feeling unfairly treated. It may engender suspicion that decisions have been influenced by improper motives which in turn generates litigation. Sensitive handling, and clear written explanations to staff, may limit such misperceptions.

*The non-renewal of the Applicant's Coterminous Term Appointment
(Retaliation Claim)*

58. The Applicant contends that the decision not to renew his appointment was retaliatory and was related to the allegations he made in August 2012—regarding favoritism for NGOs in tendering processes on RBF projects and mismanagement of grants in the Bank's Africa Region—to INT, the Vice President of the Africa Region and the Director of the Health Nutrition and Population Network. He states that his employment was terminated because he “was not accepting mismanagement of RBF operations.”

59. The Bank denies there was any link between the Applicant's allegations of corruption and the non-renewal of his appointment. The Bank states that the coterminous nature of the Applicant's appointment made his position dependent on external funding, that this funding was limited, and the decision not to renew the Applicant's appointment was made for valid business reasons “as the HSS hubs were closed for budgetary reasons.” Referring to *AH*, Decision No. 401 [2009], para. 36, the Bank notes that the Tribunal has held “it is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person.”

60. The Staff Rules are clear that retaliation against any person “who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System” is prohibited. *See* Staff Rule 3.00 (“Office of Ethics and Business Conduct (EBC)”), paragraphs 6.01(g) and 7.06, and Staff Rule 8.01 (“Disciplinary Proceedings”), paragraph 2.03.

61. Staff members who report suspected misconduct that may threaten the operations or governance of the Bank Group are additionally protected by the provisions of Staff Rule 8.02 (“Protections and Procedures for Reporting Misconduct (Whistleblowing)”). Staff Rule 8.02, paragraph 3.01, states that a staff member may challenge an alleged retaliatory action before this Tribunal. It further states that:

Where a staff member has made a prima facie case of retaliation for activity protected by Staff Rule 8.02 (i.e., by showing the staff member reported suspected misconduct under this Rule and has a reasonable belief that such report was a contributing factor in a subsequent adverse employment action), the burden of proof shall shift to the Bank Group to show – by clear and convincing evidence – that the same employment action would have been taken absent the staff member’s protected activity.

62. The Application includes a copy of the header of the Applicant’s August 2012 e-mail addressed to INT and describes the allegations made therein. On its face, his report to INT appears to satisfy the first element of Staff Rule 8.02 and the Bank has not contended otherwise.

63. The Applicant, however, has failed to establish the second element required by Staff Rule 8.02, paragraph 3.01, namely, that his belief that his report was “a contributing factor in a subsequent adverse employment action” is reasonable. In his Application he contended his appointment was terminated because of his report to INT citing as the only factual support for this allegation that a “few months” after making the INT report, he received a message from his Sector Manager “saying that his term appointment will not be renewed, without any reason.” In his Reply, he also contends that his appointment was terminated so that a staff member with “white skin color” could be given his work.

64. The Applicant does not refer to any circumstances supporting his belief that the non-renewal decision was retaliatory other than the fact that he received a message from his Sector Manager saying that his Term appointment would not be renewed. The Tribunal is left to imply retaliation, but nothing in the record suggests any connection between these two events. The absence of reference to other facts supporting the Applicant’s belief is suggestive of speculation rather than a belief based on reasonable grounds.

65. There is a message from the Sector Manager, Mr. D, to the Applicant in the record which is pertinent. On 4 December 2012, Mr. D forwarded an automatically generated HR reminder dated 28 September 2012, stating that the Applicant’s appointment was due to expire on 27 March 2013. The reminder had been sent to Mr. D and copied to the Applicant on 28 September 2012. In forwarding the automatic reminder, Mr. D added a note stating:

Thank you for your service to the World Bank. You will recall from your letter of appointment dated March 18, 2011, that the appointment will terminate at the end of the contract period unless it is extended or a new appointment is made. You will also recall the provision that the World Bank has no obligation to extend the appointment or to offer a new appointment.

I would like to inform you that your appointment will expire under its own terms on March 27, 2013. Accordingly, the management of AFTHE and AFTHD, in consultation with HR, will in due course initiate the normal exit procedures per institutional guidelines.

Please accept my sincere wishes for your success, both in the remaining part of your work at the World Bank and in your future endeavors.

66. On 27 December 2012, Mr. D forwarded another automatically generated reminder of the same date referring to the expiry of the Applicant's contract on 27 March 2013, with a note stating: "With reference to the HR Reminder below, and as already conveyed to you in my note of December 3, 2012, this is to confirm that your appointment will expire under its own terms on March 27, 2013."

67. The Tribunal is not convinced that the 4 December message from the Sector Manager supports a reasonable belief that the non-renewal decision was related to the Applicant's August 2012 report to INT. Factual support that might be expected in a case like this includes: an adverse employment action which comes by surprise or at least is not consistent with what might reasonably have been expected prior to the making of the report of misconduct; changed behavior by managers that can be linked to the report of misconduct; and perhaps even negative comments or treatment implying criticism related to the report. The Applicant refers to nothing like this. In fact, the Application makes clear that he perceives himself to have been discriminated against, harassed and insulted by his managers since at least summer 2011. He also refers to harassment in June 2009. In other words, it is not clear that the Applicant himself perceived any change in management behavior related to his August 2012 INT report. Certainly he does not refer to any.

68. The Applicant states that INT did not follow up on his report and he has heard nothing more about it. He also comments that the Bank's silence about his report is "in line" with the

non-renewal of his appointment. The Tribunal, however, is mindful that in March 2012 the Applicant had been offered a one-year appointment. In the context of the abolition of the HSS hubs that was announced shortly before his appointment was renewed, it is not clear that the fact it was not renewed is surprising or inconsistent with expectations that existed prior to his making of the INT report. His managers' offer in March 2012 to reassign the Applicant to Washington, DC if his appointment was renewed in March 2013 makes plain that such renewal was uncertain.

69. The Tribunal concludes that the evidence of the abolition of the HSS hubs for budgetary reasons, and the facts the Applicant's Coterminous Term appointment was dependent on external funding which was coming to an end and that going forward HSS work would need to be WPA funded, establishes clearly and convincingly that the decision not to renew his appointment would have been taken absent his August 2012 report to INT.

70. The Tribunal recalls that in its decision on the preliminary objection in this case, it noted that a complaint by the Applicant to the Office of Ethics and Business Conduct (EBC) could ensure a more complete factual record and make an important contribution to a proper consideration of what may be a factually complex background to a retaliation claim. It also noted that, in appropriate cases, the Tribunal may suspend proceedings before it to allow for EBC review. No application to suspend these proceedings was received.

*The non-renewal of the Applicant's Coterminous Term Appointment
(Discrimination Claim)*

71. The Applicant states that another staff member, Mr. R, had applied for the "RBF position" for which the Applicant had been selected. He contends that "systems" were put in place to justify the termination of the Applicant's appointment so that Mr. R could take his place, including "refusing to sign off [his] Performance Evaluations," requesting that Task Team Leaders not work with him, "harassing [him] to not share [his] publications," "sabotage" of his mission travel (this claim is separately considered by the Tribunal below) and "artificial budget constraints." He states that this was the result of racial discrimination in that his managers all had "white skin color," that Mr. R has "white skin color," and that he was discriminated against

because he has “black skin color.” The Applicant says that Mr. E told him that although the Applicant had been selected for the RBF position, “we have many ways we can use to bring whoever we want to hire.” He also states that in February 2013 another staff member was hired to prepare a paper on RBF for the Vice President and that this ignored the fact that the Applicant had been “hired to support RBF.”

72. The Bank states that the coterminous nature of the Applicant’s appointment made his position dependent on external funding, that this funding was limited, and that the decision not to renew the Applicant’s appointment was made for valid business reasons “as the HSS hubs were closed for budgetary reasons.” The Bank states that the Applicant ignores the facts that Mr. R was based in Washington, DC and was not an HSS hub staff member nor engaged on a coterminous appointment. The Bank also asserts that Mr. R was a better qualified staff member with experience in the management of Bank operations and that while he continues to provide RBF advice, he also “oversees and manages Bank operations and has extensive Bank experience.”

73. The Tribunal finds that the Applicant has failed to establish a prima facie case of discrimination. The Tribunal has already concluded that the abolition of the HSS hubs for budgetary reasons, and the fact the Applicant’s Coterminous Term appointment was dependent on external funding which was coming to an end, are established by the record to be the reasons that the Applicant’s contract was not renewed.

74. The Applicant’s contentions regarding Mr. R appear to be based on the misperception that the Applicant’s appointment was not renewed on the pretext that the Bank had no further need for RBF expertise and that consequently Mr. R’s continued employment by the Bank is evidence of race-based discrimination against the Applicant. The Tribunal notes that the Bank’s assertion is not that it has no further need for RBF expertise but more narrowly that “there was no longer a demand for RBF advice provided in isolation from Bank operations” and that it had to be incorporated into WPA funded work. The record establishes that budgetary pressures led to the integration of RBF and other HSS work into the operational work of the Africa Region. In

other words, RBF expertise could only form part of a staff member's portfolio under the new organizational model.

75. The record establishes that the decision not to renew the Applicant's appointment was made for permissible reasons and not on racial or other prohibited grounds.

The delayed clearance for the Applicant's mission travel to Kigali, Rwanda

76. In his Application, the Applicant alleges discrimination on grounds that administrative approvals for travel on mission—to Kigali in September 2012 and to Naivasha in October 2012—were delayed and that this was part of an attempt to “sabotage” his work. He states that none of his AFTHE colleagues suffered similar delays, save one who he considers faced the same discrimination.

77. The Bank observes that that over a period of four years the Applicant travelled on mission on over sixty-five occasions and has claimed that delays occurred on only three occasions (including one instance that the Tribunal found to be inadmissible). The Bank states that although “it is understandable that [the] Applicant may have felt frustrated and discouraged by these delays, it is remarkable that [the] Applicant perceives a delay in four percent of his travel clearances to amount to sabotage and discrimination by” the Bank.

78. The Bank submits that it acted reasonably in the circumstances, that there was “an observable basis” for the delays, and that “[n]o bias or discrimination can be inferred from two unrelated incidents, involving different individuals and different World Bank offices.”

79. In respect of his Rwanda mission travel in September 2012, the Applicant contends that when he requested the required security clearance from the outgoing Rwanda Country Manager, Ms. O, on 27 August 2012, she requested information about the Bank's role in the conference which “had nothing to do with security clearance.” He rejects the Bank's contention that the transition between the outgoing and incoming Country Manager was the cause of the delay in providing the clearance. He states that it was “clear for everyone that [Ms. O] was looking [for]

something to delay the mission. It's why when she received all the documents she requested, she kept quiet.”

80. The Bank contends that the security clearance was delayed during a period of increased workload due to the transition to a new Country Manager in Rwanda but that, after the Applicant's follow up, it was granted on 7 September 2012 in time for the Applicant to travel as planned. The Bank also notes that the urgency of the Applicant's request was related to the fact that he intended to travel to Kigali on Saturday 8 September 2012 for a personal family visit. The conference he was due to attend did not commence until Tuesday 11 September 2012. The Bank accordingly submits that there is no basis for the Applicant to complain that the delay “sabotaged his work.”

81. The Tribunal accepts that the delay in providing the clearance was unfortunate and must have been frustrating for the Applicant as the Bank acknowledges. The Tribunal considers, however, that it is normal to expect to occasionally have to follow up on clearance and other administrative requests in a large organization like the Bank. The Tribunal notes that shortly after the Applicant followed up on the matter, he obtained the necessary clearance. The Bank's explanations are persuasive and there is no evidence the delay was an act of discrimination or otherwise improper. Ultimately, the Applicant suffered no harm other than the additional time taken to follow up on his request for clearance.

The delayed clearance for the Applicant's mission travel to Naivasha, Kenya

82. As regards his mission travel to Naivasha in October 2012, the Applicant contends that the Bank's claim that clearance was delayed by a technical glitch in its travel approval system is “a pretext.”

83. The Bank asserts that when the Applicant sent his request for travel clearance on 4 October 2012, his Sector Manager Mr. D was on mission travel. Mr. D had designated two colleagues, Mr. K and Mr. M, as Acting Sector Managers while he was away. Although the Applicant submitted a travel request through the approval system, according to the Bank,

for an unknown reason that seems to be related to a glitch in the system, it did not appear in the [approval] system for Mr. [M] to approve. In the absence of prompting messages normally generated by the system, Mr. [M] wrote to [the] Applicant on October 9, 2012 to inform him that he had not received a travel request in his inbox, and asked [the] Applicant whether it had been cleared. ... Ignoring Mr. [M's] communication and without making any further attempt to clarify the matter, [the] Applicant cancelled the travel request on October 9, 2012.

84. The Bank also notes that on 9 October 2012, the Applicant's Sector Manager Mr. D saw the Applicant's follow up e-mail pertaining to the travel request, and responded to him asking him to resubmit the request so that he would be able to travel the next day. The Bank states that as "the workshop was in Kenya and only a short drive from Nairobi, where [the] Applicant was based, Mr. D believed it was still possible for [the] Applicant to travel to Naivasha and participate in two out of three days of the workshop." The Bank points out that the Applicant declined Mr. D's suggestion and responded that he would instead contribute to the workshop via e-mail.

85. The Bank adds that given the issues that arose during the approval process of Applicant's travel request Mr. D "decided it was necessary to update the AFTHE internal procedures for the review and clearance of travel requests in [the approval system], in order to have in place a more orderly management of such requests. [The] Applicant's issue with the Kenya travel request clearance had illustrated the need to have clear and transparent guidelines for staff members." A draft of the updated internal procedures was circulated to AFTHE staff on 22 October 2012. The Bank notes that a number of staff members provided their comments, including the Applicant. A copy of the Applicant's e-mail providing his comments is in the record.

86. The Bank asserts that on a few occasions technical glitches in the Bank's travel approval system have delayed or prevented the appearance of travel requests for managers' approval. The Bank suggests the reason may even have been that the Applicant did not submit the request correctly. The Bank also suggests that Mr. D's subsequent efforts to update procedures to clarify the protocol for making, reviewing and clearing travel requests are inconsistent with an intent to prejudice the Applicant.

87. The Bank's account of the relevant events is supported by e-mail correspondence in the record. There is evidence that the clearance systems required review and the Sector Manager recognized this by taking action shortly afterwards. The Tribunal finds, however, that the Bank has established that the delayed clearance for the Applicant's travel to Naivasha was not discriminatory or otherwise improperly motivated.

*The decision not to shortlist the Applicant for the
Sector Director (HDNHE) position*

88. In his Application, the Applicant does not state any grounds for his complaint of discrimination arising in relation to the fact that he was not shortlisted for the Sector Director (HDNHE) position in October 2012.

89. In his Reply, he contends that the criteria used to shortlist candidates for the position were "terrible" and that several were of a nature that is impossible to assess based on a review of job applications alone (e.g., "focused on strong leadership and fully transparent"; "intellectual leadership ... focused on credibility/gravitas to lead a global dialogue on health system/health financing"; "diplomacy and partnership skills"; "strong client management skills" and "stature to speak on behalf of the Bank"). He contends that it would be necessary to meet candidates to assess them against these criteria. He also contends that the selected candidate did not meet the critical criteria for the job.

90. The Bank asserts that the Applicant does not allege any procedural irregularities nor specific abuse of discretion nor produce any evidence of unfairness or arbitrariness. It refers to *Riddell*, Decision No. 255 [2001], para. 50, in which the Tribunal held that "the fact that [a staff member] was not shortlisted for an interview cannot, by itself, be regarded as evidence of unfair and arbitrary evaluation."

91. The Bank states that the Shortlisting Committee followed standard procedures in arriving at a shortlist of six candidates (four external and two internal) from the twenty-four candidates (including the Applicant) who were longlisted from a total of ninety applicants. The Bank adds

that the Shortlisting Committee was diverse in its membership, that it contemporaneously documented its conclusions, and complied with the Tribunal's guidance in *BK*, Decision No. 444 [2010], para. 56. It states that the Applicant's candidacy was given "full consideration" and he "was given a clear explanation of why he was deemed not to be the best qualified candidate." The Bank contends it is noteworthy that the two internal candidates put on the six-person shortlist for this Grade GI position were both in Grade GH positions at the time. The Applicant, on the other hand, was in a Grade GG position, a less senior and non-managerial role. The Bank asserts that it is "extremely unusual" for a staff member to be "promoted more than one grade above his current level" and notes that the Applicant had not been working in a management role for several years and had never done so within the Bank or a similar international institution.

92. The Shortlisting Committee's notes indicating the reason that the Applicant was not shortlisted state: "Not enough experience; has been in the Bank only one year. Needs to get more exposure." The Tribunal observes that at that time the Applicant had in fact been a Bank staff member for three-and-a-half years, since March 2009 initially as an Extended Term Consultant and since March 2011 on a Coterminous Term appointment. The reference to only a year in the Committee's notes is therefore incorrect. The Tribunal, however, considers that the overall point regarding the Applicant's relative lack of Bank or other international organization experience in the context of a Sector Director position is supported by the record. The Tribunal is satisfied that the record establishes that the Shortlisting Committee's decision not to shortlist the Applicant was not discriminatory.

DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 26 September 2014