

Decision No. 317

Yang-Ro Yoon (No. 4),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 13, 2003, by Yang-Ro Yoon against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Francisco Orrego Vicuña (President of the Tribunal) as President, Elizabeth Evatt (a Vice President of the Tribunal), Jan Paulsson and Sarah Christie, Judges. The usual exchange of pleadings took place. Requests by the Applicant for oral proceedings and for documents were denied. On February 20, 2004, the Tribunal sent an inquiry to the Chair of the Staff Association, to which he responded. Both parties commented on the response. The case was listed on March 24, 2004.

2. The Applicant's employment was made redundant effective June 1999. Her challenge to that decision was upheld by the Tribunal in *Yoon (No. 2)*, Decision No. 248 [2001]. Pursuant to Article XII of its Statute (as then in force), the Tribunal ordered the Bank to reinstate her to a "comparable position," unless the President of the Bank were to determine, in the interest of the institution, to pay compensation in lieu of reinstatement. The Tribunal fixed the compensation that would be payable in the event the President so determined as the equivalent of two years' salary (in addition to the awarded six months' salary previously recommended by the Appeals Committee and paid by the Bank).

3. During the period between her redundancy and the Tribunal's judgment in her favor, the Applicant secured work as Manager of the Commission on Macroeconomics and Health of the World Health Organization, after which she was engaged on a Consultancy basis as a labor economist at the Bank, notably to make recommendations to policy makers in preparation of the Jamaican Reform of Secondary Education. This Consultancy ended on December 31, 2001.

4. The Applicant received a copy of the Tribunal's judgment on August 13, 2001. On August 30, 2001, she wrote to the President of the Bank to express her "unambiguous preference" to be reinstated.

5. Sometime in early September 2001, Bank managers met to discuss the Applicant's prospects. Aulikki Kuusela, Human Resources Manager for Africa, was assigned to find a new job for the Applicant. She testified before the Appeals Committee that she and other colleagues determined that the Applicant's strengths lay in "capacity-building." In particular, Ms. Kuusela stated: "... we found that you had been very successful in areas of capacity-building, training, and the study tours that you had done in Africa, to Sweden and Korea with the African leaders, political leaders, and Bank staff. That had been the most successful work that you had done." Ms. Kuusela therefore concluded that the Applicant could appropriately be assigned to the World Bank Institute ("WBI"). This Vice-Presidency is devoted to capacity-building for development. It operates 500-600 learning programs annually.

6. On September 12, 2001, the Bank's Vice President for Human Resources, Katherine Sierra, informed the Applicant's counsel that the Applicant would be reinstated "to a position comparable to the one she occupied at the time of the termination of her employment." Many months of increasingly difficult discussion and correspondence ensued.

7. The Applicant considers that she was not reinstated in a “comparable position.” In her view, she was given an assignment on the basis of a biased, fabricated and false appraisal of her aptitude and achievements. She also alleges that the Bank retaliated against her and threatened her with revocation of the reinstatement. She requests a wide range of relief, including monetary compensation, placement in a permanent position in an operating unit of the Bank at GH level, “corrective penalties” to be paid to non-profit organizations, damages on account of “unjust delay and abuse” by the Appeals Committee, and disciplinary proceedings against three staff members who also have allegedly mishandled her case.

8. It is useful at the outset to consider some obvious realities in the context of the reinstatement of a staff member after a significant period of severance. The concerned staff member cannot expect that his or her previous position has remained vacant. That is why the expression used is “comparable position.” The higher the degree of specialization or qualification, the more challenging the task of effecting the reinstatement. Without a cooperative attitude on the part of the concerned staff member, the difficulties will be exacerbated. The person to be reinstated has no greater rights than any other staff member. Certainly no other staff member should be transferred, demoted, or dismissed only to accommodate that person. Nor should the Bank create a position at the level to which such a person aspires only for that purpose; that would be an unjustifiable waste of the Bank’s resources, indeed nothing more than a concealed and inefficient equivalent of monetary compensation. The Tribunal recalls its statement in *Yoon* (No. 3), Decision No. 267 [2002], at para. 15:

A suitable “comparable position” is unlikely to materialize instantly on the occasion of an order of reinstatement. Reinstatement is likely to require consultation and accommodation. The Bank is entitled to exercise its managerial discretion in the manner in which it implements the order (although of course it cannot alter the terms of the order).

9. The Applicant has articulated a host of bitter complaints against the Bank, including serious personal accusations against those who dealt with her case, presented in a 76-page, single-spaced opening “Brief.” These allegations will be considered in due course. But before doing that, it is relevant to consider the Applicant’s own behavior:

(i) On August 30, 2001, she wrote to the President of the Bank to express her desire to be “reinstated at the level I would have reached and in the financial position I would have had, had I been treated fairly throughout.” She moreover indicated that “I could well imagine working in the social sector in ECA” (the Europe & Central Asia Regional Vice Presidency). In other words, she was not seeking a comparable position, but advancement.

(ii) She replaced the attorney who had handled her appeal with George A. Pieler as counsel to assist her in the reinstatement process.

(iii) She asked Mr. Pieler to call Ann E. Rennie, the Director of Human Resources, on October 3, 2001, “to advise her that she did not regard the proposed WBI meeting as responsive” to the Tribunal’s judgment in her favor. A meeting scheduled by Ms. Kuusela for the Applicant to meet the Vice President of the WBI was cancelled. Instead, as the Applicant concedes, at her request, Ms. Rennie agreed to set up meetings with a number of units which seemed more attractive to her (PREM, ECA, DEC, East Asia, and South Asia); she now suggests that this camouflaged a *fait accompli* of “dispatch[ing] [the] Applicant unilaterally to WBI.”

(iv) On October 12, 2001, Mr. Pieler attended meetings with Bank personnel; by October 17, 2001, he sought to engage the General Counsel of the Bank in correspondence about the Applicant’s dissatisfaction with the process, in particular with respect to the Bank’s alleged failure to take positive action to declare in some written form that her redundancy decision was rescinded. He took the position that this was required pursuant to the Tribunal’s order that “the decision terminating the Applicant’s employment for redundancy shall be rescinded.” He wrote: “Clearly, the Bank’s failure to act decisively to rescind that termination decision, in writing ... violates both the letter and spirit of the Tribunal’s July 23 judgement.” He was wrong. As David Rivero, the Chief Counsel for the Administration Unit of the Bank’s Legal Department, correctly answered him on November 5, 2001, “the Tribunal’s decision itself annuls Ms. Yoon’s redundancy, in

writing.”

(v) In the same letter, Mr. Pieler referred to the Applicant’s reinstatement in a “suitable” position. Mr. Rivero’s response of November 5 surmised that this referred to the Applicant’s stated desire for a *promotion*, and he made clear that the Bank’s acceptance of reinstatement related precisely “to a position comparable to the one she occupied at the termination.” Mr. Rivero informed Mr. Pieler that if this was not workable, the Bank would consider paying her two years’ salary instead.

(vi) On October 23, 2001, Mr. Pieler wrote to Ms. Rennie with respect to various meetings with units that might have potential openings. He noted that a meeting had been set during a two-week period when his client “will be out of the country.” He complained that the Applicant had not been given access to SLIP and Lotus accounts, writing: “There should be no more delay on this. When you make a promise, it becomes your obligation to overcome bureaucratic obstacles.” He also insisted that it was the Applicant’s “prerogative” to participate in meetings with potential work units without the presence of either of the two Human Resources officers who had been assigned to implement her reinstatement.

(vii) On November 19, 2001, as the Applicant’s Brief puts it, Mr. Pieler e-mailed Ms. Rennie, “reminding Ms. Rennie that Katherine Sierra had tasked her, not Ms. Kuusela or Mr. Beauregard, to coordinate Applicant’s reinstatement process,” thus purporting to deny the right of the Director of a Vice-Presidency to delegate a job search.

(viii) Despite repeated requests from Ms. Rennie that Mr. Pieler, as the Applicant’s attorney, communicate exclusively with the Bank’s counsel in regard to legal matters while the Applicant continued her job search in direct liaison with the Human Resources staff, Mr. Pieler continued writing to Ms. Rennie, always to object that the Bank was not in compliance with the Tribunal’s judgment. On November 27, 2001, a Bank’s Senior Counsel for Corporate Administration, Philip Beauregard, wrote to Mr. Pieler to clarify the Bank’s position with regard to the Applicant’s reinstatement process – including a proposal of financial support if the Applicant was interested in a “developmental assignment ... as a learning experience” – and asked him to address any further correspondence concerning his client to Mr. Beauregard.

(ix) Instead, three days later, Mr. Pieler wrote a five-page single-spaced letter to the President of the Bank, stating that “the clock is rapidly ticking” towards the time when he “must advise Ms. Yoon to return to the Administrative Tribunal.” Among his several complaints, he noted the failure to meet the Applicant’s demand for “a suitable office on-site, fully equipped, to expedite the search.”

(x) Notes of meetings prepared by Bank personnel were assiduously “corrected” and commented upon by the Applicant and her lawyer in hypersensitive ways. As an illustration, a notation that the Applicant was “expected to report to Ms. Kuusela” in order that the latter accompany her to ECA was criticized as sounding “like indentures [sic] servitude.”

(xi) In early February 2002, when (as shall be seen) the Applicant had been offered a specific position in the very unit she had requested, and had been put back on the payroll at an increase over her previous salary, but was still declining to report to work because of dissatisfaction with a number of conditions, John Alvey, the then First Vice Chair of the Staff Association, spoke to Human Resources personnel about the Applicant’s situation and immediately wrote to her to express his views in a friendly tone (“the most important thing as far as I am concerned is for you to be happy in your decision, in your career and your life”). The Applicant wrote back a long message (copied to the previous Chair of the Staff Association) which began by asking: “I am wondering who authorized you to negotiate for my case with Bank management and in what capacity are you doing this on my behalf?” The same day, she e-mailed Ms. Kuusela to express her surprise at “the Bank’s recent antics (I am referring to John Alvey’s intervention, of course).”

(xii) Among the four communications addressed to Mr. Wolfensohn by the Applicant or her counsel in the course of the six months following the Tribunal’s judgment, that of Mr. Pieler on December 16, 2001, “gently

remind[ed]” the President “that he had tasked HR with handling Applicant’s reinstatement, not legal”; this relates to the Applicant’s unjustifiable insistence that the Human Resources staff negotiate her case with her lawyer. (A lawyer who is told by the other side to communicate with its legal representatives should refrain from contact with its non-legal staff. In this case, Mr. Pieler had been expressly, unequivocally, and repeatedly asked to deal with the Bank’s lawyers only, but persisted.)

(xiii) In late February 2002, the Applicant finally agreed to report to the post proposed by the Bank (see below). But she was still insisting on an urgent meeting with Ms. Kuusela to obtain further satisfaction with respect to a number of matters. By her own admission, she rejected Ms. Kuusela’s proposal that the Manager of the Bank’s Mediation Office attend as a notetaker. Considering her subsequent allegations that the Bank had become “increasingly aggressive, hostile, threatening and dishonest,” it is unfortunate that she thus eliminated a source of contemporaneous evidence. As it is, the Tribunal has not been able to find any evidence warranting such adjectives beyond the Applicant’s assertions of what was said at meetings.

10. A full recital of the communications that took place during the autumn of 2001 would be extraordinarily long. Fortunately, the narrative may be shortened by focusing on a date of central relevance to this complaint, namely December 18, 2001, when Ms. Kuusela announced to the Applicant by e-mail the solution which had been found for her. That e-mail contained the following salient elements:

- after consultations with ECA, “the news is positive”;
- to enable the Applicant to work in her Region of preference, she would be given a developmental assignment involving a re-entry position as an education economist in the Human Development Sector of the WBI should the ECA assignment not lead to a permanent position there;
- she would be reinstated at her previous level at her previous salary; and
- Ms. Kuusela would remain the Applicant’s HR officer.

11. A number of conclusions may be drawn with respect to the record of how things stood at this stage. On the basis of the available evidence, the Human Resources officers recognized the Applicant’s entitlement and, with little cooperation from her, sought diligently to resolve the situation to her satisfaction. The Applicant had informed the President of the Bank that she was attracted to the ECA; the Human Resources officers worked to find a way for her to get there notwithstanding hiring restrictions and notwithstanding their own view that there was an appropriate and available post in the WBI. Moreover, the Applicant had written to Mr. Wolfensohn that she was specifically attracted to the *social sector* in ECA, and indeed an appointment was arranged for her with the Sector Leader of Social Protection in that Region. A special financial package was envisaged to ensure that she would have her previous salary level – as adjusted upward – even though her initial assignment was developmental and the budget of the ECA could not accommodate a full salary. In response to all efforts made on her behalf, she complained that they were not enough.

12. In December 2001, a number of the Bank’s personnel were looking at regulations and consulting with each other in order to determine how they could advise the Applicant in relation to her apparent consideration of two options with respect to her reinstatement: to rescind the original termination and treat her absence as leave-without-pay, or to start a new appointment. The relative effects on her benefits (pension, expatriate allowances, treatment of a previous separation grant, and the like) were complex. By noon on Friday December 21, 2001, the Bank’s specialists had prepared a detailed and comprehensive analysis of the relative advantages and disadvantages for further consideration.

13. As it happened, the same day, December 21, 2001, the Applicant wrote to Ms. Rennie and Ms. Kuusela, to answer Ms. Kuusela’s e-mail of December 18 and to thank them as well as Mr. Beauregard and Ms. Cardona, for “what you have done.” She referred to Ms. Kuusela’s message of December 18 as an “offer of reinstatement” and recorded: “I am very pleased that the Bank has come as far as it has in an effort to comply with the Tribunal’s order to reinstate me.” She said she was “ready to start” but “suggested” five “changes” to the “offer”:

1) a written statement rescinding the declaration of redundancy “before my new start date” (identified by Ms. Kuusela as January 7, two weeks later);

2) that the Bank “clear” her personnel file of materials by correcting and deleting negative statements and adding “missing three best practice citations”;

3) a commitment by the Bank to a permanent position in ECA within 18 months;

4) that the Bank record her starting day as June 1, 1999, “the first day after my wrongful termination on alleged grounds of redundancy”; and

5) “modification” of her salary to reflect cost of living adjustments and “normal grade and step increases.”

14. She also included an *addendum* reminding “everyone” of a list of tasks “agreed to in our December 19 meeting,” including the supply of information about “factors used in the Bank’s calculation of its salary proposal.”

15. Ms. Rennie’s rapid response to this three-page letter was sent out in the afternoon of Friday, December 21. It was curt. Its key paragraphs were the following:

Your reinstatement is not a proposal subject to negotiation. From October until now, the Bank has expended every reasonable effort to explore and satisfy your stated preference for operational work in ECA. More importantly, however, your reinstatement to WBI remains in full satisfaction of the Tribunal’s decision with regard to your redundancy.

I would suggest that you contact Aulikki between December 27th and January 4th to make necessary arrangements for beginning your ECA developmental assignment on January 7th. Every staff member has the right to ask for a peer review of their salary, and you are certainly free to do so once you have started your reinstatement.

Otherwise, on January 7th, the Bank will accept your rejection of your reinstatement, and pay you in the amount of two years’ net salary as provided by the Tribunal.

16. On Monday, January 7, the Applicant decided to write to Mr. Wolfensohn again, asserting that “though Ms. Rennie has tried to shut off discussions, you have it in your power to begin serious negotiations at any time.” She accused the Bank of bad faith and informed him that she had had no choice but to file a new application to this Tribunal. (That application led to *Yoon (No. 3)*, in which her grievance about abuse of discretion in implementing *Yoon (No. 2)* was dismissed without prejudice because the Applicant had not exhausted internal remedies.)

17. In the meanwhile, the Applicant had in fact been put on the payroll as a Regular staff member as of January 1, 2002. The Bank promised to conduct a peer review of her salary. Ms. Kuusela wrote to her on February 12 that her requests to “clean your record” and “receive an apology from the Bank” were being considered, and she (Ms. Kuusela) believed that “issues can be resolved in a mutually acceptable way.” Noting that the Applicant had not reported for work at ECA, Ms. Kuusela went on to note that if the Applicant did not want to start in ECA, “this will be construed as your rejection of the reinstatement that has already been implemented, in which case the Bank is prepared to take it back and pay you the two year salary.” She asked for an answer by the end of that week (February 15). Ms. Kuusela added that even if the Applicant preferred to cancel her reinstatement, the Bank could nevertheless implement a Short-Term Consultancy arrangement.

18. On February 13, the Applicant responded by an e-mail stating notably that Ms. Kuusela had not addressed “my main concern: which was how and when we can resume negotiations over record clearing, salary level, and a clarification statement (an apology, in your words) from the Bank.” On February 14, Ms. Kuusela wrote to the Applicant that unless she expressed her willingness to report to work at ECA by February 25, the Bank would draw the conclusion that she had rejected her reinstatement. On February 15, the Applicant wrote to Ms. Kuusela: “I will be happy to report to ECA on February 25, 2002.” Yet she added: “Let’s meet ASAP next week

to work out the outstanding issues.” Ms. Kuusela responded on February 22 that the Applicant’s remaining questions regarding her salary level could be subject to mediation, and that she would receive a letter of apology.

19. Indeed, on February 27, 2002, the Vice President of Human Resources, Katherine Sierra, wrote a letter of apology to the Applicant expressing regret on account of “the irregularities surrounding your redundancy.” She added that the Applicant’s salary had been subjected to a peer-review analysis, and that her career file had been cleared of “any memoranda relating to your redundancy.”

20. At this point in time, the situation was as follows. The Applicant had been reinstated as a Regular staff member working in the unit she had requested. Her salary had been adjusted upward after a peer review, and her dissatisfaction with that new salary was proposed to be mediated. Her record had been cleared. She had received an apology at the Vice-Presidential level. It was naturally open to her to question whether the adjustment of her salary was sufficient. She may not have been satisfied with the peer review referred to in Ms. Sierra’s letter of February 27. She would have a right to raise that issue – just as she would have been able to do if she had never suffered the wrongful redundancy and had felt that the Staff Rules had not been followed with respect to her salary. This subject, however, has nothing to do with reinstatement, wrongful or otherwise.

21. Yet the Applicant asserts that the Bank wrongfully refused to carry out the reinstatement ordered by the Tribunal because it dealt with her in bad faith in order to put her into a non-comparable position. She uses words such as: “force,” “coerce,” “compel,” and “intimidate.”

22. She seeks to expand the scope of her application to include wrong-doing on the part of the Appeals Committee in “limiting and misstating the issues,” refusing to order the production of documents, denying the Applicant’s “right to call witnesses,” conducting the hearings in a “hostile” and “blatantly biased” manner, and repeatedly delaying the proceedings. The complaint against the Appeals Committee is plainly misconceived. The Tribunal reviews applications *de novo*. Its function is not to assess the regularity of the process that leads to an Appeals Committee recommendation, because that recommendation is of no moment in the Tribunal’s assessment of the legal merits of any application. True, one might in theory entertain the hypothesis that an Appeals Committee might illegitimately prejudice a staff member by refusing to act with adequate dispatch, but nothing close to such a case is even pleaded here. The Applicant’s reference to a delay of 18 months is misleading. The first six months of that period were wasted by the Applicant’s own mistake of coming before this Tribunal without having exhausted internal remedies (*Yoon (No. 3)*).

23. Appearing before the Appeals Committee, the Applicant summarized her grievance in a written opening statement which is usefully reprinted in the transcript available to the Tribunal. She referred to four remedies: (i) actual reinstatement to a position *truly* comparable to the one she held before; (ii) a *genuine* acknowledgement that her redundancy had been wrongful; (iii) a *genuine* apology; and (iv) a clearing of her record. The last three of these may be dismissed quickly. The Tribunal’s judgment in *Yoon (No. 2)* had the effect of rescinding the redundancy; the Bank had no obligation to make an announcement to that effect, let alone issue an apology. It was given anyway, in writing and at the Vice-Presidential level. The Tribunal will not entertain speculation about whether the Bank’s apology was “genuine.” The Tribunal’s judgment did not require the Bank to clear the Applicant’s record. Yet the Bank notified the Applicant through the Vice President of Human Resources that all memoranda referring to her redundancy had been removed from her career file (see paragraph 19). If this were not enough (i.e., if it is the Applicant’s theory that it was an abuse of discretion for the Bank not to ensure that even more was done), she needed to request a specific decision about which she could then properly articulate a grievance.

24. That leaves the notion of failure to reinstate the Applicant in a truly comparable position. The word *truly* is the Applicant’s gloss, but the Tribunal is willing to accept it inasmuch as a *false* or even *ostensibly* comparable position might expose the Bank to censure. In addition, compulsion or intimidation in the course of giving effect to the Tribunal’s judgment would certainly – as in the course of any other managerial action with respect to terms of employment – be considered and condemned by this Tribunal.

25. For all their stridency, the Applicant's accusations are hollow. Nor are they given substance by their incessant repetition.

26. In its Report dated August 8, 2003, the Appeals Committee determined whether the Bank had complied with the Tribunal's Order of reinstatement to a "comparable position" after having:

- (i) substantively assessed the proposals and conditions that were the subject of post-judgment communications between the Bank and the Appellant;
- (ii) examined the consultation and accommodation that occurred between the parties in placing the Appellant in a "comparable" position;
- (iii) compared the Appellant's position at the time of reinstatement to the one she was occupying when she was terminated; and (iv) reviewed the length of time it took for the Bank to reinstate the Appellant.

27. The Tribunal finds this formulation to be insightful and appropriate. It merits to be endorsed, and to serve as a template for any future similar cases. The Tribunal has followed these four steps in its own examination of this application (although it does not rely on the Appeals Committee's conclusions in *applying* this text). It has read the Applicant's voluminous submissions, and has reviewed the evidence with great care, given the fact that this is a case of first impression. It has no hesitation in reaching its conclusion.

28. Ultimately, the Applicant's complaint is that she was not given a *promise* that she would succeed at ECA. Her extensive questioning before the Appeals Committee of her Manager and her Human Resources officer at ECA repeatedly challenged them to say what special efforts they had made to help her succeed. But she had no greater rights than other staff members to attractive postings. Nor would it have been permissible for the Bank to ride roughshod over the ECA managers' prerogatives and evaluations in their own sector.

29. Her premise seems to be that it was wrong for the Bank not to have eliminated the very *risk* that she might not succeed in ECA and be sent back to "a dumping ground for dead-end staff deemed by management to have no future at the Bank." Contrary to this description, the unrebutted evidence before the Appeals Committee was that the WBI is a Vice Presidency integrated in the operations of Regions and Networks. The WBI had a budget to fund the Applicant's position; she would have the occasion to develop task-team management skills and to carry out operational functions; she would, like any other Regular staff member, be free to apply for other positions with the World Bank Group. Contrary to the Applicant's contention that the WBI "does not conduct any project operations," her own communications within ECA mention that a school health program in Tajikistan "touches on almost every aspect of the planned work with WBI in Tajikistan" and speak of cooperation with WBI.

30. In sum, the Applicant was unwilling to take a position in her preferred sector unless it came with exceptional guarantees. She was unwilling to entertain even the possibility that she might find herself in a Vice Presidency which she had decided was unattractive, unwilling to allow the Bank any option but to accede to every demand. The Bank's disinclination to do so was not, in the circumstances, an abuse of discretion.

31. It seems that the Applicant wanted to work in the field (in what she refers to as an "operational") capacity, rather than at Headquarters. In this regard, the Tribunal takes note of the Bank's statement in its Rejoinder to Applicant's Reply: "... whether operational or not, the position was commensurate with her education, skills, experience and was graded at the level of her prior position. It was both a reasonable and appropriate position to which she was assigned."

32. The Applicant's case is harmed by her frequent and obvious mischaracterization of the record. Thus, she says that from the moment she "gave in to the Bank" on February 15, 2002, the Bank "reneged on every promise, pledge, or representation" it had made to her. This is an incomprehensible accusation, given the plain terms of the letter of apology from the Vice President of Human Resources dated February 27, 2002. (The Applicant manages to discuss this letter in her Brief without mentioning the apology found in its very first sentence.) Viewing the matter objectively, the fundamental promise of the Bank was to reinstate her in a

Regular staff position at the same grade and the same salary, which it did. To give just two more of a myriad examples, she asserts (i) that her own e-mail of February 21, 2002, warned the Bank that its representatives “had become increasingly hostile, manipulative, and dishonest” – words that would have caused any Human Resources officer to report the matter – whereas her message contains not one of the three quoted adjectives, and (ii) that Ms. Rennie’s e-mail of December 21, 2001 stated that “whatever the Bank asserts is a comparable position within the meaning of Decision No. 248 [*Yoon (No. 2)*] makes it so, by Bank fiat” when there are no words in Ms. Rennie’s e-mail which could conceivably be construed to have that import.

33. At the time of the hearings before the Appeals Committee, the Applicant was still in her developmental program in ECA. Both her Manager and her Human Resources officer testified. They stated that in their eyes no “stigma” was attached to the Applicant; she had been wrongfully terminated and should be given every opportunity to develop in her career like any other staff member; but accession to desirable positions involved competition on an equal footing with other staff members.

34. Ms. Maureen Lewis, in whose unit in ECA the Applicant had worked for almost a year and a half by the time Ms. Lewis testified before the Appeals Committee in July 2003, described Ms. Kuusela’s approach to ECA as follows:

I think my entire impression of Aulikki was that she really wanted to find something that would work, and it was clear to her that Africa wasn’t the right place, and that you [the Applicant] were interested in ECA, and she thought it was a good place because there was a very broad spectrum of things, and there was a lot of pension work, and you were interested in pension work, but you just wanted a broader experience and that my unit was good because we worked across sectors, so that you had a lot of options that way.

35. Ms. Kuusela testified at length before the Appeals Committee about the way in which the Applicant’s salary was reviewed, after consultation with an internal compensation specialist. There was a regression analysis. The Applicant’s case was examined in two ways:

One was if you [the Applicant] had stayed, and that’s when I looked at it and I saw that your salary was – exactly what you mentioned, and I was aware of it – and if you had stayed and gotten the average increase for satisfactory performance, where you would you [sic] be; and the second was the normal regression analysis that we do in every case, and that was a little bit more advantageous for you.

So that is what we selected to use, and retroactive to your reinstatement.

36. Ms. Kuusela went on to explain:

Your Level 23 salary minimum at the time was \$70,280. Your salary was \$79,660. That’s 13 percent more. Today, when you were reinstated at the salary scale of 2001, the minimum was \$78,960. What I remembered in the morning [of the Appeals Committee hearing] was that you were already above the minimum, which was true. And your salary reinstated was \$89,409, and that’s 13 percent higher than the minimum – not one percent, but 13.

37. The Applicant apparently believes that the Bank should not get credit for having reinstated her at \$89,409, because the adjustment was made, retroactively, only after she had lodged her complaint in *Yoon (No. 3)*. The Tribunal notes, however, that she had been insistent on a salary review from the beginning of the process; but having received it, she apparently wishes to disregard it in order to build a case of injustice. That she might have pressed for an even higher salary is another matter; in this respect, as seen, she was offered mediation.

38. The Applicant complains extensively that she has been treated with indignity. The Applicant apparently so *perceives*. But the Bank cannot be held to a duty to ensure that staff members *feel* satisfied and respected. The Tribunal’s inquiry is whether objective standards have been violated. The Applicant says the Bank has “thoroughly trashed the notion of dignity,” but her evidence does not bear that out. She cites two “incidents that illustrate the point quite well.” The first arises from the fact that Mr. Wolfensohn’s letter of reinstatement directed the Applicant to Ms. Sierra – “or at least one of her delegates.” Instead, the Applicant was immediately scheduled for an interview with her possible work unit at WBI. Apparently the Applicant perceives that she had some unstated prerogatives of protocol. The second is that Ms. Kuusela “coerced” her into accepting a low

salary which Ms. Kuusela knew would be immediately raised. The Applicant has concluded that there is no explanation other than Ms. Kuusela's desire to humiliate her. The Tribunal finds that the Applicant's inferences are unreasonable in both instances.

39. The Applicant argues that if the Tribunal's judgment in itself rescinded her redundancy, she was entitled to a work facility and office facilities the very date the judgment was signed. This argument is so plainly unreasonable that no comment is required; the fact that some reasonable time for implementation is required was acknowledged and explained in *Yoon (No. 3)*.

40. The central thrust of the Applicant's narrative strains logic. If the Bank was so anxious to put an end to her career, it had the option to do so by paying her two years' salary. To organize and implement a conspiracy of numerous senior personnel would certainly have been far more disruptive and costly than the payment of those damages. That leaves the only possibility as personal animus. Why that should exist on the part of persons who had had no prior contact with the Applicant is, as far as the Tribunal is in a position to judge, inexplicable.

41. The Applicant says the Appeals Committee committed "one of many glaring errors with serious practical implications" when it referred in paragraph 7 of its Report to her redundancy as having taken place in 2000 rather than 1999. This was an obvious typographical error; the fuller discussion of her grievance, in paragraph 15 of the Appeals Committee's Report, notes correctly that her redundancy had been effective June 1, 1999. As for the "practical implications" of this error, they remain unexplained.

42. Even the Appeals Committee Secretariat does not escape the Applicant's censure; she criticizes it as "not impartial" and "biased" in setting deadlines.

43. An entire section of the Applicant's Brief is entitled "Ms. Kuusela's track record." The Applicant accuses her of having been "the key player for the Bank in conveying management's threats of retaliation." The Tribunal is satisfied that there were no threats by anyone representing the Bank. From the beginning, the Applicant had resisted the Bank's efforts to reinstate her. The Applicant was asked as early as October 2, 2001, to attend a meeting with the manager of WBIHD to discuss her reinstatement. Instead of cooperating (even if she had questions about the appropriateness of her position), the Applicant refused. She does not deny this. In her own Brief, she admits that she asked her lawyer to call Ms. Rennie (i.e., by-passing the persons assigned to deal with her) "to advise her that the Applicant did not regard the proposed WBI meeting as responsive to Decision No. 248" (i.e., *Yoon (No. 2)*). The meeting scheduled for October 4 did not take place. (The Applicant finally met with WBI on November 8.) Although Ms. Kuusela made what the Applicant considered an "offer" on December 18, 2001, for the Applicant to begin working on January 7, 2002, and although the Applicant accepted that offer, she insisted on further negotiations. By mid-February she had still not reported for work. Under these circumstances, Ms. Kuusela could legitimately put the Applicant on notice to accept the reinstatement, or to take the two-year compensation ordered by the Tribunal. The Applicant is wrong to characterize this as intimidation.

44. Having unjustifiably accused Ms. Kuusela of "deliberate misstatements," "threats" and other turpitudes, the Applicant goes on to discuss Ms. Kuusela's alleged past "record." She invokes *Conthe*, Decision No. 271 [2002] as evidence of Ms. Kuusela's improper behavior. It is a matter of regret that she has launched such accusations on the basis of wholly inadequate information. The independent inquiry in *Conthe* described Ms. Kuusela as a person of "experience, skill and integrity." The Applicant then invokes another judgment by the Tribunal, which – suffice it to say – she once again mischaracterizes to a degree that crosses the line of reasonable advocacy.

45. On October 23, 2002, the Applicant wrote to Frannie A. Leautier, the Vice President of the WBI, to ask for support in a project. Her e-mail began as follows:

I have returned to the Bank this February and am now working as a senior human resources economist in the ECA HD (ECSHD). Some of my colleagues insinuated that you were instrumental in Mr. Wolfensohn's decision to reinstate me at the Bank and provided continued support in the process. I am truly grateful to

you for that. I am now very happy to be able to work on development where my passion lies and where I hope to make meaningful contribution.

46. Ms. Leautier's response began as follows:

Thank you for your email below. I am delighted to hear that you are very happy in your current assignment is ECSHD and I am sure you will make a valuable contribution to the HD agenda there.

As you know, you have a re-entry guarantee in WBI should there not be a permanent job available in ECA at the end of your current assignment. I want you to know that this guarantee still stands.

47. The Applicant concludes that this "was just another in an incessant series of distortions and manipulations." The Applicant's vision is startling and fanciful. She says her own e-mail had been carefully formulated to avoid the inference that she was "happy in her current assignment in ECSHD," because she was "not happy at all" in ECSHD "and had no reason to be." True enough, the words "I am now working in ECSHD" do not appear in the same sentence as the words "I am now very happy." But it is difficult to see why someone should be castigated as a manipulator because she expresses delight when told that her correspondent is "now very happy." (Incidentally, the Applicant's response to Ms. Leautier began "Many thanks for your thoughtful reply" and said nothing about any error of inference.)

48. Worse yet from the Applicant's perspective, Ms. Leautier sent a copy of this exchange to the Director of Human Resources. The Applicant confidently concludes that Ms. Leautier did so "in order to strengthen the latter's arsenal of defenses; no conspiracy theory is needed to arrive at this conclusion." The Applicant is wrong; not only would a conspiracy theory be needed, but an extravagant one. Ms. Leautier had just confirmed to the Applicant that her "guarantee" of a permanent job "still stands." It was perfectly natural for her to inform Ms. Rennie of this apparently positive exchange. Why Ms. Leautier should think Ms. Rennie needed an "arsenal of defenses" is unclear; that someone in Ms. Leautier's position should allow herself to get dragged into a conspiracy would require very convincing proof and explanation.

49. Perhaps the most self-defeating element of the Applicant's conspiracy theory relates to her account of the December 12, 2001 meeting, where she describes Ms. Kuusela as correcting Ms. Rennie's statement that "all managers" thought the Applicant was more appropriately assigned to WBI than to ECA. If Ms. Kuusela was the lynchpin of such a conspiracy, she would not have corrected Ms. Rennie with respect to a proposition which so logically favored the objectives of the machination.

50. The Applicant's attempts to implicate Mr. Alvey are incredible. In the first place, Mr. Alvey did not represent the Bank in her reinstatement process. Rather, as indicated in his letter of February 25, 2004 to the Tribunal, he acted in this case in his capacity as First Vice Chair of the Staff Association. Secondly, there is no evidence that the Applicant objected to his intervention. Indeed, in an e-mail of February 4, 2002 addressed to Mr. Alvey and copied to the then Chair of the Staff Association, the Applicant stated that during a previous meeting of January 17, 2002 with Mr. Alvey, "... I made it clear that the Staff Association or you can help me in two respects: a) Given my preference to resolve my case through the negotiations (rather than through the Tribunal) you can facilitate management's return to the negotiations table; and b) if I have to continue pursuing the grievance process through the Tribunal, I would like the Staff Association to help me win a hearing before the Tribunal...." Thus, having enlisted Mr. Alvey and the Staff Association's help in order to "facilitate" negotiations with management, she now strangely excoriates Mr. Alvey for having provided the very assistance that she requested.

51. The Applicant then moves forward in time to criticize a number of aspects of her experience within ECA. She asserts that her abilities have been used in a "piecemeal and inefficient" manner, and that she has been denied adequate professional review. She also says she has not been properly considered for operational positions of her liking. Although the Applicant may be operating on the basis that her treatment during her time in ECA was preordained as part of a conspiracy, she has failed to make the connection between these allegations and the substance of this application: wrongful non-compliance with *Yoon* (No. 2). Once reinstated, she is in the same position as any other staff member, with the same duties and obligations. Any violation of

the Staff Rules by her managers may be raised, examined, and dealt with as part of the ordinary conflict resolution system. It is not part of this case.

52. One may legitimately wonder if the pattern of adversarial negotiations summarized above in paragraph 9 is the best way to handle a reinstatement process, especially when one's own counsel openly admits, as Mr. Pieler did in his message to Ms. Rennie on November 19, 2001, that "we are all working our way through a novel process."

53. The Applicant is a highly articulate professional who is entitled to make her own choices. Nevertheless, it is impossible to review the record without coming away with the impression that the Bank's managers treated the Applicant with considerable patience. To note one example, access to Lotus Notes is restricted, under normal circumstances, to those having entered into an employment contract with the Bank. Given the Applicant's refusal to accept several of the Bank's offers of reinstatement, providing her access to Lotus Notes was problematic to say the least. Nevertheless, as noted by Ms. Rennie in an e-mail of October 25, 2001, the Bank found a "creative system, involving our systems people, to circumvent this restriction."

54. In the end, the test is not who was the most pleasant and constructive but whether there is any evidence that the Bank abused its discretion in implementing the Tribunal's judgment. The record before the Tribunal does not begin to justify the accusations levied by the Applicant.

55. The Applicant's critical attitude toward those who contributed to her wrongful redundancy in 1999 may be understandable. But she sought and obtained redress for that justified grievance. It is most unfortunate that her posture since then has been one of constant confrontationalism and fault-finding. In order to validate her theory of pervasive injustice, she seems to have concluded that anyone who did not agree with her demands was an adversary. Even when her demands were met, she treated them as insincere tactical concessions. As time went by, anyone who considered that her demands were unjustified, or simply disagreed with her thesis of "deliberate psychological warfare waged by the Bank" against her, was simply added to an ever longer list of adversaries. The Human Resources personnel who did the most to assist her are now, regrettably, vilified in her pleadings. She makes the extraordinary demands that this Tribunal order disciplinary proceedings against them. The Staff Association's First Vice Chair who sought to assist her is castigated as a "designated functionary" sent to threaten and intimidate her. Now she wants him also to be disciplined. Once she received the disappointing recommendation of the Appeals Committee, she assigned a role to that body too in the ever-widening conspiracy; she refers to it as "prejudicial," "hostile" and "blatantly biased." (At the time, she orally commended it for its "patience and careful listening throughout the hearing.") On top of her demands for a permanent placement, apologies, and disciplinary actions, and on top of her demand for payments of \$1.75 million, the Applicant specifically seeks an order that the Bank pay \$125,000 on account of the Appeals Committee's alleged misdeeds. The alternative was apparently unpalatable to the Applicant; having stretched her ever-widening accusations so far, she apparently could not contemplate the possibility that her entire grievance was unfounded. The Applicant is exceptionally articulate and persistent. The Tribunal can only regret, not without sympathy, that she did not fully consecrate her abilities to the institution to whose objectives and values she expresses such deep commitment, rather than to her unrelenting and distractive pursuit of a grievance which, it must be said, was always illusory.

56. This judgment does not answer all conceivable questions relating to reinstatement. The Tribunal must take cases as they are pleaded. Among the three pages of single-spaced writing which details the relief the Applicant has sought fit to seek, there is a mention of "present value of earnings foregone" during the period between her wrongful severance and her effective reinstatement. Reinstatement under *Yoon (No. 2)* was *prospective* in effect, and a claim for lost earnings from the date of the wrongful redundancy to the date of the judgment is therefore not possible. Still, the concept of lost earnings might conceivably be developed in the event of unjustified delays following the judgment of reinstatement. As already held, there were no such unjustified delays, and in any event the Applicant has not demonstrated that she suffered a net loss of income given her work as a Consultant in the interim.

57. The Applicant has demanded that this judgment be published "with no concealment of the identity of any of

the parties, managers, or actors, including all members of Bank staff named herein (including web posting).” The Tribunal sees no reason not to accede to this demand. As for her additional demand for republication of *Yoon (No. 2)* with similar identification of all individuals referred to therein, it is firmly rejected on grounds of fairness. *Yoon (No. 2)* established liability on the part of the Bank, which as the Respondent – and the sole Respondent – was given full opportunity to state its case. The Tribunal seeks to be sensitive to the position of individual staff members whose conduct may have given rise to the Bank’s liability without their having been heard.

58. The Tribunal is reluctant to criticize staff members who come before it. In this case, however, the Applicant has exceeded the acceptable limits to an extent which must be noted. Her reckless accusations against fellow staff members are regrettable, and unworthy of someone with the benefit of her academic qualifications. As for her lawyer, Mr. Pieler, his conduct is professionally reprehensible. His gratuitous confrontationalism, fallacious arguments, and unreliable pleadings have served no purpose but to fan the flames of litigation. In the hopes that he will reflect on his duties as an officer of the court, the Tribunal hereby censures him.

Decision

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

/S/ Francisco Orrego Vicuña
Francisco Orrego Vicuña
President

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

At London, England, June 18, 2004

