



World Bank Administrative Tribunal

2009

No. 404

**Yang-Ro Yoon (No. 8),
Applicant**

v.

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

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

**Yang-Ro Yoon (No. 8),
Applicant**

v.

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

1. This judgment is rendered by a Panel of the Tribunal established in accordance with Article V(2) of the Tribunal's Statute, composed of Jan Paulsson, President, and Zia Mody, Stephen M. Schwebel, and Francis M. Ssekandi, Judges. The Application was received on 13 February 2009.
2. The Applicant joined the Bank in 1991 as a Long-Term Consultant and received a Regular appointment in 1993 as a Human Resources Economist in the Eastern Africa Department of the Bank.
3. In 1998 the Bank declared the Applicant's employment redundant. She challenged that decision before the Tribunal, which ordered the Bank to reinstate her or pay her compensation. *Yoon (No. 2)*, Decision No. 248 [2001].
4. The Bank reinstated her in 2002 and assigned her to the World Bank Institute ("WBI"). She then requested and was granted a developmental assignment in another unit of the Bank. In June 2004 she rejoined WBI in the Human Development unit ("WBIHD") as a Senior Human Development Economist.
5. Following her reinstatement the Applicant filed a number of cases with the Tribunal, as described in *Yoon (No. 6 and No. 7)*, Decision No. 390 [2009].

6. In the present Application the Applicant challenges the Bank's conduct in three respects: (i) External Service; (ii) 2006-2007 Overall Performance Evaluation ("2007 OPE"); and (iii) 2006-2007 Salary Review Increase ("2007 SRI").

External Service

7. According to the Applicant, she has not had a fair performance evaluation and a proper work program for the last ten years. She states that upon her return to WBIHD in 2004, it became obvious to her that "little hope" existed for reviving her career at the Bank. She wished to explore an exit arrangement and on 3 January 2005 sent an e-mail message to Mr. Xavier Coll, the then Vice President of Human Resources ("HRSVP"), "seeking to negotiate a more conducive environment allowing her to resign on viable terms."

8. HRSVP responded to her on 7 January 2005 and designated Mr. Scott Kahle, then Manager, Human Resources, Employee Relations and Global Employment Policy ("HR Manager"), to follow up on her request.

9. The HR Manager and the Applicant met in April 2005. The then Chair of the Staff Association ("SA Chair") attended the meeting. The Applicant discussed with the HR Manager the possibility of pursuing External Service in another institution to facilitate her career transition in the development community outside the Bank. The HR Manager indicated that HRSVP would support her in "exploring opportunities [for] external assignment."

10. Neither the Applicant nor the Bank, however, explored the issue of External Service any further until July 2006. On 20 July 2006 the Applicant sent an e-mail message to HRSVP stating:

It is ... clear ... that the Bank itself does not especially value my contributions and even presence. It would therefore seem to be mutually

beneficial if I was able to reignite my career outside the Bank, with the Bank's support in enabling this transition. I would thus appreciate it if we could discuss appropriate exit arrangements, perhaps following up on our exchange in April 2005.

11. On 1 August 2006 Ms. Francine G. Peltz, Senior Human Resources Officer and Special Assistant to HRSVP ("Senior HR Officer"), replied to the Applicant's message and informed the Applicant that she would schedule a meeting between the Applicant and HRSVP.

12. On 13 September 2006 the Applicant met with HRSVP. The Senior HR Officer and the SA Chair also attended the meeting. At the meeting the Applicant asked HRSVP to consider "mutually-agreeable exit arrangements" and sought his support for a three-year External Service paid for by the Bank. HRSVP stated that he would look into it and would get back to her.

13. As a follow-up to the meeting, on 19 September 2006 HRSVP informed the Applicant by e-mail that the HR Manager would be in contact with her, adding that "it is my hope that we can arrive at a mutually agreeable solution."

14. On 19 October 2006 the HR Manager met with the Applicant together with the SA Chair. At the meeting the Applicant proposed the following terms for External Service: (i) a Bank-paid three-year External Service with no re-entry guarantee; (ii) the HR Manager would draft letters for HRSVP's signature to be sent to the institutions at which the Applicant wished to pursue External Service; (iii) the HR Manager would provide the draft letters to the Applicant for her review; and (iv) the Applicant would identify the institutions and the names of the people in the institutions to whom HRSVP would send the letters. The HR Manager agreed to discuss the proposed terms with HRSVP.

15. After discussion with HRSVP, the HR Manager on 1 November 2006 sent an e-mail message to the Applicant stating:

[HRSVP] has agreed to the following:

the Bank will sponsor a two-year external service with pay arrangement for you and an external entity;

the Bank will not provide a re-entry commitment at the end of this arrangement and you will leave the service of the Bank at that time;

the Bank, under [HRSVP's] signature, will contact relevant organizations/individuals as identified by you.

If this is acceptable to you, please confirm your agreement by return e-mail. If you have any questions, please let me know. Thanks in advance for your consideration.

16. This proposal by the HR Manager was unacceptable to the Applicant because, according to the Applicant, "this offer cut the paid external service period from three to two years, and failed to contain any explicit commitment to overhead cost." In the view of the Applicant, this initial offer "[w]hile not acceptable as is ... could have been the starting point of a serious negotiation."

17. The Applicant decided to consult the SA Chair before responding to the HR Manager's e-mail of 1 November and thus on 3 November wrote to him stating: "Thank you for conveying the proposal. I will get back to you sometime next week."

18. On 12 November 2006 the Applicant sent the following e-mail message to the HR Manager:

Thanks again for conveying [HRSVP's] proposal dated November 1, 2006. Frankly, I was quite disappointed that, without any explanation, the Bank proposes to finance only two years of External Service instead of the three years we had discussed, especially since according to the rules that I am aware of, External Service can last for up to four years. However, I would be willing to accept the proposal nonetheless provided that the following two conditions are met.

First, there are no explicit or hidden strings attached: my full compensation following Staff Rule 5.02 (External Service) plus a standard share of the overhead costs at the relevant institution.

Second, the Bank obtains a placement for me at one of the following three institutions which would be most useful in terms of staying connected/reconnecting with the development community from outside the Bank: Brookings, the Center for Global Development (CGD), and SAIS [School of Advanced International Studies]. The most appropriate contacts are the following: ... Director of Global Economy and Development, Brookings, ... Director, Wolfensohn Center, Brookings, ... President, CGD, ... [Vice President], CGD, and ... [Dean], SAIS. In view of my qualifications and the Bank's close institutional and personal connections to these people, I believe that this condition should not be onerous for the Bank. Also, you will understand that, in view of the history that has led to this juncture, it is important, indeed critical for me to have an agreement on the outcome rather than merely the process.

In line with what we already agreed, I assume that you will share the content of the draft letter to these people with me, and incorporate my feedback if necessary. I would also ask you to write a generic letter "To Whom It May Concern," that simply states that the Bank is supporting a two-year external assignment, financing fully my compensation plus applicable overhead costs.

19. As requested by the Applicant, the HR Manager drafted a cover letter and sent it to the Applicant by e-mail on 14 December 2006 for her review, stating that the Bank would follow up with the contacts she had suggested once he received her comments on the draft cover letter as well as her CV.

20. On 17 December 2006 the Applicant responded, asking whether his message meant that he had accepted her proposal of 12 November "as it is." With respect to the draft letter, she commented that the letter neither contained any context for External Service, nor any clear expression of Bank support. She stated that she would appreciate it if the HR Manager "could add those things in a revised draft."

21. On 20 December 2006 the HR Manager informed the Applicant by e-mail that the "external service arrangement will be administered under Staff Rule 5.02." He further

informed her that “[t]raditionally the Bank has covered the costs of the staff member’s salary and benefits; however, overhead costs are not provided.” He also stated that he would make a “few minor revisions to the proposed letter” and resend it to her.

22. On 8 January 2007 the Applicant sent an e-mail message to HRSVP commenting upon the HR Manager’s message of 20 December and seeking another meeting with HRSVP:

I found a message from [the HR Manager] dated December 20, 2006. Regrettably, it is largely non-responsive (once more), tries to drag things out, and even backtracks on what seems to have been agreed upon before. In view of this apparent lack of good faith, I must doubt whether HR is still genuinely interested in a mutually beneficial outcome.

...

If HR is still interested in a consensual and mutually beneficial resolution, I believe that we should have one final meeting that includes you and [the SA Chair] in which all outstanding issues are resolved. I hope that this meeting can be held soon.

23. HRSVP responded on the same day by e-mail stating that he would “review the situation and get back” to the Applicant. A few days later on 11 January 2007 HRSVP sent another e-mail message to the Applicant stating:

As I indicated when we met last September, we are supportive of your proposal and it is our objective to reach a mutually satisfactory arrangement for you and the Bank. Although there are still some details that need to be sorted out, it seems to me that we are almost there.

I would be willing to meet with you and with [the SA Chair] to bring this matter to closure.

24. On 22 January 2007 the Applicant met with HRSVP. The SA Chair and the Senior HR Officer also attended the meeting. At that meeting, as the transcript of the Appeals Committee hearing exhibits, HRSVP asked the Applicant “what would it take” to place her at the institutions she had mentioned. The Applicant replied “your call.” HRSVP then said: “Okay, I will do it.” He agreed to call the individuals the Applicant had identified in

her e-mail of 12 November 2006 as well as another individual, the Director of Programs, CGD. There was no discussion at the meeting as to whether HRSVP would send a letter to the individuals before calling them. According to the Senior HR Officer who attended the meeting, HRSVP told the Applicant that the institutions she had identified were “small institutions,” and that “he would do his best” but he “could not force anyone to take” the Applicant.

25. As a follow-up to the meeting, on 25 January 2007 the Applicant sent HRSVP an e-mail message attaching a document titled “Statement of Purpose for the Proposed External Service” and her CV. In the message she wrote:

I am glad that we seem to agree on the purpose and the basic parameters of my External Service. I am attaching my CV and the write-up you requested. Hopefully this will help you to communicate my background and interest to the people you will contact.

26. On 13 February 2007 HRSVP informed the Applicant that he had spoken with the Director of Programs, CGD, who was willing to review the Applicant’s CV.

27. On 27 February 2007 HRSVP updated the Applicant by e-mail, to the effect that he had contacted the Director of Programs, CGD. After the Director had reviewed the Applicant’s CV with her colleagues, she indicated to HRSVP that she did not see a “good fit” for the Applicant in her area that would match the Applicant’s interests and expertise. HRSVP noted in the e-mail message that the Director had suggested the Hewlett Foundation as another option for the Applicant. HRSVP also stated that he had been in touch with the Director of the Wolfensohn Center, Brookings, who was travelling at that time, and that they agreed to talk after his return. He also asked the Applicant if there were other organizations that she believed would be options for her.

28. On 28 February 2007 the Applicant responded, thanking HRSVP for the update “and above all for [his] effort.” Noting that HRSVP was doing his best to help her, she suggested that the best way for HRSVP to proceed was to call the individuals she had identified and send them her “letter of intent” for the External Service together with her CV. She also added the names of a Senior Fellow, CGD, and the Director, International Development Program, Johns Hopkins, to the list of the individuals who could be contacted for the External Service. She also noted that if this approach did not work then they could explore other academic institutions.

29. On 14 March 2007 the Bank announced to all staff that HRSVP would be leaving the service of the Bank by early summer of 2007.

30. On 20 March 2007 HRSVP contacted the Deputy Director, Stanford Centre for International Development, and also sent to him the Applicant’s CV. According to the Bank, although the Deputy Director was not on the list suggested by the Applicant, HRSVP considered Stanford as an option worth exploring. On 24 March 2007 the Deputy Director wrote to HRSVP expressing a lack of interest in making use of the Applicant’s skills at Stanford.

31. On 29 March 2007 HRSVP again updated the Applicant by e-mail about his efforts to assist her with the External Service. HRSVP informed the Applicant that he had been “in touch” with some of the people the Applicant had suggested, but he had not received any positive responses. HRSVP stated that he would like to talk further with the Applicant.

32. On 2 April 2007 the Applicant wrote to HRSVP expressing her disappointment that he had not been able to get a positive response from anyone he had contacted. She

requested that HRSVP “redouble [his] efforts to make such an arrangement work, and not hesitate to use [his] clout as [HRSVP] of the World Bank.”

33. On 10 April 2007 the Applicant met with HRSVP together with the SA Chair and the Senior HR Officer. HRSVP told the Applicant that he had no positive results from his contacts and that the Applicant should consider other options. He also told the Applicant that, contrary to her belief, he could not influence outside institutions to oblige them to accept the Applicant on External Service. According to the Applicant, she insisted that HRSVP contact the individuals she had specifically identified and HRSVP agreed to do so. However, prior to doing so, according to the Applicant, HRSVP agreed to first send a letter which would serve as an introduction. The SA Chair volunteered to draft the letter for HRSVP’s signature.

34. The record does not show that the SA Chair ever drafted the letter. But, following up on the 10 April meeting, HRSVP on 17 April 2007 called the Dean, SAIS, the Vice President, CGD, and the President, CGD. The Dean of SAIS stated that she could not accommodate the Applicant but would talk with the Director, International Development Program, Johns Hopkins, and ask him to contact HRSVP. However, the Director did not contact HRSVP. The Vice President and the President of CGD expressed no interest.

35. On 18 April 2007 HRSVP called the Director, Wolfensohn Center, Brookings, who indicated that he could not accommodate anyone at all because his organization was too small and the Applicant was not the right match. On 19 April 2007 HRSVP scheduled a call to the Director of Global Economy and Development, Brookings, but could not get hold of her.

36. On 27 April 2007 HRSVP updated the Applicant by e-mail stating:

It has been difficult to get hold of the contacts you have provided due to their travel and busy schedules. However, I have managed to talk with [Vice President, CGD], [President, CGD], [Director, Wolfensohn Center, Brookings] and [Dean, SAIS]. I will continue trying to get hold of [Director, International Development Program, Johns Hopkins] and [Director of Global Economy and Development, Brookings]. I would like to meet with you and [the SA Chair] to share the outcome of these discussions and where to go from here.

37. That same day the Applicant responded to HRSVP stating that she appreciated that HRSVP had “contacted quite a few people on the agreed-upon list.” She nevertheless expressed concern that he had decided to call them without writing a “consensual letter” beforehand, which she asserted was “in direct contradiction to the substance and spirit” of the 10 April 2007 meeting.

38. On 30 April 2007 the HR Manager, Mr. Kahle, retired from the Bank. Effective 1 May 2007, Ms. Maria Dalupan replaced Mr. Kahle in an acting capacity.

39. On 30 May 2007 the Applicant sent a Bank-wide e-mail message criticizing HRSVP’s role in the then current events concerning governance issues at the Bank, stating *inter alia* that

it seems clear that the personal values and character traits most needed are quite different from those exhibited by [HRSVP]. These would include: leadership in the sense of willingness to assume responsibility for outcomes including a respect for staff rules; a clear appreciation of their importance, and of what it takes to ensure their maintenance and credibility; and a modicum of courage in standing up to pressures in the managerial environment.

40. On 4 June 2007 the Applicant sent an e-mail message to HRSVP inquiring of the status of his efforts for her External Service and his plan to share with her the draft letter to be sent to the contacts in the three institutions that they had agreed upon. She also asked him what he envisioned as to her work program for FY08 and her future in the Bank, in the event “the External Service arrangement is delayed which now seems very likely.”

41. On 6 June 2007 the Bank announced that Ms. Aulikki Kuusela would serve as Acting HRSVP effective 20 June 2007. On 1 July 2007 HRSVP left the service of the Bank. After his departure no further discussion took place between the Applicant and the Bank on the envisaged External Service.

2007 OPE and SRI

42. The Applicant did not have any work program for the 2007 OPE period covering 1 April 2006 to 31 March 2007. The process for completing the 2007 OPE began in April 2007. On 20 April 2007 the Applicant sent an e-mail message to HRSVP inquiring how she should process her 2007 OPE as she had not been given a work program.

43. On 4 May 2007 HRSVP advised her that since she did not have a “clear” work program she would not be expected to complete her 2007 OPE. On 7 May 2007 the Applicant wrote to HRSVP expressing her dissatisfaction with his decision.

44. The Applicant was given a rating of 3.1 for her 2007 SRI. The Applicant complains that her manager neither informed her of her 2007 SRI nor discussed it with her.

Appeals Committee Proceedings

45. On 27 August 2007 the Applicant filed her Statement of Appeal challenging the following decisions: (i) the Bank’s arbitrary “termination of ongoing and mutually-agreed negotiations over External Service”; and (ii) HRSVP’s decision regarding her 2007 OPE and “its effects on every aspect of her corollary rights as a regular employee, including her SRI and her work program.”

46. In its report of 21 July 2008 the Appeals Committee found the following:

- (i) “Mr. Coll and Mr. Kahle acted in good faith and made considerable efforts above and beyond the call of duty to assist the [Applicant] in finding a mutually agreeable solution for her to exit the Bank”;

- (ii) “the [Bank] abused its discretion by failing to continue the negotiations with the [Applicant] in assisting her to find an appropriate exit arrangement from the Bank in the form of an [External Service] or by failing to bring the matter to closure”;
- (iii) “Mr. Coll’s decision not to require the [Applicant] to complete an OPE for the 2007 period was based on an observable and reasonable basis”; and
- (iv) “the management’s decision to award the [Applicant] a 3.1 rating was reasonable and not an abuse of discretion.”

47. For the Bank’s abuse of discretion with respect to the External Service, the Appeals Committee recommended that the Bank pay the Applicant compensation in the amount of two months’ salary and \$5,000 in attorney’s fees.

48. On 19 September 2008 one of the Bank’s Managing Directors informed the Applicant that the Bank had accepted the Committee’s recommendation only in part stating:

I have reviewed the report and decided ... not to accept the Panel’s recommendation that [the Bank] abused its discretion by failing to continue negotiations to assist you to find an appropriate exit arrangement from the Bank in the form of an [External Service] or by failing to bring the matter to closure. Staff Rule 5.02 (External Service) and the applicable Bank policy on External Service provide staff members with no entitlement to an External Service Arrangement. To the contrary, these policies impose on the staff member the responsibility to pursue and arrange their own external service if they wish. You failed to pursue this matter after Mr. Coll’s departure. I have also concluded that because you were in full pay status during that period, you suffered no damage during that time. I am therefore, not accepting the Panel’s recommendation of monetary compensation in the amount of two months’ salary.

I do, however, agree with the Panel that the Bank could have engaged in better efforts to ensure an orderly handover of the matter upon Mr. Coll’s departure. For this reason, the Bank will pay you attorney’s fees in the amount of \$5,000.

49. On 30 September 2008 the Applicant informed the Managing Director by e-mail that she had decided to reject the payment of \$5,000 stating:

This is to let you know that I decided to reject the payment of \$5,000 as I cannot endorse the [Appeals Committee] process that has been fraught with many fundamental flaws in the Panel's decision, including whitewash and even outright misrepresentation of the facts and issues of the case. [The Managing Director's] partial reimbursement of attorney's fees, in the amount of \$5,000, combined with a rejection of even the minimal relief offered by the Panel, seems not more than a fairly transparent attempt by the Bank to create an appearance of impartiality and minimal fairness.

For the continuity of the institutional memory, please note that in September 2005 I also returned to HR the check of \$40,000, awarded by the WBAT in Decision 332, Yoon No. 5 to avoid endorsing the deeply flawed and defamatory WBAT judgment in that case.

50. On 13 February 2009 the Applicant filed her Application with the Tribunal raising the following main claims: (i) the HR Manager acted in bad faith during the negotiations on External Service; (ii) HRSVP also acted in bad faith and failed to keep his promise; (iii) HRSVP unilaterally terminated the negotiations on External Service; and (iv) the Bank abused its discretion with respect to her 2007 OPE and SRI.

51. The Bank answers that it engaged in good-faith efforts at all times to assist the Applicant's pursuit of External Service and did not abuse its discretion regarding the 2007 OPE and SRI.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

External Service

52. Under Staff Rule 5.02, External Service is an arrangement whereby staff members of the Bank Group work for another entity or organization. External Service can be with pay or without pay. Typically a staff member secures a position with an outside entity and then seeks Bank approval for that External Service. Staff Rule 5.02, paragraph 3.01, provides that "the Bank Group will consider applications from staff members for assignment to External Service." Under Staff Rule 5.02, a staff member has no vested right to External Service. This Rule does not impose an obligation on the Bank to place a

staff member on External Service, i.e. to secure an arrangement with an outside entity for a staff member's External Service. Accordingly the Tribunal will examine the Bank's conduct against the terms of Staff Rule 5.02.

53. The Applicant's first claim is that the HR Manager acted in bad faith during the negotiations. She argues that this was demonstrated in several ways, including the following: (i) he delayed in following up on the 19 October 2006 meeting; (ii) in his e-mail message of 1 November 2007, he unilaterally reduced the term of the External Service from three years to two; (iii) he did not respond in a timely manner to the Applicant's e-mail message of 12 November 2006; (iv) his draft letter was "very superficial," of "poor quality," "painfully pathetic" and did not contain any clear expression of Bank support for an External Service agreement; and (v) his e-mail message of 20 December 2006 demonstrated "deceitful" and "manipulative" conduct and was a part of his "delaying tactics."

54. The Tribunal does not accept the Applicant's claim and her related complaints against the HR Manager. Regarding the alleged delay in his follow-up to the 19 October 2006 meeting, the record demonstrates the following. The HR Manager discussed the Applicant's proposed terms for the possible External Service with HRSVP on 20 October 2006. On 31 October 2006 the Applicant sent an e-mail message to him stating:

I still have not heard back from you after our October 19, 2006 meeting. ... I am not especially keen on further delays which could be viewed as yet another mind game.

On the same day the HR Manager replied to the Applicant stating:

Please know that I did meet with [HRSVP] the very next day, Friday, October 20. In addition, I submitted to him a written proposal shortly thereafter. He was to discuss it with senior management and then respond to you accordingly.

I regret that you see this as a possible “mind game.” I believe that folks who have worked with me for the past 24 plus years would not recognize my name associated with such antics.

I will be in touch with you as soon as I can. In the meantime, please let me know if you have any questions.

55. The next day on 1 November 2006 the HR Manager informed the Applicant by e-mail of the terms of the possible External Service that HRSVP had approved.

56. In sum, the record shows that as a follow-up to the 19 October 2006 meeting, within nine working days, the HR Manager met with HRSVP, updated the Applicant about his meeting with HRSVP, and also secured HRSVP’s approval of the terms of the proposed External Service. The Tribunal rejects the Applicant’s claim that there was an unreasonable delay on the part of the HR Manager in his follow-up to the 19 October meeting.

57. The Applicant next complains that, in his e-mail message of 1 November 2006, the HR Manager “unilaterally announced a 2-year term of the external service rather than the 3-year term agreed on by Applicant and [HRSVP].”

58. The record contains no evidence that HRSVP agreed to a three-year paid External Service prior to 1 November 2006 or at any other time. HRSVP made concrete proposals with respect to the terms of the possible External Service for the first time on 1 November 2006, and that included Bank support for two years. The Tribunal notes in this respect that Staff Rule 5.02, paragraph 3.03, states that: “The maximum length of External Service is two years, unless the External Service Sponsor, in consultation with the HR Manager or designated official decides to extend the duration of the External Service. The maximum extension shall be two years. The maximum total duration of the External Service shall be four years.” The Applicant’s complaint that the HR Manager violated a binding agreement

or Staff Rule by reducing the term of the possible External Service from three years to two is unsustainable. There is no such provision in the Staff Rules and there was no such agreement. In sum, management never agreed to extend the length of the proposed External Service from two years to three.

59. The Applicant next complains that the HR Manager did not respond in a timely manner to her e-mail message of 12 November 2006. In this message, the Applicant expressed her disappointment regarding the HR Manager's e-mail message of 1 November 2006, proposed new terms for the possible External Service, and requested the HR Manager to draft a letter in relation to the External Service.

60. The Tribunal notes that following the 12 November message, on 4 December 2006 the Applicant wrote to the HR Manager: "Since I have not heard from you, I am wondering whether you received my e-mail and when I can expect to hear back from you." On 8 December the HR Manager replied:

Thanks for your note. I was out of office. One of ... my colleagues is working on the draft letter which will be shared with you. In addition, we will most likely ask you to add to the draft any relevant information you feel important in terms of your own background and abilities. I regret the delay.

On 14 December the HR Manager sent her another e-mail message attaching the draft letter for the Applicant's review.

61. The Tribunal does not accept the Applicant's charge that the delay in responding to her e-mail message of 12 November was excessive. In that message, she made new proposals regarding the External Service, which the Bank needed time to consider. She asked the HR Manager to draft a letter, which required some time. Moreover, the HR Manager was out of the office and he expressed regret for "the delay." In these

circumstances, the Tribunal does not find that there was unreasonable delay in the HR Manager's response to the Applicant's e-mail message of 12 November.

62. As her next complaint the Applicant finds fault with the draft letter prepared by the HR Manager. On 14 December 2006 the HR Manager sent by e-mail a draft of the letter she had requested. In the e-mail message the HR Manager wrote: "Following is a draft letter we would like you to review. If there are any particular points you would like to make in reference to your skills and abilities, please feel free to do so." The draft letter reads as follows:

Dear ...

The purpose of this letter is to explore the possibility of an assignment with your organization for one of the World Bank's Senior Economists, Ms. Yang-Ro Yoon. Ms. Yoon identified your organization as one of interest, where her skills and experience would be of value. Equally, association with your organization would provide Ms. Yoon with an opportunity to broaden her perspectives.

Ms. Yoon has worked with the World Bank for more than 15 years in various capacities, with her experience primarily in the Human Development area. She holds a PhD in Agricultural Economics, Development Economics/Labor Economics/Econometrics from Cornell University, in New York, and two Masters Degrees, one ... from Cornell, and the other ... from Harvard.

I am attaching Ms. Yoon's resume for your review and consideration. As we are sponsoring Ms. Yoon for a two-year external service assignment, we can confirm ... the budget for salary/benefits will be covered by the World Bank. Ms. Yoon will be available for an assignment early in 2007. Please feel free to contact her by e-mail ("yyang@worldbank.org") or phone I would be happy to speak with you as well.

63. The Applicant complains that "Mr. Kahle's disrespectful and nonchalant attitude is also obvious in the very superficial and poor quality of the attached draft letter: the level was painfully pathetic by any normal Bank standard, for example, its misstatement of the Applicant's e-mail address as 'yyang@worldbank.org' instead of 'yoon

@worldbank.org.” The Applicant adds that the draft letter contained no “context for the external service, nor any clear expression of Bank support.”

64. The Tribunal cannot uphold the Applicant’s assertion that the draft letter evidences bad faith. It was no more than a draft, expressly so described. The HR Manager invited the Applicant to review it, and if she was not happy with the contents she had the chance to provide specific comments for its improvement. In any event, she suggested that the HR Manager revise the draft; he agreed to do so and to resend the draft to her. The Tribunal finds no evidence of bad faith in this procedure.

65. Finally, the Applicant complains that the HR Manager’s e-mail message of 20 December was further evidence of his “delaying tactics.” As noted above, on 12 November 2006 the Applicant sent an e-mail message contending that the terms of the External Service must include “full compensation following Staff Rule 5.02 (External Service) plus a standard share of the overhead costs at the relevant institution.” On 20 December 2006 the HR Manager wrote: “The external service arrangement will be administered under Staff Rule 5.02. Traditionally, the Bank has covered the costs of the staff member’s salary and benefits; however, overhead costs are not provided.” The Applicant contends that the HR Manager’s message about overhead costs constituted “backtracking,” was “manipulative” and was part of his “delaying tactics.”

66. The Tribunal disagrees. Staff Rule 5.02 contains no provision for overhead costs. In any case, the record contains no evidence that the HR Manager or HRSVP ever agreed that the proposed External Service would cover “overhead costs.” The Tribunal cannot conclude, in the circumstances of the case, that the refusal by the HR Manager or HRSVP of a proposal by the Applicant demonstrates manipulative conduct or unreasonable delay.

67. For these reasons, the Tribunal rejects the Applicant's claim that the HR Manager acted in bad faith during the negotiations respecting External Service.

68. The Applicant's next set of claims and complaints is against HRSVP. According to the Applicant: "Although [HRSVP] started the negotiations over external service in what seemed a spirit of compromise and openness, he ended up following the example of his designee, [the HR Manager], in the pattern of bad-faith behavior of being evasive, disingenuous, and manipulative."

69. The Applicant claims that HRSVP did not implement the agreement of 22 January 2007 in which he agreed to contact the individuals the Applicant had suggested in her message of 12 November 2006.

70. The Tribunal does not accept this claim. In her message of 12 November 2006, the Applicant proposed that HRSVP should contact the following individuals: (i) the Dean of SAIS; (ii) the Vice President of CGD; (iii) the President of CGD; (iv) the Director of the Wolfensohn Center, Brookings; and (v) the Director of Global Economy and Development, Brookings. HRSVP contacted the Dean of SAIS, the Vice President and the President of CGD, on 17 April 2007; and the Director of the Wolfensohn Center on 18 April 2007. They all told him they could not accommodate the Applicant. On 19 April 2007 he attempted to contact the Director of Global Economy and Development, Brookings, but could not reach her. The Tribunal is satisfied that HRSVP did what he had said he would do on 22 January 2007.

71. The Tribunal notes that the Applicant was initially appreciative of HRSVP's efforts. But once it was clear that his efforts to place her on External Service had not been successful, the Applicant became critical of HRSVP and claimed that he did not make

those efforts in good faith or in a committed way. She alleges that “it is very likely that he had conveyed a message putting her in unfavorable light as damaged goods rather than conveying any enthusiastic support by the Bank.”

72. The Applicant provides no evidence to substantiate this allegation. The Senior HR Officer who was involved in the negotiations over the External Service testified before the Appeals Committee that:

[HRSVP] was genuinely trying to help. It is – you know, it is highly unusual to have a Vice President HR getting involved in case work like that. But he was willing to put his capital and his reputation on the line and to contact these people. So he was genuinely committed to help.

The HR manager for the Applicant’s unit, Mr. Robert M. Voight, testified that he “was aware that a genuine good-faith effort was going on to find an outside sponsor for an external service program.” Moreover, the SA Chair who advised the Applicant on the External Service and attended meetings on the External Service, testified that

in conversations that I had with [HRSVP], at least, [HRSVP] said that he was sincere about [the External Service] I still [got] the feeling that [HRSVP] was acting in what he thought was the best way. ... I believe that [HRSVP] was sincere when he said he, you know, would commit to something. I believe that he was sincere.

73. The Tribunal sees no evidence that HRSVP acted in bad faith when he contacted the individuals the Applicant had identified in her e-mail message of 12 November 2006.

74. The Applicant next claims that HRSVP violated the agreed procedure by making contact with the individuals in question. The Applicant claims that at the meeting of 22 January 2007 HRSVP asked her to send him a “brief write-up (or TOR [Terms of Reference])” for the External Service and he agreed to share it with the contacts. On 25 January 2007 the Applicant sent a document titled “Statement of Purpose for the Proposed External Service.” It appears that the Applicant considers this document to be the TOR.

The Applicant alleges that HRSVP “never reviewed this document or shared it with his contacts either verbally or as an attachment, in contradiction of his repeated promises.”

75. The Tribunal finds no evidence in the record showing that HRSVP agreed to share the so-called TOR with the individuals in question. No agreement required that HRSVP do so. When on 25 January 2007 the Applicant sent the TOR to HRSVP she stated in her e-mail message: “I am attaching my CV and the write-up [TOR] you requested. Hopefully this will help you to communicate my background and interest to the people you will contact.” It is not clear whether she requested that HRSVP send the document to the individuals he was going to contact or whether the information in the document was for his background. In any event there is no evidence that HRSVP told the Applicant that he would share it with the individuals concerned. The Applicant also assumes that HRSVP “never reviewed this document.” The fact that it was not shared with the individuals in question hardly establishes that he did not review it.

76. The Applicant maintains that at least at the 10 April 2007 meeting a clear procedure was agreed upon, pursuant to which HRSVP agreed to send a letter attaching her TOR and CV to the individuals he was expected to contact. The Applicant adds that the SA Chair was expected to draft the letter for HRSVP in consultation with the Applicant. The Applicant alleges that HRSVP failed to follow this agreed procedure.

77. The Tribunal finds that no such procedure was agreed upon. There is no Staff Rule or Bank policy dictating how, if at all, management should contact potential entities for possible External Service for Bank staff. In any event, HRSVP did not receive the letter from the SA Chair. There was no reason why he should not make contact with the individuals named by the Applicant without the letter in question. In fact the Senior HR

Officer testified that, had HRSVP waited for the letter from the SA Chair, HRSVP “probably would not have gotten in touch” with persons identified by the Applicant because the SA Chair never drafted the letter. The Tribunal finds no lapse by HRSVP in this regard.

78. As further evidence of HRSVP’s alleged bad faith, the Applicant refers to the fact that HRSVP failed to place her at an institution that she had suggested. The Applicant states that: “While it is not known what and how [HRSVP] talked to them, it is very likely that he had conveyed a message putting her in unfavorable light as damaged goods rather than conveying any enthusiastic support by the Bank, further spoiling her chance in those institutions and in the entire community via word of mouth.” The Applicant adds that the “failure by [HRSVP] and his managers to place Applicant is proof-positive that the Bank has so thoroughly tarnished Applicant’s career and reputation.”

79. The Tribunal cannot infer bad faith from the fact that HRSVP ultimately failed to place her on External Service. During the negotiations, HRSVP never promised that he would secure a place for the Applicant at any of the institutions she had specified. The Applicant has not cited any evidence suggesting that HRSVP made any promises or offered any assurances. The Applicant understood the limits of HRSVP’s undertakings. The Applicant admits that HRSVP told her that “he would not be able to exercise any influence on Applicant’s placement in the three designated institutions,” and told her that she had “an exaggerated view about the importance of the Bank in the development community and accordingly his clout as [HRSVP] of the Bank in that community.” The Applicant testified to this effect before the Appeals Committee stating: “And of course there’s always a possibility that he would not be able to place me.” Accordingly, the

Tribunal cannot consider the ultimate failure to place the Applicant at the institutions she had suggested as evidence of HRSVP's bad faith.

80. Finally, the Applicant claims that HRSVP unilaterally terminated the negotiations on the External Service. She explains that on 4 June 2007 she sent an e-mail message to HRSVP inquiring about his efforts on the External Service and her future at the Bank because the External Service would likely be delayed. In the Applicant's view, "Mr. Coll was exercising his power as [HRSVP] again to impose his unilateral termination of the negotiations by silence." The Applicant contends that this is evidence of bad faith on the part of HRSVP and that the Bank must take responsibility for his unacceptable behavior.

81. The Tribunal notes that on 14 March 2007 the Bank announced to all staff that HRSVP would be leaving the Bank early that summer. HRSVP, however, continued to work on the Applicant's External Service until his departure. On 29 March 2007 he updated the Applicant about his efforts and on 10 April 2007 he held another meeting with her. Following the meeting, he made contact with the individuals the Applicant had suggested to him. On 27 April 2007 he again provided the Applicant with an update on his efforts. By then it was clear to the Applicant that his efforts had not been successful.

82. On 30 May 2007 the Applicant sent a Bank-wide e-mail message questioning the "personal values" and "character traits" of HRSVP. A few days later on 4 June 2007 she sent another e-mail message to HRSVP inquiring as to the status of the External Service negotiations. Two days later on 6 June 2007 the Bank announced that HRSVP would be leaving the Bank after 20 years of service on 2 July 2007, and that Ms. Aulikki Kuusela would serve as Acting HRSVP effective 20 June 2007. The announcement also stated that HRSVP would be taking annual leave from mid-June.

83. The Applicant's argument is that HRSVP's failure to respond to her message of 4 June 2007 shows that he had unilaterally decided to terminate the negotiations on External Service. The Tribunal notes that HRSVP had given her an update on the status of the proposed External Service on 27 April 2007. The Applicant should have realized that she might not get a response to her message of 4 June 2007 because she knew that HRSVP was leaving the Bank in a few weeks, that he would be on leave from mid-June and that someone else had been appointed to serve as Acting HRSVP. Since she did not receive a response to her 4 June e-mail message from HRSVP, while publicizing her misgivings about his "character," the Applicant should simply have contacted the Acting HRSVP or the relevant HR Officer to inquire about the status of the External Service assignment. She did not do so. Yet she claims that the failure of HRSVP to respond to her 4 June e-mail message shows an exercise of power to impose a unilateral termination of the negotiations. It is clear from the record that the Bank was ready to support her External Service for two years and took steps to that end. The Applicant was not told that the Bank would withdraw that support after HRSVP's departure. The Applicant's claim in this regard is unproven and unpersuasive. The Tribunal does not find that the Bank violated the Applicant's rights with respect to the proposed External Service in any respect.

84. The Tribunal notes that the Applicant disclosed before the Appeals Committee that:

I can go, you know, Berkeley anytime. ... And the only reason why I chose Berkeley is my boyfriend is in California. I just want to – I'll be closer to him if I have to go to that kind of place, academic place. ... So, basically, I have other options – okay? I have Berkeley, and I just even leave [the Bank] without anything. I was about to leave. You know, I'm just showing you everything. I was about to leave, this institution, by the end of this fiscal year, regardless of what happened.

85. Yet she never saw fit to inform HRSVP or the Bank that actually she had secured a place for her External Service at the University of California at Berkeley. It is difficult to

fathom why the Applicant never informed HRSVP that she had secured a place at Berkeley or pursued it in accordance with Staff Rule 5.02 even though she was anxious to leave the Bank.

2007 OPE and SRI

86. The process for completing the 2007 OPE began in April 2007. In response to the Applicant's inquiry about how to proceed regarding her 2007 OPE, on 4 May 2007 HRSVP advised her as follows:

I consulted with your ... HR Manager, who in turn consulted with your manager It is acknowledged that this past performance year covered an extraordinary period characterized by turnover of both your assigned manager and director. A Results Agreement for the 2006/07 work year was never agreed with you, nor were you assigned a clear work program on which results criteria could be specified and a valid OPE completed. In view of these circumstances, you will not be expected to complete an OPE for the 2006/07 period.

87. The Applicant claims that the 4 May 2007 decision of HRSVP advising her not to complete the 2007 OPE is an abuse of discretion.

88. From 1 April 2006 to 31 March 2007 (the 2007 OPE period) the Applicant did not have a work program. This was not because she asked for one and was refused; she never asked her supervisor for a work program during this period. There is no doubt that the Applicant's supervisor had the responsibility of assigning a work program to her. The supervisor testified before the Appeals Committee that he became the new manager of the Applicant's unit on 1 July 2006 and he had a meeting with the Applicant around that time lasting more than an hour. At the meeting, they discussed the Applicant's work and employment situation at the Bank. During the meeting she told the supervisor: "you do not have to worry about me. I am going to leave the Bank." The Applicant did not contest this account of the testimony. Her supervisor then discussed the matter with senior

management of WBI and the HR manager for the Applicant's unit, and they confirmed that negotiations on External Service were in progress. It was in this context that her supervisor decided not to assign a work program to her. It is not the case that the Applicant sought a work program and the supervisor declined to provide one. To the contrary, she told him "not to worry" about her.

89. The senior management of WBI and the HR manager for the Applicant's unit, however, made some efforts to find a work program for the Applicant during the 2007 OPE period, but did not succeed. One of the directors at WBI looked into the matter but could not identify a suitable work program for her. The director then discussed the matter with the Vice President of WBI. The Vice President then discussed with another director in WBI, and asked him to find a work program for the Applicant in his area of responsibility. This director did look into it but could not find a suitable work program for the Applicant. The HR manager for the Applicant's unit testified that he personally pursued the matter with two other managers but did not succeed.

90. It is striking that while the managers were making efforts to find a work program for the Applicant, the Applicant herself failed to show any interest. As noted above, she stated to her supervisor that she would be leaving the Bank. There is no evidence in the record that suggests that she approached any manager in WBI asking for or proposing a work program. There is no evidence in the record that she expressed concern about the lack of a work program during the 2007 OPE period. The Tribunal notes that even during the 2005 and 2006 OPE periods, the Applicant did not discuss her work program with her supervisor and refused to discuss her OPEs. When she challenged her 2005 and 2006 OPEs, the Tribunal found that "in view of the fact that the Applicant refused to meet with

[her supervisor] to discuss her OPE, she failed to avail herself of the opportunity to meet and discuss her future within her unit. The Bank cannot be faulted under the circumstances.” *Yoon (No. 6 and No. 7)*, Decision No. 390 [2009], para. 98.

91. Given this context, and considering the facts that she did not have a work program during the period in question and that in the absence of a work program no proper performance evaluation could be made, HRSVP’s decision of 4 May 2007 advising her not to complete the 2007 OPE was not unreasonable. Under Staff Rule 5.03, paragraph 2.02(a), OPEs are to be completed every year. But this Rule also states that: “In exceptional circumstances, for World Bank staff, the Vice President, Human Resources ... may require that performance evaluations be completed by the Manager or Designated Supervisors more or less frequently.” The context of the Applicant’s 2007 OPE makes her case exceptional. The Tribunal concludes that HRSVP’s decision of 4 May 2007 was not an abuse of discretion.

92. As for the 2007 SRI, she was given a satisfactory rating of 3.1. Her claim regarding the 2007 SRI is limited. She claims that her manager failed to inform her about the 2007 SRI rating or discuss it with her.

93. The Tribunal finds that as no discussion on her 2007 OPE took place, she could not expect to have an SRI discussion. In any event, she did not express interest in having such a discussion with her supervisor. As for the SRI rating, she could have found it out by looking at the SRI matrix and her actual salary increase, usually available in HR Kiosk in August every year. Or she could have simply asked her supervisor about her rating. She failed to take even these simple steps. The Tribunal is unable to find that any prejudice was caused to the Applicant in this regard.

94. The Tribunal cannot fail to observe that the Applicant's attitude toward the Bank in this case has been characterized by relentless and unfounded fault-finding with the managers who dealt with her, leading to complaints that transgress the frontiers of frivolousness. Nevertheless the Tribunal has punctiliously examined her claims as she has seen fit to raise them. The fact that this judgment is lengthy should not be taken as evidence that her claims come close to having merit. The Tribunal deplores the disruption and waste of resources caused by the unreasonable pursuit of exaggerated grievances.

DECISION

For the reasons given above, the Tribunal dismisses all of the Applicant's claims.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 7 October 2009