

**Decision No. 367****Pierre Yourougou,  
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, and composed of Jan Paulsson, President, Sarah Christie and Florentino P. Feliciano, Judges. The application was received on 3 October 2006. The Applicant challenges the Bank's decision of 14 June 2004 to declare his position redundant and the subsequent termination of his employment as of 31 December 2004.

*Relevant Facts and Procedural History*

2. The Applicant joined the Bank as a Financial Policy Analyst in March 1992. At the time of his termination in December 2004, he was a Senior Financial Officer (SFO) at Level G.

3. In 1994, the Applicant was appointed back-up coordinator for the delivery of a newly approved Single Currency Loan program. He developed client information and training material for both Bank operational staff and clients. In 1996 and 1997, the Applicant worked on a Staff Exchange Program (SEP) assignment at the African Development Bank (AfDB), where he set up the Financial Technical Services Division and served as its Acting Manager. The then Presidents of the AfDB and the Bank were appreciative of the Applicant's contributions at the AfDB. Upon his return to the Bank in 1998, the Applicant worked in the Corporate Finance group. In 1999, he transferred to the Financial Products and Services group in the Treasury Vice Presidency (TRE). In 2001, he switched to the Public Debt Management group of the Banking and Debt Management Division (BCFBD) of TRE, where he remained until his position was declared redundant.

4. On 1 July 2003, the Financial Products and Services group merged with the Public Debt Management group under the leadership of Ms. Gloria Grandolini, Manager, BCFBD.

5. In addition to the Applicant, three other SFOs worked in the Public Debt Management group within BCFBD: Ms. Elizabeth Currie, Ms. Eriko Togo, and Mr. Lars Jessen. Mr. Fred Jensen, a Level I Senior Adviser, also worked in BCFBD. Mr. Jensen was the Applicant's immediate supervisor before Ms. Grandolini joined the group. Mr. Jensen's position was declared redundant at the same time as the Applicant's.

6. BCFBD was in charge of providing technical advice to country teams within the Bank and to government officials about: (a) loans and hedging products offered by the Bank (Financial Products group), and (b) effective public debt management (Debt Management group).

7. According to the Bank, the Financial Products group was growing, and the staff in the group was somewhat underskilled. Country teams and governments required increasingly specialized financial advice, and management considered it necessary to hire additional financial officers to strengthen the group. The managers viewed the work of this group as a priority.

8. In contrast, the Bank described the Debt Management group in BCFBD as overstaffed; its work had become peripheral to the work in TRE. This group provided advisory services to various governments to help them manage their public debt portfolios. Most of these activities related to countries that were eligible to borrow from

the International Bank for Reconstruction and Development (IBRD countries). Some of these countries were eligible only for interest-free loans from the International Development Association (IDA countries), but others were moving towards eligibility for IBRD financing (Blend countries). In addition to the advisory services, the group also provided training seminars to long-term IDA countries. As described by the Bank, however, the focus of TRE was changing to provide expert advice on capital markets and on asset and risk management. The IDA countries did not require such expert advice. The group finally was developing a computer model for public debt management (the Modeling Project), for both IBRD and IDA countries, but in the three years that the group promoted the model, none of the countries adopted it.

9. Throughout his Bank career, the Applicant worked as a Financial Officer in various groups, including the Financial Products and Services group. He developed some new financial products, including the local currency loan product. He assisted in the early development of the sovereign debt management side of TRE. As mentioned earlier, he also worked at the AfDB, where he helped develop new products and information material, primarily for IBRD countries. During his last three years at the Bank, the main focus of the Applicant's work was on developing and carrying out training courses and workshops on risk modeling for both IDA and IBRD countries. He also actively participated in capacity building and sovereign debt management for Francophone Africa. He developed and expanded TRE's outreach program and partnership efforts with regional organizations, starting with the Macroeconomic & Financial Management Institute of Eastern and Southern Africa (MEFMI), expanding to the Centre for Latin American Monetary Studies (CEMLA), and preparing for a partnership with the Vienna Institute. He actively participated in a case study on Tanzania (a non-IDA country), and ultimately published its findings and recommendations. He conducted research in various areas, and presented various papers to public debt managers. Finally, he was responsible for new staff orientation seminars.

10. His managers acknowledged his important contributions to the training programs and risk modeling courses, which he both developed and presented. They encouraged him to focus his work on Africa, including the joint work with MEFMI and the AfDB. In response to his request for broadening his experience, his managers indicated their preference for his continued work in the same area. Although his responsibilities appeared to have increased during the last three years of his employment with the Bank, and his training seminars had expanded in outreach, the principal area in which he was involved remained risk modeling. There is a dispute of fact as to the proportion of the Applicant's work devoted to IDA countries. The Applicant claimed that he only spent 25 percent of his time on IDA countries. Mr. Jensen estimated that time to be 40 percent. The Applicant's managers stated that he spent as much as 95 percent of his time on those countries.

11. Ms. Currie provided technical assistance to several IBRD countries, contributed to the unit's strategy work, and worked on several research papers on debt management issues. She also completed several country assessments as well as preliminary needs assessments for technical assistance in both IBRD and IDA countries. In addition, she worked on the Tanzania case study as did the Applicant, and she participated in the joint training and presentations in Africa as well as in other parts of the world.

12. Ms. Togo was a Financial Officer, Level F, in 2001-2002. At the end of the probationary period, her manager recommended her for promotion to a Level G SFO. Her primary focus was research and writing on public debt management. Although in 2001-2002 she had been heavily involved in risk modeling analysis, advisory work for an IBRD country, and training, that work gradually diminished, and by 2003-2004 constituted only a small part of her work program. In 2002-2003, Ms. Togo worked on a risk modeling course for Latin American countries, participated in workshops on debt management for Asian countries, conducted additional research, and participated in Board management reports. Her last Overall Performance Evaluation (OPE) indicates that she continued to work on research, training and presentations on debt management issues. It appears from the OPE that this work related for the most part to IBRD countries.

13. Mr. Jessen joined the group in early 2002. Throughout 2002-2003, he worked on a risk modeling course, participated in workshops and risk modeling, and provided technical assistance to several countries. He also participated in the preparation of a country assessment program for Bulgaria. Except for one IDA country, his work seemed to involve only IBRD countries. His 2003-2004 OPE shows a variety of tasks, including technical

assistance, workshops, assessment programs and a country risk study.

14. In February 2004, BCFBD management advertised two new positions, a Level G SFO and a Level H Principal Financial Officer. The vacancy announcements for these posts closed on 20 February 2004. Meanwhile there were indications that budget cuts were looming. On 19 February 2004, Mr. John Wilton, Vice President, Strategy, Finance and Risk Management (SFRM), notified the Bank Vice Presidents informally that there would probably be no budget increases in Fiscal Year 2005 (FY05), and he cautioned them to carefully consider their priorities.

15. TRE managers continued with the hiring process for the two new positions. On 20 March 2004, management offered Mr. Miguel Navarro-Martin, a staff member from another department, the Level G SFO position. He accepted the offer and was to start on 1 June 2004. The second position was put on hold and later eliminated.

16. At about the same time, the Bank created three Regional Financial Officer positions. The Regional Financial Officers would start at TRE for training and would be transferred to their respective regions after a few months "to build up their financial products work/knowledge and get up to speed on the resources TRE can bring to bear in the ALM, Capital markets, asset management and treasury operations businesses." SFRM would fund the positions. Between late 2004 and early 2005, three Regional Financial Officers had been selected from a pool of candidates meeting the requirements for the Principal Financial Officer position that had been posted in February 2004 but not filled due to the budget cuts. All three had experience working in government debt offices.

17. On 31 March 2004, Mr. Graeme Wheeler, then Vice President and Treasurer, updated managers in TRE of the budget discussions among member countries and advised them that it was possible that the budget for FY05 would be lower than had been expected in late February. He gave no specific figure but the tone of his e-mail suggested that the budget discussions would be arduous.

18. On 24 April 2004, TRE received official word that its FY05 budget would be cut by 6.3 percent. As the Bank's medium and long-term borrowing activities had significantly fallen, management decided to move resources away from the Financial, Administrative and Corporate functions and into operations.

19. On 27 April, Mr. Howard Polster, then Senior HR Officer, informed Mr. Wheeler that it would be necessary to declare certain staff members redundant, that time was of the essence, and that as early as 29 April managers needed to identify who would be affected. Mr. Wheeler forwarded the e-mail to TRE directors, informing them of the budget cuts and the timetable for implementation of planned redundancies.

20. The Bank contends that whereas previously management had been able to cope with smaller budget decreases (up to 2 percent) by reduction in variable overhead costs and natural staff attrition, the immediate 6.3 percent budget cut in TRE was of such a magnitude that it could not be managed by a process of gradualism. TRE's business, the Bank states, consists of the delivery of financial services, and most of TRE's expenses are fixed staff costs. Accordingly, TRE management had to reduce staff, eliminate some services and work more efficiently.

21. TRE management reviewed its work program and decided to eliminate the two programs that appeared least effective. These included the Modeling Project, which, according to the Bank, had not produced the results that TRE had hoped for, and the work with IDA countries, which another Vice Presidency at the Bank, namely the Poverty Reduction and Economic Management Network (PREM), could perform as efficiently.

22. The Applicant's managers in the Unit determined that his work program included in large part the two work programs that were being eliminated. Consequently, they decided to abolish his position as well as three others within his group: a Principal Financial Officer at Level H, a Senior Adviser at Level I (Mr. Jensen), and a Financial Assistant at Level D.

23. Mr. Jensen testified before the Appeals Committee Panel (“the Panel”) that he had been expecting the redundancy announcement even before the budget cuts were announced. This was because he knew that TRE was changing direction and was hiring a number of senior staff, at Level H or above, with debt management operational experience (including legal ramifications), who came from government debt offices. He also said:

when [PREM’s creation] was first announced, ... I believed that Treasury was going to shut down parts of the program, and I was particularly concerned about [the Applicant]... and I encouraged people in PREM ... to take on the debt management capacity building and training responsibilities for IDA countries, because by then, it was clear to me that Treasury was going to give it up.

He further said:

I had come to the conclusion some months earlier that this program was going to be shut down and that there would be redundancies. ... And in addition to the IDA country work that was shut down, the broader partnership program for training and capacity building, I believed, was also going to be cut back.

He also alluded to a townhall meeting where Mr. Wheeler talked about budget cuts through “normal staff turnover and retirements,” which he interpreted to mean that the three oldest staff members would be retiring soon. Mr. Wheeler denied having knowledge of any basis for such predictions.

24. The major dispute of fact between the parties concerns the nature of the Applicant’s work program compared to the work program of other SFOs in the group. In testimony before the Appeals Committee, it was not disputed that the skills required for working on IDA and IBRD countries differ because of the nature of the countries’ economic needs; likewise, it was not disputed that the Applicant possessed the skills required to work on both IDA and IBRD countries. He had in former times worked on a number of different programs, including financial products, but he lacked recent relevant operational experience.

25. Before notifying the Applicant of the decision to declare his position redundant, Messrs. Kenneth G. Lay and Graeme Wheeler asked Mr. Gobind Nankani, Vice President, PREM, whether there were any alternative job opportunities for the Applicant in PREM. There were none.

26. On 13 May 2004, the Applicant was informed orally that his position was being abolished. The next day, on 14 May, Mr. Lay submitted to Mr. Wheeler a Request for Approval of Severance Payment in respect of the Applicant.

27. On 18 May 2004, Ms. Grandolini informed the staff about the budget cuts and the resulting staff reductions. She explained that the cuts were the result of three developments: (1) the creation in PREM of a debt management unit focused on highly indebted and poor countries (IDA/HIPC countries); (2) the need to respond to the current institutional priorities and revitalize the IBRD banking business; and (3) the need to respond to the “highly constrained budget environment.” She added that:

BCFBD will exit public-debt management work in IDA-only countries and concentrate its resources on sovereign debt management work in IBRD and blend countries. Where possible, work in IDA-only countries will be undertaken by other units in the Bank more closely focused on the needs of this group of clients. In addition, specialist services not encompassed in the foregoing, including liability-side risk modeling and related training, will be outsourced to appropriate providers outside TRE.

She continued that “[i]nvariably, these circumstances are going to change the way we are staffed. ... We’ve therefore concluded reluctantly that it will be necessary for us to reduce by four the number of positions in the banking and debt management team.”

28. Mr. Wheeler invited the staff to attend a townhall meeting to be held the next day, on 19 May 2004. He explained that “[b]ecause TRE is largely a fixed cost business, we have had to cancel some new positions, fill others internally, and not fill vacancies created by staff transfers and departures. Even after doing so, however,

and working hard to find further economies in areas such as travel, IT infrastructure and telecommunications, we still need to make nine positions redundant.”

29. The Applicant received formal notice of redundancy on 14 June 2004, effective as from 1 July 2004. The Applicant had six months, i.e., until 14 December 2004, to find another position, at which time his employment with the Bank would end. The termination date was subsequently extended to 31 December 2004, to enable the Applicant to receive a pension immediately upon termination (when he had reached the age of 55).

30. From June to December 2004 the Applicant’s managers attempted to secure another position for the Applicant. They contacted managers in the Africa Region and inquired about suitable openings. On 28 May 2004, Mr. Wheeler asked Mr. Callisto E. Madavo, the then Africa Region Vice President, about positions for both the Applicant and another staff member whose position had also been declared redundant. Mr. Wheeler described the Applicant as follows: “[He] is 54, a Canadian citizen of African heritage, with a PHD in Finance and Banking from New York University.” These efforts proved fruitless.

31. The Applicant also met with his managers several times to discuss various avenues and opportunities within the Bank and outside. To enhance his chances of finding a position in operations, his managers encouraged him to attend training courses in Bank Operations, which he did, and made available \$12,000 to help cover the cost of travel that could lead to possible employment opportunities. In order to assist the Applicant in finding alternative employment, TRE further allowed him to participate in several training seminars in Africa, although the group was no longer providing these services.

32. On 17 December 2004, a few days before termination of his employment, the Applicant wrote to Mr. Xavier Coll, Vice President of Human Resources, and for the first time expressed his view that his redundancy was “unfair and discriminatory.” He indicated that he had

requested that TRE Management arrange for a suitable position for [him] at any level. [He had] asked to participate in the Staff Exchange Program with the Development Bank of South Africa. [He had] also requested funding for on-the-job training to increase the odds of finding a job in operation, which is normal practice to facilitate the transition to operations. All these requests were denied.

33. The Applicant filed a Statement of Appeal with the Appeals Committee on 29 April 2005, challenging the Bank’s decision to declare his position redundant and raising claims regarding non-promotion to Level H. A hearing was held on 13 March 2006 before a Panel. On 4 May 2006, the Panel issued its Report rejecting all of the Applicant’s claims.

34. The Panel concluded that the Applicant’s work program was materially different from that of the other SFOs, that the decision to eliminate that work was justifiable in the interests of efficient administration, and that the Bank complied with applicable procedures relating to the redundancy decision and assistance in finding another position within the Bank.

35. With respect to the Level G SFO position that had been filled before the redundancy, and the positions of the Regional Financial Officers filled after the Applicant was declared redundant, the Panel found that the Bank had provided a reasonable and legitimate explanation why TRE management did not offer these positions to the Applicant.

36. The Panel found an insufficient factual basis to conclude that management discriminated against the Applicant on the basis of his national origin.

37. The Vice President of Human Resources, International Finance Corporation, agreed with the recommendations of the Panel and so notified the Applicant on 31 May 2006.

38. The Applicant subsequently filed his application with the Tribunal.



*The Parties' Contentions*

39. The Applicant's first contention is that his position was declared redundant under the wrong Staff Rule. His position was not abolished because he did not have a different "set of functions" from the other SFOs. The Bank should have used para. 8.02(d) of Staff Rule 7.01, not para. 8.02(b). At the time of his redundancy, para. 8.02(b) provided that employment may be declared redundant when "[a] specific position in an organizational unit must be abolished." BCFBD did not abolish his position because all the SFOs in BCFBD were employed with the same position descriptions. His position was not "unique and significantly different" from the positions of the other SFOs as contended by the Bank, which mischaracterized the work assigned to each of the SFOs within his group.

40. He disagrees with the Bank's argument that he worked exclusively or nearly exclusively on IDA countries, and asserts that the other SFOs who were not declared redundant did not work nearly exclusively on non-IDA countries. "People worked across the whole spectrum of Bank clients, both IBRD and IDA, and did not specialize in one or the other." He argues that it is difficult to distinguish the individual work of each SFO because they worked as a team and did not have narrowly circumscribed individual assignments. The Bank's attempt to justify its decision to declare his position redundant on the basis that he had not worked previously in a government debt office or in a central bank was arbitrarily applied to him and not to Ms. Togo.

41. The Applicant also contends that the percentages used by the Bank to describe the amount of work he did on IDA countries and risk modeling are "apparently made up out of thin air." He adds that those percentages have no supporting evidence, and are very different from his estimation and that of his former supervisor, Mr. Jensen, the person best placed to make a reliable assessment.

42. The Applicant further points out that para. 8.02(d) provided that employment may be declared redundant when "[s]pecific types or levels of positions must be reduced in number." The difference between the two paragraphs is significant. Had para. 8.02(d) been applied, it would have led to a different outcome because it requires management to assess the pool of staff members whose numbers needed to be reduced. He points to the record of his performance, which had always been "stellar"; he was the most senior SFO in BCFBD, and he was the only SFO with "direct experience and the skill to work on both aspects of the work of BCFBD, namely, public debt management and IBRD financial products." He concludes that because the wrong rule was applied he was wrongly selected for redundancy.

43. The Bank rejects these assertions and contends that there are material distinctions between the work in public debt management in IBRD and IDA countries. The advice provided by BCFBD to IDA countries is at a basic level, and could have been delivered by other parts of the Bank, such as PREM, without the need for the high financial expertise that is required for IBRD countries.

44. Furthermore, the Bank disagrees with the Applicant's assertions that the assignments of each of the four SFOs in the Debt Management group were interchangeable. Although it admits that the Applicant may have contributed to assignments related to IBRD countries, the core of his job centered on delivering training to IDA borrowers and the Modeling Project.

45. The Bank also notes that the Applicant's disagreement about the description of his work program emerged only after he had been unable to secure another position at the Bank, towards the end of the six-month search period. The Bank points to the fact that when the Applicant learned of the redundancy and the reasons for it, he did not dispute the factual basis for the decision, either in relation to the description of his work or the business rationale for the decision. Accordingly, his contentions are unfounded.

46. The Applicant contends that the Bank has sought to justify the redundancy by applying para. 8.02(b) of Staff Rule 7.01 in an amended form in circumstances in which it did not apply. Para. 8.02(b) was amended in September 2004. The amended para. 8.02(b) provides that employment may be declared redundant where "[a] specific position *or set of functions* performed by an individual in an organizational unit must be abolished." (Emphasis added.)

47. The Applicant claims that the Bank's argument that he performed a set of functions different from the other SFOs is false, and requires that "modifications to a Staff Rule ... that did not exist at the time [TRE] management selected [the Applicant] for redundancy ... be applied retroactively." At the time of the redundancy, the Staff Rule provided that employment may be declared redundant when a "specific position in an organizational unit must be abolished." The Bank's justifications for the Applicant's redundancy "[a]t best ... go to whether he performed a set of functions that BCFBD was abolishing." That was not the text of the rule at the time he was selected for redundancy. Accordingly, the Applicant argues, even if he performed a set of functions that was being abolished, this is not decisive because the proper question to ask is whether a specific position was being abolished. There were seven SFOs. The position of SFO was not abolished; the number of SFOs needed to be reduced. It follows that para. 8.02(d) of Staff Rule 7.01 should have been applied.

48. The Bank asserts that the rationale used for the Applicant's redundancy was that his job was abolished. While the rationale also mentioned that the *functions* assigned to the abolished position would not be reassigned, it was clear that the rationale used fell within the language of the Staff Rule at the time the redundancy decision was taken. The Bank denies that it sought to apply the amended language retroactively.

49. The Applicant argues that management unfairly discriminated against him when it "targeted" him for redundancy instead of making a "carefully considered choice between all of the SFOs." This amounted to a violation of the Bank's own Principles of Staff Employment. Specifically, the Applicant alleges discrimination on the basis of race and age, invoking *Hitch*, Decision No. 344 [2005]. He points to the fact that one "white" staff member was promoted, and another was hired, at the time that his position was declared redundant, although it was well known at the time that Africans were underrepresented throughout the Bank. He contends that the Bank had improperly and erroneously assumed that he was suitable only for work in Africa and points to the fact that management only looked for alternative employment in the Bank's Africa Region when assisting him to find alternative employment and described him to other potential employers as "a Canadian citizen of African heritage."

50. The Applicant cites the fact that the three oldest members of the group were declared redundant as evidence of discrimination on the basis of his age, and that when Mr. Wheeler recommended him for alternative employment, he clearly identified him as a 54 year-old Canadian. This information was not relevant to a representation of suitability for employment.

51. The Applicant contends that one can infer discrimination from the Bank's failure to challenge these facts.

52. The Bank responds that the facts on which the Applicant relies are insufficient to conclude that either race or age was taken into account in the decision to make him redundant. The Applicant was not the only staff member to be made redundant in TRE. The other staff members were a diverse group of European, Asian and African origins and ranged in age from 31 to 57.

53. The evidence of Mr. Lay and Ms. Grandolini before the Appeals Committee that neither race nor age were considered in the redundancy decision was not, in the Bank's view, properly challenged.

54. The Bank asserts that the Applicant's allegations of discrimination were made for the first time in December 2004, about six months after he was informed of the redundancy decision. As to the contentions relating to the under-representation of Africans, the Bank insists that its commitment to diversity cannot protect any individual person from actions that are rationally taken to meet legitimate business needs and implement budgetary reduction. Whereas Principle 4(a) of the Bank's Principles of Staff Employment requires managers to consider race in the hiring process, the Bank's redundancy rules prohibit such considerations.

55. The Applicant claims that his immediate supervisor selected three Regional Financial Officers before the date of the Applicant's actual termination, but after he had received a notice of redundancy. These three positions had not been advertised and the Applicant "unquestionably" met the requirements of the positions. The fact that another department funded the positions is also irrelevant because Ms. Grandolini had the

authority to hire for these positions. Whether the Applicant had applied for the positions should be irrelevant because management was responsible under the Staff Rules for offering him one of these positions for which he clearly qualified. By failing to do so, it acted contrary to Staff Principle 7.1(b)(iii).

56. Staff Principle 7.1 (b)(iii) permits redundancies only if “no vacant position in the same type of appointment exists for which the Organizations determine that the staff member is eligible and has the required qualifications or for which he or she can be retrained in a reasonable period of time.” The new positions were similar to the ones for which the Applicant was qualified. Even if the Applicant lacked some of the qualifications, he could have been retrained within a reasonable time. Finally, Staff Rule 7.01, para. 8.06, provides that placement also may be offered in a vacant lower level job. The Applicant should at least have been offered one of the lower graded positions for which he clearly qualified.

57. The Bank explains that three SFO positions were created in three regions with major IBRD borrowers to promote better coordination between operational units and the Financial Products group in BCFBD. SFRM provided the funds for these positions. Each position reported first to the regional managers and to Ms. Grandolini secondarily. These SFOs joined TRE temporarily for training until they were ready to be deployed to the regions. Accordingly, there were not three new positions in TRE. Furthermore, the Bank contends that the Applicant was aware of these positions but expressed no interest in them, and they were significantly different from the one held by the Applicant. He was not entitled to automatic reassignment to any of these jobs.

58. The Applicant claims that management was aware early in 2004 that budget cuts were likely and that it could achieve these cuts by normal attrition. Accordingly, the decision to hire a new SFO at the same level as the Applicant in the context of impending budget cuts “was an abuse of discretion.” In any event, given the wording of the vacancy announcement, which listed as criteria “general knowledge of Bank operations and lending instruments and CAS preparation and implementation process,” he would have been qualified for the new position.

59. The Bank counters that Mr. Navarro-Martin was hired after an open and transparent selection process; the most important hiring criteria were operational experience and a demonstrated ability to work as a task leader in multi-disciplinary teams. Mr. Navarro-Martin had the operational experience, and management considered that he would be able to learn the financial aspects of the job within a reasonable time. The Applicant, on the other hand, had a background in finance; he lacked the required operational experience, and it was reasonably considered that he could not compete with the candidates who worked in operations.

60. Furthermore, although management expected some budget cuts at the time they extended an offer to Mr. Navarro-Martin, they did not anticipate the severity of the cuts which they ultimately had to implement. The offer, which Mr. Navarro-Martin accepted the same day it was made, could not be withdrawn almost a month later when the cuts were announced. The decision to fill the position was appropriate because it filled a business need.

### *Considerations*

61. As the Tribunal has stated many times, most recently in *Prakas*, Decision No. 357 [2007], para. 33:

[i]t recognizes the discretionary nature of redundancy decisions and that such decisions are subject to only limited review. The Tribunal will invalidate a redundancy decision only in cases of abuse of discretion or where the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (*Mahmoudi (No. 2)*, Decision No. 227 [2000]; *Yoon (No. 2)* Decision No. 248 [2001]).

It is not disputed that, as set out in Staff Principle 7.1:

...

b. Separations may also be initiated by The World Bank or the IFC. They shall be based on the needs for



efficient administration and for upholding the standards of the Organizations. Staff members separated at the initiative of the Organizations have the right to be notified in writing of the decision and the reason for it, which shall be based on the following:

...

iii. when the Organizations determine that a position or positions are no longer necessary, or that the responsibilities of a position have changed so that the staff member is not qualified to fill it, provided that no vacant position in the same type of appointment exists for which the Organizations determine that the staff member is eligible and has the required qualifications or for which he or she can be retained in a reasonable period of time.

62. The relevant Staff Rule 7.01, para. 8.02, applicable at the time the Applicant was declared redundant, provided that:

Employment may become redundant when the Bank Group determines in the interests of efficient administration that:

- (a) An entire organizational unit must be abolished;
- (b) A specific position in an organizational unit must be abolished;
- (c) A position description has been revised, or the application of an occupational standard to the job has been changed, to the extent that the qualifications of the incumbent do not meet the requirements of the redesigned position; or
- (d) Specific types or levels of positions must be reduced in number.

63. The Applicant does not dispute that the budget cut of 6.3 percent was substantial, nor that it was unexpected and far exceeded the level of reduction which the Applicant's managers had reasonably predicted in early 2004. Nor does the Applicant challenge the Bank's conclusion that because staff costs comprised the bulk of its expenses, in order to meet the budget, management in the unit would be forced to reduce staffing levels "in the interests of efficient administration." The Applicant's major contention is that a *specific position* was not abolished. The Tribunal must therefore consider whether the Applicant's work program was sufficiently different from that of other SFOs within the unit as to amount to a specific position within the meaning of para. 8.02(b). As the Tribunal declared in *Aziz*, Decision No. 162 [1997], paras. 31 and 32:

The question of identifying the specific provision of Staff Rule 7.01 under which the position of the Applicant was declared redundant is of considerable importance, since the Respondent's obligation vis-à-vis the staff member under paragraph 8.02(d) of Staff Rule 7.01 is different from that under paragraph 8.02(b). In situations where positions are reduced in number, the selection of staff members whose positions are to be declared redundant under Staff Rule 7.01, paragraph 8.02(d), must take into account certain elements specified by Staff Rule 7.01, paragraph 8.03, namely:

- (a) the performance of staff members;
- (b) whether the abilities and experience of staff members can be used elsewhere in the Bank Group; and
- (c) the existence of volunteers for termination who are willing to accept severance payments pursuant to paragraph 8.08.

On the other hand, if the declaration of redundancy is based on paragraph 8.02(b), the right to reassignment of staff members whose positions were abolished is determined by the general principles governing reassignment of staff members whose employment is terminated.

The question thus arises in this case whether the new positions that were created were in fact different from the one previously occupied by the Applicant or whether, on the other hand, they were in fact essentially the same.

64. The Tribunal has had occasion to consider whether work “was materially different from or essentially the same as the ... position previously occupied by the Applicant.” *Ezatkhah*, Decision No. 185 [1998], para. 17. In *Brannigan*, Decision No. 165 [1997], para. 23, the Tribunal held that:

To demonstrate the abolition of a position it is not enough that there may be some differences between the old and new positions; the differences must be ones of substance. The Tribunal has emphasized in this respect the need for the Bank to show a clear material difference between the new position and the position that was made redundant.

65. The Bank’s contention is that the word *position* in para. 8.02(b) of Staff Rule 7.01 denotes a work program rather than a named position, and that the Applicant’s work program related in large part, even if not exclusively, to risk modeling work – and this mainly with IDA countries, whereas the work of the other SFOs related to IBRD countries and their work was more varied. Thus when management legitimately removed that work, the Applicant had no job in the sense of a work program, and his former position inevitably became redundant. The Tribunal noted in *Aziz*, para. 34, that “[i]t will often be the case that some duties will be carried over from an abolished position to a newly created one, and that a staff member will be able to demonstrate the needed skills in the job application process. But that does not mean that the two positions are the same.” The focus of the enquiry should not be, as the Applicant contends, on whether the Applicant was equally well qualified to perform IBRD work, but whether the work he actually performed at the relevant time was materially different from that of the other SFOs. For several years before early 2004, the Applicant’s work program had focused primarily on developing and delivering training courses for various groups of countries. He also developed TRE’s outreach program to regional organizations, including MEFMI and CEMLA. Although it is not disputed that the other SFOs, namely Ms. Currie, Mr. Jessen and Ms. Togo, participated in a number of these programs, such programs were the Applicant’s main responsibility as developer and primary organizer. The Applicant’s work program had increasingly been devoted to outreach programs and risk modeling, primarily although not exclusively to IDA countries. More significantly, given the new direction of TRE, the Applicant had not been involved in providing technical assistance or completing any country assessments. Ms. Currie and Mr. Jessen provided such technical assistance and developed country assessment programs, some of which involved IDA countries. Yet the bulk of their work was with IBRD countries. There was clearly some overlap between the work of some of the SFOs and that performed by the Applicant. This overlap is more marked, however, when comparing the Applicant’s work with that of Ms. Togo.

66. An examination of the OPEs for Ms. Togo shows that in the review period 2001-2002 her work was similar to that of the Applicant. She was involved in risk modeling, performed advisory work for an IBRD country, and also participated in training. Had the focus of this enquiry been on that period, there would be little doubt that there was a substantial overlap between the Applicant’s work and that of Ms. Togo. Her risk modeling and training work, however, diminished over time. During 2002, her OPE shows that she had been involved more predominantly in IBRD work. This continued in 2003. Her OPE for that year shows that she had become more involved in research and assistance relevant to IBRD borrowers, and that her research work related to issues outside of risk modeling, in areas of sound practices and general debt management. It would appear from the evidence tendered at the Appeals Committee, and from an examination of the OPEs, that although Ms. Togo’s work was somewhat similar to that of the Applicant, she had become more involved in research and her role in training receded. The Tribunal accepts that the Applicant’s post was declared redundant chiefly because the Risk Modeling Program was being eliminated. That program had been the Applicant’s primary project. Although some or all of the other SFOs participated from time to time in that program, their work had increasingly diverged from his. In the Tribunal’s view, it was not improper for management to consider the work of the Applicant, and of the two other SFOs who were declared redundant at the same time, as sufficiently different from that of the other SFOs as to bring it within the scope of para. 8.02(b) of Staff Rule 7.01. The fact that the Applicant and many of his colleagues in the Unit were all classified as SFOs and were appointed against the

same job description does not mean that they did the same work.

67. The Applicant contends that, based on Staff Principle 7.1 (b)(iii), redundancies are permitted only if “no vacant position in the same type of appointment exists for which the Organizations determine that the staff member is eligible and has the required qualifications or for which he or she can be retrained in a reasonable period of time.” He claims that his immediate supervisor selected three Regional Financial Officers prior to his actual termination, but after he received a notice of redundancy. These three positions had not been advertised, and the Applicant “unquestionably” met the requirements of the positions. The Applicant adds that whether he had applied for the positions should be irrelevant because management was responsible under the Staff Rules for offering him one of these positions for which he clearly qualified. By failing to do so, the Bank acted contrary to Staff Principle 7.1(b)(iii). He further argues that even if the Bank considered that he did not have the necessary operational experience, he could have been retrained within a reasonable time.

68. Furthermore, the Applicant argues that the Bank should not have hired Mr. Navarro-Martin, an SFO at level G, when it knew early in 2004 about some upcoming budget cuts. He asserts that the Bank abused its discretion in doing so. Moreover, he complied with the criteria listed for the position, specifically, “general knowledge of Bank operations and lending instruments and CAS preparation and implementation process.” He finally asserts that the Bank could and should have withdrawn its offer to Mr. Navarro-Martin upon learning of the severity of the budget constraints, thereby eliminating the need to abolish his position.

69. The Bank answers that the three Regional Financial Officer positions were created to promote better coordination between operational units and the Financial Products group in BCFBD. TRE did not fund these positions, which were not TRE positions. SFRM funded them, and they would ultimately be located in the regions. The Bank explained that staff members who were hired into these positions were to start at TRE in order “to build up their financial products work/knowledge and get up to speed on the resources TRE can bring to bear in the ALM, Capital markets, asset management and treasury operations business.” This was a temporary placement; they would transfer to their respective regions within a few months, after completing their training. Furthermore, the Applicant never expressed interest in these positions, although he knew about them. They were significantly different from the position held by the Applicant, and he was therefore not entitled to reassignment to these jobs.

70. As to the position filled by Mr. Navarro-Martin, the Bank responds that he was hired through an open and transparent selection process, where the most important criteria were operational experience and demonstrated ability to work as a task leader in multi-disciplinary teams. The Bank argues that Mr. Navarro-Martin had much needed operational experience which the Applicant lacked. Filling that position was appropriate because it filled a business need. The budget cuts required TRE to prioritize its work programs and eliminate activities that produced limited results. It also required TRE managers to redeploy funds in areas where they would be most effective.

71. The Tribunal held in *Aziz*, para. 42, that “[t]he obligation of the Respondent ... is not to reassign staff members whose employment was declared redundant under Staff Rule 7.01 but to try genuinely to find such staff members alternative positions for which they are qualified. It is an obligation to make an effort; it is not an obligation to ensure the success of such effort.”

72. With respect to the specific positions to which the Applicant believes he was entitled, the Tribunal notes that the Bank’s decision not to offer the Applicant these positions was within his managers’ discretion. Unless the Applicant can show evidence of abuse of discretion, the Tribunal should not invalidate the decision.

73. The evidence demonstrates that the Applicant has had limited exposure to operations throughout his career, especially in the last few years. Prior to joining the Bank, he had taught at various universities. In the first few years after he joined the Bank, he developed some of the new financial products ultimately used by various countries receiving assistance from the Bank. He also actively participated in a case study on Tanzania and ultimately published its findings and recommendations, which were used as a model for other countries. However, the Applicant was not involved in providing direct technical assistance to any particular country, or

conducting needs assessments. During his last three years at the Bank, he worked primarily on developing and delivering training courses and workshops on risk modeling for both IDA and IBRD countries. He developed and expanded TRE's outreach program and partnership efforts with regional organizations.

74. Accordingly, while some of his responsibilities at the Bank in his early years may have involved some operational work, the focus of his work program in the last three years of his Bank career focused almost entirely on training. The Tribunal finds that the managers' determination that he did not have the operational experience required of the positions held by the three Regional Financial Officers and Mr. Navarro-Martin appears reasonable.

75. Furthermore, the Tribunal observes that the Bank went to considerable lengths to help the Applicant find another position. His managers sent e-mails enquiring about openings, sent referrals, made suggestions, paid for training and travel to facilitate contacts with potential employers, and met with the Applicant many times to discuss his options. The Bank complied with its obligation to "try genuinely to find [him] alternative positions."

76. The Applicant's claims of abuse of discretion because the Bank discriminated against him based on his racial origins and age have not been established. The Applicant's claim of discrimination on the basis of race is in essence that people from sub-Saharan Africa are under-represented in the Bank, that TRE declared a disproportionate number of Africans redundant between 2003 and 2005, and that despite this, a "white" staff member was promoted and another was hired at the same time he was declared redundant. Furthermore, during the six-month job search, when Bank management was ostensibly assisting him to secure alternative employment, his managers focused only on the Africa region as a likely source. This effectively pigeon-holed him as a Black African rather than as an individual with relevant attributes. The Applicant claims support for this contention in Mr. Wheeler's reference to his racial origins. The Tribunal observes that, while "discrimination takes place where staff who are in basically similar situations are treated differently," *Crevier*, Decision No. 205 [1999], para. 25, "it is necessary for an applicant to introduce facts supporting a claim of individualized wrongdoing which amount to a violation of his or her own terms of employment." *Njovens*, Decision No. 294 [2003], para. 17. Discrimination must be linked to a specific decision or course of conduct that is made on the basis of a prohibited ground. Furthermore, the Applicant does not challenge the Bank's contention that whereas the Principles of Staff Employment require managers to consider geographic diversity, which may include race, in the hiring process, that consideration is not permitted in making redundancy decisions. The Tribunal is not convinced that the selection of the Applicant for redundancy was affected by the fact that his origins are African, or that the reference to his origins during the course of his job search had any, let alone material and adverse, impact on the Applicant's candidacy for any position in the Bank or elsewhere. The Tribunal concludes that the Applicant's allegations of race discrimination lack foundation.

77. The Applicant's claim of age discrimination is not supported by the record. He relies on the fact that he and the two other persons who were declared redundant at the same time were the oldest in the Unit, and that his age was mentioned in the same letter as the reference to his African origin. The evidence suggests that it was fortuitous that all three were in the same Unit. As the Tribunal stated in *Hitch*, Decision No. 344 [2005], para. 53, it is

[e]specially undesirable, when comparing candidates during a selection process [that] reference [be] made to age and race in a manner which results in singling out or setting apart one person; there, the impression is created that extraneous factors are being taken into account when making important employment recommendations or decisions. This is all the more so in a multinational organization like the World Bank which, under its Principles of Staff Employment, has as its mandate the hiring of high-caliber employees and the fostering of their equal treatment by disallowing unjustifiable differentiation on the basis of age, culture and gender while, at the same time, respecting the need for diversity.

But the Tribunal notes that this, in contrast to *Hitch*, is not a case in which older members of a group are identified by reference to their age. All the SFOs within the Unit were affected, and it was happenstance that they were also the oldest. There was no prejudicial comparison between the Applicant and the other SFOs.

78. The Tribunal concludes that the Bank properly exercised its discretion when it identified the Applicant's work and therefore his position as redundant; it did not apply an inappropriate staff rule; nor was its conduct in the post-redundancy period improper; and the claims of discrimination on the basis of age and race lack substance.

**Decision**

For the above reasons, the Tribunal dismisses the application.

/S/ Jan Paulsson  
Jan Paulsson  
President

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

At Paris, France, 24 May 2007