



World Bank Administrative Tribunal

2014

Decision No. 493

**Jocelyne O. do Sacramento,
Applicant**

v.

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

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

**Jocelyne O. do Sacramento,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani and Marielle Cohen-Branche.
2. The Application was received on 6 September 2013. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the decision of the Bank to declare her employment redundant.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in July 1992 as an Administrative and Client Support (“ACS”) assistant at the Paris Office on a two-year fixed term contract which was later converted to an open-ended appointment. While working for the Bank, the Applicant completed Bachelor and Master of Science degrees in Business Management and Organization Development respectively. At the time of the termination of her employment on 1 September 2012, she was an Operations Analyst (HIV/AIDS & Transport Specialist and the Focal Person for HIV/AIDS) in the Africa Technical Families Transport Sector (“AFTTR”) at level GE.
5. The Applicant’s position in AFTTR was created in 2004 as part of the Bank’s effort to address urgently the recognized problem of HIV/AIDS in developing countries.

Her Overall Performance Evaluations (“OPEs”) showed that she was a consistently good performer. The Applicant assisted Task Team Leaders (“TTLs”) in monitoring and managing transport projects with HIV/AIDS components. The Applicant’s workload increased steadily over the years. After 2007, however, the Bank’s operational approach to HIV/AIDS prevention changed gradually and was integrated in various ways into the workflow of projects: HIV/AIDS issues were being routinely addressed as part of mainstream projects activities. In the Transport Sector, the requirement for HIV/AIDS prevention activities was routinely inserted into civil works contracts. Those activities were supervised by social safeguards specialists, and there was no longer a need for a separate HIV/AIDS specialist position such as the Applicant’s.

6. Between 2009 and 2012, the Applicant, on her own initiative, and alongside her normal duties, took a number of available training courses in the Bank in order to become involved in social safeguards projects and thus diversify her experience.

7. In June 2010, the Applicant approached the Sector Director, AFT Sustainable Development Network (“SDN”), with her concerns regarding her work program. The Sector Director suggested a Developmental Assignment (“DAIS”) in a position outside the unit, supporting the Sector Director on work for the African Diaspora Program. Her efforts, however, did not result in a DAIS for the Applicant.

8. In the Applicant’s 2010 OPE covering the period from 1 April 2009 to 30 June 2010, her former manager and the Reviewing Manager had recommended that the Applicant acquire added visibility for her career development and broaden her support on HIV/AIDS to other sectors in order for other operations teams to benefit from her considerable knowledge.

9. In February 2011, Ms. T became the new Sector Manager in AFTTR and the Applicant’s supervisor.

10. On 12 September 2011, the Applicant had her OPE discussion with Ms. T. According to the Applicant, during the meeting, among other things, Ms. T suggested that the Applicant seek a DAIS in a social safeguards unit outside the Africa Region. She however emphasized that no budget would be provided by AFTTR for such a DAIS.

11. On 19 September 2011, Ms. T sent an e-mail message to the Sector Manager, Social Development, Africa Technical Families, Fragile States, Conflicts and Social Development (“AFTCS”), exploring the possibility that his unit mentor the Applicant and that she become one of the social safeguards specialists. She explained that AFTTR could not provide the Applicant a full time work program on HIV/AIDS issues alone. That same day, the Sector Manager, AFTCS, responded that there were not enough senior staff to mentor and train staff at the operations analyst level on social safeguards. He also stated that they did not have “the budget to allow staff not already part of ... task teams to participate in safeguards missions, which would be essential to complement any training or mentoring in [Headquarters].”

12. According to Ms. T, during that same period, she had a discussion with the Sector Manager of the SDN’s Transport Unit (“TWITR”) in order to place the Applicant in TWITR as a gender specialist. However, the Applicant did not have the educational background or experience for a position as a gender specialist.

13. By e-mail of 27 September 2011, the Applicant reiterated to Ms. T her plans to build on her recent social safeguards training. She stated:

I am a little bit hesitant about the DAIS assignment because it might take us to a dead end, considering the budget cut in the institution. I was thinking of “on the site training” in conjunction with a mentor supervision and ties with possibilities of cross support opportunities. While I recognize that the need for my HIV expertise has leveled off, I note that AFTTR projects require these days more substantial social safeguards support.

14. The Applicant proposed a detailed outline for a professional growth program of 6 – 12 months.

15. Ms. T responded that she had checked with safeguards colleagues about providing the Applicant with “on-the-job” training, although to no avail. She suggested that the Applicant discuss directly “with colleagues in [the] Safeguards unit.”

16. On 11 October 2011, Ms. T signed the Applicant’s OPE which covered the period 1 July 2010 through 30 June 2011 (“2011 OPE”). While acknowledging the Applicant’s contribution to the AFTTR HIV/AIDS agenda and the Applicant’s enthusiasm and dedication to her work and capacity to integrate teams, she noted in the OPE that

the task on HIV/AIDS in the Transport [S]ector continued to be shrinking as many awareness and preventive activities were main-stream[ed] in the civil works contract[s]. [The Applicant] continues to work hard to expand her skills in support of the Africa Region drive towards multi-sectoral projects in potential areas such as social safeguards in transport projects. In order to gain relevant skills in the social safeguard issue, [the Applicant] is encouraged to seek [an] on-the-job training opportunity with any social safeguard units as it could be the most effective way to diversify her skills. This will also help her to ensure a better match between her skills and AFR business needs.

17. Around that time, Ms. T informed the Applicant that she was considering making her position redundant. The Applicant consulted with Human Resources (“HR”), the Staff Association, the Ombudsperson, and obtained advice from other staff at managerial level in order to discuss her options. In the following months, the Applicant attempted to continue to work but her manager did not include her in planned missions and advised her in a meeting in December 2011 to concentrate only on looking for a “new job” outside the Africa Region.

18. On 5 January 2012, the Office Manager of AFTTR offered the Applicant an ACS position. The Applicant was “shocked.” She explains that she rejected that offer because the position was substantially below her qualifications. She points out that the Office Manager made that offer to her verbally while running into her in the corridor. Ms. T explained before Peer Review Services (“PRS”) that this offer had been made in order to accommodate the Applicant’s request to HR to stay employed by the Bank for four more

years and thereby enjoy an increased pension under the so-called “Rule of 85.” According to Ms. T, the Applicant would have occupied that position until a GE level position became available in the Applicant’s unit about eighteen months after the declaration of the redundancy of her position when the staff member holding that position would retire. The Applicant denies having been given the foregoing explanation.

19. In the meantime, the Applicant, through her own efforts since mid-December 2011 had secured prospects for a DAIS in the East Asia and Pacific Region starting July 2012. The TTL of the transport project in Papua New Guinea and his team needed someone to take care of the increasing HIV/AIDS activities in the region and the Applicant had e-mail exchanges with them. Subsequently, the Applicant had e-mail exchanges and meetings with the Social Safeguards Coordinator and other TTLs as well as the Director of Safeguards in the Social Development Department in the Pacific Region.

20. The Proposed Staff Redundancy Form for the Applicant was reviewed and approved by the Severance Review Group (“SRG”) and was signed on 23 February 2012.

21. In describing the post to be abolished it stated in pertinent part:

The Transport Unit in the Africa Region is abolishing a GE level, Operation Analyst position based in HQ. The position was created six years ago when the HIV/AIDS was a pandemic issue globally, and specifically in Africa region. The position was primarily to work on HIV/AIDS issues in the transport sector in the Africa region. The duties of the position focused around the coordination of task teams, consultants and clients to mainstream HIV/AIDS prevention into the Project Appraisal Documents and implemented in procurement bidding documents.

The unit had prepared and implemented one HIV/AIDS Transport corridor project (covering Cote d’Ivoire, Ghana, Benin, Togo, and Nigeria) in 2003. The project was implemented successfully and closed in 2007. Once the unit completed mainstreaming HIV/AIDS awareness and prevention into civil works contracts, the contractors were required to provide HIV/AIDS clinics in the construction camp sites as well as sensitizing the workers and villagers along the construction road regarding the preventive measures for the disease. The Bank’s coordination became less intensive and unneeded directly in the transport sector. The staff occupying this

position had also been coordinating any HIV/AIDS activities with the [AIDS Campaign Team for Africa (“ACT”) Africa] (a unit dedicated for HIV/AIDS activities in the Africa region), but the ACT Africa unit was dismantled last year. The abolition of such position would result in the redundancy of an existing staff member, [the Applicant].

22. It also stated:

[T]here has been a protract[ed] lack of a full work program for this position for more than three years. The unit has tried to diversify the affected staff member to other lines of business, but was not successful, due partly to the staff’s lack of interest in other business lines, and partly to the lack of budget to support her intensive training for diversification. After many efforts and a few years passed, it has become clear that there is no justification to keep this position.

23. The Proposed Staff Redundancy Form also discussed efforts made to place the Applicant in alternative positions before the declaration of the redundancy and stated that the Senior Human Resources Officer (“HRO”) had discussed with her the implications of separating under “Redundancy, Mutually Agreed Separation and Early-Out,” but she had expressed a preference for redundancy.

24. Before the SRG approved the redundancy, there were questions posed by one of its members. As a result, the write-up for the proposed redundancy was revised and upon further review and questions by the Lead HR Specialist of the Human Resources Unit Corporate Operations (“HRSCO”), and Chair of the SRG, Ms. T added a paragraph explaining the difference between the Applicant’s position and that of the other two Operations Analysts.

25. Upon receipt of the clarification from Ms. T, the redundancy proposal was finalized. The SRG then forwarded the Proposed Staff Redundancy Form to the Africa Region Vice President for approval. The Director of Strategy and Operations for Poverty Reduction and Economic Management signed the Proposed Staff Redundancy Form and the Notice of Redundancy on behalf of the Vice President.

26. On 1 March 2012, the Applicant received the redundancy notice signed 23 February 2012, which stated that her employment had become redundant with effect from 1 March 2012 and that this decision had been taken in accordance with Staff Rule 7.01, paragraphs 8.02(b) and 8.03. It also informed her that during the six-month reassignment/termination notice period, she would be notified by Lotus Notes of any suitable vacancies in her type of appointment and grade and encouraged her to work closely with her HR Team and the staff in the Job Search Center, including a career counselor, in this endeavor. It added that if the job search efforts proved unsuccessful, her employment would be terminated on 1 September 2012 in accordance with Staff Rule 7.01, Section 8, and that she would be entitled to severance payments and other benefits.

27. Thereafter the Applicant continued to pursue the opportunity in the East Asia and Pacific Region referred to in para. 19 above. She briefed the Ombudsperson and the Conflict Resolution Coordinator on her situation and was introduced to the Lead HR Specialist in HRSCO (and Chair of the SRG) who suggested an assignment under the Institutional Staff Resources Program (“ISRP”) for the opportunity in the East Asia and Pacific Region, and even committed to finance one-third of the Applicant’s salary and benefits for the 18 months period of the ISRP assignment. Both the Director of Sustainable Development in AFT, and the Sector Director of Sustainable Development in East Asia and Pacific Sector Units, appeared to support the idea by committing one-third each of the funds for the position, and the latter noted that he was for it “in principle” provided there were no issues with the Applicant’s performance.

28. By e-mail dated 13 August 2012, the Sector Director of Sustainable Development in East Asia and Pacific Sector Units informed the Applicant that there was no position for her in the East Asia and Pacific Region. He stated that while there was demand for safeguards support, the Applicant did not have the skills and experience needed for these assignments. He also added that the HIV components in the transport projects in the region were covered under the contractual arrangements for these projects and did not constitute a significant work program for her.

29. The Applicant explains that she was disappointed as she had received many supportive e-mail messages from TTLs in the region who were trying to create a work program for her.

30. The Applicant's employment was terminated effective 1 September 2012. Following an unsuccessful request for review with PRS, of, *inter alia*, the Bank's decision to declare her employment redundant, the Applicant filed an Application with the Tribunal on 6 September 2013.

31. The Applicant requests the Tribunal to order: (i) the rescission of the redundancy decision; (ii) compensation for economic damages (lost salary and pension) and emotional distress in the amount of three years' salary; and (iii) legal fees and other costs in the amount of \$5,698.17.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's main contentions

32. The Applicant contends that: (i) there was no legitimate business rationale for the redundancy decision; (ii) the Applicant's managers did not make sufficient efforts to retrain her; (iii) the redundancy decision was discriminatory and made only on grounds of the Applicant's age; (iv) the redundancy decision is invalid for procedural reasons, because it did not follow proper process and misleading information was provided to the decision-makers involved in approving the redundancy; and (v) no proactive, good faith effort was made to help the Applicant locate another position before and after her position was declared redundant.

The Bank's main contentions

33. The Bank contends that: (i) the decision to declare the Applicant's position redundant was based purely on reasonable business factors; (ii) there is no evidence of improper motivation or bias in the redundancy decision; (iii) the Bank followed all the

applicable policies and procedures and made more than reasonable efforts to find alternative employment for the Applicant before and after the redundancy decision; and (iv) the fact that these efforts were ultimately not successful is not in and of itself wrongful.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

34. The scope of the Tribunal's review of redundancy decisions is well-established. In *Harou*, Decision No. 273 [2002], para. 27, the Tribunal held:

The decision to declare a staff member redundant is an exercise of discretion. Review by the Tribunal is limited to cases where there has been an abuse of discretion, such as where a decision is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (*Kahenzadeh*, Decision No. 166 [1997], para. 20; *Mahmoudi (No. 2)*, Decision No. 227 [2000], para. 24). An applicant must show a *prima facie* case of abuse of power (*de Raet*, Decision No. 85 [1989], para. 57). The Tribunal notes, however, that it is often difficult for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion, and that it is incumbent on the Tribunal to require the strictest observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy:

Otherwise, ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in "the interests of efficient administration." (*Yoon (No. 2)*, Decision No. 248 [2001], para. 28; *Husain*, Decision No. 266 [2002], para. 50.)

Legitimate rationale

35. The Applicant claims that there was no legitimate rationale for the abolition of her position and that she had a full work program before and after the declaration of redundancy and points to activities she undertook on non-HIV/AIDS related projects, including as a TTL. The Bank responds that the Applicant continued to work full time only because she found projects to fill her time but, although she made contributions to the

projects, she “was no longer central to the projects.” Staff Rule 7.01 “Ending Employment,” paragraph 8.02, “Definition of Redundant Employment” prescribes that

Employment may become redundant when the Bank Group determines in the interests of efficient administration, including the need to meet budgetary constraints, that:

(b) A specific position or set of functions performed by an individual in an organizational unit must be abolished.

36. The Tribunal has held that it will not interfere with the Bank’s discretionary decision to declare redundant employment provided that this decision is based on a legitimate rationale and is taken in the interests of efficient administration. (*See e.g. Marchesini*, Decision No. 260 [2002], paras. 30 and 35.) It has also held in *Ezatkah*, Decision No. 185 [1998], para. 14, that “the factors determining whether a reorganization is efficient include not only the staff budget, but also the redefined work strategies and the priorities resulting from the new structure.”

37. A review of the record shows that the reason for the abolition of the Applicant’s post in early 2012 pursuant to paragraph 8.02(b) was the lack of a business need for the set of functions she performed in her position in AFTTR. In her post as Operations Analyst, the Applicant was the HIV/AIDS & Transport Specialist, and the Focal Person for HIV/AIDS, in AFTTR. The Proposed Staff Redundancy Form explains the circumstances for the creation of her position in 2004, and the strategic need for such a position at the time in the Africa Region at the Transport Sector. The Applicant’s position was created to assist TTLs in monitoring and managing transport projects with HIV/AIDS components in Africa. By 2007, AFTTR had prepared and implemented successfully, *inter alia*, one HIV/AIDS Transport corridor project (covering Cote d’Ivoire, Ghana, Benin, Togo and Nigeria). The Applicant had been directly involved in such successful implementation. In addition, AFTTR worked to build gradually the HIV/AIDS preventive concept into civil works construction by including it as a standard clause in civil work contracts and requiring contractors to: (i) set up HIV/AIDS clinics at the civil work camp site; and (ii) as part of the social safeguard measures under the contract, hire social workers to sensitize

and provide knowledge to workers and villagers along the construction route about the danger of HIV/AIDS and its preventive measures. Once the supervision of this HIV/AIDS element of transport projects was integrated into social safeguards, it was supervised by the social safeguards specialist in the AFTCS unit and there was no longer a need for the Applicant's position. In addition, in 2011, ACT Africa, a unit dedicated to HIV/AIDS activities in the Africa Region with which the Applicant had been coordinating the HIV/AIDS activities, was dismantled.

38. Furthermore, the need for the abolition of the Applicant's post because of a lack of a work program and the need for new skills is recognized in: (a) her discussion in June 2010 with the Sector Director, AFT, Sustainable Development Network, regarding a DAIS assignment; (b) her September 2011 OPE discussion with Ms. T; (c) the e-mail exchange between Ms. T and the Sector Manager of AFTCS exploring a possibility for his unit to mentor the Applicant in order for her to become a Social Safeguards Specialist; (d) the number of training courses that the Applicant took in social safeguards in the recent years; (e) her admission in an e-mail message of 27 September 2011 to Ms. T that "While I recognize that the need for my HIV expertise has leveled off, I note that AFTTR projects require these days more substantial social safeguards support"; and (f) in her manager's comments in her 2011 OPE where she noted that as "the task on HIV/AIDS in Transport Sector continued to be shrinking ... [The Applicant] continues to work hard to expand her skills in support of the Africa Region drive towards multi-sectoral projects in potential areas such as social safeguards in transport projects" and encouraged the Applicant "to seek [an] on-the-job training opportunity with any social safeguard units as it could be the most effective way to diversify her skills. This will also help her to ensure a better match between her skills and AFR business needs."

39. The record shows that redefined work strategies and priorities were present in AFTTR and that these led to the genuine, well-documented and progressive lack of need for and eventual abolition of the Applicant's post. The abolition was not pretextual. There was no new position that simply replaced the Applicant's position. The supervisory duties of the HIV/AIDS element of transport projects were integrated into social safeguards

functions carried out by a social safeguards specialist in the AFTCS unit. The Applicant had also realized this progressive lack of need for her position and worked towards expanding her skills with a view to assuming a social safeguards specialist position in the future.

The Bank's efforts to retrain or mentor the Applicant

40. The Applicant claims that the Bank failed to retrain her or mentor her in order to diversify her skills and eventually be placed in a social safeguards position, in view of the fact that there was no need for her skills in her current position which was being abolished. The documentation produced by the Bank in response to the Tribunal's order shows the Applicant's efforts to have herself retrained. It shows that by June 2012, the Applicant, on her own initiative, had taken a good number of courses (about 20 by her account) on safeguards issues in order to diversify her skills and work in a safeguards position in the future. The Bank indeed confirms that by the beginning of 2010, the Applicant's training record shows that she was no longer focusing her training on HIV/AIDS issues and that she was focusing instead on taking safeguards courses but claims that such training was not sufficient to assign the Applicant to a position in that field as more "on-the-job" training would have been required.

41. However, the record shows that such "on-the-job" training was never offered to the Applicant either for budgetary reasons or because of the lack of staff to mentor her. Despite the fact that the Applicant's manager had in the Applicant's most recent OPE encouraged her to "seek [an] on-the-job training opportunity with any social safeguard unit as it could be the most effective way to diversify her skills" no successful attempts were made or assistance offered to the Applicant to help her secure such "on-the-job" training. Ms. T had, first, simply suggested to the Applicant at that time (in September 2011) to pursue a DAIS in a social safeguards unit outside the Africa Region pointing out at the same time that no budget from AFTTR was available to support such a DAIS outside the Africa Region. Then, on 19 September 2011, Ms. T sent an e-mail message to the Sector Manager, Social Development, AFTCS, discussing the possibility that his unit mentor the

Applicant and that she become one of the social safeguards specialists. He responded that he did not have either senior staff to mentor and train staff, such as the Applicant, at the operations analyst level on social safeguards nor the budget to allow staff not already part of the task teams to participate in safeguard missions, essential to complement any training or mentoring in Headquarters. No further action was taken.

42. The Tribunal notes that it is doubtful that the Applicant would have been able to take up a social safeguards position, if, despite her own efforts and training, the Bank, and particularly her manager, did not provide her with effective support and assistance. This lack of assistance by the Bank with “on-the-job” training at this earlier stage adversely affected the Bank’s subsequent efforts to find the Applicant alternative employment discussed in the next section.

43. Other efforts by the Bank to assist the Applicant’s transition to another position before the declaration of the redundancy are not supported by the documentation in the record. The record only shows that the Applicant rejected an offer made before the abolition of her post to accept a Senior Program Assistant position as it was an administrative support position and therefore a downgrade. She also considered that the offer was not a serious one because it had been communicated to her in an informal manner by the Office Manager in the unit. It was later explained by the Applicant’s manager that this was a temporary offer until the Applicant moved to a position to replace one of the other Operations Analysts who was expected to retire soon. The Applicant states that she was never made aware of the prospect of eventually assuming the position of the other Operations Analyst.

Assistance in finding alternative employment after the declaration of redundancy

44. The obligation of the Bank to assist staff members in finding alternative employment is prescribed, first, in Principle 7 of the Principles of Staff Employment which states in pertinent part that staff members may be separated from the Bank

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 retrained in a reasonable period of time.

45. Furthermore, Section 8 of Staff Rule 7.01 specifies regarding reassignment and retraining of staff members after the declaration of redundancy of their employment:

8.06 Following the effective date of the notice of redundancy, the Bank Group will assist redundant staff in seeking another position within the Bank Group by providing access to My JobWorld and to a job search specialist. Staff are responsible for applying to existing vacancies in My JobWorld. Placement also may be offered in a vacant lower level job in accordance with Rule 5.06 “Assignment to Lower Level Positions.”

8.07 Following the effective date of the notice of redundancy, redundant staff may receive retraining, which may include on-the-job training, for an existing or known prospective vacancy where the manager agrees to accept the assignment of the staff member after a reasonable period of retraining. The cost of such training may not exceed three months of the staff member’s net salary and training must begin at least 60 calendar days prior to the staff member’s termination date.

46. In *Arellano (No. 2)*, Decision No. 161 [1997], para. 42, the Tribunal found that the obligation of the Bank, in this respect, “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.” In addition, in *Marshall*, Decision No. 226 [2000], para. 45 the Tribunal noted that “the job-search exercise requires efforts from both sides.”

47. The Applicant has claimed that she was not offered any assistance with regard to finding alternative employment from the Senior HRO whether before or after the declaration of the redundancy. While the Tribunal requested documentary evidence of such assistance by the Senior HRO, the Bank was unable to furnish such evidence. The Tribunal, however, notes that during the Applicant’s six-month reassignment period, it was

the Lead HR Specialist in HRSCO that suggested the ISRP assignment and funding for the Applicant to secure a position in East Asia and Pacific Region.

48. The record shows that the Applicant, first, through her own efforts, had identified an opportunity for reassignment and was actively engaged in conversations since December 2011, well before the declaration of her redundancy, to secure a DAIS in the East Asia and Pacific Region as HIV/AIDS activities were increasing in the region. She was in close contact with the TTL of the transport project in Papua New Guinea and his team as well as the Social Safeguards Coordinator and other TTLs in the region. After the declaration of the redundancy, the Applicant enlisted the assistance of the Ombudsperson who introduced her to the Lead HR Specialist in HRSCO who had also chaired the SRG that had reviewed and approved the abolition of the Applicant's post. He, in turn, suggested an assignment under the ISRP for the opportunity in the East Asia and Pacific Region and committed to finance one-third of the Applicant's salary for the 18-month period of the ISRP assignment. The applicable HR Policy explains that "the ISRP is a prestigious program – a means to recognize career excellence and contribution to the Bank." The record shows that after the intervention of the Ombudsperson, the Director of Sustainable Development in AFT, and the Sector Director of Sustainable Development in East Asia and Pacific Sector Units also agreed to finance one-third each of the Applicant's salary for the duration of the ISRP assignment. However, despite the efforts of the Applicant in this respect and the support of staff and managers in the Bank, the Sector Director of Sustainable Development in East Asia and Pacific Sector Units informed the Applicant on 13 August 2013, almost three weeks before the Applicant's termination of employment was to take effect, that

While we do have demand for safeguards support, your profile does not match the kinds of skills and experience that we would need for these assignments. We do have some HIV components in our transport projects but these are covered under the contractual arrangements for these projects and so [do not] constitute a significant work-program on our side. Therefore we do not see a good fit between your skills and our needs at this time.

49. The Applicant complains that her manager did not assist her reassignment to this position. The record shows that Ms. T had one e-mail exchange in early June 2012 with the Director of Sustainable Development in AFT. At that time, Ms. T had also met with the Applicant and had stated that she would help her. However, the record does not show any further efforts by Ms. T to contact TTLs and to assist the Applicant's efforts to be reassigned to the East Asia and Pacific Region.

50. Nonetheless, the Tribunal notes that, while the initiative was proactively taken by the Applicant, it was clear that the East Asia and Pacific Region proposal moved forward with the assistance of the Ombudsperson, the Lead HR Specialist in HRSCO, the relevant Directors as well as the TTLs in that Region who were ready to work with the Applicant and benefit from her experience. In the end, despite this support from the Bank, the position was not offered to the Applicant.

51. The main reason given was that the Applicant lacked qualifications in safeguards. This was an area in which she had taken through her own efforts training courses, but had not been provided necessary mentoring and "on-the-job" training. Despite these initial efforts by the Bank, its obligation under *Arellano (No. 2)*, "to try genuinely to find ... staff members alternative positions for which they are qualified" was not met in this case as the Bank tried to place the Applicant in a position for which it ultimately determined that she was not qualified. The Applicant's reassignment efforts for that position were destined to be unsuccessful since she had not been offered the "on-the-job" training to acquire the qualifications necessary for the position.

52. Furthermore, because all efforts during the six-month reassignment period focused on assisting the Applicant in securing the East Asia and Pacific Region position, it is not clear that other job search efforts mentioned in paragraph 8.06 of Staff Rule 7.01 were given proper consideration by the Applicant and the Bank. In particular, paragraph 8.06 provides with regard to reassignment after the declaration of the redundant employment that "[p]lacement also may be offered in a vacant lower level job in accordance with Rule

5.06, ‘Assignment to Lower Level Positions.’” In *Ezatkhah*, Decision No. 185 [1998], para. 24, the Tribunal held that the Staff Rule imposed an obligation on the Bank

to make an effort to place the staff member in existing or known prospective vacant positions for which he or she was qualified. This implied an obligation at the least to notify the staff member of the existence of such a vacancy and to let her apply for it. Although the Respondent assisted the Applicant generally in her attempts to secure alternative positions, it failed to offer her the immediate vacant [lower-level] position ... in her unit. This was the only way in which the Respondent could have demonstrated that it had genuinely tried to find the Applicant an alternative position for which she was qualified and to ensure that it had fulfilled its duty to make an effort to place her in such a position or at least to give her an opportunity of being considered for one. Whether the Applicant was finally selected or would have accepted an offer to occupy an alternative position is not material.

53. When the prospect of occupying the East Asia and Pacific Region position did not materialize towards the end of the Applicant’s six-month reassignment period, the Bank did not reiterate the offer it had made to the Applicant before the declaration of the redundancy to assume the lower level Senior Program Assistant position, which would be temporary until one of the two Operations Analysts in her unit retired. This offer had been rejected by the Applicant earlier because the position was of a lower grade. She clarified in her pleadings that its temporary nature had not been properly explained to her nor was it put in writing. Regardless of the reason for this rejection, it happened at a stage in the process when the Applicant was still actively seeking and reasonably expected to secure a position in the East Asia and Pacific Region with assistance by the Bank. It is not clear why, when the effort did not ultimately materialize, the Bank did not revisit the offer of the lower level Senior Program Assistant position providing proper explanations that it would be temporary, as this was the only viable alternative at that late stage in order to retain an employee who had dutifully worked in the organization for over twenty years. The Bank had the obligation to offer the lower level position under paragraph 8.06 of Staff Rule 7.01 after the declaration of the redundancy and during the Applicant’s six-month reassignment period.

54. In *Marshall*, at paras. 40 and 41, the Tribunal found that, by not assisting the applicant, during the job search period under paragraph 8.06 to be placed in positions for which the applicant was qualified at her level as well as available lower level positions, the Bank had fallen short of its responsibilities under the Staff Rule, particularly in the light of the applicant's 22 years of service with the Bank, her several promotions in the past and her remarkably high performance evaluations, her identification by her superiors as a person of "high potential" and the resulting support given to her academic studies in order better to qualify her for higher Bank service. It awarded the applicant compensation in that case. The Tribunal finds the Applicant's case comparable. It finds that the Bank did not adequately meet the obligation enunciated in *Ezatkah* and *Marshall* and Staff Rule 7.01, paragraph 8.06 to assist the placement of the Applicant in such a lower level position or, at least, to give her an opportunity to be considered for it during the period of her job search.

55. In *Marshall*, at para. 45, however, the Tribunal had also recognized that the job-search exercise required efforts from both sides and took into account at para. 47 of that judgment the applicant's lack of proactive efforts when assessing the remedy to which she was entitled. In this case, and despite the Applicant's own efforts in finding alternative employment, the Tribunal notes that the Applicant, who had rejected the possibility to occupy the Senior Program Assistant position earlier and was thus well aware of it, also had an obligation to raise it with the Bank if she was interested in remaining employed. The Applicant's failure in this respect is a factor to be taken into account by the Tribunal.

56. The Applicant also claims that her manager did not offer her the retraining provided under Staff Rule 7.01, paragraph 8.07. The Staff Rule provides for "on-the-job" training for an existing or known prospective vacancy where the manager agrees to accept the assignment of the staff member after a reasonable period of retraining. She claims that she could have obtained a social safeguards accreditation offered by the Bank while attending a one-week training session, followed by a three-week mission to test the staff's new skills in order to obtain a safeguards specialist position. She claims that she could have done this with less than the maximum three-month salary funds allowed under the Staff Rule.

57. Under Staff Rule 7.01, paragraph 14.02, it is for the Vice President of Human Resources or his or her designee to authorize such retraining. The record shows that the Terms and Conditions of the Notice of Redundancy dated 2 July 2012, signed by the Lead HR Specialist in HRSCO and given to the Applicant two months before the termination of her employment, notified her of her right to receive funds under the Staff Rule towards approved training activities or half of that amount as a lump sum upon the termination of her employment. The Tribunal considers that, as the reason for the non-reassignment of the Applicant to the East Asia and Pacific Region position was ultimately found to be the lack of skills in safeguards, these funds from the institutional budget might have been useful in this respect if they had been offered to her earlier to pay for “on-the-job” training in safeguards which was not available in the Applicant’s unit. It is not clear whether the Applicant raised this issue at the time she received the letter with the Terms and Conditions of the Notice of Redundancy or if in the end she received the lump sum mentioned in the letter.

Other claims

58. The Applicant claims that proper process was not followed with respect to the redundancy because misleading information was presented to the SRG and because there was no documentation showing the actual SRG approval.

59. The Tribunal notes that, in accordance with paragraph 8.03 of the Staff Rule and more specifically HR Guidelines, the Applicant’s Manager sent to HRSCO, for consideration by the SRG, the Redundancy Proposal and Request for Approval of Severance Payment forms. The SRG had a number of questions and asked the Senior HR Officer to have these answered by Ms. T. The Applicant’s manager answered these questions to the satisfaction of the SRG and then the redundancy proposal was amended, more information was included, and it was subsequently forwarded to the Vice President for approval.

60. Staff Rule 7.01, paragraph 8.03, provides that a decision that a staff member's employment is redundant "will be made by a vice president ... and with the concurrence of the Vice President, Human Resources or his/her designee." The Tribunal notes that in this case the appropriate Vice President was the Vice President of the Africa Region. The Director of Strategy and Operations for Poverty Reduction and Economic Management acting on behalf of the Vice President of the Africa Region, and with the concurrence of the Lead HR Specialist in HRSCO and Chair of SRG, signed the approval of the redundancy. The signature of the Director appears on both the Proposed Staff Redundancy Form and on the Notice of Redundancy to the Applicant. The Tribunal is satisfied that the procedural steps prescribed in the Staff Rule and the HR Guidelines were properly followed.

61. The Applicant also claims that the redundancy decision was discriminatory and made only on grounds of the Applicant's age. She asserts that Ms. T told her that an HR Officer in the 2011 management review meeting had suggested that she be offered early retirement because she was already 55 years old. The Tribunal found in *de Raet*, Decision No. 85 [1989], para. 57, that

it is not the obligation of the Bank to demonstrate that there has been no discrimination or abuse of power – not, that is, until an Applicant has made out a *prima facie* case or has pointed to facts that suggest that the Bank is in some relevant way at fault. Then, of course, the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner.

62. The evidence does not show that Ms. T had this discussion with the Applicant, or that an HR Officer had suggested that she be offered early retirement. The Applicant has not made out a *prima facie* case of discrimination on the ground of her age. On the contrary, the Tribunal has found earlier in this judgment that the abolition of the Applicant's post was based on a legitimate rationale. There is no evidence that the Applicant's age played a role in the actions of which she complains in this case.

Conclusion

63. The Tribunal concludes that the Bank did not adequately assist the Applicant in finding alternative employment. The Applicant will be awarded compensation on this ground.

64. The Tribunal does not otherwise sustain the Applicant's claims.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of \$25,000 net of taxes.
- (2) All other pleas are dismissed.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D.C., 28 February 2014