

## Summary of DO v. IBRD, Decision No. 546 [2016]

The Applicant challenged the decision of the Vice President of his unit not to appoint him to the Level GG position to which he was selected by the Hiring Manager of his unit based on the recommendation of the interview panel. The Applicant contended that the Vice President's intervention in the hiring decision for the senior officer position was an abuse of discretion as his actions were ultra vires and violated Bank policy. According to the Applicant, the Vice President's decision was carried out in violation of fair and reasonable procedure. The Applicant further argued that the decision was improperly motivated by race-based considerations.

The Tribunal held that whether the Vice President's decision violated fair and reasonable procedures centered on who bore the ultimate decision to select the Applicant for the position. The Tribunal reviewed the Non-Managerial Recruitment Guide for Open-ended/Term Staff as well as the 2012 Accountability and Decision-Making Policy noting that under these, the Hiring Manager was the decision maker. The Tribunal nevertheless took note of the Bank's assertion that these documents were not binding on the unit in question since the unit was a corporate function, and the Non-Managerial Recruitment Guide was a non-binding document. However, these documents depicted best practices, and any decision to deviate from established best practices, which are recommended for the efficient and fair recruitment of staff, must not be arbitrary or lack a reasonable and observable basis. The Vice President's decision, like any exercise of discretion, was subject to scrutiny. The Tribunal then reviewed the Vice President's decision, finding that his assessment criteria was subjective and did not conform to the advertised criteria for the position. The Tribunal further assessed whether the non-appointment decision was improperly motivated, the issue being whether there is evidence that the Vice President's decision was tainted by the perception that the Hiring Manager, preferentially recruited to the unit individuals of African descent. The Tribunal found that the Bank had not shown that the Vice President had a reasonable and observable basis for declining to comply with best practices.

**Decision:** The non-selection decision was rescinded. The Tribunal referred the issue to the current Vice President to consider promoting the Applicant *in-situ*, or failing that, to pay the Applicant compensation.