



**World Bank Administrative Tribunal**

**2018**

**Decision No. 592**

**ET,  
Applicant**

**v.**

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

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

**ET,  
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 Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Abdul G. Koroma, Marielle Cohen-Branche, and Janice Bellace.

2. The Application was received on 10 November 2017. The Applicant was represented by Ryan Griffin and Marie Chopra of James & Hoffman, P.C. The Bank was represented by Ingo Burghardt, Chief Counsel, and Juliane Fries, Associate Counsel (Institutional Administration), Legal Vice Presidency. Oral proceedings were held on 16 October 2018. The Applicant's request for anonymity was granted on 17 October 2018.

3. The Applicant challenges the following decisions: (i) his non-selection for a Country Manager (CM) position due to discrimination; and (ii) his non-selection for four Lead Financial Sector Specialist positions due to retaliation.

## FACTUAL BACKGROUND

### *Non-selection for the CM position*

4. On 1 July 2014, a Country Management Unit (CMU) advertised the CM position as part of a batch recruitment process for CMs within the Latin America and Caribbean Region (LCR). The closing date for this vacancy was 21 July 2014.

5. The vacancy announcement stated that the Bank "is committed to achieving diversity in race, gender, nationality, culture, and educational background. Individuals with disabilities are equally encouraged to apply." The selection criteria included, among others, "strong strategic

orientation in order to link macro and sector strategies as well as lending and non-lending services within a consistent development framework” and “prior experience in managing people, budget processes in an open and collegial way would be an advantage.”

6. Responding to an invitation from the Hiring Manager, who had previously been the Applicant’s supervisor from 2009 to 2012, the Applicant applied for the CM position.

7. A shortlisting committee (SLC) was established to review candidates for three CM positions in LCR, including the CM position in question.

8. By email dated 23 July 2014, a Senior Recruitment Officer sent the Hiring Manager the SLC’s recommended candidates for the CM position. The Applicant was not included in the initial shortlist of recommended candidates. However, after an exchange of emails between the Hiring Manager and the Senior Recruitment Officer about several candidates, including the Applicant, they agreed to ask the SLC to add the Applicant and another candidate to the shortlist. Regarding the Applicant, the Senior Recruitment Officer wrote that “what made him the less strong candidate was on the behavioral side and that this managerial role would be a stretch for him”; however, she noted that “he has been interested in managerial positions, and the committee recognized his strong background and experience.”

9. Of the twenty-eight candidates, the SLC shortlisted six candidates for the position, two women and four men, all from Part I countries, including the Applicant. The Applicant and a female candidate were at Level GG, whereas the other four candidates were at Level GH.

10. By email dated 21 August 2014, the Senior Recruitment Officer requested the Acting Vice President, LCR to approve the shortlist and set out the Hiring Manager’s brief as follows:

- Background in either private sector development, financial sector, or macroeconomics  
[...]
- Job suitable for first time manager with adequate technical background, experience in dealing with IMF [International Monetary Fund] and donors, and in leading complex engagements [...]

11. By email dated 3 September 2014 to the Senior Recruitment Officer, the Vice President, LCR (LCRVP) approved the shortlist but noted that he “would have liked to see a short list with better diversity in terms of nationalities and gender.”

12. On 29 September 2014, the Interview Panel interviewed the six shortlisted candidates. According to the Interview Panel Report, the Interview Panel considered the Applicant and a female candidate, both of whom were at Level GG, to be “the top candidates for this position” and recommended that they be interviewed by the LCRVP. The Interview Panel found the Applicant to be the

best prepared for the interview and demonstrated a good understanding of [the country’s] complex problems. A clear speaker, articulate, mature and thoughtful, he addressed most issues in a substantive, convincing and pragmatic way, providing cross-sectoral perspectives and demonstrating strategic thinking. [The Applicant] brings a solid and relevant technical background focused on PSD [private sector development] and FSD [financial sector development] issues, strong operational experience, and experience dealing with countries under difficult IMF programs. Although he is not yet a manager, [the Applicant] demonstrated good communication skills and leadership abilities, including an inclusive and principled management style.

One of the shortlisted candidates was found not suitable for the position because “the content of the Bank’s program in [the country] make[s] bringing a macro or a FSD/PSD experience recommendable [...]”

13. By email dated 2 October 2014 to an addressee at the Asian Development Bank (ADB), the Applicant wrote that the Hiring Manager had told him that he “was the unanimous first choice of the panel,” that “given the pressure to promote women, [the Interview Panel is] also recommending a woman as a second choice,” and that the Hiring Manager told him that “the panel made clear in their recommendation to the VP that I’m the first choice. However [...] given the incentives to promote women, she can’t guarantee anything.”

14. By email dated 15 October 2014, the Hiring Manager sent the Interview Report to the LCRVP.

15. On 29 October 2014, the LCRVP interviewed the Applicant and the other candidate recommended by the Interview Panel.

16. On 7 November 2014, the Applicant emailed the Hiring Manager for advice on his candidacy, asking whether he should speak with someone in an Executive Director's office. The Applicant noted that he had "a very bad feeling, if the MD [Managing Director] is screaming at the VP that he has to hire a woman, then I would be passed over once again. I can't emphasize just how demoralizing it would be to lose out again, not based on qualifications, but on gender." The Hiring Manager dissuaded him from involving the Executive Director's office.

17. During a telephone call on 7 November 2014 with the Senior Recruitment Officer, the Applicant told her that, according to the Hiring Manager, although the LCRVP had been impressed with him during his interview, the LCRVP felt that he could not go to the Managing Director for approval to appoint a male candidate.

18. On 7 November 2014, the Applicant spoke with the Hiring Manager by telephone to discuss the status of his candidacy. On the same day, by email to the addressee at the ADB, the Applicant described his conversation with the Hiring Manager regarding the LCRVP's positive opinion of him after the interview. However, according to the Applicant, the LCRVP was "under enormous pressure to hire a woman [...] his boss [...] 'screamed' at him recently about hiring women, so he feels he can't ask her to approve another man."

19. By email dated 18 November 2014 to the Human Resources (HR) Client Services Manager, LCR, the Hiring Manager requested a list of staff who were ready for CM positions so she could "contact women who could be considered for the [...] CM job."

20. By email dated 19 November 2014, a Senior HR Assistant, on behalf of the HR Client Services Manager, LCR, sent the Hiring Manager a list of female CMs. The Hiring Manager responded the same day, requesting a list of "GH staff who are not yet CM but were considered 'Ready now' to become a CM."

21. On 18 November 2014, the Applicant and the Hiring Manager spoke by telephone about the status of the recruitment. On the same day, by email to the addressee at the ADB, the Applicant described his latest conversation with the Hiring Manager. According to him, the LCRVP wanted to keep him as a potential candidate but had asked the Hiring Manager “to actively invite more women to interview [...]. [The Hiring Manager has] ask[ed] HR to compile a list of women who applied and did well in other CM interviews but weren’t selected.”

22. By email dated 9 January 2015 to two addressees, the Applicant described a meeting the day before with the Hiring Manager about the selection process. According to the Applicant, the Hiring Manager told him that the LCRVP was “virtually insisting that she find a woman for the position, even if less qualified. He even suggested that they re-advertise the position.”

23. By email dated 9 January 2015 to the HR Client Services Manager, LCR, the Hiring Manager wrote:

After I reached out to many people without success, I reached out to [Ms. A] [...] and she just confirmed that she is interested in the [...] CM position. She has been a CM before, and knows the program very well. Thus, she would certainly be a credible candidate. Can we invite her to apply?

Do you think we should add one or two other candidates? (I limited my search so far to women with a macro/growth background as this is really what is needed [...]; I could however possibly find one or two infrastructure H/d type candidates that we could compare to [Ms. A]).

24. Having been contacted by the Hiring Manager, Ms. A expressed interest in the position and applied.

25. The Hiring Manager contacted the SLC and asked the SLC to shortlist Ms. A. The SLC did not object to adding Ms. A to the shortlist but noted that she did not meet the macroeconomics requirement.

26. By email dated 28 January 2015, to the addressee at the ADB, the Applicant described his telephone conversation from earlier in the day with the Hiring Manager. As set out in the email,

the Applicant told the Hiring Manager that “HR staff told me that what the VP was doing is not consistent with the diversity policy, that he’s applying the policy wrong, that it amounts to discrimination [...]” According to the Applicant, the Hiring Manager informed him that they had identified a woman as a possible candidate, that she would be interviewed, and ““if and only if” the panel thinks she’s qualified, then they’ll recommend that the VP interview her,” otherwise the Hiring Manager would “do as HR suggested (i.e., get the regional HR staff to talk to the VP and say ‘enough’).”

27. By email dated 2 February 2015 to the addressee at the ADB, the Applicant described a meeting with the Hiring Manager on the same day, during which, according to the Applicant, the Hiring Manager told him that “[s]he doesn’t think this woman is qualified since she doesn’t have the macroeconomic background that is needed [...]” and that the LCRVP “won’t hesitate to lie and say he never liked me as a candidate, so asking HR or the SA [Staff Association] to talk to him will backfire.”

28. By email dated 9 February 2015, the Senior Recruitment Officer informed the Hiring Manager that, because macroeconomics was no longer an essential requirement for the position, the SLC reviewed the original list of candidates and recommended that, in addition to Ms. A, another female candidate and a male candidate be interviewed “as they meet the revised criteria.”

29. The Hiring Manager responded to the Senior Recruitment Officer on the same day as follows:

1. We are only looking for female candidates. Indeed, [the Applicant] has proven to be an ideal male candidate, who was sent by the interview panel to the VP as [the] top candidate and who was interviewed by the VP who found him to have the required profile, skills and aptitude for the position. However, due to diversity constraints in the region, our VP has asked us to look for a female candidate at par with [the Applicant]. Thus, there is no reason to add any male candidates to the shortlist.
2. The macro background criterion remains essential. However, having not found any strong enough female candidates with a macro background in the long list nor outside [...], we agreed to consider adding [Ms. A] to the list because, while [Ms. A] does not have a macro background, she is very knowledgeable about

[the country] including the country's macro difficulties and the political sensitivity of the dialogue. In addition, she is an experienced CM.

30. By email dated 10 February 2015, the Senior Recruitment Officer informed the Hiring Manager that the male candidate had withdrawn his candidacy.

31. By email dated 11 February 2015, the Senior Recruitment Officer requested the LCRVP's approval to add two more candidates, Ms. A and the female candidate, to the shortlist. The LCRVP confirmed the addition of these two candidates on the same day. However, prior to being interviewed by the Interview Panel, the other female candidate withdrew her candidacy because she was selected for another CM position.

32. On 2 March 2015, the Interview Panel, with one change in membership, interviewed Ms. A. It asked her the same questions posed to the candidates interviewed on 30 September 2014, with an additional question on macroeconomics. The Interview Panel recommended Ms. A to the LCRVP for a further interview. The Interview Panel found her "to be a very suitable candidate for this position." It noted that she

knows [the country] and its context very well [...]. [She] demonstrated a good understanding of the many issues relevant to [the country's] development, including [the country's] complex macro difficulties, providing cross-sectoral perspectives and demonstrating strategic thinking. She addressed questions in a convincing and pragmatic manner. She is professionally mature, with a solid and versatile background, which includes a very positive experience as a Country Manager [...]. Clear speaker, calm and articulate, her answer[s] conveyed her strong leadership and motivational skills, as well as her practical approach to problem solving.

33. By email dated 4 March 2015, the Hiring Manager informed the Applicant that an additional candidate was interviewed and would be recommended to the LCRVP for a further interview. She indicated to the Applicant that the LCRVP would "have to trade-off gender considerations, with expertise (the three candidates have different profiles), and interview results" and noted the LCRVP's "focus on female candidates."



34. By email dated 11 March 2015, in response to an email from the Applicant asking for an update, the Hiring Manager wrote that “[m]y sense however is that in view of the increased push for diversity, if [the LCRVP] likes the new woman he may go for her. She is indeed a qualified candidate.” The Applicant responded by email on the same day, suggesting that the chair of the Staff Association speak with the LCRVP about the issue of discrimination and stating that “[g]iven [the LCRVP’s] insistence for over 5 months on hiring a woman, it seems inevitable that he’ll make that choice.” The Hiring Manager dissuaded the Applicant, noting that “it is not discrimination. The lady is truly qualified. I agree with this. She does not have a macro/financial background but she understands the macro/financial realities of [the country] very well.”

35. By email dated 17 March 2015, the Hiring Manager sent the LCRVP an updated interview report, stating that the Interview Panel recommended that he interview Ms. A and “compare her with the other candidates you interviewed earlier.”

36. On 30 March 2015, the Applicant met with the Senior Vice President, Operations (Senior VP), who was responsible for approving the LCRVP’s hiring decision. According to the Applicant, at this meeting, the Senior VP acknowledged that the Bank has diversity targets that the regions were under pressure to meet but that he had not yet been presented with a formal request from the LCRVP to approve a candidate for the CM position.

37. By email dated 31 March 2015, the Hiring Manager informed a Senior HR Business Partner, LCR, that the Applicant had spoken with the Senior VP and added that “I think there is not much we should worry about as the process has been fully clear and [the LCRVP] never stated he thought [the Applicant] was the right candidate.”

38. By email dated 6 April 2015, the HR Client Services Manager, LCR, wrote to the LCRVP, stating that the selection process was “still a pending recruitment effort, but there have been perceptions that the process is closed.”

39. On 23 April 2015, the LCRVP wrote to the Senior VP, seeking his approval for the appointment of Ms. A. He explained the selection process as follows:

After considering the views of the panel and interviewing [...] and [the Applicant], and considering the skill set of the [...] CMU and our broader management team, I recommended that additional applicants be sought in order to increase the managerial experience, seniority, and technical/HR diversity of the pool of potential candidates. To this effect, and as reflected in the attached interview panel report, two new candidates were identified. [...] [T]he Panel and I interviewed only [Ms. A]. [Ms. A] demonstrated professional maturity, relevant experience – including country manager experience, familiarity with [the country’s] development issues, and leadership skills, all of which should make her a good fit for this position.

The proposed selection would improve our diversity indicators for both Part II and Female Managers categories [...].

40. By email dated 30 April 2015 to the LCRVP, the Senior VP approved the selection of Ms. A for the CM position.

41. On 14 May 2015, a Kiosk Announcement stated that Ms. A had been selected for the CM position, and her appointment became effective on 1 July 2015.

42. On 17 June 2015, the HR Client Services Manager, LCR, contacted the Applicant to provide feedback on his application for the CM position. The Applicant responded the following day, and they met on 23 June 2015.

43. On 9 and 21 July 2015, the Applicant sent follow-up emails to the HR Client Services Manager, LCR, but did not receive any response.

*Non-selection for Lead Financial Sector Specialist positions*

44. In February 2015, the Finance & Markets Department (F&M) posted a vacancy announcement for a Lead Financial Sector Specialist position based in Hanoi, Vietnam. The Applicant applied and was shortlisted. The Applicant was interviewed by a panel, chaired by the Director, F&M, and was recommended as the panel’s second choice behind another male candidate. The interview panel acknowledged that the Applicant “interviewed quite well and had made the effort to read up on Vietnam” and recognized his prior experience in Vietnam as an

advantage. However, some panel members “felt his experience and writings focused more on microfinance,” and one panel member considered his answers “to be too similar to the FSA recommendation.” In May 2015, he interviewed with the Country Director. However, in June 2015, the Applicant was notified by the Director, F&M, that he had not been selected for the position.

45. On 3 April 2015, the Applicant emailed the hiring manager for three Lead Financial Sector Specialist positions based in Asia. The Applicant indicated that he had met with the Senior VP to express his concerns that the selection process for the CM position was discriminatory.

46. In June 2015, F&M posted a vacancy announcement for a Lead Financial Sector Specialist position based in Jakarta, Indonesia. The Applicant applied, was shortlisted, and was interviewed in November 2015. The interview panel considered the Applicant and a female candidate to be “very close in ranking,” and noted strengths and weaknesses in the Applicant’s candidacy. However, another male candidate was the unanimous first choice of the panel, this candidate being “far ahead of the others in terms of expertise and management skills and the best candidate for this complex assignment.” The Country Director and the hiring manager accepted the interview panel’s recommendation. The Applicant learned of his non-selection in December 2015.

47. In July or August 2015, F&M posted a vacancy announcement for a Lead Financial Sector Specialist position, based in Kuala Lumpur, Malaysia. The Applicant applied, was shortlisted, and was interviewed on 1 December 2015. The interview panel recommended the Applicant and another male candidate for further interviews with the Country Director. The other candidate was the preferred candidate, “considering the local office dynamics, continuation of client engagement, and the near term focus areas related to financial stability and integration.” The panel noted that the Applicant was “technically stronger in some areas, such as financial inclusion, and more seasoned in handling research and technical projects, but will need to build up client relationships.” The Applicant interviewed with the Country Director in December 2015. He learned of his non-selection in February 2016.

48. In September 2015, F&M posted a vacancy announcement for a Lead Financial Sector Specialist position based in Kiev, Ukraine. The Applicant applied, was shortlisted, and was interviewed on 13 November 2015. The interview panel recommended the Applicant and another male candidate, noting a slight preference for the other candidate and the Applicant's lack of Russian language skills. The interview panel identified the Applicant's strengths, namely, his "strong policy responses to technical questions on bank supervision, recovery and resolution [... his] strong operational experience within and outside the WB, and in a wide range of topics and countries, which projects policy authoritativeness in his responses [... and his] good behavioral capabilities, focusing on relationships, communication and coordination." The Applicant interviewed with the Director, F&M, and a practice manager, and they agreed with the recommendation of the interview panel. The Country Director, who had worked directly with both the Applicant and the other recommended candidate, did not feel the need to interview both candidates. He preferred the other candidate "based on his hands-on bank restructuring experience, maturity, and language skills." In December 2015, the Applicant learned of his non-selection.

*Request for Review and Application*

49. On 29 December 2016, the Applicant submitted a Request for Review to Peer Review Services (PRS), challenging the five non-selection decisions. Since the selection processes for the CM position and the four Lead Financial Sector Specialist positions involved different responding managers, PRS bifurcated the appeal into Request for Review No. 372(A), regarding the CM position, and Request for Review No. 372(B), regarding the other four positions.

50. On 29 April 2017, PRS conducted a hearing in Request for Review No. 372(A).

51. On 13 June 2017, the PRS Panel issued its report in Request for Review No. 372(A). The PRS Panel concluded that the non-selection decision "was reasonable and supported by the evidence." Specifically, the Panel found that the Applicant

met the stated criteria for the position. However, [the LCRVP] wanted someone with previous CM experience who could hit the ground running and better perform the responsibilities of the position. The Panel noted that Ms. [A] had deeper

experience and more breadth of experience to handle the complexities of the [country] program. The Panel observed that Ms. [A] was a stronger candidate than [the Applicant] and that there was a reasonable basis for [the LCRVP's] decision.

52. Regarding the Applicant's claim of discrimination, the PRS Panel found that "management's consideration of the gender of the candidates for the position was justifiable to demonstrate that LCR was attempting to meet its diversity targets" and that Ms. A was the most qualified candidate, regardless of gender. Therefore, the PRS Panel "found insufficient evidence to support [the Applicant's] claim of discrimination based on gender."

53. However, the PRS Panel found that "the recruitment process after October 2014 did not meet the requirements of transparency and diversity" and "that management, in conducting the recruitment process after October 2014, did not act with fairness and follow a proper process under Principle of Staff Employment 2.1." Accordingly, the PRS Panel recommended that the Bank pay the Applicant compensation in the amount of two months' net salary.

54. By letter dated 20 June 2017 to the Applicant, the Chief Executive Officer informed the Applicant that she had accepted the PRS Panel's recommendation.

55. On 19 June 2017, PRS conducted a hearing in Request for Review No. 372(B).

56. On 12 July 2017, the PRS Panel issued its report in Request for Review No. 372(B). The PRS Panel found that, although the Applicant met the stated criteria for the positions, "management selected a candidate with a better fit" and "[i]n each case, the decision-maker followed the recommendations of the interview panel." The PRS Panel also concluded that the recruitment process for each vacancy "met the requirements of objectivity, transparency, rigor and diversity." The PRS Panel rejected the Applicant's retaliation claim, finding that there was "insufficient evidence of retaliation or any bad faith in connection with the non-selection decisions." Therefore, the PRS Panel recommended that all of the Applicant's requests for relief be denied.

57. By letter dated 13 July 2017, the Vice President, Equitable Growth, Finance and Institutions informed the Applicant of his acceptance of the PRS Panel's recommendation.

58. On 10 November 2017, the Applicant submitted this Application to the Tribunal. The Applicant challenges the following decisions: (i) his non-selection for the CM position due to discrimination; and (ii) his non-selection for four Lead Financial Sector Specialist positions due to retaliation.

59. The Applicant seeks "appointment to a mutually-agreeable" CM position retroactive to 1 July 2015 or, in the alternative, "two years' net salary in lieu of such appointment." In addition, he seeks compensation "for the harm to [his] career, professional reputation and personal life; the loss of potential benefits and income; and the intangible damages and distress" as well as legal fees and costs in the amount of \$70,249.03.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

### *The Applicant's Contention No. 1*

*The Applicant was discriminated against on the basis of his gender in the CM selection process*

60. The Applicant alleges that he was discriminated against on the basis of his gender in the CM selection process. First, the Applicant points to contemporaneous evidence from the Hiring Manager, who expressly identified the Applicant's gender as the reason for the LCRVP's instruction to search for additional candidates. According to the Applicant, the Hiring Manager reported conversations with the LCRVP where both she and the LCRVP expressed the opinion that the Applicant was the best candidate for the position. Second, the Applicant asserts that the "supplemental recruiting efforts [...] were in fact dedicated to identifying a suitable female candidate for the position." Third, the Applicant states that the original selection criteria, which included macroeconomics experience, were modified to accommodate Ms. A, thus "show[ing] the lengths to which management was willing to go to fill the position with a female candidate."

61. The Applicant argues that management's reason for failing to select him, namely his lack of prior CM experience, is a pretext. First, he notes that the LCRVP kept him "in the running for the [...] CM position for nearly six months [... which] belies any notion that [the LCRVP] considered prior CM experience to be a requirement for the position or that he considered [the Applicant] to be insufficiently qualified." He submits that the Hiring Manager and the LCRVP considered him to be the ideal candidate but for his gender.

62. The Applicant states that, although the LCRVP was unwilling to hire him, purportedly because he was a "stretch" candidate without the requisite experience, the LCRVP was willing to hire a female candidate who lacked experience in macroeconomics. According to the Applicant, this was a criterion that had previously been identified as essential for the position. Finally, the Applicant observes that, when two candidates were added to the shortlist, one of the candidates lacked both macroeconomics and CM experience.

63. The Applicant relies on the absence of contemporaneous documentation that reflects prior CM experience as a requirement. The Applicant also points out that no such experience is mentioned in the vacancy announcement, which instead refers to prior experience in managing people and budget processes as being an advantage. He contends that the Hiring Manager did not emphasize such requirement to the SLC. The Applicant states that he had significant managerial experience that should have been considered.

64. The Applicant contends that the Bank has not produced any contemporaneous documentation indicating that the LCRVP perceived the Applicant to be a "stretch" candidate, without sufficient experience, following his interview. He urges the Tribunal not to rely on the testimonies of the LCRVP and the Hiring Manager from the PRS hearing, which are not supported by any contemporaneous documentation. The Applicant claims that such testimony is "inherently less reliable than contemporaneous documentation because it tends to be tailored to self-servingly justify whatever conduct is being challenged."

65. Rather, the Applicant asserts that the LCRVP's concerns about him "developed only after [the Applicant] reported his discrimination concerns to [the Senior VP]," and after the intervention of the Vice President of Human Resources.

66. The Applicant claims that the Bank contradicts itself when it asserts that the Applicant was not qualified after the interview in October 2014, yet it purported to compare the Applicant "fairly to Ms. [A] many months later."

### ***The Bank's Response***

*The non-selection decision was reasonable, and there was no gender discrimination*

67. The Bank submits that the Applicant has no proven "leadership and managerial experience, hands-on knowledge of the country issues, and the ability to have difficult dialogues with the government which has often been at odds with the World Bank," all areas of experience that a CM should have. Therefore, the Bank claims that it was reasonable for the LCRVP "not to want to take a risk with a 'stretch' candidate like Applicant."

68. The Bank states that it weighed the qualifications of the Applicant and Ms. A, and chose the more qualified candidate, "who met all their expectations" and who "had the key skills that Applicant did not i.e. country managerial experience and hands-on knowledge of the [...] region in general and [the country] in particular." The Bank recalls that prior managerial experience, which the successful candidate had but the Applicant did not have, was listed as an advantage in the vacancy announcement and that the Applicant initially was not shortlisted because of his lack of managerial experience.

69. The Bank asserts that the "continued search targeted candidates who had more seniority than Applicant, namely H-grade officials" and sought demonstrated managerial experience.

70. The Bank states that it was reasonable for the LCRVP to try to increase diversity in the region by finding a qualified female candidate for the position. It recalls that "[d]iversity has been of critical importance to the Bank since the inception of the institution" and that "encouraging



hiring teams to be mindful of the goals of diversity and the need to strengthen female and Part II representation were valid recruitment principles.” In support of this argument regarding diversity, the Bank relies on the vacancy announcement, the Articles of Agreement, Principles 2.1 and 4.1(a) of the Principles of Staff Employment, Staff Rule 4.01, FY07–12 Diversity and Inclusion Strategy (Update and Action Plan), and a Senior Management Team Diversity and Inclusion Compact for FY15–16.

71. The Bank argues that the Applicant has not established a *prima facie* case of discrimination. According to the Bank, while gender was an important factor, it was only one among many in the decision to select the CM.

***The Applicant’s Contention No. 2***

*The CM selection process was marred by improper procedures and a lack of transparency*

72. The Applicant alleges that, by failing to inform him that he would not be selected for the position following his interview with the LCRVP, and instead pursuing a supplemental recruitment process, “management left [him] in limbo for nearly six months during which he was effectively unable to pursue other opportunities.”

73. The Applicant contends that the Hiring Manager’s supplemental recruiting efforts, which were informal, rather than reopening the vacancy, were unfair to the Applicant because he was “later bypassed by a staff member who had not applied for consideration to the advertised position.”

74. The Applicant argues that the selection criteria were changed the first time “to impose a gender requirement that eliminated [the Applicant] from contention following his successful interview with [the LCRVP].” He further argues that the Hiring Manager subsequently revised the criteria to ensure that the SLC would consider a candidate whom she believed would be acceptable to the LCRVP, despite this candidate’s lack of experience in a field previously identified as essential.

75. The Applicant claims that the Bank has not identified any relevant diversity policies in LCR at the time of the decision in question. Although the Applicant agrees that the Bank has a legitimate interest in increasing the number of female managers, he disputes the means by which the Bank sought to do so in this case. He submits that after the vacancy closed on 21 July 2014, and after the LCRVP interviewed him and deemed him a perfect candidate, the Hiring Manager impermissibly “conducted a lengthy and unpublicized search over a period of five months for an acceptable female candidate.”

### ***The Bank’s Response***

#### *There were no procedural improprieties in the CM selection process*

76. The Bank acknowledges that the ten-month-long recruitment process may have been longer than average, but it justifies this delay due to the LCRVP’s desire “to have a seasoned candidate” and “his interest in identifying a qualified female candidate, [...] considering the Respondent’s stated goals to attract Part II female candidates into senior positions.” It adds that “[t]he fact that a female candidate was added to the selection process and was compared, in her qualifications, to Applicant was not in contravention of the Bank’s policies and procedures” and is consistent with the Tribunal’s jurisprudence.

77. The Bank claims that the selection process remained open so that management could look for the best candidate for the position. It argues, therefore, that the addition of female candidates “at the given point did not undermine the principle of a competition-based selection.” The Bank submits that, “until the formalization of the employment contract,” the Bank is entitled, *inter alia*, “to enlarge the pool of candidates aiming to increase technical qualification and diversity at the Bank.”

78. The Bank denies that the selection criteria were modified, by eliminating the requirement for macroeconomics experience, to accommodate the successful candidate. The Bank argues that macroeconomics experience was never advertised as a requirement for the position; rather, it was a preference that the Hiring Manager indicated to the SLC for the purpose of identifying candidates. The Bank notes that, when the pool of candidates was expanded, the SLC reexamined

the original list of candidates and selected additional candidates to be interviewed on the assumption that macroeconomics experience was not a prerequisite. Finally, the Bank states that the Interview Panel “intensely questioned Ms. [A] on her grasp of the macroeconomic issues in [the country] and was impressed by her answers.”

79. Even if the selection criteria had been changed, such that macroeconomics experience was no longer required, the Bank argues that a change of selection criteria is not an abuse of process or discretion.

80. The Bank denies the Applicant’s claim that the selection process was wrongfully tailored to favor one candidate. It recalls that the Applicant initially was not shortlisted because he was considered a “stretch” candidate and was included only at the Hiring Manager’s request.

81. The Bank asserts that the Applicant was kept apprised throughout the selection process by the Hiring Manager, and, therefore, he cannot complain of lack of transparency in the process.

82. In the alternative that the Applicant was prejudiced by not having been formally informed earlier of the Bank’s decision to expand the pool of candidates, the Bank argues that the Applicant has already been compensated through the Bank’s acceptance of the PRS Panel’s recommendation to pay the Applicant two months’ net salary.

83. Finally, the Bank argues that “deliberations with respect to an ongoing recruitment process should not be reviewed by the Tribunal.”

***The Applicant’s Contention No. 3***

*Management’s repeated failure to select the Applicant for Lead Financial Sector Specialist positions was retaliatory*

84. The Applicant states that he reported suspected misconduct within the meaning of Staff Rule 8.02, para. 3.01(a), by expressing to the Senior VP his concern that he had been discriminated against on the basis of his gender during the CM selection process.

85. The Applicant submits that the Director, F&M, who was involved in interviewing the Applicant for three of the four positions as well as all of the hiring managers for the positions were aware of the Applicant's complaints to the Senior VP. The Applicant claims that the Director, F&M, by virtue of his position, could influence the hiring managers and interview panels and, in fact, chaired two of the interview panels in question. The Applicant also states that, at the Global Practice's annual performance review meeting on 23 July 2015, some practice managers expressed concerns about him due to his report to the Senior VP.

86. The Applicant further cites two examples of how his report to the Senior VP was negatively viewed within the Bank, including by two key decision makers. First, he states that the Hiring Manager explicitly warned him not to speak with the Senior VP about the matter because it "would cause [the LCRVP] to deem [the Applicant] a troublemaker and exclude him from consideration for good." Second, the Applicant claims that the HR Client Services Manager, LCR, stopped responding to him about routine HR-related matters after he learned that the Applicant had spoken with the Senior VP.

87. The Applicant submits that he "has presented a *prima facie* [case] showing that management has effectively frozen him out of any career advancement following his reporting to the Senior VP his concerns regarding discrimination in the [...] CM selection process."

### ***The Bank's Response***

*The Applicant's non-selection for the Lead Financial Sector Specialist positions was reasonable and not retaliatory*

88. The Bank submits that the Applicant had an equal opportunity to compete for the Lead Financial Sector Specialist positions. The Bank claims that, after an assessment of each candidate's qualifications, the Applicant was found not to be the best candidate, in comparison to other candidates who had applied for the same position.

89. The Bank contends that the Applicant has not provided any factual support linking his complaint to the Senior VP to the non-selection decisions. It argues that the Applicant has not established that the Director, F&M, knew about the Applicant's complaint to the Senior VP or that the Director, F&M, was in a position to influence the hiring managers or the interview panels. The Bank also asserts that the hiring managers for the four positions were not aware of the Applicant's complaint of discrimination.

90. However, even if the hiring managers were aware of the Applicant's complaint, the Bank notes that the Applicant's candidacy was "considered by four independent panels of interviewers, consisting of six members per panel, with no overlap in membership, except for one HR representative who served on two of the panels. [...] None of the panels recommended the Applicant as the top candidate for either of the four positions." The Bank denies that all of the members on the various interview panels had a retaliatory animus towards the Applicant.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### *The non-selection for the CM position*

91. The Tribunal has held that "it will not overturn a discretionary managerial decision, unless it is demonstrated that the exercise of discretion was 'arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack[ed] a reasonable and observable basis, constitut[ed] an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment.'" *See DO*, Decision No. 546 [2016], para. 33; *AK*, Decision No. 408 [2009], para. 41; *Desthuis-Francis*, Decision No. 315 [2004], para. 19; *Marshall*, Decision No. 226 [2000], para. 21; and *de Raet*, Decision No. 85 [1989], para. 67.

92. Regarding the selection and recruitment of staff members, the Tribunal in *Riddell*, Decision No. 255 [2001], para. 23, stated that

no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position. The decision to select an applicant for a particular position, or to include him or her in a list of candidates, is discretionary

and the Tribunal will not overturn such a decision unless it finds that it is tainted by bias or abuse of discretion.

93. In *Jassal*, Decision No. 100 [1991], para. 37, the Tribunal held:

It is not for the Tribunal, in assessing the validity of the selection or non-selection of a staff member, to undertake its own examination of that staff member's record, or a criterion-by-criterion assessment of his or her qualifications. That is for the Bank to do in the first instance, subject to review by the Tribunal only for abuse of discretion. But the Tribunal is charged with determining whether the Bank's decision was the product of bias, prejudice, arbitrariness, manifest unreasonableness, or unfair or improper procedure. Thus, if the Bank's conclusion regarding the Applicant's qualifications [...] altogether lacks support in factual evidence or reasonable inference, that conclusion must be found to be an abuse of discretion.

94. The Tribunal acknowledges that the "identification and definition of specializations is a matter that comes within the managerial discretion of the Bank as does the evaluation of the corresponding skills to perform these tasks." *Garcia-Mujica*, Decision No. 192 [1998], para. 13; *DO*, para. 55. But there must still be a fair and transparent assessment of candidates against the advertised criteria. *See Perea*, Decision No. 326 [2004], para. 53.

95. The Tribunal has held that, in both the shortlisting and interview processes, "[t]he principles of 'objectivity,' 'transparency,' 'rigor,' and 'diversity'" should be applied. *CP*, Decision No. 506 [2015], para. 64; *BK (No. 2)*, Decision No. 452 [2011], para. 41.

96. The Bank claims that the Applicant was not selected because he lacked managerial experience, specifically, experience as a CM. It is agreed that the Applicant does not have prior experience as a CM, although the parties dispute the Applicant's managerial qualifications. The Applicant, for his part, claims that this criterion was added as a *post hoc* justification for his non-selection and that the real reason was his gender.

97. The Tribunal will first examine the reason for the Applicant's non-selection, namely, whether it was due to gender or to the Applicant's lack of experience as a country manager.

98. The Tribunal observes that the Applicant was not on the initial shortlist. After the Senior Recruitment Officer informed the Hiring Manager that a candidate was not shortlisted because the SLC considered that candidate to “lack the FPD [Financial and Private Sector Development] and/or macro background,” the Hiring Manager asked: “[I]f it is to add a FPD-type candidate to the list, can you let me know why [the Applicant] was not selected? [H]e is GG, but I know him very well and consider he would be a great CM.” The Senior Recruitment Officer responded that “what made [the Applicant] the less strong candidate was on the behavioral side and that this managerial role would be a stretch for him. [...] I think [the Applicant] would appreciate being given the chance to interview as well, I know he has been interested in managerial positions, and the [SLC] recognized his strong background and experience.” Consequently, the Applicant and another candidate were added to the shortlist at the request of the Hiring Manager.

99. After the shortlisted candidates were interviewed, the Interview Panel found that the Applicant successfully met the criteria in the vacancy announcement and recommended him and a female candidate to be interviewed by the LCRVP. Of the six shortlisted candidates who were interviewed by the Interview Panel, the Interview Panel recommended to the LCRVP two candidates who were at Level GG and none of the four candidates who were at Level GH. Neither the Applicant nor the other candidate recommended by the Interview Panel had prior experience as a country manager, although the other candidate was the Acting CM in the country at the time of the interview.

100. In considering the Applicant’s Request for Review, the PRS Panel also concluded that the Applicant “met the stated criteria for the position.”

101. The Tribunal finds that the shortlisting and recommendation of the Applicant by the Interview Panel, despite his lack of experience as a country manager, comports with the vacancy announcement. The vacancy announcement refers to “prior experience in managing people, budget processes in an open and collegial way” as being an “advantage.” The Tribunal does not interpret this as requiring experience as a country manager or formally holding a managerial position.

102. The Tribunal takes into account the Hiring Manager's brief, which stated that the "job [is] suitable for [a] first time manager with adequate technical background [...]." As well, the LCRVP testified during the oral proceedings before the Tribunal that CM experience was not a requirement listed in the vacancy announcement, and this is supported by the record.

103. The LCRVP interviewed the Applicant and a female candidate, both of whom were recommended by the Interview Panel. During the oral proceedings, the LCRVP testified: "It was very clear that [the Applicant] had prepared well for the interview. He shows experience mostly in financial sector matters, which is also my area of expertise, so I felt affinity with him. We had a high-level strategic conversation, so the interview went well." However, the LCRVP "felt that [the Applicant and the other candidate] were not senior enough to do the kind of job that was required in [the country]." The LCRVP also testified that he was not satisfied with the shortlist because "it had absolutely no diversity. It had two-thirds males, one-third female, at the point in time where [we] needed to work extra hard to improve our gender diversity. It had only two nationalities represented [...]."

104. During the oral proceedings, with respect to the supplemental recruitment efforts, the LCRVP testified that he "would not have taken one single extra male into the list if we did not at least have parity." The Hiring Manager also admitted that in her search for additional candidates "gender was the main criteri[on], and then people who had relevant expertise." She did not consider whether the candidates came from a Part I or Part II country.

105. The Tribunal also has regard to the email from the Hiring Manager to the Senior Recruitment Officer dated 9 February 2015, where the Hiring Manager stated:

We are only looking for female candidates. Indeed, [the Applicant] has proven to be an ideal male candidate, who was sent by the interview panel to the VP as [the] top candidate and who was interviewed by the VP who found him to have the required profile, skills, and aptitude for the position. However, due to diversity constraints in the region, our VP has asked us to look for a female candidate at par with [the Applicant].

[...]

We are looking for someone who is very strong on macro/financial/PSD issues and/or someone who is an experienced CM with sufficient understanding of [the country] and very strong skills to lead complex sensitive dialogues.



106. The Tribunal finds that the LCRVP instructed the Hiring Manager to conduct a search for additional candidates but limited the search to female candidates. However, as the Bank had “not found any strong enough female candidates with a macro background in the long list nor outside,” the Bank changed the selection criteria to attract more female candidates. The resulting changed criteria were as follows: “very strong on macro/financial/PSD issues and/or someone who is an experienced CM with sufficient understanding of [the country] and very strong skills to lead complex sensitive dialogues.” The propriety of the decisions to expand the candidate pool and modify the selection criteria will be discussed below.

107. The Tribunal finds that the LCRVP was motivated, at least in part, by the LCR diversity scorecard, which showed female managers in LCR comprising 38.5% of all managers in the first quarter of Fiscal Year 2014, whereas the Bank’s target was 50%. The Tribunal notes the vacancy announcement, which states that the Bank “is committed to achieving diversity in race, gender, nationality, culture, and educational background. Individuals with disabilities are equally encouraged to apply.”

108. Principle 2.1 of the Principles of Staff Employment provides that the Bank “shall not differentiate in an unjustifiable manner between individuals or groups within the staff.” Staff Rule 3.00, paragraph 6.01(e) makes clear that “wrongful discrimination, including on the basis of age, race, color, sex, sexual orientation, national origin, religion or creed” constitutes prohibited misconduct.

109. In *Crevier*, Decision No. 205 [1999], para. 25, the Tribunal found that “discrimination takes place where staff who are in basically similar situations are treated differently.”

110. The Tribunal has stated that it “unhesitatingly invalidates discretionary decisions if the evidence shows that the decision was discriminatory based on race, gender, or other prohibited grounds.” *AI*, Decision No. 402 [2010], para. 39.

111. Diversity in recruitment is one of the cornerstones of the Bank’s recruitment policies. *BO*, Decision No. 453 [2011], para. 65. Principle 2.1 of the Principles of Staff Employment provides

that the Bank “shall encourage diversity in staffing consistent with the nature and objectives of the [Bank].” Diversity includes gender diversity.

112. Staff Rule 4.01, “Appointment,” paragraph 1.01, states:

The Bank Group’s recruitment policy is to recruit Staff Members of the highest caliber through a competitive selection process based on criteria determined by the needs of the Bank Group and the requirements of the position, paying due regard to the importance of recruiting Staff on a diverse basis.

113. In *BO*, para. 66, the Tribunal stated:

The standard to be observed in promoting diversity in recruitment is ensuring that the process adheres to advancing the Bank’s paramount objective in recruitment, namely, to secure “the highest standards of efficiency and of technical competence,” as prescribed by Section 5(d) of Article V of the Articles of Agreement. Preferences for candidates based on geographical distribution or gender may be weighed for that matter, provided that, in compliance with the paramount objectives of the Articles of Agreement, a choice is made between candidates who are evenly matched in qualification, but not where there is a significant and relevant difference between the candidates (*see* ILOAT Judgment No. 2392 (2005)). As the Administrative Tribunal of the International Labour Organization (“ILOAT”) has stated [...] “there is nothing wrong in having a policy aimed at gender parity.... But the bottom line must always be that the person best qualified should be appointed.” In *re Matthews*, ILOAT Judgment No. 2004 (2001).

114. The Tribunal will examine whether, in this case, the Applicant and the selected candidate were “evenly matched in qualification,” in which case the Tribunal may find that the Bank has observed “the bottom line” as stressed in *BO*, para. 66, and, therefore, is entitled to express a preference based on gender.

115. In doing so, the Tribunal considers the changed selection criteria, which were expressed by the Hiring Manager as follows:

We are looking for someone who is very strong on macro/financial/PSD issues and/or someone who is an experienced CM with sufficient understanding of [the country] and very strong skills to lead complex sensitive dialogues.

116. The Tribunal finds that, on the basis of the record and with regard to the changed selection criteria, the Applicant and Ms. A were evenly matched or, at least, that there was “no significant and relevant difference between the candidates.” The LCRVP testified, during the oral proceedings, that none of the three candidates presented to him, i.e., the Applicant, Ms. A, and the third candidate initially recommended by the Interview Panel, had a macro-fiscal background. Rather, he was presented with “one candidate from the governance practice, [...] one candidate from finance and markets, and [...] one candidate from the Country Manager track.”

117. The Tribunal observes that the Interview Panel assessed the Applicant as “demonstrat[ing] a good understanding of [the country’s] complex problems” and having “a solid and relevant technical background focused on PSD and FSD issues [...]” while it assessed Ms. A as “know[ing] [the country] and its context very well [...] demonstrat[ing] a good understanding of the many issues relevant to [the country’s] development, including [the country’s] complex macro difficulties.” Therefore, the Tribunal finds that the Bank’s preference for Ms. A, in principle, could be an acceptable explanation in light of the Bank’s diversity policy and the LCR’s diversity scorecard.

118. The Tribunal recalls that the PRS Panel found that “management’s consideration of the gender of the candidates for the position was justifiable to demonstrate that LCR was attempting to meet its diversity targets.”

119. In this case, the Tribunal finds that the decision to prefer a female candidate to the Applicant, after evaluating both candidates against the changed selection criteria, was not an improper motivation, given the Bank’s focus on achieving gender parity in managerial positions. Nevertheless, for the Tribunal to reach a firm conclusion that the Bank’s preference was not improperly motivated, it must determine that the Bank followed proper procedures. Accordingly, the Tribunal will analyze the procedure followed in this case.

*Whether there were procedural irregularities and a lack of transparency*

120. The Applicant submits that the selection process was marred by the failure to inform him that he would not be selected for the position following his interview with the LCRVP and management's supplemental recruitment efforts. The Applicant claims that, during this period, management changed the selection criteria, by imposing a gender requirement and then removing the requirement of macroeconomics experience.

121. The Tribunal finds that the decision not to select the Applicant was made only after the Bank had completed its consideration of additional candidates in April 2015. Ms. A's selection was publicly announced on 14 May 2015, and the Applicant was contacted on 17 June 2015 by the HR Client Services Manager, LCR, to provide feedback on the Applicant's candidacy. In light of this timeline, the Tribunal finds that there was no undue delay in informing the Applicant of the non-selection decision.

122. Regarding the supplemental recruitment efforts, the Tribunal ordered the Bank to produce "all policies or procedures applicable to supplemental recruiting efforts for an internationally competitive position following the closing date of a job vacancy announcement or interviews by a hiring panel or members of senior management." The documents the Bank identified refer to the decision-making authority and process where a managerial position is filled through a competitive selection process. The Tribunal notes that these documents were not responsive to the Tribunal's order.

123. According to the Bank, although a vacancy announcement may have a closing date, until an offer of appointment is made and the chosen candidate accepts, the competitive recruitment process remains open. During the oral proceedings, witnesses for the Bank confirmed that, even after a vacancy announcement has closed and interviews have been conducted, it is still possible for management to add candidates to the shortlist, including by directly contacting potential candidates and inviting them to apply. The witnesses also stated that this practice is neither unusual nor prohibited by the Bank's regulatory framework. According to the Senior Recruitment Officer,

another possibility, if decision makers are not satisfied with the initial pool of candidates, would be to cancel the vacancy announcement and readvertise the position.

124. This case is not the first time where the Bank has added candidates after the close of a vacancy announcement and after an interview panel and a hiring manager have recommended a candidate. In *BO*, the applicant had been interviewed and recommended as the strongest candidate by the interview panel and the hiring manager. However, the Bank's President requested the hiring manager to "expand the pool of candidates [...] to include external candidates and female candidates" and stated that he, the President, "was not uncomfortable with the specific recommendation [of the applicant], but wanted to try to do even better." *Id.*, para. 16.

125. The Tribunal in *BO*, para. 62, found "that the President's action did not violate any rules of the Bank and was consistent with its prevailing practice, especially with regard to appointment of staff at higher levels." The Tribunal did not find any abuse of power, noting that there was no evidence that the President had a particular candidate in mind and that, "in requesting a further search for suitable candidates, there is no suggestion that the President eliminated the [a]pplicant from consideration." *Id.*, para. 63.

126. On the basis of *BO*, the Tribunal finds that the LCRVP's mere expansion of the candidate pool did not violate the Staff Rules.

127. In the Hiring Manager's email to the Senior Recruitment Officer, the Hiring Manager stated that "having not found any strong enough female candidates with a macro background [...] we agreed to consider [Ms. A]" and further stated that "we are looking for someone who is very strong on macro/financial/PSD issues and/or someone who is an experienced CM with sufficient understanding of [the country] and very strong skills to lead complex sensitive dialogues." During the oral proceedings, the Senior Recruitment Officer also confirmed that the selection criteria were "modified" to eliminate macroeconomics as a criterion. The Senior Recruitment Officer described that the SLC then reviewed the original longlist to see which of the original candidates best met the changed criteria. The Tribunal finds that the original selection criteria were changed. The

Tribunal observes that none of the candidates were informed either of the change or of the revision of the shortlist in light of the changed criteria.

128. The Tribunal holds that the change in selection criteria during an ongoing selection process without informing the candidates does not comport with “the principles of objectivity, transparency, rigor, diversity and fairness in the selection process.” *CO (Nos. 1 and 2)*, Decision No. 504 [2015], para. 70. *See also Jassal; Perea; BK*, Decision No. 444 [2010]; and *BK (No. 2)*.

129. Principle 2.1 of the Principles of Staff Employment states that the Bank “shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members.”

130. In *Sisler*, Decision No. 491 [2014], para. 87, the Tribunal stressed:

The importance of transparency in the relationship between the Bank and its staff cannot be overstated given that the haphazard disclosure of information can result in prejudice to staff. The Bank is required, by virtue of Staff Principle 2.1, to follow proper process in its relations with staff members and such a process includes transparency.

131. The Tribunal finds that, when the Bank took the decision to look only for female candidates and changed the selection criteria, it denied the Applicant a fair opportunity to compete for the CM position. The Tribunal holds that the Bank can legitimately pursue gender parity, particularly in managerial positions, as provided for in the Bank’s regulatory framework. However, it not only should observe the bottom line of making a choice between candidates who are evenly matched in qualifications but also must be transparent in the selection process such that all candidates are evaluated against the same criteria.

132. The Tribunal finds that the Bank was not sufficiently transparent in the selection process for the CM position.

133. The Tribunal welcomes the importance of the diversity policy of the World Bank Group and stresses the relevance of the commitment to gender parity in practice. However, in pursuing

these goals, the Bank must observe due process, act transparently, and give candidates a fair opportunity to compete.

*The non-selection for the Lead Financial Sector Specialist positions*

134. The Tribunal reaffirms its jurisprudence that “no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position.” *Riddell*, para. 23.

135. Staff Rule 3.00, paragraph 7.06, states:

Retaliation by a Staff Member against any person who provides information regarding suspected misconduct, who cooperates or provides information in connection with a preliminary inquiry or investigation conducted under Staff Rule 8.01, “Disciplinary Proceedings,” or in connection with an initial review or subsequent procedures set forth in sections 8 through 10 of this Rule, or who uses the Internal Justice Services, is expressly prohibited and shall result in proceedings under this Rule. This prohibition against retaliation extends also to retaliation against any person because such person was believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken.

136. Staff Rule 8.02, paragraph 3.01(a), provides as follows:

Where a Staff Member has made a *prima facie* case of retaliation for an activity protected by this Rule (i.e., by showing that the Staff Member reported suspected misconduct under this Rule and has a reasonable belief that such report was a contributing factor in a subsequent adverse employment action), the burden of proof shall shift to the Bank Group to show – by clear and convincing evidence – that the same employment action would have been taken absent the staff member’s protected activity.

137. In *DP*, Decision No. 547 [2016], para. 106, the Tribunal held that the prohibition against retaliation “also extends to retaliation against any person who is believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken.”

138. The Applicant claims that his non-selection for the four Lead Financial Sector Specialist positions was motivated by retaliation for his complaint of discrimination.

139. In *O*, Decision No. 337 [2005], para. 47, the Tribunal held that any applicant alleging retaliation must discharge the burden of proof by

establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse action. A staff member's subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation [...].

140. The Applicant claims that the Director, F&M, who was involved in interviewing the Applicant for three of the four positions, as well as all of the hiring managers for the positions, were aware of the Applicant's complaint of discrimination to the Senior VP.

141. At the oral proceedings, the Director, F&M testified that the first time he learned that the Applicant had met with the Senior VP to complain of discrimination was during the PRS proceedings. He also stated that no one had ever raised any concerns regarding the Applicant's complaint to the Senior VP to him at any point in time.

142. The Tribunal finds that the Applicant has not substantiated his claim that any or all of the panel members knew that he had expressed his concerns to the Senior VP. Nor has the Applicant established that the Director, F&M, and the hiring managers exerted undue influence over the other members of the interview panels or the Country Directors who conducted the final interviews.

143. The Tribunal gives great weight to the fact that, for each of the four positions, the Applicant was interviewed by six members per panel, with no overlap in membership except for one HR representative who served on two of the panels. The Applicant has not alleged collusion between the interview panels. The Tribunal finds that it would be highly unlikely for twenty-three different people to have a retaliatory animus towards the Applicant.

144. The Tribunal finds that the Applicant has not established facts sufficient to amount to a *prima facie* case of retaliation.



145. The Applicant did not bring a claim of retaliation to the Office of Ethics and Business Conduct before coming to the Tribunal. In *Bodo*, Decision No. 514 [2015], para. 78, the Tribunal held:

Given the severity of allegations of discrimination and retaliation, thorough investigations of the facts are imperative, and staff members should avail themselves of the investigative body that is the Office of Ethics and Business Conduct (EBC).

The Tribunal reiterates that EBC is the appropriate avenue to undertake an investigation into a retaliation claim. *EM*, Decision No. 578 [2018], para. 100; *Sekabaraga*, Decision No. 494 [2014], para. 42.

#### *Secret Recordings*

146. Between 7 November 2014 and 2 April 2015, the Applicant secretly recorded seven telephone and in-person conversations with the Hiring Manager about the Applicant's candidacy and the CM selection process. The Applicant submitted these recordings to the Tribunal. The Bank objected to the admissibility of these recordings. The Tribunal did not consider the evidence in the recordings. Therefore, there is no need to rule on their admissibility.

#### *Concluding Remarks*

147. The Bank contends that, because it accepted the PRS Panel's recommendation to compensate the Applicant in the amount equivalent to two months' net salary, the "Applicant has been compensated for this oversight."

148. In *DB*, Decision No. 524 [2015], para. 133, the Tribunal considered the issue of double recovery and held that "the Tribunal is free to take into account any compensation already received by an applicant, and to adjust accordingly any award the Tribunal itself chooses to make."

149. In awarding compensation to the Applicant in this case, the Tribunal is cognizant that the Bank has paid the Applicant two months' net salary, upon the recommendation of the PRS Panel.

The PRS Panel recommended this compensation because of the Bank’s “failure to follow a fair and proper process,” specifically, “during the recruitment process after October 2014.” The PRS Panel “concluded that the recruitment process after October 2014 did not meet the requirements of transparency and diversity [...]”

150. In this case, the Tribunal finds that the Bank failed to act transparently and did not give the Applicant a fair opportunity to compete for the CM position. These are serious failures for which additional compensation is merited.

#### DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of one year’s salary net of taxes, for the Bank’s lack of transparency in the selection process and failure to give the Applicant a fair opportunity to compete;
- (2) The Bank shall contribute to the Applicant’s legal fees and costs in the amount of \$45,000.00; and
- (3) All other claims are dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 October 2018