



World Bank Administrative Tribunal

2019

Decision No. 600

**EY,
Applicant**

v.

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

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

**EY,
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 12 June 2018. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 11 April 2019.

3. The Applicant challenges (i) the Bank's decision to make her employment redundant; (ii) the Bank's alleged retaliatory actions and hostile work environment; (iii) the Bank's alleged breach of the 2016 Mediation Agreement and the "informal" agreements that resulted from the 2013 and 2015 mediations; (iv) the release clause in the 2016 Mediation Agreement; and (v) the Bank's alleged discriminatory actions.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in May 1998 as a Financial Management Specialist, level GF, in the Loan Department of the Bank's Finance and Accounting Vice Presidency (WFA). In February 2001, she became Senior Finance Officer, level GG. In September 2011, as a result of a competitive selection, she was promoted to Manager, level GH, and became the head of the Loan Operations division for Africa, the Middle East, Europe, and Central Asia.

THE MEDIATIONS OF 2013, 2015, AND 2016

5. The Applicant claims that she experienced instances of unfair treatment in 2012 and 2013 by her former supervisor, the Director of WFA Financial Controls (the WFAFC Director). In early 2013, she contacted the Bank's Mediation Office and engaged in a group mediation with the WFAFC Director. She asserts that a Memorandum of Understanding (MoU) resulted from it. The Bank denies that an MoU was concluded by the parties.

6. The Applicant claims that the WFAFC Director continued to treat her unfairly in 2015. In mid-May 2015, the Applicant requested mediation with him. On 17 August 2015, the Applicant and the WFAFC Director ended the mediation process without an agreement. The Applicant asserts, however, that an MoU was agreed upon but never implemented. The Bank denies this assertion.

7. The Applicant alleges that, in a meeting held in March 2015, the WFA Vice President told her that he was aware of the difficult working relationship between the Applicant and the WFAFC Director and stated that he did not think it was appropriate for the Applicant to "escalate" matters and that her duty was to "obey" the WFAFC Director.

8. In May 2015, Ms. A joined WFA as Director of Accounting Business Services.

9. In August 2015, the WFAFC Director carried out strategic reassignments and undertook several other organizational changes. As a result, the Applicant became the Manager of the Loan Systems division, while another manager took over the Applicant's portfolio.

10. In late August 2015, the Applicant contacted the Office of Ethics and Business Conduct (EBC), alleging that the reassignment was done in retaliation for her complaints to Internal Justice Services (IJS).

11. On 7 October 2015, the Applicant filed a Request for Review with Peer Review Services (PRS) contesting the reassignment decision. On 9 March 2016, a PRS Panel found that there was

“no evidence of retaliation or any bad faith in making the reassignment decision.” It found, however, that the Applicant was not afforded due process. The PRS Panel recommended that the Applicant and management engage in mediation to seek an acceptable reassignment. This recommendation was accepted by management in April 2016.

12. Between June and September 2016, the Applicant and the WFA Vice President met several times to mediate the Applicant’s reassignment.

13. On 19 September 2016, the mediation concluded with the signing of a Mediation Agreement between the Applicant and the WFA Vice President (the 2016 Mediation Agreement).

THE REORGANIZATION OF THE WFA TRUST FUNDS AND LOANS DEPARTMENT

14. By email dated 29 November 2016 addressed to all WFA staff, the WFA Vice President announced an “organizational realignment” in WFA. In this email, the WFA Vice President explained that the “organizational realignment” would enable WFA to provide a single point of contact for Bank operations by bringing together the trust fund division and the Bank loan operations divisions. He noted that Ms. A would become the Director of the newly constituted WFA Trust Funds and Loans Department (WFATL), which included the Applicant’s division.

15. On 1 January 2017, the “organizational realignment” took effect. Ms. A became the Applicant’s supervisor from this date.

16. In March 2017, the Applicant’s supervisor and the four managers in her department, including the Applicant, discussed the hiring of a consultant to develop and evaluate a new service delivery model for the department.

17. Between March and April 2017, the consultant selection process was carried out and the consulting firm Deloitte was hired for the assignment.

18. By email dated 27 May 2017 to the WFA Vice President, the Applicant complained of an incident in her supervisor's office the day before in which she alleged that she was subjected to her supervisor's "aggressive actions" and "continuous verbal abuse" (the 26 May incident).

19. On 15 June 2017, the WFA Vice President wrote to the Applicant and her supervisor to inform them that he had decided to appoint an executive coach to work with them in improving their working relationship.

20. From July to September 2017, the Applicant and the other managers in her department led working groups on the new service delivery model.

21. By email dated 13 July 2017, the Applicant's supervisor wrote to the four managers in her department, including the Applicant, to clarify how the decision-making and consultation processes would work for the new service delivery model and for the new organizational structure that would follow.

22. On 28 July 2017, pursuant to the WFA Vice President's decision of 15 June 2017, the Applicant and her supervisor had their first meeting with the executive coach. The Applicant claims that her supervisor refused to apologize for the 26 May incident. The Applicant alleges that, after that, her supervisor and she had very few one-on-one meetings, leading to a further strained working relationship.

23. On or around 31 July 2017, the Applicant reported to EBC that her supervisor was "proxy retaliating" against her on behalf of the WFAFC Director and that she was also the victim of a hostile work environment.

24. From August to October 2017, EBC undertook an initial review. On 3 October 2017, EBC closed the case stating that it had not found evidence that the Applicant was singled out in connection with the reorganization, or evidence that the Applicant was the target of discriminatory actions. EBC concluded that it "found no evidence of retaliation, discrimination, harassment or

hostile work environment” and further noted that the 26 May incident, though inappropriate, did not rise to the level of misconduct.

25. On 1 September 2017, the Applicant wrote to her supervisor and the WFA Vice President to raise concerns about the lack of consultation on the new organizational structure. Later that day, the Applicant’s supervisor responded that Human Resources (HR) had advised that, according to its policy and the Staff Rules, “there is no need to consult managers in an organizational structure exercise as the decisions are completely up to leadership team with [the WFA Vice President’s] final approval.” The Applicant’s supervisor added that “HR [has] confirmed that there is no requirement nor precedent in the [B]ank to seek managerial consultation. Deloitte [has] also confirmed this from industry practice. So this consultation is a courtesy step not a requirement.”

26. In early September 2017, Deloitte delivered three proposals – options A, B, and C – for the WFATL new organizational structure.

27. On 13 September 2017, the Applicant met with her supervisor to have her performance discussion for Fiscal Year (FY) 2017. As the Applicant disagreed with her supervisor’s assessment, the Applicant sought an Administrative Review. The Administrative Review did not result in any changes to the Applicant’s FY2017 Manager Annual Review.

28. On 18 September 2017, Deloitte executives and the Applicant’s supervisor met with the Applicant and the other managers in WFATL to receive their input on the new service delivery model and the WFATL new organizational structure options presented by Deloitte.

29. On 27 September 2017, the Applicant wrote to the WFA Vice President alleging breaches of the terms of the 2016 Mediation Agreement and complaining that her supervisor had retaliated against her. In response, the WFA Vice President informed the Applicant that the 2016 Mediation Agreement was no longer applicable as it “was very much around your and [the WFAFC Director]’s relationship.” He suggested a meeting with the Applicant and her supervisor to discuss the Applicant’s concerns, which took place on 13 October 2017.

30. On 18 October 2017, the Applicant was notified in a consultation meeting with her supervisor, the HR Vice President, and the other managers of her department that her position “had been identified as being affected by the planned business changes within WFATL” and “at risk of redundancy.”

31. On 19 October 2017, the WFA Vice President and the Applicant’s supervisor held a town hall meeting to announce the new organizational structure. The Bank asserts that the WFA Vice President and the Applicant’s supervisor explained the background of the reorganization and the reasons for it, including the business rationale and how the new organizational structure reflected the new service delivery model. The Applicant denies this assertion.

32. By email dated 23 October 2017, the Applicant’s supervisor wrote to the Applicant to confirm that her position was “at Risk of redundancy as per SR [Staff Rule] 7.01, para. 8.02b.” The Applicant’s supervisor noted that “[a]nother part of this restructuring process is that we are creating three new Manager jobs which will be advertised within a week and open for competition to all internal candidates.” She also asked the Applicant to inform her by 14 November 2017 whether she would be willing to separate voluntarily.

33. On 26 October 2017, the following three new manager positions were advertised: Client Services manager, Account Support & Corporate Services manager, and manager for Systems and Transformation. The positions were open for “all internal candidates from across the World Bank Group.” The Applicant applied for the Client Services manager and Account Support & Corporate Services manager positions.

34. By email dated 1 November 2017, the Applicant wrote to the WFA Vice President complaining that her supervisor “ha[d] not engaged sufficiently with [her] during this restructuring process.” On 10 November 2017, the Applicant reiterated that she had not received any information from her supervisor on the analysis and methodology that led to the new organizational structure.

35. On 10 November 2017, in response to the Applicant's emails, the WFA Vice President asked the Applicant to refrain from challenging "the decision itself, the analysis or methodology" of the new organizational structure. He requested the Applicant "to carry out [her] managerial duties to make this reorganization effort a success and support the implementation of the new service delivery model. If you cannot do the above, I must and will relieve you of your managerial duties."

36. On 28 November and 1 December 2017, the Applicant was interviewed for the two manager positions.

37. On 4 December 2017, the Applicant and her colleague, another manager in her department, were interviewed for a second time for the Client Services manager position. At the same time, management asked an external firm to carry out reference reports for the Applicant and her colleague.

38. Later that day, the Applicant's supervisor selected the Applicant's colleague for the Client Services manager position, and that selection was endorsed by the WFA Vice President.

39. On 5 December 2017, the Applicant was informed that she had not been selected for either of the two manager positions. The Bank asserts that the Applicant's supervisor informed the Applicant of the reasons for her non-selection, but the Applicant denies this account.

40. On 6 December 2017, the Applicant went on a scheduled sick leave. The Applicant complains that she was not given "an opportunity to notify her staff or clients of these major reorganizations" before her sick leave.

41. By email dated 11 December 2017 to all WFA staff, the WFA Vice President announced the appointment of three new managers for the roles of Client Services manager, Account Support & Corporate Services manager, and manager for Systems and Transformation.

42. On 1 January 2018, the new organizational structure was implemented.

43. By email dated 16 January 2018, the Applicant's supervisor informed the Applicant that, because the Applicant had not been selected for either of the two positions for which she had applied, and she no longer had a role with WFATL as of 1 January 2018: "[Y]ou should expect a Notice of Redundancy shortly, by March 1, 2018 latest [...]. You will have 6 months from the time of the Notice of Redundancy. At that point, your employment will terminate at WBG [World Bank Group]." In her email, the Applicant's supervisor also stated that she would like to help the Applicant find another role within the World Bank Group if the Applicant could share her areas of interest.

44. On 19 January 2018, the Applicant requested a Performance Management Review of her FY2017 Manager Annual Review. The Applicant claimed, among other things, that her supervisor had not shared feedback with her before or during the performance discussion. The Performance Management Reviewer concluded that the Bank had followed the applicable rules and procedures in conducting the Applicant's Manager Annual Review and that the Applicant's due process rights had not been violated.

45. On the same date, the Applicant and the WFA Vice President ended the mediation process, which they had started on 13 October 2017, without reaching an agreement.

46. On 7 February 2018, the Applicant received the Notice of Redundancy. The Notice stated that the Applicant's "employment ha[d] become redundant with effect March 1, 2018. This decision has been taken in accordance with Staff Rule 7.01, paragraphs 8.02(d) and 8.03." The Applicant was provided with a six-month period during which she would be notified of "any suitable vacancies in your type of appointment and grade." The Applicant was placed on Administrative Leave from 1 March 2018 until her scheduled date of separation from the Bank and was not required to report to work. Finally, the Applicant was informed that her HR team was available to her as she looked for a new job, as well as career counselors, if she needed other types of career support.

47. The Applicant filed this Application on 12 June 2018. The Applicant is contesting (i) the Bank's decision to make her employment redundant; (ii) the Bank's alleged retaliatory actions and

hostile work environment; (iii) the Bank's alleged breach of the 2016 Mediation Agreement and the "informal" agreements that resulted from the 2013 and 2015 mediations; (iv) the release clause in the 2016 Mediation Agreement; and (v) the Bank's alleged discriminatory actions.

48. The Applicant seeks (i) reinstatement in her former position, or a similar position, "and all compensation due to her"; (ii) withdrawal of the Notice of Redundancy; (iii) a "[b]an of [the WFA Vice President, her supervisor, and the WFAFC Director] from having supervisory responsibilities over Applicant or participating in a future performance review or references"; (iv) "[s]pecific performance of the Mediation Agreement or compensation for breach of the Mediation Agreement"; (v) monetary compensation of three years' net salary for the "effects of the sanctioned/sanctionable conduct on Applicant's career"; (vi) "[t]ransfer to another equivalent position away from the named directors and Vice President"; (vii) "[p]rotection from further retaliatory actions from the named directors and Vice President"; and (viii) legal fees and costs in the amount of \$42,250.

49. The Applicant's employment with the Bank ended on 1 September 2018.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The decision to declare the Applicant's position redundant did not have a legitimate basis and was procedurally flawed

50. The Applicant challenges the basis of her department's new organizational structure and the resulting redundancy of her employment. She asserts that the Bank has failed to show that the elimination of her position was justified under the reorganization. The Applicant also challenges Deloitte's methods in developing the new service delivery model, which the Bank asserts served as the basis for the reorganization.

51. The Applicant denies that the new organizational structure was made in the interests of efficient administration. She asserts that efficiency had low priority in designing the new service

delivery model and that there were budget increases in her department that did not justify the reduction of positions. The Applicant further argues that the elimination of her position resulted in doubling the span of control of other managers in the department, which contradicts the Bank's argument of efficiency. The Applicant further questions the legitimacy of the reorganization, arguing that the new Client Services and Account Support & Corporate Services managers have continued to carry out the same work programs as they did prior to the reorganization.

52. The Applicant asserts that WFA management planned a new organizational structure as “a blatant pretext for getting rid of [her].” According to the Applicant, WFA management planned for organizational changes and the elimination of her position even before Deloitte was hired to work on the new service delivery model. She accuses management of “using” Deloitte to justify the reorganization to make it appear as if it was based on the new service delivery model. She contends that her difficult working relationship with her managers may have improperly influenced the decision to make her employment redundant. She also raises concerns with the fact that she was the only manager whose employment was made redundant.

53. The Applicant claims that the Bank violated due process in implementing the new organizational structure. She argues that the Bank has failed to provide any justification for the “urgent” implementation of the new organizational structure and the “speedy” redundancy of her employment. She further contends that the Bank failed to consult with her regarding the new organizational structure and inform her with due anticipation that her position would be at risk of redundancy. The Applicant also claims that she was removed from her position before her employment was made redundant.

54. The Applicant further claims that the Bank has failed to comply with the requirements of Staff Rule 7.01, paragraph 9.03, requiring that the Bank consider a set of criteria where positions are reduced in number under paragraph 9.02(d) of the Staff Rules. According to the Applicant, the Bank failed to consider her prior performance or properly assess her skills and experience. In this regard, she asserts that the selection processes for the new managerial positions were not the best methods for conducting performance comparisons or assessing her skills and experience and that a desk review would have been the most transparent and robust process for management to

determine “whose employment with the Bank will be made redundant.” The Applicant also complains that her supervisor failed to place her in a different Bank unit in which she could have applied her skills and experience. The Applicant further asserts that the Bank has failed to show that management sought volunteers for separation before the redundancy decision was made. Finally, she alleges that, since the issuance of the Notice of Redundancy until the end of her employment with the Bank, none of her managers contacted her to offer her job assistance.

55. Furthermore, the Applicant claims that the selection processes for the positions of Client Services manager and Account Support & Corporate Services manager were procedurally flawed. The Applicant challenges the assessment made by the selection committee, in connection with her application for the Client Services manager position, that she lacked the ability to adapt to change and lead her team through the reorganization process. She explains that as a manager she has successfully demonstrated that she could manage “various changes over the years.” She also objects to the reference reports and asserts that they were manipulated by the inclusion of five references whom she did not choose and who may have had ulterior motives in not recommending her for either of the two positions. She further claims that the selection processes were not independent because the chairs of the selection committees for both positions were close friends with the selected candidates. Finally, she argues that her non-selection was inappropriately influenced by her negative relationship with her managers, who were also the decision makers.

The Bank’s Response

The redundancy decision was based on a proper business rationale, and management followed a fair and reasonable procedure

56. The Bank asserts that the decision to declare the Applicant’s employment redundant, which followed the implementation of a new organizational structure, was motivated by a proper business rationale. Similarly, management followed a fair and reasonable procedure and gave the Applicant as early notice as reasonably possible.

57. The Bank maintains that there was a business need to change the WFATL’s organization into a new service delivery model and ensure that the department stay relevant and align resources

to support the needs of the Bank's operations. The Bank asserts that, with this objective in mind, WFATL hired Deloitte to submit a new service delivery model proposal. Contrary to the Applicant's assertion, the Bank states that the new service delivery model informed the new organizational structure, but the new organizational structure was based on recommendations by Deloitte and decided by the WFA Vice President.

58. The Bank contends that the proposal submitted by Deloitte was done in conformity with Deloitte's terms of reference and duly informed by the feedback of staff and clients. The Bank contends that the three options submitted by Deloitte to WFA management to reorganize WFATL into new divisions reflected the desire of clients and staff for WFATL to provide more efficient services.

59. In response to the Applicant's contention that the redundancy decision was not made in the interests of efficient administration, the Bank submits that, when a redundancy is decided, "the issue is not whether there were budgetary constraints but whether there has been a managerial determination in the interests of efficient administration that the types or levels of positions must be reduced in number." The Bank asserts that none of the new managers has "an unusual or unreasonable span of control." Furthermore, the Bank disputes the Applicant's contention that there was no significant change in the functions of the new managers. The Bank states that, while the department's former structure was focused on product lines and regional responsibility, the new organizational structure is concerned with specific functions. It also states that the new Client Services manager position is entirely new and different as it is no longer responsible for loan accounting, debt servicing, and help desk.

60. The Bank asserts that the Applicant has failed to show that the Bank had an improper motivation in declaring her employment redundant. According to the Bank, the fact that management expected the new service delivery model to have organizational implications does not prove that there was a plan for eliminating the Applicant's position. The Bank maintains that the decision to reorganize the Applicant's department had the effect of eliminating several positions, and not only the Applicant's. The Bank denies that the decision to reorganize the

department was arbitrary, noting that it followed a recommendation by Deloitte and emanated from the new service delivery model, which was developed through a transparent and inclusive process.

61. The Bank denies the Applicant's allegations that she was "kept in the dark through the [r]eorganization process." The Bank asserts that, "regardless of the lack of a right to be consulted," the Applicant was invited to several meetings from July to September 2017 and was consulted about the new service delivery model and its organizational implications, prior to any decision being made on the new organizational structure. The Bank further asserts that the Applicant led two working groups; the first one was to test the new service delivery model, while the second related to implementation of the new organizational structure. Furthermore, the Bank maintains that the Applicant knew since April 2017 that a reorganization was likely to be implemented in her department. It also notes that, as soon as the new organizational structure was decided in October 2017, the Applicant was informed, like the other managers in her department, that her employment was at risk of redundancy.

62. The Bank argues that, in making the Applicant's employment redundant, it has complied with the criteria set forth in Staff Rule 7.01, paragraph 9.03. The Bank contends that pursuant to this rule "management is entitled to use its judgment" to determine whose employment will be made redundant based on the skills needed in the Bank. The Bank states that in this case management identified the skills needed "by creating three new positions, and thereafter selected staff members for these positions."

63. Regarding the additional criteria listed in paragraph 9.03, the Bank avers that it conducted the required performance comparisons and fungibility assessment through the selection processes for the Client Services and Account Support & Corporate Services manager positions. The Bank asserts that a selection process was the best method to conduct performance comparisons and evaluate whether the Applicant's abilities and experience could be used elsewhere in the Bank, and it constituted a "more robust and transparent" process than a desk review. The Bank further asserts that it has shown that the Applicant had "both inferior performance and inferior fungibility compared to her colleagues. A desk review – which is not required – would not have saved her employment." The Bank states that, despite the Applicant's reluctance to meet with her supervisor,

the Applicant's supervisor reached out to two Directors in other departments to place the Applicant in another Bank unit but without success. The Bank points out that management called for volunteers at the town hall meeting of 19 October 2017 and through emails to and meetings with all staff whose positions were at risk of redundancy. Finally, the Bank avers that it has complied with Staff Rule 7.01, paragraph 9.06, and explains that, at the time of the redundancy, management offered the Applicant job assistance, but she refused any help and did not apply for any positions.

64. The Bank claims that the selection processes for the two manager positions for which the Applicant applied were fair and reasonable. The Bank asserts that the selection committees for both positions were "diverse and highly qualified" and consisted of senior staff members, including two Directors and one Chief Counsel; they were also impartial as the WFA Vice President and the Applicant's supervisor were not involved in the shortlisting or first round of interviews. The Bank further asserts that the selection committees assessed the Applicant's candidacy objectively and did not find her to be a good fit for either of the positions. Furthermore, the Bank contends that management acted transparently in requesting reference reports for each of the candidates.

The Applicant's Contention No. 2

The Applicant was subjected to a hostile work environment and retaliation

65. The Applicant contends that she was subjected to a hostile work environment and "falsely accused" of challenging her supervisors' authority and "escalating" matters. She claims that the following actions support her allegations: (i) the negative comments made by her supervisor in her FY2017 Manager Annual Review, including the statement that the Applicant was "quick to escalate"; (ii) her supervisor's accusation that the Applicant did not submit a list of feedback providers and refused to complete her FY2018 Manager Annual Review; and (iii) the 26 May incident in which the Applicant was subjected to her supervisor's "aggressive actions" and "continuous verbal abuse." The Applicant challenges EBC's findings that she was not subjected to a hostile work environment, claiming that EBC did not conduct an independent investigation of her allegations. She also challenges the conclusions of the Performance Management Reviewer regarding her FY2017 Manager Annual Review.

66. The Applicant also claims that she was retaliated against by her managers. She argues that management took the following adverse actions against her in response to her complaints of harassment and unfair treatment before IJS: (i) the Applicant was reassigned in 2015 after contacting mediation with allegations of a hostile work environment against the WFAFC Director; (ii) the Applicant's operational budget was restricted following the 2016 Mediation Agreement; (iii) the Applicant was reassigned to another department immediately after the 2016 Mediation Agreement had reinstated her to her former position; (iv) the Applicant's supervisor undermined the Applicant's managerial authority by directly contacting the Applicant's staff with impending managerial and staff reduction issues; (v) the Applicant's position was eliminated following the Applicant's expressed disagreement with the new organizational structure; (vi) the WFA Vice President threatened the Applicant with removal if she continued to question the business rationale of the new organizational structure; and (vii) the Applicant was placed on Administrative Leave following the Applicant's request for mediation in 2018.

The Bank's Response

Management did not retaliate against the Applicant; the Applicant's allegations of a hostile work environment and unfair treatment are without basis

67. The Bank denies that the Applicant's supervisor's comments that the Applicant escalated matters created a hostile work environment. The Bank states that management merely reminded the Applicant that she should conform to normal standards of workplace behavior and respect her supervisor's authority and role to be consulted regarding the Applicant's work issues prior to any discussion with the Vice President. The Bank asserts that EBC conducted a thorough investigation of this allegation and concluded that there was no evidence of a hostile work environment. Furthermore, the Bank asserts that the request made by the Applicant's supervisor that the Applicant submit a list of feedback providers in relation to her FY2018 Manager Annual Review is not evidence of a hostile work environment but part of the performance evaluation process. Finally, the Bank denies that the other management actions alleged by the Applicant constitute a hostile work environment.

68. The Bank asserts that the Applicant has failed to establish a *prima facie* case for her allegations of retaliation. The Bank avers that the Applicant has not shown a direct link between the Applicant's recourse to IJS and the decision to declare her employment redundant. The Bank adds that the retaliation alleged by the Applicant in the present case is no different from the Applicant's prior complaints of retaliation before PRS and EBC, both of which failed to find that retaliation had occurred. Regarding the other retaliatory actions alleged by the Applicant, the Bank maintains that the Applicant has failed to show that these "claims and theories are actually true." The Bank states that the Applicant "was treated like any other managers in her department, with the same authority over budget and staffing (within the constraints of WFA budget resources), and her role was not undermined."

The Applicant's Contention No. 3

The Bank breached the 2016 Mediation Agreement and two agreements resulting from the 2013 and 2015 mediations

69. The Applicant contends that the Bank has breached several terms of the 2016 Mediation Agreement as follows. First, she argues that the Bank violated the terms requiring that the WFAFC Director and the Applicant work with an executive coach in restoring trust and respect in their working relationship. The Applicant states that, after the first meeting with the executive coach, the WFAFC Director stopped attending the coaching sessions. She also states that, after Ms. A became her supervisor, WFA management discontinued all participation in the coaching sessions. Second, the Applicant argues that the Bank has also breached the obligation requiring that the Applicant and the WFAFC Director discuss career development and ensure that her managerial authority is not undermined. Third, she asserts that the Bank has breached the obligation to ensure a work environment of transparency, direct communication, and informal resolution of conflicts.

70. The Applicant further contends that the Bank breached two agreements that resulted from mediations in 2013 and 2015. She notes that the first agreement resulted from a group mediation held in 2013 between the WFAFC Director and his management team, including her, and sought to improve trust in the entire team. As for the second agreement, the Applicant explains that it

resulted from discussions between her and the WFAFC Director requiring that the Applicant be treated equally in relation to the other managers in her department.

71. The Applicant alleges that management negotiated the 2013 and 2015 agreements and the 2016 Mediation Agreement in bad faith. She contends that, although the WFAFC Director initially accepted the terms of the 2013 and 2015 agreements, he subsequently “chose to ignore these in his engagement with the Applicant.” She also contends that the WFA Vice President’s decision to announce an “organizational realignment” only two months after the conclusion of the 2016 Mediation Agreement clearly shows that he negotiated in bad faith.

The Bank’s Response

Management did not breach the 2016 Mediation Agreement; the 2013 and 2015 mediations did not result in MoUs

72. While conceding that mediations between the Applicant and the WFAFC Director took place, the Bank asserts that no MoUs were concluded between the parties as a result of the 2013 and 2015 mediations.

73. The Bank denies the Applicant’s contention that it has breached the terms of the 2016 Mediation Agreement. The Bank contends that (i) the relevant provision in the Agreement requiring that the Applicant and the WFAFC Director work with an executive coach became moot when he was reassigned in November 2016 and Ms. A became the Applicant’s supervisor; (ii) the Applicant has failed to show how her Talent Review placement and Salary Review Increase rating relate to the provision in the 2016 Mediation Agreement regarding the Applicant’s career development as this provision requires the parties to discuss the Applicant’s long-term career goals; (iii) the Applicant offers no evidence in support of her allegation that management was “unwilling to engage” in the informal resolution of conflicts between them; and (iv) the Applicant has failed to show that the Bank undermined her managerial authority. The Bank submits that the Applicant’s other claims of breaches of the 2016 Mediation Agreement “lack specificity and are virtually impossible to address.”

The Applicant's Contention No. 4

The release clause in the 2016 Mediation Agreement interfered with the Applicant's staff rights

74. The Applicant argues that the release clause in the 2016 Mediation Agreement requiring that both parties refrain from any future legal or administrative actions in connection with the issues brought to mediation interfered with her staff rights. She relies on the Tribunal's finding in *DB*, Decision No. 524 [2015] to assert that the release clause specifically infringes upon her right to seek relief from the Tribunal. She contends that her reassignment was conditioned upon her acceptance of each of the provisions of the 2016 Mediation Agreement, including the release clause, and that she felt pressured to accept it.

75. The Applicant claims that she engaged in mediation in good faith. She contends that she relinquished her request for financial compensation before PRS to demonstrate her good faith in working with management to resolve their disputes. She further accuses management of not committing to the spirit of the 2016 Mediation Agreement, which she claims was undermined by a series of management actions seeking to invalidate the 2016 Mediation Agreement. She alleges that the Bank acted in bad faith.

The Bank's Response

The 2016 Mediation Agreement did not interfere with the Applicant's rights

76. The Bank submits that, according to *BJ*, Decision No. 443 [2010], agreements that include a commitment by a staff member not to appeal are valid and must be differentiated from the agreement in *DB*, in which the applicant waived his right to appeal on the condition that he would receive compensation. The Bank claims that the 2016 Mediation Agreement is similar to the agreement in *BJ* because the Applicant did not have to sign a waiver. The Bank explains that the 2016 Mediation Agreement was the result of negotiations between management and the Applicant and did not constitute the compensation for an identified violation of a right. The Bank notes that the Applicant received "much more than PRS's recommendation of an acceptable assignment" given that the PRS Panel also recommended that the Applicant have (i) an enlarged scope of

responsibility; (ii) two months of annual leave; (iii) a revised performance evaluation; and (iv) reinforced managerial authority.

The Applicant's Contention No. 5

The Applicant suffered harm from covert discrimination

77. The Applicant claims that, as the only Sub-Saharan/Caribbean female staff member to hold a managerial position in the history of her department, she was subjected to “subtle forms of discrimination” on the basis of gender and “race/nationality.” She claims that the WFAFC Director treated the male managers in her department more favorably than the Applicant even though the Applicant had more experience. She alleges that she and another female manager reporting to the WFAFC Director were referred to as “his ladies” while he referred to the male managers by their names, which shows “a lack of respect for his female colleagues.” She complains that she was not given the same high-profile assignments as other female and male managers of different races and she was also given less managerial authority. The Applicant raises concerns over the fact that she was the only female and Part II manager whose position was made redundant, while the other managers who “secured their managerial positions” were male. She also claims that “race/nationality were factors in the 2015 and 2017 reorganization” because her supervisor, “who is Chinese, selected the two Chinese male managers for the new positions in her Department, therefore forcing out the Applicant, the only female Caribbean manager, by declaring her position redundant.” She asserts that these facts should be considered by the Tribunal “as strong indications of discrimination.”

The Bank's Response

Management did not discriminate against the Applicant

78. The Bank asserts that the Applicant has failed to establish a *prima facie* case of discrimination. The Bank denies that the “Chinese” ethnicity of the two new managers played a role in their selection and asserts that they were selected following a competitive and transparent selection process. The Bank notes that only the new Client Services manager is Chinese; the Applicant’s supervisor and the new Account Support & Corporate Services manager are both

American, whereas the new manager for Systems and Transformation is Kenyan. The Bank points out that WFA is one of the most diverse Vice Presidencies of the World Bank Group, with a diversity index of 0.94 (out of a maximum of 1), and WFA also has one of the highest Employee Engagement Survey Diversity & Inclusion Index scores in the World Bank Group. The Bank further asserts that the use of the word “ladies” does not constitute a *prima facie* case of discrimination nor does it indicate discrimination.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS
 DECISION TO DECLARE THE APPLICANT’S EMPLOYMENT REDUNDANT
Scope of the Tribunal’s Review in Redundancy Cases

79. Referring to its scope of review in redundancy cases, the Tribunal recently held in *González Flavell*, Decision No. 553 [2017], para. 137:

[T]he decision to declare a staff member’s employment redundant is an exercise of managerial discretion. Nevertheless, such a decision will be reviewed to determine whether 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.” See *Harou*, Decision No. 273 [2002], para. 27 citing *Kahenzadeh*, Decision No. 166 [1997], para. 20; and *Mahmoudi (No. 2)*, Decision No. 227 [2000], para. 24.

80. To be upheld, the redundancy decision in question must be based on a legitimate rationale and must have been made in the interest of efficient administration. See, e.g., *DI*, Decision No. 533 [2016], paras. 85–87, and *Marchesini*, Decision No. 260 [2002], paras. 30 and 35.

81. To substantiate a claim against a redundancy decision, the initial burden of proof lies upon the Applicant who must make a *prima facie* case of abuse of power (*de Raet*, Decision No. 85 [1989], para. 57). However, the Tribunal has recognized in *DD*, Decision No. 526 [2015], para. 40, that it may be “‘exceedingly difficult’ for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion.” It is thus incumbent upon the Tribunal to require, from the Bank, 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; *Harou*, para. 27; and *Fidel*, Decision No. 302, [2003], para. 24.)

Relevant Provisions of the Staff Rules on Redundancy

82. Staff Rule 7.01, paragraph 9, sets forth the provisions governing redundancy. The relevant provisions are as follows:

09. Redundant Employment

Applicability

9.01 Paragraphs 9.01–9.09, “Redundant Employment,” of this Rule, apply only to Staff Members holding Regular, Open-Ended, Term, or Local Staff Regular appointments.

Definition of Redundant Employment

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

- a. An entire organizational unit must be abolished;
- b. A specific position or set of functions performed by an individual in an organizational unit must be abolished;
- c. The responsibilities of a position no longer match the skills and experience of the incumbent and are unlikely to do so within a reasonable period of time; or
- d. Types or levels of positions must be reduced in number.

Decision on Redundant Employment

9.03 A decision that a Staff Member’s employment is redundant will be made by a Vice President, or where there is no Vice President, the responsible Department Director responsible for administering the position, in consultation with the appropriate Sector Board, Network, or other management group, where applicable, and with the concurrence of the World Bank Group Human Resources Vice President or his/her designee. Where positions are reduced in number under paragraph 9.02 (d) of this Rule, the selection of Staff Members whose employment is redundant will be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively, taking into account the following factors:

- a. The performance (including professional and work-place behavior) of Staff Members;

- b. Whether the abilities and experience of Staff Members can be used elsewhere in the Bank Group; and
- c. The existence of volunteers for termination who are willing to accept severance payments pursuant to paragraph 9.08 of this Rule.

Notice of Redundancy

9.04 Staff Members will receive a written notice of redundancy. The notice will state that the Staff Member's employment is redundant, and that unless the Staff Member is reassigned, the Staff Member's employment will be terminated six months from the effective date of the notice of redundancy.

Reassignment and Retraining

9.06 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 career counseling services. Staff are responsible for applying to existing vacancies in the World Bank Group's recruitment portal. Placement also may be offered in a vacant lower level job in accordance with Staff Rule 5.06. "Assignment to Lower Level Positions."

Whether the redundancy decision had a legitimate basis

83. The Applicant challenges the basis of her department's new organizational structure and the resulting redundancy of her employment. She asserts that the Bank has failed to show that the elimination of her position was justified under the reorganization. The Applicant denies that the new organizational structure was made in the interests of efficient administration. For its part, the Bank asserts that the decision to declare the Applicant's employment redundant followed the implementation of a new organizational structure and was motivated by a proper business rationale.

84. The record shows that the Applicant's employment was made redundant under Staff Rule 7.01, paragraphs 8.02(d) and 8.03 (now paragraphs 9.02(d) and 9.03), namely "d. Types or levels of positions must be reduced in number." The Tribunal held in *Fidel*, para. 30:

The question is therefore whether according to para. 8.02(d), there existed, in relation to the unit's work program, a clear identification of "specific types or levels of positions," as well as evidence of a thorough analysis of the need for redundancies by "type" and "level," which would put to rest any suspicion that the redundancy mechanism had been used as a pretext against the Applicant's interests.

85. The first issue before the Tribunal is whether there was a genuine basis for the elimination of a GH level manager position in the Applicant's department that ultimately led to the redundancy of the Applicant's employment. The next issue is to determine whether the process under which the redundancy was implemented followed the Bank rules and procedures.

86. The record shows that an "organization realignment" was announced in WFA and its departments on 29 November 2016. The rationale was explained by the WFA Vice President as follows:

As part of WFA's role as a value-add partner and in consultation with my Leadership Team, I am announcing **an organizational realignment** which will place certain IBRD/IDA divisions under newly reorganized departmental areas. This will enable WFA to provide a single point of contact with our clients, particularly colleagues in operations, and at the same time provide new opportunities for additional value-added services. With the Trust Funds Division initiating a relationship management pilot with Operations, and the Bank's simplification and agile initiatives, we currently have a unique opportunity to bring together trust funds and loan operations under a single directorship. (Emphasis in original.)

87. The record also shows that, pursuant to the realignment, the trust fund division and the loans division merged into the newly created WFATL under the direction of Ms. A, who became the Applicant's supervisor on 1 January 2017. The Applicant's supervisor was entrusted with the task of "primarily [...] enhancing the client service delivery model both through the application of LEAN in our global loan processing business and through the launch of a Bank-wide survey that will target a large internal client audience."

88. It also follows from the record that the Applicant's supervisor hired Deloitte to develop and evaluate a new service delivery model for her department. In early September 2017, Deloitte delivered three proposals – options A, B, and C – for a new service delivery model and suggested a new organizational structure to implement them. The record indicates that WFA management considered most suitable a proposal that reflected three key components of the new service delivery model: (i) a client services division to provide advice to Task Team Leaders; (ii) an account support division to provide accounting, reporting, and help desk services, and; (iii) a systems and

transformation division for WFA to provide systems and data support, project management, and innovation services.

89. The record further indicates that the newly adopted WFATL organizational structure created three new divisions: Client Services, Account Support & Corporate Services, and Systems and Transformation. The record also indicates that the following positions were eliminated: one Manager (level GH) position, one Team Lead (level GG) position, one Finance Officer (level GF) position in Chennai, one Finance Officer (level GF) position in Brasilia, two Finance Analyst (level GE) positions in Chennai, four Finance Analyst (level GE) positions at headquarters, one Finance Assistant (level GD) position in Brasilia, and three Finance Assistant (level GD) positions at headquarters.

90. The Tribunal is satisfied that the elimination of a GH level manager position in the Applicant's department was driven by the legitimate business need to adapt the new organizational structure to the new service delivery model. Under this model, WFATL needed only three managers to lead each of the three newly created divisions.

91. The Applicant also challenges Deloitte's methods in developing the new service delivery model. The record shows, however, that the proposals submitted by Deloitte were done in conformity with Deloitte's terms of reference and duly informed by the feedback of staff and clients. Deloitte's terms of reference show that the firm was hired to, *inter alia*, "[d]etermine the optimal Service Delivery model to enhance client experience by providing them the faster, better, and value add service"; "[d]efine the staffing mix and skills required to achieve the service delivery model"; and "[e]valuate the organization implications of this on the organization structure." It is also evident from the record that Deloitte not only conducted extensive interviews with clients but also consulted with staff members, including the WFATL managers, to allow them the opportunity to provide input on the planned changes. Furthermore, WFA management expected the new service delivery model to have organizational implications in the department, including in its staffing needs.

92. The Applicant also questions the legitimacy of the reorganization by claiming that the new managerial positions have continued to carry out the same work program as they did prior to the reorganization. The record shows that the new divisions under the new organizational structure were “functional” instead of “regional ones.” Pursuant to a Tribunal order for document production of 21 February 2019, the Bank produced job description comparisons regarding the old and new roles and responsibilities of the Account Support & Corporate Services manager and the manager for Systems and Transformation. The record also contains evidence that the new Client Services manager is no longer responsible for loan accounting, debt servicing, and help desk. Having reviewed the record, the Tribunal is satisfied that the newly configured manager positions and their divisions are different from the former positions in WFATL.

93. The Applicant also claims that the reorganization was not made in the interests of efficient administration. She argues that there were budget increases in her department that did not justify the reduction of positions. She also argues that efficiency had low priority in designing the new service delivery model.

94. In *Fidel*, para. 29, citing *Ezatkah*, Decision No. 185 [1998], para. 14, the Tribunal observed 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.” This principle was reaffirmed in *Garcia-Mujica*, Decision No. 192 [1998], para. 10, where the Tribunal found that “the governing element is the redefined work strategies and priorities resulting from the overall new structure envisaged. Even if [...] the staff budget had been increased, this would not preclude staff reductions based on a different business rationale.”

95. The Tribunal finds that the Bank has shown that there was a business need to change the WFATL organization into a new service delivery model and ensure that the department stay relevant and align resources to support the needs of the Bank’s operations in an efficient manner. The record indicates that the aim of the new service delivery model was to “simplify and standardize [the Bank’s] loan processing services, [and] strive for greater operational efficiencies through further automation, with the goal of enhancing [the Bank’s] value add to clients.” The record further indicates that the reduction of types and levels of positions in the Applicant’s

department was implemented in line with the redefined work strategies recommended in the new service delivery model. Any budget increase in the department could not have precluded the reduction of positions in the department given that the reorganization rationale was not driven by budgetary concerns but responded to other business needs.

96. The Applicant further argues that the elimination of her position resulted in doubling the span of control of other managers in her department and contradicts the Bank's argument of efficiency. While noting that the span of control of the new managers is not contrary to HR directives, the Tribunal observes that the question put before it is not whether the new divisions are currently encountering challenges and fulfilling their objectives; it is not the Tribunal's function to scrutinize this. The Tribunal is asked whether the redefined work strategies and priorities under the new organization structure were driven by concerns of efficiency. The record strongly supports this latter conclusion.

97. The Tribunal finds that the reorganization had a genuine basis and was part of a thorough process conducted by the Applicant's managers with the goal of rendering more efficient client services. Therefore, it concludes that the new organizational structure and the resulting decision to make the Applicant's employment redundant had a legitimate basis.

Whether the redundancy decision was affected by improper motivations

98. The Tribunal will now review the record to assess whether the redundancy decision was affected by improper motivations. It is the Applicant's contention that WFA management planned a new organizational structure as "a blatant pretext for getting rid of [her]."

99. The Tribunal has consistently held that "[a] finding of improper motivation cannot be made without clear evidence." *Lysy*, Decision No. 211 [1999], para. 71. In *Martin del Campo*, Decision No. 292 [2003], para. 63, the Tribunal observed:

The fact that the redundancies appeared to take place in two stages, with the second phase affecting only the Applicant, understandably made the Applicant distrustful of the process, and it gives pause to the Tribunal. Clearer identification of "specific

types or levels of positions,” as well as evidence of specific analysis of the need for redundancy by “type” and “level,” could have established beyond peradventure the managers’ respect for para. 8.02(d), and dispelled any suggestion that the redundancy mechanism was used as a pretext against the Applicant’s interests. But in the circumstances of this case, the Tribunal concludes that there was no pretext. The two “stages” were not devised to harm the Applicant, but resulted from an effort to preserve his position. If the managers had been looking for a pretext to remove the Applicant, it is far more plausible that they would have included him with the initial batch of redundancies.

100. The record shows that the reorganization was gradual, with the first steps taken in spring 2017 with the hiring of Deloitte. Thereafter, Deloitte worked for several months on the development of the new service delivery model, which it presented to management in September 2017. The decision to reorganize the Applicant’s department into three new divisions was made in October 2017 and followed the recommendation presented by Deloitte in the new service delivery model. The new organizational structure was then implemented in January 2018 after which the Applicant’s employment was made redundant. Therefore, the Tribunal observes that the record does not support the allegation that the reorganization was arbitrarily planned and hastily implemented.

101. The Applicant further claims that she did not have a good working relationship with her managers, which tainted the objectivity of the redundancy decision. The issue before the Tribunal is whether the Applicant’s difficult working relationship with her supervisor improperly influenced the decision to declare her employment redundant. In other words, “whether the objectivity of the redundancy decision was impaired.” *See DV*, Decision No. 551 [2016], para. 67; *González Flavell*, para. 151.

102. The record shows that the Applicant had a strained working relationship with her former supervisor and that she had complained several times that he had treated her unfairly. The record also shows that in fall 2015 the Applicant’s former supervisor reassigned the Applicant, and that the Applicant complained before PRS alleging that the reassignment constituted retaliation. The PRS Panel did not find evidence of retaliation or any bad faith but recommended that the parties mediate to seek an acceptable reassignment for the Applicant. Following the “organizational realignment” in WFA, Ms. A became the Applicant’s supervisor on 1 January 2017. The Applicant

appears to have initially had a good relationship with her new supervisor, but it deteriorated soon afterwards. The Applicant complained to EBC in July 2017 that her new supervisor was “proxy retaliating” against her on behalf of her former supervisor and that she was the victim of a hostile work environment. EBC found no evidence in support of the Applicant’s complaints.

103. In light of the foregoing, the Tribunal finds that, despite the difficult working relationship between the Applicant and her supervisor, this did not influence the redundancy decision.

Whether the redundancy decision followed due process

104. The basic elements of due process require that a staff member receives clear notification of the exact and correct Staff Rule under which his or her employment is being terminated. *See, e.g., Yoon (No. 2)*, para. 37.

105. The Tribunal has also held that “[i]t is of the utmost importance for the Bank to follow established procedures closely so as to ensure transparency and avoid the appearance of unfairness.” *Moussavi (No. 2)*, Decision No. 372 [2007], para. 47. Though “Staff Rule 7.01 does not provide for specific advance warning about the issuance of a redundancy notice, a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspect of his work.” *Garcia-Mujica*, para. 19.

106. In the present case, the Applicant contends that the Bank did not follow a proper process in declaring her employment redundant. First, she asserts that the Bank failed to consult with her regarding the new organizational structure and did not inform her with due anticipation that her position would be at risk of redundancy. Second, the Applicant claims that she was removed from her position before her employment was declared redundant. Third, the Applicant complains that, in making her employment redundant, the Bank did not follow the procedures set forth in Staff Rule 7.01, paragraph 9.03.

107. Regarding the first contention, the record shows that the new service delivery model envisaged the following consultation process: (i) Deloitte would propose options for the new service delivery model, (ii) the four managers in WFATL would be consulted on the options, and (iii) Ms. A would make the final decision. The Applicant's supervisor also informed her managers that there would not be a consultation process regarding the new organizational structure and that the decision-making process would be led by WFA management. The record further shows that, when the Applicant complained about the lack of consultation in the reorganization process, her supervisor responded that "HR [has] confirmed that there is no requirement nor precedent in the [B]ank to seek managerial consultation. Deloitte [has] also confirmed this from industry practice. So this consultation is a courtesy step not a requirement."

108. It is the Tribunal's view that, when a reorganization is decided, the Bank should make an effort to inform staff members and give them the opportunity to plan on matters regarding their careers. *See Garcia-Mujica*, para. 19. However, managers retain a wide discretion in deciding how to inform their staff of any reorganization. The record shows that the Applicant was consulted regarding the new service delivery model and participated in working groups from July to September 2017. She was also present in the managers briefing held on 18 September 2017 in which WFA management sought input concerning the new service delivery model and its organizational implications. The Tribunal observes that the Applicant was consulted on matters regarding the new service delivery model and its organizational implications.

109. Another issue to be determined by the Tribunal is whether the Applicant was given early notice of impending redundancy. The record shows that, while the Applicant was officially informed that her position was at risk of redundancy on 18 October 2017, she and the other managers in her department were in fact informed at the managers briefing of 18 September 2017 that management was considering adopting either option B or option C for the final reorganization, which proposed the elimination of a GH level managerial position in WFATL.

110. The Tribunal found in *Bhatia*, Decision No. 303 [2003], para. 21:

[P]rovision of such [early] notice is not always practicable. The Bank cannot be expected to forewarn a staff member of defects in his qualifications when these

only emerge in the context of later, new organizational demands [...]. To consider otherwise would, in effect, require a supervisor when evaluating a staff member's past performance to inform the staff member that if the Bank were – at some indeterminate time – to restructure some parts of its work, it might require a different skills set. Such an exercise would improperly conflate performance evaluation with organizational development and planning. The Tribunal considers that, in the circumstances of this particular case, earlier notice would not have made a difference. It further considers that the Respondent did not violate the Applicant's rights in not granting him advance notification of his possible redundancy.

111. The evidence on record supports the Bank's argument that only after a final decision on the new organizational structure was made in October 2017 was WFATL management able to notify the Applicant of her impending redundancy. The Tribunal finds that the circumstances surrounding the reorganization did not allow management to inform the Applicant of her imminent redundancy prior to October 2017 but that the elements presented to her and the other managers in her department up until that date were sufficient for them to realize that a managerial position might be eliminated. The Tribunal is satisfied that the Bank informed all four managers, including the Applicant, "with all due anticipation" of an impending redundancy.

112. The Applicant also complains that she was removed from her position before she was made redundant. But the record does not support this contention. The Applicant's supervisor wrote to the Applicant on 16 January 2018 to inform her that because she had not been selected for any of the new manager positions and considering that from 1 January 2018 she no longer had a position in her department, her employment with the Bank had been determined to be redundant. The Applicant received the Notice of Redundancy on 7 February 2018. The Tribunal is therefore satisfied that the Bank followed due process in timely issuing the Notice of Redundancy, a few weeks after the Applicant was duly informed that her employment had been determined to be redundant.

113. Another issue before the Tribunal is whether the methods used by the Bank in making the Applicant's employment redundant under Staff Rule 7.01, paragraph 9.02(d), complied with the procedures set forth in paragraph 9.03 of this Rule, which require that, in selecting the staff member whose employment is redundant, the Bank takes a number of factors into consideration.

114. In reference to the criteria set forth in paragraph 9.03, the Tribunal further held in *Martin del Campo*, para. 57:

The consistent evidence from the relevant managers is that they did not consider that *any* of the staff they had to declare redundant were performing unsatisfactorily. To the contrary, they found the process especially painful precisely because they felt they had a splendid team. It was nonetheless necessary to make cuts, and that involved comparisons. The first of the criteria permitted under para. 8.03 is the “performance of staff members.” That perforce means *comparative* performance evaluation. So when the Applicant was told of critical comments about his performance, it was not by way of explaining why he was being terminated, but rather why it was that others had been preferred when it came to saving their positions. The distinction may be irrelevant to the effective outcome from the redundant staff member’s perspective, but it is crucial in assessing the lawfulness of the decision. (Emphasis in original.)

115. The Tribunal has made a distinction “between the selection of a staff member for redundancy because of perceived poor performance, which is impermissible, and consideration of the relative ‘performance of staff members’ as part of an exercise to select one individual rather than another.” See *Prakas*, Decision No. 357 [2007], para. 66.

116. The first factor to be considered by the Bank in deciding redundancies concerns “[t]he performance (including professional and work-place behavior) of Staff Members.” The Applicant complains that the selection processes were procedurally flawed and were not the best methods to conduct performance comparisons. She claims that a desk review would have been the most transparent and robust process for management to determine “whose employment with the Bank [would] be made redundant.” The Applicant also argues that she had more experience than the other managers and that her performance ratings for the years preceding the redundancy decision were higher. The Bank asserts that it took into account this factor, “including through the selection processes for the new Manager positions.” The Bank asserts that a selection process was the best method to conduct performance comparisons and it constituted a “more robust and transparent” process than a desk review.

117. The Tribunal observes that the Staff Rules do not provide for a particular method to conduct comparisons of staff members’ performance and finds that the Bank has discretion in determining

which methods are most suitable to carry out that task. In the present case, the Bank chose to launch a selection process to recruit three positions: a Client Services manager, an Account Support & Corporate Services manager, and a manager for the Systems and Transformation Division. Although the Applicant claims that a desk review would have been the most transparent and robust process in conducting performance comparisons, the Tribunal finds that the Applicant has failed to support this claim. The Tribunal observes that, pursuant to its order for document production, the Bank produced a performance ratings comparison chart showing that the ratings of the other managers were higher than those of the Applicant for FY2015, FY2016, FY2017 and FY2018. The Applicant's claims are therefore unsupported by the record. Thus, the Tribunal is satisfied that a selection process constituted in this case the best method to compare the Applicant's performance to that of her colleagues.

118. The Tribunal recalls the need to observe the principles of objectivity, transparency, rigor, diversity, and fairness in the selection process. *See, e.g., Iqbal*, Decision No. 485 [2013], para. 40; *Hitch*, Decision No. 344 [2005]; *Perea*, Decision No. 326 [2004]; *Riddell*, Decision No. 255 [2001]; *Jassal*, Decision No. 100 [1991]. The record shows that the selection committees for the Client Services and Account Support & Corporate Services manager positions were diverse and consisted of highly qualified senior staff members, including two Directors and one Chief Counsel. It further shows that the WFA Vice President and the Applicant's supervisor were not involved in the shortlisting or first round of interviews.

119. The Tribunal further observes that the selection committee for the Account Support & Corporate Services manager position found that the Applicant lacked the "necessary technical knowledge" and ability to lead the relevant team through a transition process. The selection committee for the Client Services manager position did not consider the Applicant to be a good fit for the position and, therefore, recommended her colleague for the position, considering him a "good fit for the role." The Tribunal notes that the committee recommended her for a second interview along with her colleague. The record indicates that management requested reference reports for the Applicant and her colleague and that 13 out of 14 references supported the Applicant's colleague while only 6 references out of 13 supported the Applicant. The record also indicates that, after the second interview, the Applicant's colleague was selected for the position.

The following day, the Applicant was informed that she had not been selected for either of the two manager positions and was given the reasons for her non-selection.

120. Having reviewed the record, the Tribunal finds that the principles of “objectivity, transparency, rigor, diversity, and fairness” were observed in the present case. The Tribunal further finds that there is no evidence to support the allegation that the selection processes violated Staff Rule 7.01, paragraph 9.03(a). Rather, the Tribunal is satisfied that they ensured a fair assessment and comparison of the candidates’ performance.

121. The Applicant also challenges the fungibility assessment under Staff Rule 7.01, paragraph 9.03(b). She contends that her skills and abilities were not properly assessed and that she was not given the opportunity to use her skills and experience in other Bank units. The Bank contends that it has complied with the fungibility assessment through the selection process. The Bank further maintains that management attempted to place the Applicant in a different unit but without success.

122. Under the fungibility criterion, the Bank is required to consider “[w]hether the abilities and experience of Staff Members can be used elsewhere in the Bank Group.” In *Prakas*, para. 55, the Tribunal found:

The Applicant challenges the fungibility assessment, the one category in which both the Applicant and Mr. Lecksell were assessed as equal. He claims that because his own skills are more narrowly cartographic, whereas Mr. Lecksell has better computer skills, Mr. Lecksell is more fungible. He considers that because Mr. Lecksell would have been more likely to find work elsewhere in the Bank than he would, Mr. Lecksell should have been identified for redundancy as the consequences for him would not necessarily have led to the termination of his employment. This is a misapprehension of the concept of fungibility. Management is required pursuant to paragraph 8.03(b) to consider “[w]hether the abilities and experience of staff members can be used elsewhere in the Bank Group.” The more fungible a candidate’s skills, the more generally useful the candidate. The Tribunal does not consider that the team’s assessment of the fungibility of the candidates was flawed.

123. Having reviewed the record, the Tribunal is satisfied that the selection processes made it possible to assess the skills and experience of the candidates in light of the new functions attributed to the newly configured manager positions. The record supports the Bank’s assessment that the

skills and experience of the other managers were considered more fungible than the Applicant's and better suited for these new manager positions.

124. The Applicant also complains that her skills and experience could have been used in another Bank unit and states that her supervisor failed to place her in another unit. The Tribunal observes that a distinction must be drawn between the job assistance provided for in Staff Rule 7.01, paragraph 9.06, and compliance with the fungibility assessment. The former concerns the provision of job assistance after the Notice of Redundancy has been issued; the fungibility assessment, in contrast, requires that management assess the abilities and experience of a staff member prior to making a redundancy decision. In the present case, the record shows that, rather than meet with her supervisor to discuss placement opportunities, the Applicant took the position that she would meet only with the WFA Vice President in the context of mediation. The Tribunal observes, nevertheless, that the Applicant's supervisor did ask two Directors at the Bank whether they had positions available for the Applicant in their departments but nothing suitable was found for her. The Tribunal finds that the Bank complied with the fungibility assessment required under Staff Rule 7.01, paragraph 9.03(b).

125. Regarding the third criterion of Staff Rule 7.01, paragraph 9.03(c) concerning "[t]he existence of volunteers for termination who are willing to accept severance payments pursuant to paragraph 9.08 of this Rule," the Bank maintains that management called for volunteers at the town hall meeting of 19 October 2017 and through emails to and meetings with all staff whose positions were at risk of redundancy. The Applicant denies the Bank's contention.

126. In *Harou*, para. 55, the Tribunal also held that, "[u]nder paragraph 8.03(c), the Bank must consider whether there are volunteers for termination who are willing to accept severance payments pursuant to paragraph 8.08 or 8.09 before deciding on a redundancy under paragraph 8.02(d)."

127. The record shows that on 23 October 2017, a few days after the town hall announcement, the Applicant's supervisor wrote to the Applicant to inform her that her position was at risk of redundancy and that "one of the factors the leadership team is interested in must [*sic*] consider is

whether current Staff are willing to separate voluntarily. Therefore, please inform me by November 14, 2017 if you are willing to separate voluntarily.” The Tribunal finds that the Bank complied with the criterion prescribed in Staff Rule 7.01, paragraph 9.03(c), by asking the Applicant whether she was willing to separate voluntarily before the issuance of the Notice of Redundancy.

128. The Applicant also alleges that the Bank failed to assist her in her job search subsequent to the Notice of Redundancy in violation of Staff Rule 7.01, paragraph 9.06. In *Lee*, Decision No. 241 [2001], para. 44, the Tribunal observed:

The Applicant’s third main complaint is that the Bank failed to assist her in finding a new assignment subsequent to the termination of her employment for redundancy. The record does not substantiate this allegation. Rather it shows that on February 9, 1998 the Sector Manager, AFTM2, sent an email to the Applicant referring to their agreement that the Applicant’s next step would be to explore her options with her personnel officer and to get back to him by March 1, 1998 with some idea as to her future course of action. Moreover, the Applicant was matched to over thirty job postings and she submitted several applications, some of which were for jobs in her grade range. The fact that neither the efforts of the Applicant nor those of the Bank were successful does not mean that the Bank failed in assisting the Applicant in finding a new assignment. As stated by the Tribunal in *Arellano* (Decision No. 161 [1997], para. 42), the Bank’s obligation in this respect is “to make an effort; ... not ... to ensure the success of such effort.” On the basis of the above, the Tribunal cannot conclude that the Bank failed to assist the Applicant in searching for a new assignment.

129. The Tribunal notes that the Bank’s obligation in this respect is to “make an effort” and not to ensure that such effort will be successful. In the present case, the Applicant’s supervisor offered to assist the Applicant in her job search multiple times, but the Applicant declined her supervisor’s offer. The Tribunal is satisfied that the Bank observed this obligation when it offered job search assistance to the Applicant.

THE BANK'S ALLEGED RETALIATORY ACTIONS AND HOSTILE WORK ENVIRONMENT

130. The Applicant claims that she was subjected to a hostile work environment and unfair treatment. She also claims that she was unfairly accused of “circumventing” her supervisor’s authority and “escalating” matters.

131. The Tribunal finds that the record does not lend support to the Applicant’s allegations. Two of the incidents on which the Applicant relies relate to the remarks made by the Applicant’s supervisor that she was “quick to escalate” matters and the 26 May incident. The Tribunal notes that EBC conducted an initial review of these allegations and closed the case on the grounds that the allegations were unfounded. In this regard, EBC found that (i) “certain of [the Applicant’s supervisor]’s emails sought to address this issue as a performance matter, which falls within a director’s prerogative”; and (ii) the 26 May incident, “although inappropriate, does not rise to the level of misconduct.” Similarly, the Tribunal finds that the Applicant’s supervisor’s remarks cannot be interpreted as having created a hostile work environment for the Applicant but that they fell within her supervisor’s authority and role. Regarding the other incidents relied upon by the Applicant, the Tribunal finds that they do not constitute evidence of a hostile work environment.

132. The Applicant further contends that management made her employment redundant in retaliation against her several complaints of harassment and unfair treatment before IJS. She cites a few instances of alleged retaliatory actions from management: (i) the Applicant was reassigned in 2015 after contacting the Office of Mediation with allegations of a hostile work environment against the WFAFC Director; (ii) the Applicant’s operational budget was restricted following the 2016 Mediation Agreement; (iii) the Applicant was reassigned to a department under Ms. A’s authority immediately after her reinstatement of October 2016 in violation of the 2016 Mediation Agreement; (iv) the Applicant’s supervisor undermined the Applicant’s managerial authority by directly contacting the Applicant’s staff with impending managerial and staff reduction issues; (v) the Applicant’s position was eliminated following the Applicant’s expressed disagreement with the new organizational structure; (vi) the WFA Vice President threatened the Applicant with removal if she continued to question the business rationale of the new organizational structure;

and (vii) the Applicant was placed on Administrative Leave following the Applicant's request for mediation in 2018.

133. The Tribunal observes that retaliation is prohibited under the Staff Rules. In *Bauman*, Decision No. 532 [2016], para. 95, the Tribunal held:

[T]he Staff Rules are clear that retaliation against any person “who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System” is prohibited. *See* Staff Rule 3.00, paragraphs 6.01(g) and 7.06, and Staff Rule 8.01, paragraph 2.03; *see also* CS, Decision No. 513 [2015], para. 104; *Sekabaraga* (No. 2), Decision No. 496 [2014], para. 60. This prohibition extends also 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.

134. The standard of proof for any claim of retaliation is that “an applicant [...] must still make a *prima facie* case with some evidence to show the [...] retaliatory motives behind the impugned decision.” *See Bodo*, Decision No. 514 [2015], para. 77. However, as stated in *Bauman*, para. 99,

“[i]t is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation” (*AH*, Decision No. 401 [2009], para. 36). The Tribunal has also recognized that “[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes.” (*O*, para. 49.)

135. The Tribunal observes that the Applicant has not shown a direct link between the Applicant's recourse to IJS and the decision to declare her employment redundant. The Applicant has also failed to show that any of the managerial actions mentioned above were made with retaliatory motives. Therefore, the Tribunal concludes that the Applicant has failed to make a *prima facie* case of retaliation.

THE BANK'S ALLEGED BREACH OF THE 2016 MEDIATION AGREEMENT AND TWO AGREEMENTS
FROM 2013 AND 2015

136. Regarding the Applicant's allegation that the Bank breached two MoUs resulting from the 2013 and 2015 mediations, the Tribunal observes that no MoUs resulted from these mediations. The Applicant also claims that the WFAFC Director acted in bad faith in entering negotiations he did not intend to observe. The Tribunal observes that mediation "is considered to be a voluntary remedy." *Rittner*, Decision No. 335 [2005], para. 36. Parties to a mediation start the process consensually and are not compelled to conclude agreements.

137. The record indicates that, further to the PRS Panel recommendation, the Applicant and the WFA Vice President signed the Mediation Agreement on 19 September 2016. In it, the parties agreed that, effective 1 October 2016, the Applicant would "resume her position as Division Manager, Loan Operations (WFALA)" with regional responsibilities in Sub-Saharan Africa, South Asia, and Latin America and the Caribbean. Management also agreed to circulate a memo to all staff and clients with a positive message about the Applicant's contributions, give the Applicant a satisfactory performance evaluation with a neutral summary of work performed during FY2016, and remove the WFAFC Director's negative comments about the Applicant from her annual reviews for FY2014 and FY2015. Management also agreed that the Applicant "will be treated no differently than other managers and will be allowed to exercise the same positional authority over her staff, budget and work program as other managers." Furthermore, the WFA Vice President and the Applicant agreed to first attempt to resolve disagreements or subjects of concern between them "by informal means" before attempting other avenues.

138. The Tribunal has consistently held that an agreement signed between the Bank and a staff member "represents a binding commitment for the parties." *See BV*, Decision No. 466 [2012], para. 41 (citing Staff Rule 9.01, para. 4.12).

139. The Applicant claims that the Bank violated the terms of the 2016 Mediation Agreement, requiring that the Applicant and the WFAFC Director work with an executive coach in restoring

trust and respect in their working relationship. She also claims that this obligation extended to Ms. A once she became her supervisor on 1 January 2017.

140. Item 4 of the 2016 Mediation Agreement reads as follows:

[The Applicant] and [the WFAFC Director] shall work together with one of the WB's contract executive coaches, which shall be paid for by WFA, with the objective of moving forward to restore mutual trust, respect and harmonious and productive working relationship between them. [...] The coaching sessions and support will continue for at least one year and may be extended if deemed necessary by both parties.

141. The Tribunal notes that this provision imposed a duty on the Applicant and the WFAFC Director to work together to improve their working relationship. Once the WFAFC Director stopped supervising the Applicant, the duty to meet with an executive coach became moot as their direct working relationship had ended. This obligation was not transferable to the Applicant's new supervisor; it was negotiated with the purpose to restore trust and respect in the Applicant's and the WFAFC Director's working relationship and could not have bound the Applicant's new supervisor.

142. The Tribunal observes that this obligation must be distinguished from the decision made by the WFA Vice President on 15 June 2017 to appoint an executive coach for the Applicant and Ms. A to work on improving their working relationship, which had also deteriorated.

143. The Applicant also contends that the Bank has breached its obligations requiring that the Applicant and the WFAFC Director discuss career development and ensure that her managerial authority remained intact in her department. She also refers to the obligation to ensure a work environment of transparency, direct communication, and informal resolution of conflicts.

144. The Tribunal considers that the Applicant has failed to substantiate these claims. First, the Applicant has not shown that the performance rating of 3 she received in FY2017 amounted to a breach of the obligation regarding her career development. Second, she fails to show that management was unwilling to engage in the informal resolution of their conflicts. Third, the

Applicant has failed to show that the Bank treated her differently than the other managers in her department. Regarding the other allegations of breaches of the 2016 Mediation Agreement, the Tribunal finds that the other allegations raised by the Applicant are vague and lack merit.

145. The Applicant further claims that the WFA Vice President's decision to announce a realignment of WFA and its departments on 29 November 2016, only two months after the conclusion of the 2016 Mediation Agreement, clearly shows that he negotiated in bad faith. The Tribunal observes that the record does not lend support to the Applicant's allegation of bad faith. It indicates only that the WFA Vice President was contemplating the realignment of divisions which in turn would merge some units, and that one change would have the effect of removing the WFAFC Director as the Applicant's supervisor as the Applicant would be moved to the newly created WFA Trust Fund and Loans, under a new supervisor, Ms. A.

THE RELEASE CLAUSE IN THE 2016 MEDIATION AGREEMENT

146. The Applicant claims that the release clause in the 2016 Mediation Agreement requiring that both parties refrain from any future legal or administrative actions in connection with the issues brought to mediation interfered with her staff rights. She relies on the Tribunal's finding in *DB*, to assert that the release clause specifically infringes upon her right to seek relief from the Tribunal in respect of the issues covered by the clause.

147. Having concluded that the terms of the 2016 Mediation Agreement, which related to the conflict between two named individuals and which imposed a specific obligation on the named WFAFC Director, became moot once he stopped supervising the Applicant, the Tribunal considers that review of this claim is unnecessary.

THE APPLICANT'S ALLEGATIONS OF DISCRIMINATION

148. In *Crevier*, Decision No. 205 [1999], para. 25, the Tribunal stated that "discrimination takes place where staff who are in basically similar situations are treated differently." The Tribunal

has consistently held that any form of discrimination is prohibited within the Bank. In *DJ*, Decision No. 548 [2016], para. 57, the Tribunal observed:

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 by Bank staff members including “on the basis of age, race, color, sex, sexual orientation, national origin, religion or creed” constitutes prohibited misconduct. Staff Rule 3.01, paragraph 4.01 states that supervisors’ treatment of staff shall not be influenced by “the race, nationality, sex, religion, political opinions or sexual orientation of the supervisor or the staff member.”

149. The Tribunal held in *Njovens*, Decision No. 294 [2003], para. 16, that, just as it “is prepared to be firm on any question of [...] discrimination supported by the evidence, so too it is prepared to dismiss outright any unfounded allegation in this context.”

150. An applicant asserting discrimination must make a “*prima facie* case with some evidence to show the discriminatory [...] motives behind the impugned decision.” *Bodo*, para. 77. In *Bodo*, the Tribunal observed, “[w]ithout any elaboration on her claims or evidence of actual or perceived [...] discrimination [...], the [a]pplicant has given the Tribunal little to deliberate on.” *Id.*

151. In the present case, the Applicant claims that, as the only Sub-Saharan/Caribbean female staff member to hold a managerial position in the history of her department, she was subjected to “subtle forms of discrimination.” The Applicant asserts that she was the only female and Part II manager whose position was made redundant, while the other managers who secured their managerial positions were all male. She also contends that her supervisor, “who is Chinese, selected the two Chinese male managers for the new positions in her Department” and that these facts are “strong indications of discrimination.”

152. The Tribunal finds that the Applicant has failed to make a *prima facie* case of discrimination based on her “race/nationality.” For the Tribunal, the Applicant’s claims that, because the two selected managers were “Chinese,” this played a role in their selection for the new positions, and that her supervisor wanted to favor their selection because she was also “Chinese,” are mere allegations and do not constitute evidence of discrimination. As the record shows, both

managers were selected for their positions following competitive, objective, and transparent selection processes. Similarly, the Tribunal finds that the Applicant has failed to make a *prima facie* case of her allegations of gender discrimination.

153. The Tribunal concludes that the Applicant failed to show that she was discriminated against on the basis of her gender, race, or nationality.

DECISION

The Application is dismissed.

/S/ Mónica Pinto

Mónica Pinto

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 26 April 2019