



**World Bank Administrative Tribunal**

**2020**

**Decision No. 625**

**FI,  
Applicant**

**v.**

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

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

**FI,  
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 Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.
2. The Application was received on 23 May 2019. The Applicant was represented by Nat N. Polito of the Law Offices of Nat N. Polito, P.C. The Bank was represented by Edward Chukwuemeke Okeke, Interim Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 5 May 2020.
3. The Applicant challenges (i) the decision not to promote him to level GF-1; and (ii) the decision to make his position redundant.
4. The Applicant is one of two former staff members working in the Bank's Information Technology Solutions Enterprise Intelligence (ITSEI) unit contesting decisions taken by the Bank in May 2018 to declare their respective positions redundant. On 25 June 2019, the Bank submitted a request, pursuant to Rule 27 of the Tribunal's Rules, to consolidate the two cases before the Tribunal. On 22 July 2019, in response to the Bank's request for consolidation of the cases, the President of the Tribunal decided that the cases would be treated separately. A separate judgment is therefore rendered in this case.
5. On 8 July 2019, the Bank submitted a preliminary objection to the admissibility of the Applicant's non-promotion claim. On 22 July 2019, the Tribunal joined the preliminary objection phase to the merits. This judgment addresses both the preliminary objection and the merits.

## FACTUAL BACKGROUND

6. The Applicant joined the Bank in 2013 on a three-year term appointment as a System Engineering Analyst, level GE, in Chennai, India. In 2014, he became an Information Technology Engineering Analyst, level GE, and in 2015 he joined the ITSEI team in the same capacity. The Applicant's term appointment was converted to an open-ended appointment in December 2016.

7. At the material time of the contested decisions, the Applicant's Supervisor was based in the Chennai Country Office and his Manager was based in Bank headquarters (HQ). The Applicant's team, ITSEI, was overseen by the Director, World Bank Group Finance (ITSFI). The Vice President of Information and Technology Solutions (ITS) oversaw ITSFI.

### The Applicant's Performance

8. On 23 September 2017, the Applicant's Supervisor provided the following comments in the Applicant's Fiscal Year 2017 (FY17) Staff Annual Review:

[The Applicant] had an excellent work year. He was able to demonstrate superior knowledge in the Unix/Linux administration area. He picked up the vBlock converged infrastructure quickly and became the go to person in Chennai. He is an excellent team player. He works very well with the clients and shares his knowledge with teams. He also completed the AWS Architecture training this year. He needs to continue the good work, learn new technologies and is encouraged to engage more into projects and look at opportunities for improvement, automation, standardizing and best practices.

9. On 24 September 2017, the Applicant's Manager stated in the Applicant's FY17 Staff Annual Review that "[the Applicant] has played a pivotal role in the vblock migration and his contribution was critical to the success of the project. Looking forward to an equally productive Fiscal Year 18."

10. The Applicant received a performance rating of 4 for his performance in FY17.

### ITS Promotion Process

11. On 26 July 2017, the Applicant's Manager submitted a Progression/Promotion FY17 Nomination Form to the ITSFI Management Team recommending the Applicant's promotion to level GF-1. The ITSFI Management Team, composed of the Director of ITSFI and other managers under ITSFI, conducted an internal review and decided to present the Applicant's candidacy, among others, to the ITS Management Team for a further round of evaluation and final decision on whether the nominated candidates would be promoted.

12. In total, fourteen GE-level staff members were recommended for consideration by the ITS Management Team for *in situ* promotions to level GF-1. The ITS Management Team selected nine staff members to be promoted to level GF-1. The Applicant was among the five staff members not selected for the GF-1 promotion.

13. According to the Director, all the candidates he put forward to the ITS Management Team were "ready" for promotion; however, he was asked by the Vice President to pick nine out of the fourteen candidates to promote from level GE to GF-1. The Director stated he chose nine candidates and that the Applicant was not selected because the Director considered him one of the five "weaker" cases. There is no contemporaneous documentation in the record indicating what qualifications made a candidate "weaker" as compared to other candidates. Despite the Tribunal's order to produce documents supporting the non-promotion decision, no comparative information of the candidates was provided to justify the Director's assessment.

14. According to the Applicant, on 27 September 2017, the Supervisor verbally informed him that the ITS Management Team had rejected the Applicant's nomination for promotion.

15. By email dated 27 September 2017, the Applicant sent an email to the Manager expressing his disappointment in not being selected for the promotion and his confusion regarding why he was not selected.

16. In response, on 28 September 2017, the Manager wrote:

I completely understand your disappointment. I too was disappointed. Your promotion case was put forward by me, accepted by [the Director] and he made it to MT [the ITS Management Team]. This year there were too many progression/promotion submissions, 60% over the HR [Human Resources] established limit. Most of the cases were very strong and MT used seniority in grade as a [sic] one of the filtering criteria. Unfortunately, your case was screened out without any adverse remarks.

You have done great work and I am going to ask you to continue with your high performance and delivery.

17. On 4 October 2017, the Vice President sent out an email to all ITS staff stating:

Please join me and the ITS Management Team in congratulating the 62 staff who received promotions and the 51 staff who progressed in their grades this year! Here is the process that we followed:

As we announced in late May, each ITS Department held its own management review meetings in mid-July, where all proposals for promotions and progressions were presented and discussed based on:

1. Competencies levels (Deliver results for clients; Collaborate within teams & across boundaries; Lead and innovate; Create, apply, and share knowledge; and Make smart decisions),
2. Performance track record,
3. Business needs for the positions on the next grade level,
4. Modeling WBG [World Bank Group] Values (Excellence, Integrity, Commitment, Team Work, and Diversity).

The ITS Management Team then met twice on July 27 and September 7 to review all proposals from all departments across ITS. All nominations were discussed with due diligence, and decisions were taken collectively by the MT members.

Please congratulate your colleagues, and let's take pride in each other's accomplishments!

#### The Applicant's Use of Peer Review Services

18. On 13 October 2017, the Applicant filed a Request for Review with the Peer Review Services (PRS) challenging the Bank's decision not to select him for the promotion. During the

PRS proceedings, the Director explained that the Applicant was not promoted to level GF-1 due to his “relatively few years in grade (3.5), relatively low [...] prior SRI [Salary Review Increase] ratings and the fact that [the Applicant] had achieved a higher level of productivity in the current year.” The Director also indicated that there were other staff members with stronger cases for promotion.

19. During the PRS proceedings, the Director acknowledged that there was no contemporaneous documentation pertaining to the selection of candidates for promotion. According to the Director, “the ITS Management Team’s discussions regarding its review of proposed cases for promotion at the end of FY17 were not documented so as to preserve the confidential nature of the discussions.” However, the Director indicated during the PRS proceedings that the following factors were considered by the ITS Management Team when selecting candidates for the level GF-1 promotion: “the fulfillment of all requirements as defined for the grade and job stream; job grade requirements of the position occupied; years that the candidate has exhibited the requirements for the new grade; years in the current grade; SRIs, [t]alent box ratings; and behavioral strengths and weaknesses.”

20. On 13 April 2018, the PRS Panel concluded that

management acted consistently with [the Applicant’s] contract of employment and terms of appointment in deciding not to promote him to Level GF-1 during the 2017 performance review period. Specifically, the Panel determined that management made the non-promotion decision for credible and objective reasons, followed a proper process, and acted in good faith. The Panel therefore recommends that [the Applicant’s] request for relief be denied.

21. By letter dated 17 April 2018, the Vice President informed the Applicant that he accepted the PRS Panel’s recommendation. The letter informed the Applicant as follows: “If you are dissatisfied with this decision, the next step in the Internal Justice Services would be recourse to the Administrative Tribunal, which has its own rules and procedures for the filing of claims.”

### ITS Staff Satisfaction Survey

22. In January 2018, an ITS Staff Satisfaction Survey was circulated to staff in all ITS units. The Applicant anonymously participated in the ITS Staff Satisfaction Survey. His survey response criticized ITSEI management, stating ITSEI supervisors weren't following Bank practice, nor were they following defined policies; he also raised concerns regarding the lack of promotions offered to ITSEI staff members located in Chennai and accused the ITSEI Management Team of being biased towards staff members based in HQ.

### Workforce Planning Exercise

23. In January 2018, the Vice President was informed that ITS would receive the same budget as received the previous year. At the time, it was estimated that ITS would need to find \$10.22 million in efficiency savings for FY19.

24. In February 2018, the Vice President met with ITS Management to discuss commencing a Workforce Planning Exercise to find cost savings. During and following the Applicant's PRS proceedings, the Director conducted the Workforce Planning Exercise for the units under ITSFI, which included the Applicant's unit.

25. According to the Director, there was no specified number of positions that he was instructed to eliminate in the units he oversaw; rather, it was he who came up with the goal of cutting 20% of staff. The Director stated that this goal was "based not on a formal analysis, but certainly anecdotal evidence" and that "[he] thought 20 percent was a pretty good ballpark figure." There is nothing in the record that documents any anecdotal evidence that the Director claims he relied on when making this assessment.

26. The Director stated that during February or March of 2018 he sought verbal input from the Manager pertaining to the Workforce Planning Exercise. The Director described the process as follows:

[E]very year we do this work [Workforce Planning Exercises]. This was the first year we cut positions in Chennai. And the reason is everything used to be budget dollars. So if I eliminated an HQ resource, I save about three times the amount of getting rid of a Chennai resource. So the focus was always on HQ. What became a more precious resource in ITS than dollars was headcount. [...] So headcount became much more valuable and that's why the focus on Chennai, whereas in prior years they were sort of shielded from this because it was really pure dollars.

[...]

So there was a list of positions and [the Manager] said, "These are the critical ones and these are the non-critical." [...] A lot of this stuff was like taking a printout of the roster and just putting an asterisk next to non-critical.

[...]

[The Manager] provided background information which basically marked [the positions] as non-critical. That was his input on this. And again, there was a longer list of non-critical positions than what we cut.

27. There is no record of the Manager identifying any ITSEI positions as "non-critical." There is no documentation in the record, contemporaneous or otherwise, which provides the rationale for why some of the allegedly identified "non-critical" positions were made redundant, while other positions allegedly identified as "non-critical" were not made redundant. Furthermore, there is no contemporaneous documentation of any input provided by ITSEI supervisors or managers to the Director regarding the business need for any of the ITSEI positions.

28. Following the Workforce Planning Exercise, the Director identified three positions in total from the ITSEI Chennai office to be declared redundant. Of those three positions identified, one position was held by a staff member on an Opportunity to Improve plan for her performance and was not going to be confirmed; another position was held by a staff member who had several exchanges with management questioning the decision not to promote him; and the other position was held by the Applicant who had by then filed a PRS Request for Review contesting the decision not to promote him, with the Director as the responding manager in those proceedings.

29. On 30 April 2018, following the Workforce Planning Exercise, the Director emailed the Manager to ask whether there were "any problems between management and the current occupants in any of the redundant positions." That same day the Manager replied identifying two of the three ITSEI Chennai staff members whose positions were being made redundant as having "HR related issues." The first was the staff member who was on an Opportunity to Improve Plan for



performance-related issues and the second was the Applicant. The Director responded to the Manager's email, stating:

The first point is known to HR. I'm not sure if we can just not confirm or need some type of MOU [Memorandum of Understanding] or MAS [Mutually Agreed Separation]. [...]

The second case is the promotion that didn't go through which I responded to back in November. I am not even sure why peer review took it up, frivolous from the start. In any case I think we proceed. Otherwise we will need to eliminate a more useful position to meet the necessary budget constraints. Not fair to whomever that would be. Not to mention the hazard of word getting out that peer reviews, no matter how frivolous, make you immune to budget cuts for some period of time.

If that were the case I'll go to peer review for not getting a fair shot at the VP title.  
:-)

30. Following the Workforce Planning Exercise conducted in the various ITS units, ITS managers collectively identified a total of thirty-eight positions as redundant.

31. On 14 May 2018, the Director informed the HR Business Partner of the positions he had identified as redundant. There is no record that the Director disclosed to either the Vice President or to an HR representative the fact that the Director was the responding manager in the Applicant's PRS Request for Review.

32. On 14 May 2018, the Director visited Chennai and met with the Applicant at which point the Applicant was verbally informed that his position was declared redundant, effective 1 July 2018. The Applicant asserts that, during this meeting, the Director advised him not to raise further claims with the Internal Justice Services again, as he would not win.

33. That same day, the Manager sent an email revoking the Applicant's access to his work-related systems "effective immediately."

34. On 27 May 2018, the Director informed the Applicant in an email that his position was declared redundant, adding:

As we discussed, [...] our HR business partner and the Chennai HR Team are available to help you with the details of the separation package options you have, and I encourage you to meet with them as soon as you can. I am available to discuss any questions or concerns you may have. I would also encourage you to consult with the Pension Admin Office, and to visit the WBG Transition Support web page at Transition Support. The Staff Association also offers useful guidance.

Many thanks for all the work you have done for this institution in your tenure.

35. By memorandum dated 27 June 2018, the Applicant was formally notified that his position was declared redundant under Staff Rule 7.01, paragraph 9.02(b). The memorandum indicated that the Applicant had the option to utilize outplacement support, and the Applicant did utilize said support.

36. The Redundancy Proposal Form, created on 27 June 2018, and signed on 31 July 2018 by both the Director and the Vice President, provided the following rationale for declaring the Applicant's position redundant:

[I]t was decided to abolish the IT Analyst, Engineering position in ITSEI based in Chennai, India, currently held by [the Applicant]. The position is responsible for hardware engineering work related to SAP infrastructure such as patching and upgrades. With the new VCE Vblock technology, this type of work is being reduced and does not constitute a full time work staff. The existing portion of the responsibilities will be absorbed by the existing HQ-based team.

The ITS VPU [Vice Presidential Unit] has explored to see if there is any other position he can be reassigned, but the ITS VPU does not have a suitable position in the same location that requires hardware engineering skills, or a position for which [the Applicant] could reskill himself in a reasonable period of time.

#### Office of Ethics and Business Conduct Investigation

37. On 4 June 2018, the Applicant requested the Office of Ethics and Business Conduct (EBC) to investigate the Director, Manager, and Supervisor, regarding the Applicant's allegations of retaliation and abuse of authority.

38. After conducting an initial review, EBC determined that the initial evidence gathered warranted a full investigation. During their eight-month investigation, EBC investigators interviewed 17 witnesses.

39. During an EBC interview, a staff member told investigators that the Director made the following statement in response to a comment about the redundancy decisions in Chennai: “[T]hey have been giving problems to [the Manager], so we had to let them go.” The Director denied making this statement.

40. The EBC investigators asked the Director about the Applicant’s PRS Request for Review and whether it affected his decision to declare the Applicant’s position redundant. In response, the Director stated:

I don’t know if I want to say frivolous peer review, but the policy at the [B]ank is very clear[:] promotions [are] the purview of management. I supported the promotion, it’s just that there were too many of them that year. [...]

It’s always shocking to me the sense of entitlement that [B]ank staff has compared to other organizations, the private sector where I’ve worked [-] I tell people back in New York some stories and they laugh. They’re like, “You’ve got to be making this stuff up.” It’s like no. People have a sense of entitlement and they are entitled more than staff [in] other places I’ve worked like Wall Street for example. But if I had any annoyance, it wasn’t at [the Applicant]. He’s trying to move his career forward. It was the fact that [PRS] actually took the case. It’s like, this is on its face [-] [i]t’s absurd.

[...] I never saw the [PRS Panel report]. They sent it to [the Vice President]. And I got notified that he was notified, so I sent him an email saying I assume that they found in our favor and he said, “Yeah, no problems.” So I was like alright, fine. Otherwise, it is a huge problem because if it came out that you went to peer review and you get promoted, it’s like we’ll have 50 a year going there.

41. When asked by an EBC investigator whether, during the Workforce Planning Exercise, an HR business partner for the department or unit was involved at all, the Director replied, “No.”

42. The HR Manager informed EBC investigators that she did not recall any discussions with the Director as to whether any of the staff whose positions would be declared redundant had any

“HR issues” nor was she informed, or aware, of whether any of the staff whose positions were being eliminated from ITS had filed a PRS case with the Director as the responding manager. The HR Manager further explained that HR Business Partners are not necessarily notified when a staff member files a claim with any of the Internal Justice Services, unless the outcome of the proceedings requires HR action.

43. EBC investigators asked the Vice President whether he was informed, prior to his signing off on the redundancy proposals put forward by the Director, that the Director was the responding manager to PRS proceedings brought by one of the staff members the Director identified as redundant. The Vice President, in response, stated: “None of this was brought to my attention at all. If it had been I would have [...] dig [*sic*] into the case a little bit more.”

44. In January 2019, the Director left the Bank, and on 22 February 2019 EBC notified the Applicant that it had concluded its investigation, finding insufficient evidence to substantiate the allegations of retaliation and abuse of authority.

### The Application

45. On 23 May 2019, the Applicant filed this Application. The Applicant “seeks damages for lost career opportunity, reputational damage, inconvenience, emotional distress, and physical/mental stress, assessed as five years’ net salary, and such other and further relief as this Tribunal deems just and appropriate under the circumstances, or, in the alternative, reinstatement as an IT Analyst [level] GE.” The Applicant requests legal fees and costs in the amount of \$18,952.48.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

**PRELIMINARY OBJECTION*****The Bank's Contention***

*The non-promotion claim is outside the Tribunal's jurisdiction because it was filed in an untimely manner*

46. The Bank asserts that the claim regarding non-promotion was filed outside the Tribunal's statutory time limits because the Applicant brought the claim after the 120-day filing deadline prescribed by Article II(2)(ii) of the Tribunal's Statute. The Bank points to the fact that the Applicant received notice from the Vice President regarding his decision to accept the PRS Panel's recommendation pertaining to the non-promotion decision on 17 April 2018. To the Bank, the Applicant therefore had until 15 August 2018 to timely file an application with the Tribunal regarding this claim. Instead, the Applicant requested an extension of time to file his Application with the Tribunal only on 21 January 2019. Therefore, the Bank maintains, the non-promotion claim was filed 159 days late. The Bank contends that waiver of the deadline would undermine statutory limitations and the Tribunal's well-established jurisprudence in that respect.

47. The Bank maintains that, to overcome the statutory filing deadline, the burden is on the Applicant to prove exceptional circumstances that justify relief. To the Bank, the Applicant has not met the burden of proof in establishing exceptional circumstances to excuse his failure to timely file his non-promotion claim and it therefore must be dismissed.

48. The Bank concludes that the Applicant seeks to tack on his time-barred non-promotion claim to his distinct termination claim, which the Bank asserts is impermissible. To the Bank, the only matter properly within the jurisdiction of the Tribunal is the Applicant's redundancy claim.

***The Applicant's Response***

*The non-promotion claim was timely filed, is inextricably linked to the redundancy claim, and does not prejudice the Bank*

49. The Applicant maintains that his challenge to the non-promotion decision was timely filed. After receiving notice of the Bank's acceptance of the PRS recommendation on 17 April 2018 and notice of the termination of his employment on 14 May 2018, the Applicant, on 4 June 2018, brought to EBC his allegations of retaliation and abuse of authority. EBC notified the Applicant of the conclusion of its investigation on 22 February 2019. The Applicant contends that 22 February 2019 is therefore the date by which the Applicant had exhausted all internal remedies, and the date from which he had 120 days to file an application with the Tribunal.

50. To the Applicant, the non-promotion claim and the redundancy claim are inextricably linked and therefore appropriately filed jointly and in a timely manner following the exhaustion of internal remedies. The Applicant asserts that there is no viable substantive reason why his two claims should have been filed separately because, in his view, the claims would have been joined or consolidated. The Applicant's reading of Article II of the Tribunal's Statute, namely that an applicant's claim may be considered "after the applicant has exhausted all other remedies available within the Bank Group," led him to believe that he needed to exhaust both PRS and EBC before coming to the Tribunal to file his claims together. The Applicant maintains that it was reasonable for him to believe that both claims were timely filed since the non-promotion claim is inextricably linked to the redundancy claim so, according to the Applicant, the Bank will have to address the non-promotion claim in its pleadings regardless.

51. The Applicant maintains that he has not attempted to pursue matters from the beginning of employment, nor lump in an unrelated claim that had long passed, and he supports this contention by pointing out that his PRS challenge to the non-promotion decision concluded less than four weeks before the redundancy decision.

52. Furthermore, the Applicant contends that, even if the non-promotion claim was delayed, there is no prejudice to the Bank if the Tribunal considers the merits of the non-promotion claim

because the delay did not result in any loss of documents, evidence, or witnesses and there is no surprise to the Bank regarding the claim. The Applicant maintains that “the interests of justice and equity” in the present circumstances dictate that the Applicant’s non-promotion claim be heard.

## MERITS

### *The Applicant’s Contention*

*The non-promotion decision was an abuse of discretion because the basis for it altogether lacks support in factual evidence and reasonable inference*

53. The Applicant contends that there is no reasonable and observable basis for the non-promotion decision, and thus it was an abuse of discretion. In the Applicant’s view, the non-promotion decision was made without a reasonable and observable basis because (i) less qualified candidates were selected for the promotion; and (ii) there is no evidence or documentation to support the *post hoc* rationale.

54. The Applicant states that less qualified candidates, who had been with the Bank for a shorter period, were promoted instead of him and that there is no documentation or comparative analysis to support their promotion instead of his.

55. The Applicant contends that the selection process did not meet the Bank’s standards of objectivity and transparency because there is no evidence regarding how the Applicant compared to the other candidates seeking promotion. The Applicant maintains that, to ensure standards of objectivity, transparency, rigor, and diversity in the selection process, the Bank is required to provide a “demonstration of contemporaneous and detailed documentation of the deliberations of the [Management Team] in its selection process.” Here, according to the Applicant, “[the Director’s] failure to contemporaneously document the candidates, scoring, comparisons or other minimal information relating to the promotion process” results in a lack of transparency and makes it impossible to rationalize the selection of candidates. In the Applicant’s view, he was entitled to, but has yet to receive, a “reasonable explanation” for his non-selection for a promotion to level GF-1.

56. The Applicant points out that the justification for the non-promotion decision was only drafted by the Director during the PRS proceedings. To the Applicant, this delay, and absence of a contemporaneous record, calls into question the accuracy of the Director's alleged recollection. The Applicant points out that, although the Director explained during the PRS proceedings that ITS Management based their decision on the Applicant's "relatively few years in his grade, relatively low prior SRIs, and his fairly recent increase in productivity," no further information was provided, such as a comparison of candidates' years in grade, SRIs, or productivity.

57. Regarding the Director's assertion that "there were other staff members with stronger cases for promotion," the Applicant contends that this "bald conclusion – without proper documentation" shows that the process lacked transparency. According to the Applicant, without an objective scoring system for candidates, or even a rudimentary comparison of the candidates' qualifications, the Bank is asking this Tribunal to simply take the Director at his word. In the Applicant's view, to allow this would be to allow managers to formulate *post hoc* justifications, evade accountability, and thwart any meaningful review by the Tribunal. To the Applicant, the "behind the scenes and undocumented [promotion] process smacks of impropriety and the failure of transparency that the Bank's Rules attempt to eradicate."

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

*The decision not to promote the Applicant was made objectively and followed a proper process*

58. Without yielding its jurisdictional objection, the Bank submits that the discretionary decision not to promote the Applicant was made objectively and followed a proper process.

59. The Bank claims that the decision not to promote the Applicant was based on the objective criteria set out by the Director during the PRS process, namely, "fulfillment of all requirements as defined for the grade and job stream; job grade requirements of the position occupied; years that the candidate has exhibited the requirements for the new grade; years in the current grade; SRIs; [t]alent box ratings; and behavioral strengths and weaknesses."



60. The Bank contends that the Manager's email to the Applicant, dated 28 September 2017, provided the Applicant with the reason for his non-promotion by stating, "This year there were too many progression/promotion submissions, 60% over the HR established limit. Most of the cases were very strong and MT used seniority in grade as a [*sic*] one of the filtering criteria. Unfortunately, your case was screened out without any adverse remarks." The Bank asserts that this email should be considered the "contemporaneous rationale" consistent with the testimony provided by the Director during the PRS proceedings.

61. The Bank rejects the Applicant's contention that he was more qualified than the selected candidates because he had been employed by the Bank longer, and it asserts that time in grade does not equate to seniority. The Bank further maintains that many factors were considered in the promotion process, not just time in grade.

62. To show the non-promotion decision followed a proper process, the Bank points to the nomination procedure and the two rounds of review each candidate went through, as well as the communications informing the Applicant of the process.

63. The Bank asserts that, while the Applicant may be disappointed, "no staff member has a right to be selected to a particular position" or even to be "included in a list of candidates for a position." The Bank further contends that decisions regarding *in situ* promotions are made at the sole discretion of management and may only be overturned where the decision was the product of "bias, prejudice, arbitrariness, manifest unreasonableness or unfair or improper procedure." Here, according to the Bank, the discretionary decision not to promote the Applicant was objective and followed a proper process and therefore should not be overturned.

### ***The Applicant's Contention***

*In declaring the Applicant's position redundant, the Bank abused its discretion by retaliating against the Applicant for challenging the non-promotion decision*

64. The Applicant contends that the redundancy decision was made in retaliation for challenging the non-promotion decision through PRS. The Applicant supports this contention by

claiming that (i) there is a business need for his position; (ii) eliminating his position is not cost-efficient; and (iii) the timing of the redundancy decision is indicative of ill motive.

65. The Applicant maintains that there is a business need for his former position. According to the Applicant, he was “the only staff member in Chennai who managed the SAP Operations team, including three separate outside contractors,” and that, following his departure from his position, his colleagues continued to request help from him to assist with his previous work profile.

66. The Applicant contends that his position “was not in reality eliminated but was merely shifted to other persons.”

67. Furthermore, to show a business need for his position, the Applicant points to his promotion nomination for which the Manager and the Director made a case to ITS Management supporting his candidacy. To the Applicant, this promotion nomination indicates that the Manager and the Director anticipated a business need for the Applicant’s position with increasing, or at least not dwindling, responsibilities. The Applicant contends the Director’s drastically changed behavior, from initially advocating to promote the position to a GF level to just a few months later determining the position redundant, is attributable to the Applicant’s use of the Bank’s Internal Justice Services.

68. The Applicant rejects the Bank’s explanation that the redundancy decision was based on costs, because, and as the Bank concedes, a portion of his duties were absorbed by HQ counterparts. The Applicant contends his salary in Chennai is more cost-efficient than paying U.S. salaries for HQ staff to complete his same duties.

69. Moreover, the Applicant contends that the timing of the redundancy decision in relation to his ITS Staff Satisfaction Survey response, as well as his use of PRS, indicates that the decision was more likely based on his making “trouble” for management than on budgetary reasons as the Bank now claims.

70. The Applicant maintains that the negative feedback he submitted in the ITS Staff Satisfaction Survey created discord between him and management. While the Applicant states that he is “unaware of how the information [collected through the ITS Staff Satisfaction Survey] was used or whether it was kept anonymous,” he believes his survey submission could be attributed to him based on its content and the surrounding circumstances. The Applicant points to his survey submission which states that “ITSEI Chennai staff hardly get promotion.” The Applicant maintains that this anonymous comment could be attributed to him because the survey comments were submitted “at the same time that he was pursuing relief through the internal justice system” claiming, before PRS, that an improper promotion process was being followed in the ITSEI Chennai office. The Applicant claims that his survey submission was therefore likely a contributing factor to the redundancy decision.

71. The Applicant was informed, by letter dated 17 April 2018, of the outcome of his PRS proceedings. The Applicant was verbally informed by the Director, just weeks later, on 14 May 2018, that his position would be made redundant. The Applicant points out that the Director was both the responding manager in the Applicant’s PRS proceedings and the individual who identified his position as redundant. The Applicant maintains that the timing of the redundancy decision, paired with the unobservable basis for the decision, is indicative of the Director’s ill motive.

72. The Applicant maintains that “[the Director’s] perception [was that the Applicant] was causing problems and headaches by appealing to the IJS [Internal Justice Services].” To further support his contention that the redundancy decision was retaliatory, the Applicant refers to the alleged comment the Director made to a colleague following his meetings to notify staff in the ITSEI Chennai office that their positions would be made redundant. In this alleged comment, the Director responded to a colleague’s comment about the recent redundancy notices by stating that “they have been giving problems to [the Manager], so we had to let them go.” The Applicant maintains that this comment supports the contention that the Director’s motivation to declare the Applicant’s position redundant was tainted by retaliation for the Applicant’s use of PRS, a protected activity.

***The Bank's Response****There was a legitimate rationale for the redundancy decision*

73. According to the Bank, the “clear and uncontroverted explanation for the elimination of [the] Applicant’s position, and 37 other ITS positions, in 2018 is that ITS received a flat budget for FY19 (with ever rising costs) – and ITS therefore needed to find over \$10 million in additional efficiency savings.” The Bank maintains that the redundancy decision is not vitiated by any improper motives.

74. The Bank contends that the Applicant’s claim of retaliation is nothing more than subjective feelings of unfair treatment. According to the Bank, the Applicant failed to provide sufficient relevant facts to substantiate a claim of retaliation. The Bank maintains that there was no retaliatory motive behind the redundancy decision, which, it claims, is supported by the record because, “[f]ollowing a full investigation, EBC determined that there was insufficient evidence to substantiate the allegations of retaliation or abuse of authority” against the Director, Manager, and Supervisor.

75. The Bank notes that it was the Vice President – not the Director, Manager, or Supervisor – who was the ultimate decisionmaker for the ITS redundancies, and that the Vice President was not accused of misconduct, nor has the Applicant alleged that the Vice President had any retaliatory motive for declaring the Applicant’s position redundant.

76. The Bank rejects the Applicant’s contention that his response to the ITS Staff Satisfaction Survey could have been a motivating factor in making the redundancy decision because the survey responses were kept anonymous.

77. The Bank also contends that the timing of the redundancy decision is not indicative of retaliation as the Applicant claims; rather, the timing was the result of a unit-wide Workforce Planning Exercise conducted at the request of ITS Management following the notification that ITS would receive a flat budget for FY19. The Bank further maintains that the Applicant was not

singled out for his use of PRS, as evidenced by the thirty-seven other ITS staff members whose positions were declared redundant.

***The Applicant's Contention***

*The redundancy decision was procedurally flawed*

78. The Applicant contends that, even if the Tribunal finds there was a legitimate rationale for declaring his position redundant, management did not follow the proper redundancy procedure.

79. First, the Applicant maintains that he was not given adequate notice of the redundancy decision. The Applicant points to reassurances and commendations from management of his value to the Bank, which the Applicant contends "blatantly misled" him to believe his position was not at risk. To the Applicant, this wrongfully prevented him from knowing to look for other employment within the Bank or taking actions to protect his career, resulting in prejudice to the Applicant.

80. Second, the Applicant contends that he was not considered for placement in a similar vacant position, as required under Principle 7.1(b)(iii) of the Principles of Staff Employment, which states that separations initiated by the Organizations may occur

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

81. Third, the Applicant contends that the redundancy decision is procedurally flawed because there is no documentation "created simultaneously in connection with the decision" which prevents him from properly challenging the alleged basis.

***The Bank's Response***

*The redundancy decision complied with procedural requirements*

82. The Bank rejects the Applicant's contention that he was not provided adequate notice that his position would be declared redundant. To the Bank, the Applicant was treated in accordance with Staff Rule 7.01, paragraph 9.04, which requires that

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.

83. The Bank maintains that the Applicant was provided written notice on 27 June 2018 in the Notice of Redundancy memorandum from the Vice President, which provided the exact Staff Rule the position was being eliminated under, and which specified that the Applicant's employment would be terminated six months from the effective date if the Applicant did not secure other employment with the Bank by that time. In the Bank's view, the Notice of Redundancy memorandum fully met the Bank's notice obligations under Staff Rule 7.01, paragraph 9.04.

84. In response to the Applicant's contention that he was not considered for placement in other internal positions, the Bank maintains that it fulfilled its obligations outlined in Staff Rule 7.01, paragraphs 9.06 and 9.07, namely that it provide "access to career counseling services." According to the Bank, the Applicant was encouraged to work with his HR team, Career Support, and other staff in Transition Support as resources to secure himself new employment. In the Bank's view, this alone fulfills its obligation under the Staff Rules.

85. Based on the information provided in the Redundancy Proposal Form, the Bank contends that "ITS went beyond its obligations and explored other positions to which the Applicant could be reassigned, but ITS did not have a suitable position requiring [the] Applicant's engineering skills." The Bank states that it hired two reputable recruitment consulting firms to assist terminated staff with finding employment and that the Applicant was among the staff who opted to use this outplacement support.

86. The Bank contends that the Applicant's claim is baseless because the record demonstrates it acted in accordance with the basic elements of due process and the rule of law at all times, as it is required to do, and furthermore exceeded the requirements set forth in the Staff Rules by providing additional outplacement support to exited staff.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### PRELIMINARY OBJECTION

#### *Whether the Tribunal has jurisdiction to hear the non-promotion claim*

87. The Bank contends that the Applicant's non-promotion claim falls outside of the statute of limitations because it was filed past the deadline prescribed by Article II(2) of the Tribunal's Statute. The Applicant contends that he timely filed his non-promotion claim with PRS, and that one month after the closure of his PRS proceedings he alleged misconduct to EBC. To the Applicant, the non-promotion claim is timely because it is inextricably linked to the misconduct claim, any delay did not prejudice the Bank, and the interests of justice and equity dictate his non-promotion claim be heard.

#### Timeliness

88. Article II(2) of the Tribunal's Statute provides the following:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

- (i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and
- (ii) the application is filed within one hundred and twenty days after the latest of the following:
  - (a) the occurrence of the event giving rise to the application;

- (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or
- (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

89. The Tribunal notes that the Applicant was informed by letter on 17 April 2018 that the Vice President accepted the PRS Panel's recommendation pertaining to his non-promotion claim. In that letter, the Applicant was expressly informed that, if he were "dissatisfied with this decision, the next step in the Internal Justice Services would be recourse to the Administrative Tribunal, which has its own rules and procedures for the filing of claims."

90. On 14 May 2018, the Applicant was verbally informed that his position had been declared redundant.

91. On 16 May 2018, the Applicant emailed the Tribunal Secretariat stating, "As I am dissatisfied with IJS decision against the [PRS] Request for Review No. 402, I would like to appeal the same with WBAT [World Bank Administrative Tribunal]. Please share the application form at the earliest." The following day, the Tribunal Secretariat provided the Applicant with a guide on how to file an application.

92. On 4 June 2018, the Applicant requested EBC to investigate allegations of retaliation and abuse of authority against his Supervisor, Manager, and Director.

93. On 21 January 2019 the Applicant requested an extension of time to file an application with the Tribunal. The Tribunal finds that this request came 279 days after the Applicant received notice of the Vice President's decision to accept the PRS Panel's recommendation. As such, the request came 159 days after the 120-day filing deadline for the non-promotion claim, as prescribed by Article II(2) of the Tribunal's Statute.



94. Having found that the Applicant did not timely file his non-promotion claim, the Tribunal will consider the circumstances surrounding the delay and whether they amount to exceptional circumstances envisioned under Article II(2) to excuse untimely filing.

#### Exceptional Circumstances

95. In *Yousufzi*, Decision No. 151 [1996], para. 28, the Tribunal held that “[t]he statutory requirement of timely action may [...] be relaxed in exceptional circumstances.” Such circumstances, it added, are “determined by the Tribunal from case to case on the basis of the particular facts of each case.” *Id.*

96. In *Malekpour*, Decision No. 320 [2004], para. 22, the Tribunal clarified that exceptional circumstances are “real and serious impediments to exhausting internal remedies,” and that “[m]ere inconvenience” is not sufficient.

97. The Tribunal follows a “strict approach in determining what constitutes exceptional circumstances in the context of Article II(2).” *BI (No. 5) (Preliminary Objection)*, Decision No. 564 [2017], para. 20. Under this strict approach, “[e]xceptional circumstances cannot be based on allegations of a general kind but require reliable and pertinent ‘contemporaneous proof.’” *Id.*, citing *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30.

98. The Tribunal has consistently held that ignorance of the law does not constitute exceptional circumstances. *See, e.g., de Vletter (Preliminary Objection)*, Decision No. 619 [2019], para. 49; *Nyambal (No. 2)*, para. 30; *Dey*, Decision No. 279 [2002], para. 17; *Levin*, Decision No. 237 [2000], para. 21. In *Mitra*, Decision No. 230 [2000], para. 9, the Tribunal rejected the applicant’s argument that “the Bank failed to adequately inform him of his rights” and held that “ignorance of the law is not a valid excuse for failure to comply with the prescribed time limits.” In *A. Tucker*, Decision No. 238 [2001], para. 23, the Tribunal reiterated that “[t]he burden remains with disappointed applicants [...] to take the initiative to learn of whatever procedural and substantive rights they may have under the pertinent staff rules and Tribunal judgments.”

99. The Tribunal notes that a non-selection decision is a “typical managerial action” for which PRS is the proper forum to challenge such a claim. *See DJ (Preliminary Objection)*, Decision No. 536 [2016], para. 56. Here, the Applicant was not selected for promotion and appropriately contested this decision through PRS in a timely manner.

100. By letter dated 17 April 2018, the Vice President notified the Applicant that he accepted the PRS Panel’s recommendation and informed the Applicant that, if he were “dissatisfied with this decision, the next step in the Internal Justice Services would be recourse to the Administrative Tribunal, which has its own rules and procedures for the filing of claims.” Subsequently, the Applicant lodged a complaint with EBC to investigate claims of retaliation and abuse of authority but did not seek an extension of time from the Tribunal to file his non-promotion claim.

101. During the EBC investigation, when the Applicant brought up the non-promotion decision, the EBC investigator expressly informed the Applicant: “[L]et me be clear. Your promotion was already addressed and resolved by PRS. What we’re looking at here is your complaint of retaliation and your complaint of whether your position had been eliminated because you use[d] the internal justice system before.” The later fact-finding conducted by EBC on the topic of non-promotion did not change the scope of the investigation of retaliation.

102. Based on (i) the letter from the Vice President explicitly informing the Applicant that the next step for his non-promotion claim would be recourse to the Tribunal, and (ii) the confirmation from the EBC investigator that the scope of the investigation was retaliation, the Tribunal finds that the Applicant knew or should have known that he had 120 days from 17 April 2018 to file his non-promotion claim with the Tribunal.

103. The Tribunal finds that the Applicant has failed to provide any “real and serious impediments” to the timely filing of his non-promotion claim and finds no exceptional circumstances to excuse the delay. The Tribunal, therefore, upholds the Bank’s preliminary objection with respect to this claim and accordingly will not consider this claim on the merits.

## MERITS

### *Scope of the Tribunal's review in redundancy cases*

104. Referring to its scope of review in redundancy cases, the Tribunal recognized 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.

105. To be upheld, the redundancy decision in question must be based on a legitimate rationale and must have been made in the interests of efficient administration. See, e.g., *DI*, Decision No. 533 [2016], para. 82; *Marchesini*, Decision No. 260 [2002], paras. 30, 35.

106. 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. See *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, therefore, incumbent on the Tribunal to require the strictest observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy." *Yoon (No. 2)*, Decision No. 248 [2001], para. 28. 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."

*Id.* See also *EY*, Decision No. 600 [2019], para. 81; *Fidel*, Decision No. 302 [2003], para. 24; *Husain*, Decision No. 266 [2002], para. 50; *Harou*, para. 27.

107. The Tribunal has further noted that “managers [must] take adequate care to ensure that the [a]pplicant’s redundancy could not be interpreted as pretextual.” *Moussavi (No. 2)*, Decision No. 372 [2007], para. 42, citing *Fidel*, para. 54.

108. In determining whether the redundancy decision in this case was “arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure,” the Tribunal is faced with two issues to consider. The first issue is whether there was a legitimate basis for the elimination of a GE-level Engineering Analyst position in ITSEI that ultimately led to the redundancy of the Applicant’s employment. The second issue is whether the Applicant’s due process rights were respected by the Bank in implementing the redundancy decision.

*Whether the redundancy decision had a legitimate basis*

109. The Applicant claims that his position was declared redundant in retaliation for his complaint to PRS and for his response to the ITS Staff Satisfaction Survey, in which the Applicant anonymously alleged an unfair promotion process was being followed in Chennai.

110. The Tribunal observes that “retaliation against any person [...] who uses the Conflict Resolution System” is prohibited. *Bauman*, Decision No. 532 [2016], para. 95; *see also CS*, Decision No. 513 [2015], para. 104; *Sekabaraga (No. 2)*, Decision No. 496 [2014], para. 60.

111. “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.’” *EY*, para. 134, citing *Bodo*, Decision No. 514 [2015], para. 77.

112. The Tribunal has made clear that “[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*, Decision No. 337 [2005], para. 49.

113. The Applicant claims that his use of PRS was a contributing factor to a subsequent adverse employment action, namely termination due to redundancy, and alleged such to EBC. The Tribunal notes that, following an initial review of the facts surrounding the Applicant’s allegations, EBC determined that the initial evidence gathered warranted a full investigation, which took eight months.

114. The Tribunal observes instances in the EBC case file in which the Director described Bank Group staff as having a shocking “sense of entitlement,” and expressed his disbelief and “annoyance” that PRS is not more discerning about the cases it takes on. While the comments were not directed toward any particular staff member, the Tribunal notes the Director’s comments are unfitting for someone in his position and reveal a misalignment between the Director’s values and the Bank Group’s core values.

115. These generalized comments cannot be condoned; however, the evidence the Applicant has provided to support his claim of retaliation includes only his inferences of retaliation based on unproven incidents of bad feelings with management following his use of PRS. As such, the Applicant has not met the burden of establishing a *prima facie* case of retaliation. After careful review of the record, and in agreement with EBC, the Tribunal finds there is insufficient evidence to establish retaliation as the motive for declaring the Applicant’s position redundant.

116. Even so, “lack of improper motivation does not by itself insulate a discretionary management act from being found arbitrary if done without an observable and reasonable basis.” *Desthuis-Francis*, Decision No. 315 [2004], para. 26, citing *Marshall*, Decision No. 226 [2000], para. 21. The Tribunal will therefore examine whether there was an observable and reasonable basis for the redundancy decision.

117. The record demonstrates that, while the Vice President signed off on the ITS positions to be made redundant, it was the Director who selected the positions to be declared redundant from his units.

118. The record indicates that for FY19 ITS received a flat budget, and that in February 2018 the Vice President requested ITS managers to find savings, which instigated a Workforce Planning Exercise.

119. The rationale provided in the Redundancy Proposal Form states that the Applicant's position was no longer needed because, "[w]ith the new VCE Vblock technology, hardware engineering work [that the Applicant] was responsible for is being reduced and does not constitute a full time work staff." According to the Manager, this Vblock technology was introduced sometime around 2014.

120. As an explanation for why the Applicant was made redundant in 2018 due to a change that occurred in or around 2014, the Director explained, "We neglected to reduce the size of the team faster is what it comes down to." This explanation, that management was merely slow to cut the Applicant's position, is not persuasive in circumstances where, in the years following the Vblock implementation, the Manager and Director made a concerted effort to promote the Applicant's position, rather than diminish or phase out the position. Furthermore, although the Vblock technology was implemented in or around 2014, in FY17 the Applicant's term appointment was converted to open-ended, which Staff Rule 4.01, paragraph 2.01(c), defines as "an appointment of indefinite duration."

121. A staff member's eligibility for conversion to an open-ended appointment is, among other criteria, "based on the business needs within the Vice Presidency of that staff member; [and] a reasonable expectation of sufficient funding to support the position." *World Bank Group Procedure: Converting Term Appointments to Open-Ended Appointments*, paragraph 3.02(a-c).

122. As stated in paragraph 3.01 of the *Guidance on Converting Term Appointments to Open-Ended Appointments*, business reasons for choosing *not* to designate a position as open-ended include:

- a. The need for the position is time-bound, as opposed to being ongoing and long-term.
- b. The position requires skills, experience and competencies that are expected to evolve rapidly, as opposed to being stable or slowly changing.
- c. The position is intended to have a high rate of turnover.

123. The Tribunal finds it troubling that in FY17 management considered the Applicant's position to be ongoing, long-term, stable, and sufficiently funded to warrant converting his appointment to open-ended, only to decide, just one year later, to declare the position redundant, citing a technology implemented years earlier as the rationale.

124. The Tribunal acknowledges that, in the interests of efficient administration, the Bank has the discretion to make the position of a staff member holding either term or open-ended appointments redundant, but such discretion is not absolute. As stated in *AK*, Decision No. 408 [2009], para. 41:

Decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis, constitute an abuse of discretion, and therefore a violation of a staff member's contract of employment or terms of appointment.

*See also Desthuis-Francis*, para. 19; *Marshall*, para. 21; *de Raet*, para. 67.

125. With no business justification provided for management's contradictory decisions, the legitimacy of the redundancy decision is called into question.

126. The Tribunal understands that managers may feel it is impossible to achieve a noncontroversial outcome when formulating a business plan for a redundancy program. "None of these considerations, however, can overcome the need to respect requirements of fairness and

transparency when terminating the careers of dedicated and blameless staff members.” *Fidel*, para. 55.

127. The Tribunal observes a complete absence of contemporaneous documentation of input received by the Director from the Manager, or from ITSEI supervisors, on which to form a basis for the redundancy decision. By the Director’s own account, the input he received from the Manager was a marked-up list of the ITSEI positions indicating which positions were “non-critical.” There is no record of this input. Additionally, there is no contemporaneous documentation to demonstrate how the Director came to decide which staff members allegedly marked non-critical would be made redundant and which would not.

128. The record shows the Director selected three positions from the ITSEI Chennai office, all held by staff members who the Director was aware were either not performing well or were objecting to the unit’s promotion process. Yet, the Vice President, as the ultimate decisionmaker, was not made aware of this. The Director failed to disclose to both the HR Manager and the Vice President that the Applicant had recently filed a Request for Review with PRS. Nor did the Director inform them that he was the responding manager in said PRS proceedings.

129. The Tribunal observes that HR was not involved in the Workforce Planning Exercise, during which the Applicant’s position was identified as redundant. A similar process was criticized in *Moussavi (No. 2)*, in which the Tribunal stated at para. 54:

While the Bank consulted with HR, it did so only after it had identified the Applicant for redundancy, giving at least the appearance that the decision had been made first and the justifications were determined later. It is of the utmost importance for the Bank to follow established procedures closely so as to ensure transparency and avoid the appearance of unfairness.

130. Like *Moussavi (No. 2)*, here, the Director consulted with HR only after he had identified the Applicant’s position as redundant, giving at least the appearance that the decision had been made first and the justifications were determined later. Moreover, when the Director eventually did inform the HR Manager and Vice President of the positions he identified as redundant, he provided no more than his bare assertion that the Applicant’s position was “[n]o longer needed.”



131. The record indicates that a more complete rationale was not documented until 27 June 2018 in the Redundancy Proposal Form, over a month after the decision was taken.

132. For the Tribunal to simply take the Director at his word, that he did not first select the Applicant for redundancy then later put forward a justification, would too easily shield any potential abuse of managerial discretion from the Tribunal's review. Considering the contradictory treatment of the Applicant's appointment and considering the lack of documentation surrounding the process by which the Applicant's position was identified as redundant, the Tribunal finds that the Bank has not followed a deliberate process in making the redundancy decision.

133. Based on the record, the Tribunal is not convinced that the Bank has shown a reasonable and observable basis for making the Applicant's position redundant.

*Whether the Applicant's due process rights were respected in the implementation of the redundancy decision*

134. The Tribunal will now examine whether the Bank respected the Applicant's due process rights in the implementation of the redundancy decision. The Applicant contends that the Bank failed to (i) provide adequate notice that his position would be declared redundant; and (ii) consider him for reassignment following the redundancy decision.

i. Whether the Bank provided adequate notice of the redundancy decision

135. Staff Rule 7.01, paragraph 9.04, stipulates:

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.

136. It is well established that, "[a]lthough Staff Rule 7.01 does not provide for a specific advance warning about the issuance of a notice of redundancy, 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*, Decision No. 192 [1998], para. 19.

137. Considering the Vblock implementation took place as early as 2014 with the intention of reducing labor costs, the Bank ideally could have been more forthcoming with the Applicant by providing advance notice that his position was in danger of being declared redundant. Nevertheless, the Tribunal recognized 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.

138. The evidence on record supports the Bank’s contention that only after a final decision on the Workforce Planning Exercise was made in April 2018 was management able to notify the Applicant of his impending redundancy. The Tribunal observes that the Applicant was informed verbally and in writing in May of 2018 that his position would be declared redundant, approximately one month before he received the Notice of Redundancy. The Tribunal further notes that the Notice of Redundancy provided the Applicant with six months’ notice, in accordance with Staff Rule 7.01, paragraph 9.04.

139. The Tribunal is satisfied that the Bank informed the Applicant “with all due anticipation” of the impending redundancy.

ii. Whether the Bank fulfilled its obligations regarding reassignment

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

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

141. Furthermore, Staff Rule 7.01, paragraph 9.06, sets out the Bank's obligations regarding staff reassignment following redundancy, stating:

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."

142. In *Arellano (No. 2)*, Decision No. 161 [1997], para. 42, the Tribunal found that the Bank's obligation in this respect "is not to reassign staff members whose employment was declared redundant under Staff Rule 7.01 but to try genuinely to find such staff members alternative positions for which they are qualified." Additionally, in *Marshall*, para. 45, the Tribunal noted that "the job-search exercise requires efforts from both sides."

143. The Tribunal observes that the Applicant was provided access to the Bank's recruitment portal to apply to other jobs within the Bank Group and was notified by HR, via email dated 1 June 2018, of an ITS Analyst vacancy in Chennai. The Tribunal further observes that the Vice President hired outplacement support for exited staff in Chennai and that the Applicant utilized said support.

144. The Tribunal therefore finds that the Bank acted in accordance with the Principles of Staff Employment and Staff Rules on reassignment obligations following redundancy.

#### *Concluding remarks*

145. The Tribunal finds that the Bank did not provide a reasonable and observable basis for the redundancy decision, and as such a remedy is warranted. The remedy sought by the Applicant is

“monetary compensation [...] or in the *alternative*, reinstatement.” (Emphasis added.) The Tribunal therefore considers that financial compensation, rather than reinstatement, is the appropriate remedy. The financial compensation takes into account the circumstances of the Applicant and the Applicant’s expectation of career security.

#### DECISION

- (1) The Bank shall pay the Applicant compensation in the amount equivalent to three years’ net salary based on the last regular salary drawn by the Applicant;
- (2) The Bank shall pay the Applicant’s legal fees and costs in the amount of \$18,952.48;  
and
- (3) All other claims are dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C.,\* 30 May 2020

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\* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.