



**World Bank Administrative Tribunal**

**2020**

**Decision No. 626**

**FJ,  
Applicant**

**v.**

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

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

**FJ,  
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 6 June 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 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.

**FACTUAL BACKGROUND**

5. The Applicant joined the Bank in 2014 on a three-year term appointment as a System Engineering Analyst, level GE, with the ITSEI team in Chennai, India. The Applicant's appointment was renewed in February 2017 for a three-year term.

6. 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.

7. According to the Applicant, and confirmed by Human Resources (HR), the advertised position the Applicant had applied for in 2014 was System Engineering Officer, level GF. This led the Applicant to believe that, especially after four years of positive performance evaluations at the GE level, he was eligible to be promoted to level GF.

8. On 30 January 2018, during a mid-year review conversation with his Supervisor, the Applicant requested information regarding his potential for promotion from level GE to level GF. According to the Applicant, the Supervisor informed him that it was "too early to receive the promotion."

9. On 28 February 2018, the Applicant again initiated a discussion, this time with his Manager, about his potential for promotion.

10. The Applicant was not alone in disagreeing with management about the promotion process followed in the ITSEI Chennai office. Another staff member from the same office was, during this time, challenging a non-promotion decision through Peer Review Services. Additionally, in February 2018, ITS collected anonymous feedback from ITS staff members through a survey. Some responses included: "ITSEI department is following [a] different practice [...] whereas other departments within ITS [are] following the defined policy [...] supervisors are following their own practices not the defined policy [...]" and "ITSEI team is very biased towards HQ. Chennai staff hardly gets any promotions/recognition."

11. On 28 February 2018, the Manager sent the Director a draft of an email he wished to send to the Applicant documenting his response to the Applicant's inquiry. It stated: "Given the context of what's going on I want to be careful in dealing with these cases. Could you review the draft of

the communication I plan to make part of [the Applicant's] mid-year [review]?" The Director replied approving the draft.

12. On 1 March 2018, the Manager emailed the Applicant, copying the Applicant's Supervisor. In this email, the Manager explained his view that the Applicant was performing at the GE level, and that promotions are done in a more "deliberate" and "formal" manner during performance review sessions.

13. On 6 March 2018, the Applicant replied to the Manager by email, copying the Supervisor. In this email, the Applicant disagreed with the Manager's assessment that he was doing GE-level work and requested information on how to align his position with GF-level responsibilities.

14. On 9 March 2018, the Applicant's Supervisor submitted the following mid-year comments in the ePerformance portal for the Fiscal Year 2018 (FY18) performance cycle:

[The Applicant] is performing his objectives well. [...] Expect him to continue the work and learn the new emerging technologies in SAP Basis domain. Advised him to look at things in bigger perspectives and not have very strong sense of entitlements.

15. On 26 March 2018, the Manager emailed the Applicant, copying the Supervisor, the Director, and two HR representatives. In this email, the Manager indicated that promotions are at "the sole discretion of the senior management" and attached a table outlining GF-level responsibilities and indicating the areas in which he felt the Applicant's current GE-level role was falling short. The Manager further recommended that any follow-up be conducted through in-person discussion.

#### Workforce Planning Exercise

16. 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.

17. 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 exchanges with management regarding his grade level, the Director conducted the Workforce Planning Exercise for the units under ITSFI, which included the Applicant's unit.

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

19. 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.

20. The Director identified three positions in total from the ITSEI Chennai office to be declared redundant. Of those three positions identified as redundant, one position was held by a staff member on an Opportunity to Improve plan for her performance and was not going to be confirmed; the second position was held by a staff member who at the time had an ongoing claim with Peer Review Services contesting the decision not to promote him; and the third position was held by the Applicant, who had several verbal and written exchanges with the Supervisor and the Manager expressing disagreement with their assessment of his assigned grade level. The Manager communicated some of these exchanges to the Director and HR representatives.

21. On 14 May 2018, the Director informed the HR Business Partner of the positions he had identified as redundant.

22. 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 claims with the Internal Justice Services, as he would not win.

23. That same day, the Manager sent an email instructing a team lead to revoke the Applicant's access to his work-related systems "effective immediately."

24. 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 [World Bank Group] 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.

25. 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 Notice of Redundancy memorandum indicated that the Applicant had the option to utilize outplacement support.

26. 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 [...] engineering work related to oracle SAP infrastructure. As ITS moves to SAP Business Suite 4 SAP HANA, 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 SAP DB engineering skills, or a position for which [the Applicant] could reskill himself in a reasonable period of time.

27. There is no record of the Director disclosing to the Vice President the fact that the Applicant was having disagreements with management regarding his grade level.

Office of Ethics and Business Conduct Investigation

28. 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.

29. 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.

30. 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.

31. During his interview with EBC, the Director described his reasoning for declaring Chennai staff redundant 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.

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

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.

33. 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. The Director further stated that he did not receive any description of the functions of the positions he considered for redundancy.

34. 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.”

35. 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.”

36. 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 positions put forward were held by staff members who had performance issues, a PRS case, or disagreements with management. 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.”

37. In January 2019, the Director left the Bank, and on 7 February 2019 EBC concluded its investigation, finding insufficient evidence to substantiate the allegations of retaliation and abuse of authority. EBC informed the Applicant of its finding on 22 February 2019.



## The Application

38. On 6 June 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 \$17,136.92.

### SUMMARY OF THE CONTENTIONS OF THE PARTIES

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

*In declaring the Applicant’s position redundant, the Bank abused its discretion by retaliating against the Applicant for questioning his grade level*

39. The Applicant claims that the redundancy decision was improperly motivated because it was made in retaliation for questioning management. To support this claim, the Applicant maintains that (i) his position is still needed; (ii) financial savings do not justify his termination; and (iii) the timing of the redundancy decision in relation to his disagreement with management demonstrates that the redundancy was pretextual.

40. The Applicant states that, in substance, the position he held has not been eliminated. The Applicant maintains that, following his departure from the Bank, his colleagues continued to request help from him to assist with his previous work profile. The Applicant further claims that, following his termination, his work program remained so necessary that his team hired a contractor to perform a job description “nearly identical” to the Applicant’s.

41. The Applicant rejects the Bank’s insistence that there was a financial justification for the elimination of his position. To that end, the Applicant points out that there was no “sudden change in budget,” because ITS had received a flat budget for several fiscal years in a row. And, according to the Applicant, these routine budgetary constraints were therefore taken into account by ITS

when, just one year prior to declaring his position redundant, management renewed the Applicant's appointment for three years. To the Applicant, this renewal demonstrates that his position was needed for at least three years, and that ITS had the budget for it.

42. Furthermore, the Applicant contends the Bank "cannot reasonably argue that [the Applicant's] modest salary would in any way affect the Bank's budget." According to the Applicant, his GE-level salary at the time of termination roughly translates to \$21,859.41, which he characterizes as "a literal drop in the bucket" compared to the \$10.22 million deficit ITS faced. To the Applicant, "if cost-saving measures were in place, senior staff members with higher grades" or HQ-based staff "would more likely be the target of termination." The Applicant further maintains that "macro budgetary issues [...] are the sort of boilerplate-style reasoning that would justify any and every termination."

43. To the Applicant, the timing of the redundancy is indicative of the Director's tainted motivation. The Applicant initiated several discussions regarding his expectation of promotion, which were escalated to the attention of HR and the Director. The discussions and email exchanges between the Applicant and management began at the end of January 2018 and concluded at the end of March 2018. Similarly, the Applicant points out that the Workforce Planning Exercise and redundancy decisions took place between January and May 2018. The Applicant contends that based on the timing of the decisions, and the lack of correspondence detailing how the decisions were made, the Bank has failed to meet its burden of demonstrating the Applicant was terminated due to efficient administration rather than retaliation.

44. Moreover, the Applicant maintains that the Director's redundancy decision was heavily influenced by management's frustration with the Applicant for perceived insubordination, as evidenced by the Director's alleged statement to a colleague, namely that the Director stated, "[T]hey have been giving problems to [the Manager], so we had to let them go."

***The Bank's Response***

*There was a legitimate rationale for the redundancy decision*

45. According to the Bank, the “record shows the decision to abolish the Applicant’s position [...] was reasonably based on budget constraints and ITS’s workforce planning exercise.” The Bank maintains that the redundancy decision is not vitiated by any improper motives.

46. The Bank contends that the Applicant’s claim of retaliation is nothing more than subjective feelings of unfair treatment. The Bank maintains that the Applicant has not provided sufficient relevant facts to substantiate a claim of retaliation. The Bank contends 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/abuse of authority” against the Director, Manager, and Supervisor.

47. 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.

48. The Bank maintains that the contractor hired in November 2018, who the Applicant alleges has “nearly identical” duties to his previous role, was actually hired to replace a different contractor, not the Applicant. The Bank further maintains that the roles of the contractor and the Applicant, while both related to SAP, reflected different responsibilities.

49. 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 disagreeing with management about his promotion, as evidenced by the thirty-seven other ITS staff members whose positions were declared redundant.

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

*The redundancy decision was procedurally flawed*

50. 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.

51. First, the Applicant maintains that he was not given adequate notice of the redundancy decision. The Applicant points to what he characterizes as misleading reassurances from management in his mid-year review in which the Applicant's Supervisor noted that he expects the Applicant "to continue the work and learn the new emerging technologies in SAP Basis domain." This performance review, which also included positive feedback on his performance, led the Applicant to believe that he was performing satisfactorily and that there was no danger of termination based on the Supervisor's indication of an ongoing need for SAP Basis work. In the Applicant's view, if there was no need for his work program, the prospective language in his performance review and the fact that his appointment was renewed for three years "blatantly misled" him to believe his job was not at risk. To the Applicant, the Bank was not prompt in providing notice which prejudiced the Applicant in looking for other employment within the Bank or taking actions to protect his career.

52. Second, the Applicant contends there is no evidence that efforts were made to place him 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[.]

53. Third, the Applicant contends that the redundancy decision is procedurally flawed because there is "no record of a fair and transparent procedure here. In fact, there is no record at all of how the redundancy decision was determined," which prevents him from properly challenging the

alleged basis. The Applicant specifically points to the lack of documentation demonstrating (i) that the Applicant's functions could be re-assigned to other staff without hiring a replacement; (ii) the cost-saving efficiency of eliminating a GE-level Chennai employee making 1,551,800 rupees, or roughly \$21,859.41 per year, as opposed to a higher-level or U.S.-based staff member; and (iii) a change in the unit's business needs after February 2017 when the Applicant's appointment was renewed.

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

#### *The redundancy decision complied with procedural requirements*

54. The Bank rejects the Applicant's contention that he was not provided adequate notice that his position would be declared redundant. According 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.

55. The Bank maintains that the Applicant was provided written notice on 27 June 2018 by 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.

56. 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.

57. 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.

58. The Bank contends that the Applicant’s claim is baseless because the record demonstrates the Bank acted in accordance with 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

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

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

60. 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], paras. 85–87; *Marchesini*, Decision No. 260 [2002], paras. 30, 35.

61. 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.

62. 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.

63. 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 right of due process was respected by the Bank in implementing the redundancy decision.

*Whether the redundancy decision had a legitimate basis*

64. The Applicant claims that there was no reasonable justification for the redundancy decision, and that therefore it was an abuse of discretion. He claims his position was declared redundant in retaliation for seeking a promotion, conflict with his manager, and “reasons other than redundancy.”

65. “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. Once an applicant has

established a *prima facie* case, “the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner.” *DJ (Merits)*, Decision No. 548 [2016], para. 58, citing *de Raet*, para. 57.

66. 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.

67. The Applicant claims that “his superiors’ frustration with [his] questioning” his grade level was a contributing factor to a subsequent adverse employment action, namely termination due to redundancy, and he 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.

68. The Tribunal observes instances in the EBC case file in which the Director described Bank Group staff as having a shocking “sense of entitlement,” referring to staff members who seek review of managerial promotion decisions. 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.

69. 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 a disagreement with his superiors. 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.

70. 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.

71. 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.

72. 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.

73. The Tribunal notes that, prior to identifying positions as redundant, the Director was not provided with descriptions of the functions of the staff members he considered for redundancy. The Tribunal further notes a complete absence of contemporaneous documentation of input received by the Director 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.

74. The Tribunal understands that managers may feel it is impossible to achieve a non-controversial 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.

75. Here, the record demonstrates that the Director failed to explain the basis for eliminating the Applicant's position until after he declared the position redundant and informed HR.

76. The Tribunal observes that HR was not involved in the Workforce Planning Exercise, during which the Applicant's position was identified as redundant. In fact, the HR Business Partner for the unit was not informed of the ITSEI Chennai positions to be declared redundant until 14 May 2018, the same date the Applicant was informed his position was 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.

77. Like *Moussavi (No. 2)*, here, the Director consulted with HR only after he had declared the Applicant's position redundant, giving at least the appearance that the decision had been made first and the justifications were determined later.

78. The Tribunal observes, in the EBC record, the process followed by another ITS director conducting the Workforce Planning Exercise. In that unit, the director provided the Vice President and HR with a table of the positions identified as redundant accompanied by a brief paragraph for each, outlining the precise rationale for abolishing the positions along with a business plan for how the team would navigate each position loss.

79. In contrast, the Tribunal observes that the Applicant's Director sent an email message to the Vice President identifying the staff members under ITSFI to be declared redundant, but he provided no more than his bare assertion that the Applicant's position was "[n]o longer needed." The Director did not copy anyone from HR on this communication.

80. 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. The rationale provided in the Redundancy Proposal Form states that the Applicant's position was no longer

needed because “[t]he position is responsible for DB engineering work related to oracle SAP infrastructure. As ITS moves to SAP Business Suite 4 SAP HANA, this type of work is being reduced and does not constitute a full time work staff. [T]he existing portion of the responsibilities will be absorbed by the existing HQ-based team.” This form was sent to the Vice President for signature on 31 July 2018, over two months after the redundancy decision was taken.

81. The Director, during his EBC interview, further elaborated on his decision to declare the Applicant’s position redundant by noting that SAP updates progressively automated processes enabling labor reductions in SAP middleware. He further stated that all the staff members in ITSEI were responsible for SAP middleware functions, and that he was not provided with the job description of any staff members in ITSEI. If reducing “headcount” was the goal for cutting positions in Chennai as the Director indicated, and SAP automation reduced the work program of all ITSEI staff members, it is not explained why the Applicant’s position was not declared redundant under Staff Rule 7.01, paragraph 9.02(d) “Types or levels of positions must be reduced in number.” Declaring positions redundant under paragraph 9.02(d) requires management to first seek volunteers for termination and imposes additional procedures to be followed to ensure a fair comparison of positions is conducted before identifying a position as redundant.

82. The Director explained that the reduction in SAP middleware work was known to management for several years, stating that, “[a]t the end of the day, I should’ve been more on top of this and downsized the team faster and I just hadn’t done the work.” This explanation, that management was merely slow to cut the Applicant’s position, is not persuasive in the present circumstances where management renewed the Applicant’s appointment for an additional three-year term in February 2017.

83. The Tribunal acknowledges that, in the interests of efficient administration, the Bank has the discretion to make the position of a staff member holding a term appointment 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.

84. The record shows that the Director selected three positions in total 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. Without first documenting a rationale, and with no contemporaneous documentation to support his decision, the Director declared these positions redundant.

85. 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 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.

86. 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*

87. The Tribunal will now examine the 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

88. 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.

89. 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.

90. 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.

91. 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.

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

iii. Whether the Bank fulfilled its obligations regarding reassignment

93. 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.

94. 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."

95. 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."

96. The Tribunal observes that the Applicant was provided access to the Bank's recruitment portal to apply to other jobs within the Bank Group. The Tribunal further observes that the Vice President hired outplacement support for exited staff in Chennai, though the Applicant chose not to utilize this service.

97. 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*

98. 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 two 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 \$17,136.92;  
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.