



World Bank Administrative Tribunal

2021

Decision No. 658

**GG,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**GG,
Applicant**

v.

**International Finance Corporation,
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 27 October 2020. The Applicant was represented by Neha Dubey, Lawyer (qualified in Australia), and Ludovica Moro, Avvocato (Italy) and Registered European Lawyer for England and Wales. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 28 October 2021.

3. In his Application, the Applicant contends that (i) the IFC's voluntary separation (VS) program did not follow a fair and proper process, and (ii) the IFC's decision to reject his VS application was unreasonable and specific facts "support the conclusion that he should have been granted VS" or that, in the alternative, his position should have been declared redundant.

FACTUAL BACKGROUND

The Applicant's employment history

4. The Applicant joined the IFC in 2010 as a Principal Financial Officer, Grade Level GH. Since January 2014, he has worked as Principal Risk Management Specialist, Global Industry, Financial Markets, Banking and Risk Assessment (CFGAB) with the IFC's Global Financial

Institutions Group (FIG) and as Principal Financial Officer, CFGAB. The Applicant's unit was one of several units housed in the Chief Operating Officer Vice Presidency (COOVPU).

5. The Applicant's duty station was Ho Chi Minh City, Vietnam. On 5 May 2017, the Applicant requested to telecommute from Melbourne, Australia, to accommodate his personal circumstances and reside with family who relocated from his duty station to Melbourne. On 6 June 2017, the Applicant's telecommuting request was approved by his Manager, granting the Applicant a one-year telecommuting arrangement beginning 21 August 2017. The Applicant's telecommuting request was subsequently extended for an additional year to August 2019.

The IFC's workforce planning exercise

6. On 19 September 2018, the IFC Chief Executive Officer (CEO) sent an email to all IFC staff announcing the start of the IFC's workforce planning (WFP) exercise and its corresponding VS program. The email stated in pertinent part:

[O]ver the next three years, we plan to rebalance the grade structure and reduce the percentage of GH level staff to around 12 percent – back to the level we had in FY08 [Fiscal Year 2008...].

A number of VPU [Vice Presidential Unit]-level town halls and staff engagement opportunities will be held this week to go over each VPU's specific rationale for this exercise and their specific business needs. These town halls will also be an opportunity for staff to hear about the process we are planning to follow to implement our workforce plans.

The implementation of the VPU workforce plans will include various staffing actions. Among those will be separations, where necessary. The sequence will be as follows:

(1) A voluntary separation program opened to all, but in most VPUs this will focus mainly on GH level staff (although in some VPUs, there will be smaller reductions of GG2 and other levels of staff). We expect the voluntary process to be complete by the end of November. The decision to accept or reject applications will be left to Management discretion based on specific criteria aligned with each VPU's business needs.

(2) Based on the position plan at each level in each VPU, non-voluntary separations will be considered. [...]

(3) In FY20 and FY21, we will continue our efforts to reach the desired grade structure, mostly through natural attrition and by hiring additional junior resources in our priority regions and sectors. Periodic reviews of our staffing pyramid will allow us to fine-tune our plans as needed in accordance with evolving business needs.

7. Also on 19 September 2018, the IFC Chief Operating Officer (COO) and head of the COOVPU, sent an email to all COOVPU staff outlining the VPU's business objectives in conducting its WFP exercise and VS program. The email provided:

To help us achieve our objectives and to leverage better our senior resources, we plan to rebalance the mix of junior and senior staff across the COO VPU by reducing GG2 and GH positions, in keeping with the charts presented in [the IFC CEO's] workforce planning email. Also, given our shift to priority regions, we will reduce the number of GA–GD positions where the duty station is Washington, DC. Volunteers from other grades will also be considered, but are not the focus of this exercise.

To this end, we are launching a voluntary separation program which will remain open until November 30th.

All GG2 and GH-level staff in Operations will receive an email outlining the application process to be considered for a mutually agreed separation. Additionally, all GA–GD staff in Operations, whose duty station is Washington, DC, will receive a similar email. Please keep in mind that not all applications will be accepted. There will be a review panel that will make a case-by-case determination, based upon business needs. Decisions regarding the voluntary exit program will be communicated in December.

Once we have completed the volunteer phase, we will evaluate where we are and proceed to identify positions where further separations may be required.

All processes will follow WBG [World Bank Group] Staff Rules and procedures. Likewise, exit packages throughout will follow WBG Staff Rules and procedures.

Communications

Regional VPs and Department Heads will hold town halls this week, as well as drop-in and live chat sessions over the coming weeks, to continue to share the rationale behind our decisions and to give you a chance to ask questions.

I recognize that this may be an unsettling time for some of you. Please reach out to your Manager, your HRBP [Human Resources Business Partner], and/or the Staff

Association with any questions. We commit to being transparent and will do our best to keep you informed throughout this process. [Emphasis in original.]

The email included an attachment entitled “COO VPU Workforce Planning Narrative,” which provided details of the business needs sought to be achieved in the VPU and a section on how the VPU aimed to achieve the IFC 3.0 business needs through the WFP exercise, stating that the COOVPU will

- Reduce GH and G2 grade generalist IO’s [Investment Officers] in global units[;]
- Reduce staff without specific industry expertise[;]
- Reduce staff in sectors no longer in focus such as energy (upstream oil & gas)[;]
- Reduce support staff in GA–GD grades in line with shifts in sectors and regions[; and]
- Increase GE and GF positions to better leverage highly skilled and senior resources[.]

8. Also on 19 September 2018, the Applicant’s Senior Director (FIG Senior Director) sent an email to all FIG staff with further guidance on how FIG specifically aimed to meet the IFC 3.0 strategy. The FIG Senior Director outlined the following staff rebalancing goals:

- i) a reduction in GH and G2 level generalist staff in global units based in DC; and
- ii) a shift in resources to regions of need (Sub-Saharan Africa, MENA [Middle East and North Africa,] and South Asia).

We will continue to focus on Specialists Advisory expertise, product development and high quality of delivery of global advisory services, keeping a few AS [Advisory Services] staff working in DC to coordinate our work with WB [the World Bank].

I know that this will be unsettling for us in FIG and you will have many questions and concerns. I would like to reassure everyone that FIG Management Team is fully aware of this. We will do our best to communicate regularly and transparently, to keep you all informed, and help you through this transition.

We will have the opportunity to discuss this in more detail and address your questions and concerns during our Townhall tomorrow.

9. On 1 October 2018, the IFC COO sent an email to all COOVPU staff identifying questions she had been asked about the WFP exercise and VS program, and providing her responses to those questions, including:

I've heard we will be letting hundreds of H-level staff go. Is that true? How many positions are you planning to reduce in Operations?

As you have heard me say before, as we implement our workforce plans to better align ourselves to deliver on IFC 3.0, some units will grow while others will shrink.

[...]

For the COO VPU, our workforce plans call for the following reductions:

- 30–35 G2-level positions
- 90–100 GH-level positions
- 15 administrative support positions (GA–GD) whose duty station is Washington, DC

In addition to the changes in our staffing grade composition, our plans call for:

- Shifting positions from Global Departments to Regions
- Increasing the number of positions in focus themes and regions [...] who have the expertise and skills to help grow our pipeline
- Increasing the number of positions focused on business development
- Strengthening our advisory capacity required for market creation – including through moving advisory staff from Global Teams to the Regions
- Increasing our number of staff who can collaborate with the WBG, IMF [International Monetary Fund], and other partners and donors to identify key policy and regulatory reforms needed to enhance private sector participation and implement the Cascade

These shifts are outlined in greater detail, including more information about specialization and expertise needed, in the workforce planning narratives for each Regional Vice Presidency and Global Department. These narratives have been posted on a newly created Operations workforce planning website [a hyperlink to the website was included]. We will keep this website updated with the most recent workforce planning information, as well as links to useful resources.

10. Attached to the IFC COO's email was the IFC's WFP frequently asked questions document (IFC Workforce Planning FAQs), which stated in pertinent part:

What is the FY19 process to implement voluntary separations? How will the decision to accept or reject an application be made? Who will be in the Committee?

Each VPU in [the] IFC will announce a voluntary separation program, mainly for GH level staff whereby staff will be given an opportunity to apply for voluntary separation. The voluntary application process will be open until November 30, 2018, and the decision to accept or reject applications will be left to managerial discretion of each VPU. There will be a committee established within each VPU composed by the VP [Vice President], VPU Leadership team and HR to review the applications and recommend decisions to either accept or decline a volunteer's request based on business needs. The committee will review the applications in order of submission and decisions to be communicated to staff in December. Depending on the number of volunteers who come forward and to the extent necessary, non-voluntary separations will be considered in accordance with Staff Rule 7.01, paras. 9.02 and 9.03.

11. In October 2018, a document was uploaded to the Operations Workforce Planning website, which summarized the “drivers of staffing level and composition” in the Applicant’s unit, FIG, and reiterated the staff rebalancing goals identified in the FIG Senior Director’s email of 19 September 2018 to FIG staff, namely:

As with all global industries, technical expertise will drive staffing needs in FIG global [...]. The reshaping of the pyramid and rebalancing, however, will result in: i) a reduction in GH and G2 level resources who are generalist or processing staff and are based in global units in DC; and ii) a shift from global units of resources that have the skills that meet the needs of regions of focus (Sub-Saharan Africa, MENA and South Asia).

FIG will maintain a small group of Specialists Advisory staff focused on product development and quality of delivery of our global advisory services [...].

12. From 1 to 5 November 2018, the IFC COO hosted four live “chat/drop-in sessions” during which she responded to staff members’ questions about the WFP exercise and the VS process. During one of the sessions, the IFC COO explained that management will avoid bias in evaluating the VS applications “by looking at the positions not the names and the committee then makes the decision. The process is position based when deciding needs, not based on the person.” During another session, the IFC COO explained that, to ensure the fairness of the VS selection, “we have a list of criteria[:] are these skillsets we need? [...] SRI [Salary Review Increase ratings], talent, etc.” The Applicant did not attend any of the drop-in sessions.

13. On 13 November 2018, the IFC COO sent an email to all COOVPU staff summarizing the four drop-in sessions. The email explained that the IFC COO would chair the VPU's VS application review panel (COOVPU Panel) along with other members from the management team. It further noted that "[w]e do not know how many voluntary applications have been received thus far. In support of staff requests to maintain confidentiality, this information is maintained by HR" and the list of applications would be shared only with the COOVPU Panel at a later time. The email again included a link to the Operations Workforce Planning website, which the IFC COO explained "has additional information, including the workforce planning narratives for each of the regions and global departments."

14. On 19 November 2018, in a recorded town hall meeting entitled "COO VPU Workforce Planning Townhall," which is available online, the IFC COO and department heads from the units within the COOVPU described the VPU's business needs and objectives in conducting the WFP exercise, and each department head spoke specifically on their unit's business needs and restaffing goals. The presentation slides were posted on the Operations Workforce Planning website together with the recorded town hall meeting, which outlined the various grade level changes FIG sought to achieve and again explained FIG's business objectives.

15. The COOVPU Panel was established to review VS applications. The COOVPU Panel comprised the IFC COO as Chair; three regional Vice Presidents; four Global Industry Directors, including the FIG Senior Director; and Human Resources (HR) representatives.

16. According to the IFC, from September to November 2018, a checklist, based on the COOVPU's "business needs" and "the criteria established in Staff Rule 7.01," was developed and prepared by HR to guide the COOVPU Panel in making decisions on VS applications. According to the IFC, this checklist was an "informative document, and the [COOVPU] Panel was requested to apply the Staff Rules, taking into account the WFP objectives, and the COOVPU business needs." (Emphasis in original.) The checklist prepared by HR stated:

1. Volunteer is in group of focus (grade level, unit, role).

2. Volunteer has or can have work program/critical client relationship which is part of an **ongoing** line of business/activity.
3. Volunteer has or can have work program which will be part of a **new** line of business/activity.
4. Volunteer has work program and competencies critical for **statutory, fiduciary or other governance** related role/work program (a ‘cannot not do’ activity). Alternatives? (Including ways to make this less person-dependent, if possible)[.]
5. Volunteer is performing or could be **performing at high level** in an activity under 2–4?
6. Volunteer is critical to coaching/mentoring/transition. [...]
7. Volunteer is **good fit for identified needs elsewhere** in the Corporation.
8. Exit package makes financial sense [...]. [Emphasis in original.]

17. In a series of emails exchanged in preparation for a COOVPU Panel meeting, an HR representative explained the use of the checklist, and the ability to tailor it to include more specific criteria to suit the VPU’s business needs. The HR representative further stated that “it is useful to have the considerations for acceptance or non-acceptance on record (either in the form of the checklists or in the form of brief summaries of decisions and underlying reasons for those).”

18. In addition to the checklist, HR also provided “Corporate Guidelines and Criteria for Volunteer Review and Selection.” The guidelines stated:

1. Questions that help the reviewer consider why we should accept the volunteer’s application:
 - Is the applicant in a group of focus (grade level, unit, role)?
 - Does the exit package make financial sense for [the] IFC?
 - Are there business reasons/advantages to accept the voluntary separation? E.g., facilitates a shift in skills profile/competencies, mobility for other staff; presents an opportunity to avoid forced exits.
2. An additional set of questions that explore: “is there any particular reason we should not let this volunteer go?” E.g., performing at a high level, critical skills for an ongoing or new line of business, good fit for elsewhere in the corporation. [Emphasis in original.]

The Applicant's VS application

19. On 6 November 2018, the Applicant submitted his VS application.
20. The COOVPU received 140 VS applications, of which 39 were rejected. All VS candidates were informed of a decision in December 2018.
21. On 22 December 2018, the Applicant received an email from his Senior Manager notifying him that, “after careful consideration, [his] application to separate voluntarily from the IFC [had] not been accepted.”
22. On 2 January 2019, the Applicant emailed the FIG Senior Director requesting clarification on the “level of consideration” given, during the assessment of his VS application, to the following factors:
 - I am working from Melbourne and have been advised that this will not be supported beyond the current period to August 2019. I am unable to move for family reasons.
 - I have been receiving treatment for mental health issues for the past 3 years and is ongoing. Unfortunately aspects of this are work-related which I find increasingly difficult to manage.
23. On 22 February 2019, the Applicant emailed the FIG Senior Director requesting to follow up on resolving issues pertaining to the Applicant's VS application rejection. In his email, the Applicant stated:
 1. Telecommuting
 - I believe that I have performed my role in the existing position well whilst telecommuting over the past 18 months. I am able to continue to work in the existing position, but that is not possible without telecommuting from Melbourne as you [...] are aware.
 - I had been advised that there is a 2 year limit on telecommuting arrangements, thus expiring in August 2019, and that longer term telecommuting isn't supported by Management. I am not aware of any IFC

rule or directive that would prevent this arrangement if [the] IFC want[s] me to continue in this role?

- If it is insisted that I cannot continue to do the role on a telecommuting arrangement, then IFC must accept my application as it is effectively making me redundant.

2. My role

- I do not believe [the] IFC's decision to keep me due to the critical nature of my role is consistent with the facts.
- Prior to receiving the email notification of the rejection from [the Senior Manager] on 22 Dec 2018, we had a brief call where she advised me the decision from the Corporate Panel. When asked of the reason I was told that there was some 'formula model' used and that Risk Management advisory is 'strategically important and needed for IFC 3.0' and that I am needed to continue to run it. Whilst this [is] good to hear, it does not appear to be consistent with what I have experienced in past years or observed recently.
- I have run the global RM [Risk Management] AS with minimum resourcing for over 5 years. In most of that time I have been the sole global specialist, have had no program management support for past 2 years and asked to change reporting line of a senior specialist to [a colleague] to transition ahead of my expected departure. I have not seen anything that would reflect the strategic priority for RM AS. Even in the recent 'FIG Overview' (Nov 2018) it is not mentioned other than the word 'risk management' in a minor bullet point.

I would like to know what was the methodology and scoring from the 'formula/model' to support the [COOVPU] Panel decision. I would like to know if there is a plan in place to develop global RM if it is to be strategically important.

I would like for my application to be reviewed and accepted based on the facts that it cannot be performed under a telecommuting arrangement and that it is not a critical [function].

24. On 26 July 2019, the Applicant's Manager sent an email informing the Applicant that his telecommuting arrangement would be extended until 31 December 2019 and no further extension would be provided. In that same email the Applicant's Manager advised the Applicant that if he "do[es] not return to [his] designated duty station [...] [he] may either resign or we may consider [him] to have abandoned [his] position."

25. The Applicant was expected to relocate to his duty station in Bangkok, Thailand, by 1 January 2020. On 31 December 2019, the Applicant commenced short-term disability leave which concluded on 31 December 2020, at which point the Applicant took various forms of leave including annual and sick leave.

Peer Review Services

26. On 6 March 2019, the Applicant filed a Request for Review with Peer Review Services (PRS) disputing the rejection of his VS application under the IFC's WFP exercise.

27. The PRS Panel summarized the testimony of the Senior Manager provided during the course of the PRS proceedings, in which he stated that the Applicant's VS application was reviewed using "clearly defined and consistently applied criteria" comprising the following:

- a) Whether the position, not necessarily the person holding the position, is needed. If yes;
- b) Does the incumbent have the skills required to perform; and
- c) Performance and Talent Review results of staff over the preceding three fiscal years (FY16, FY17 and FY18).

28. The Manager, HR Development Corporate Operations (HRDCO) testified that his office provided advice to the IFC on the VS program and that "the primary consideration for the VS program was whether it made business sense to exit a staff member with a separation package." The HRDCO further testified that it would not "make sense to provide a separation package to a staff member if the business unit has a business need to fill the staff member's position upon his/her departure." He further confirmed that personal circumstances of VS candidates, including family and health situations, did not play a role in the VS decisions, and that "there are other ways to handle these situations [...]. [I]f a staff has health issues and decides to leave the institution, he/she may avail themselves of the separation options provided by Staff Rule 7.01."

29. According to the Senior Manager,

HR collected relevant data regarding VS applications and presented to the COOVP[U] in a spreadsheet, which was used to review each application against the selection criteria. [...] [A]lthough scoring sheets setting out the criteria to be used by the COOVP[U] management to review applications for VS were prepared, no individual scoring sheets were completed for VS applications as it was practically impossible given the high number of applications received. [...] [N]o minutes or written summaries of the discussions of the COO VPU Panel Review meetings were prepared.

30. The Senior Manager further stated that Staff Rule 7.01 did not govern the VS decision process because Staff Rule 7.01 is applicable to situations of redundancy.

31. The PRS Panel summarized the testimony of the FIG Senior Director as follows:

The COOVP[U] panel reviewed [the Applicant's] application together with his Talent Reviews and Performance Evaluation results and concluded that [the Applicant] was strategically important to the FIG business needs. [The FIG Senior Director] testified that management decided not to grant [the Applicant's] application for the VS program because [the Applicant] is the only GH level risk management specialist in FIG and has a very good performance assessment and SRI ratings.

In his testimony, [the FIG Senior Director] clarified that had FIG approved to grant a separation package to [the Applicant], the implication would have been that FIG did not need [the Applicant's] GH level position at all or at the same level. [The FIG Senior Director] stated that he consulted with [the Applicant's managers] regarding [the Applicant's] VS application and they did not object to management rejecting the application. [The FIG Senior Director] had some discussion with FIG management about workforce planning of the Bank Risk Management unit and [...] the consensus was not to change staff structure of his unit and maintain [the Applicant's] position, whether the function he occupied remain[ed] global or move[d] to the regions, given that there was a business need for one person to coordinate the risk management function of FIG.

32. The Applicant's testimony was also summarized in the PRS Report. The Applicant stated that, "although his position is important to the FIG business, it was not properly supported both financially and strategically, nor did he receive the adequate staff resources to assist him in performing this function." He further stated that he was never provided with "information on the 'business needs' nor with the expected resource plans for the Global Risk Management Advisory

Program,” but noted that he did not dial into the town halls or drop-in sessions on the VS program, which he said was “his own fault.”

33. The Applicant’s Senior Manager testified in response that “any funding shortfall for the Risk Management function does not necessarily reflect the importance FIG attached to [the Applicant’s] position. [...] FIG considers [the Applicant’s] role [in risk management] as a critical advisory function.” Included as an exhibit to the PRS Report was the 2015 FIG Advisory Strategic Document, which identified risk management as one of five “critical product offerings for the FIG Advisory Business.” The Senior Manager further testified that the Applicant’s position is included in the FIG workforce planning that was recently approved for Fiscal Years 2021–23 and that the Applicant “is the only Principal Operations Officer at GH grade level for risk management [and] has been leading the Risk Management Practice and working on client engagement since August 2015.” The Senior Manager stated that, in addition to the Applicant’s leadership and experience in what the Senior Manager described as a critical business area, the Applicant’s high performance ratings and fungible skills were also considered in the VS decision.

34. According to the FIG Senior Director, on 9 and 28 January 2019, he had telephone conversations with the Applicant to provide additional details regarding the outcome of the VS process, explaining that the Applicant had the right skills for his position, which was considered needed in FIG’s workforce plan. The FIG Senior Director testified that, while he was aware of the Applicant’s telecommuting arrangements, the 9 January 2019 phone call was the first time he became aware of the Applicant’s family and health circumstances. The FIG Senior Director stated that he subsequently discussed the Applicant’s VS case with the IFC CEO’s Office but was informed that “reconsideration of personal VS cases was not possible.”

35. On 10 December 2019, while the PRS proceedings were still ongoing, the Applicant emailed his Manager restating the key reasons for his telecommuting arrangement. The Applicant stated the following:

As we have discussed on several occasions, the key reason for my requests to telecommute has been to manage my mental health conditions of depression and anxiety. My condition has not improved and has been hindered by the rejection of

my voluntary separation application (VS), the inability to mediate a fair resolution and now being placed in a position of potential termination of employment.

I remain unable to relocate from Melbourne as it is very likely to have a further detrimental effect on my mental health. I have attached the medical opinion from my doctor to confirm the nature of my condition. I have requested annual leave from 1–20 January, 2020, which is still awaiting approval [i]n the system. I am very disappointed that my needs cannot be accommodated further as outlined in your email. It is unfair and improper to propose the termination scenarios below following the disputed VS decision and could appear to be retaliatory.

The PRS case related to the rejection of my VS is in progress and I do not know if it will be completed by 31 December, 2019. I request that we seek to establish a fair separation agreement and that I have authorized absence from the designated duty station until this is resolved, whether by PRS decision or otherwise.

36. The Applicant attached to this email a letter from his doctor describing the Applicant's depression and anxiety, and prescribed treatment. The Applicant's doctor also stated his strong recommendation that "a relocation overseas would be highly detrimental to [the Applicant's] mental health."

37. On 8 July 2020, the PRS Panel issued its Report, noting that "business needs [were] the primary driver behind the WFP and the VS program, and that COOVP[U] management's decision not to consider [the Applicant's personal] circumstances in its review of his VS application was reasonable." The PRS Panel found that the VS decision was within managerial discretion, that management provided objective reasons for the VS decision, and that there was no evidence in the record to show that management abused its discretion. In sum, the PRS Panel concluded that "management had a reasonable and observable basis not to grant [the Applicant's] application for the VS program" and thus did not recommend compensation in respect of this claim.

38. The PRS Panel further concluded that, although it considered that "the VS process was not properly documented as there were no written summaries of the deliberations of the COOVP[U] Panel and the Corporate level review processes," the absence of written documentation did not rise to the level of a procedural irregularity meriting relief. The PRS Panel considered that the IFC CEO's email of 19 September 2018 and the IFC Workforce Planning FAQs provided VS candidates with advance notice about the two-level review and that, "given the scale and

implications of the IFC WFP and VS program, the Corporate level review of the VS program was part of the IFC CEO's fiduciary responsibility to ensure consistency and fairness of the process." The PRS Panel found that Staff Rule 7.01, paragraph 9.03, did not govern the VS process. The PRS Panel also determined that the verbal communications from the Applicant's managers and the phone calls with the FIG Senior Director constituted sufficient information regarding the outcome of the VS program and the opportunity to respond, providing the Applicant with the required due process in the VS decision.

39. The PRS Panel recommended no relief be awarded to the Applicant. On 3 August 2020, management accepted the PRS Panel's recommendation.

The present Application and remedies sought

40. On 27 October 2020, the Applicant filed this Application with the Tribunal.

41. The Applicant seeks as remedy compensation in the amount of (i) \$372,492.00 in accordance with the terms of the VS program; (ii) eight months and twelve days' salary for "being forced" to use that amount of leave when he could not telecommute; (iii) 30% of his salary for the period of 1–31 December 2020 due to the Applicant's status on short-term disability leave; and (iv) no less than six months' net salary for moral damages for the Applicant's unfair treatment or such other amount as the Tribunal deems appropriate. The Applicant further seeks legal fees and costs in the amount of \$10,950.00 and reimbursement of "any out-of-pocket medical expenses in an amount to be determined pending the outcome of this [A]pplication."

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The VS program did not follow a fair and proper process because the IFC failed to apply objective criteria or follow clear procedures

42. The Applicant contends that the IFC failed to follow a fair and proper VS program because (i) the criteria allegedly used to evaluate the VS applications were not objective; (ii) the VS selection criteria were not shared with the candidates; (iii) had the checklist from HR been followed by the COOVPU Panel, the Applicant's position would not have been retained; and (iv) there is a complete absence of contemporaneous documentation on the process followed and the assessments made of the VS applications.

43. The Applicant maintains that, without any criteria or objective framework against which to assess the VS applications or the alleged FIG "business needs," the IFC failed to follow a fair and reasonable procedure. According to the Applicant, "[a]lthough the information circulated to staff contains the procedure and rationale behind VS, it does not at any point actually identify any objective criteria that could be relied upon by the [IFC] in determining VS applications." The Applicant maintains that, without any objective criteria on which to assess the VS applications, the decision should be viewed as arbitrary.

44. The Applicant further points out that, while HR may have provided the COOVPU Panel with a checklist by which to evaluate VS applications, there is no evidence to suggest that the checklist was used. The Applicant asserts that, had the checklist been used, his position would not have been retained.

45. The Applicant contends that the selection criteria allegedly used to assess VS applications, which "arose for the first time during the PRS hearing," should have been part of the VS rejection notification given to the Applicant. Moreover, the Applicant maintains that, without having the selection criteria communicated to him ahead of time, it was impossible for him to know what requirements he had to meet to be awarded VS.

46. Last, in the Applicant's view, it is difficult to fathom how the IFC can claim to have conducted a case-by-case determination with respect to VS decisions when there is no written record of the determinations or any contemporaneous evidence at all.

47. For the above-mentioned reasons, the Applicant contends that the IFC failed to follow a fair and transparent VS selection process.

The IFC's Response

The VS decision was not vitiated by improper process

48. The IFC contends that it established and applied clearly defined criteria to assess VS applications. According to the IFC, from the very first communications from IFC management, including emails from the IFC CEO, IFC COO, and FIG Senior Director, VS candidates were made aware that

- i) the VS process will be strictly business-driven and will not take staff personal circumstances into account [...];
- ii) the WFP and VS will be focused on positions [...];
- iii) not all VS applications will be accepted, and management is not obliged to offer or accept a MAS [Mutually Agreed Separation] proposal. If an application is not accepted, it will be based on a business need to retain staff whose skills are required in the Institution [...];
- iv) the VS program will be centered on GH and G2 generalist staff based in Washington D.C., and IFC FIG "will continue [to] focus on Specialist Advisory expertise" [...];
- v) a VS Panel will be established to evaluate the COOVPU VS applications [...];
- vi) [t]he Panel will be chaired by [the] IFC COO and head of the COOVPU, and it will make a case-by-case determination on the VS applications based upon business needs [...]; and
- vii) a VS application will be accepted when a staff "position is declared redundant through a Mutually Agreed Separation (MAS)." [...] Staff members "must be facing a bona fide redundancy to be eligible for a 100% MAS."

49. In the IFC's view, the record demonstrates that these communicated rationales, processes, and procedures were followed.

50. To the IFC, the "business needs" and IFC 3.0 staffing objectives of FIG were made abundantly clear in numerous communications to VS candidates, including the 19 September 2018 email from the FIG Senior Director to FIG staff, the Workforce Planning Narratives posted on the Operations Workforce Planning website, and various town hall forums and presentations. The IFC explains that "the VS program was a business-driven program, akin to a mutually agreed separation (MAS) under Staff Rule 7.01" and that only staff members "facing a bona fide redundancy" were eligible for MAS. To the IFC, the IFC's stated business objectives and the criteria set out in Staff Rule 7.01 serve as objective criteria on which to review VS applications. The relevant paragraphs of Staff Rule 7.01 were identified by the IFC as follows:

9.02 A staff member's employment may become redundant when the World Bank Group (WBG) determines in the interests of efficient administration, including the need to meet budgetary constraints, that:

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

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

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

51. The IFC further points out that, as communicated, a COOVPU Panel was constituted to, and did, evaluate the VS applications by applying consistent criteria based on the identified business needs of the VPU and the criteria identified in the Staff Rules. The IFC maintains that, in line with the IFC CEO's email of 19 September 2018, and the IFC Workforce Planning FAQs, the decision was appropriately made by IFC management, including the COOVPU Panel and the IFC CEO.

52. In the IFC's view, if the established and advertised criteria were not clear enough for the Applicant, he could have asked his HR Business Partner, sent an email to the IFC's transition support team, posed his questions to management during a town hall session, or consulted the Operations Workforce Planning website. According to the IFC, all of these resources were available from the launch of the VS program.

The Applicant's Contention No. 2

The rejection of the Applicant's VS application was manifestly unreasonable

53. The Applicant does not contest that the IFC has discretion in making the VS decisions but does contend that the decision to reject his VS application was arbitrary and unreasonable.

54. To support his contention, the Applicant maintains that his position is not needed. The Applicant states that he has not had any discussion about his role and function with his supervisor since November 2019, almost one year after the VS decision was taken, and that he "appears to have been removed from various mailing lists and excluded from team communications, which again throws into question the alleged need for his position." To the Applicant, this information demonstrates the lack of importance for his position.

55. The Applicant further contends that the IFC was unreasonable in its VS decision because it was “required to consider the Applicant’s personal circumstances in determining his VS application” but did not. The Applicant states in this respect that the IFC has a “duty to treat all staff with dignity and respect” but failed to when it denied his VS application knowing it would impose an “unfair, arbitrary and frankly inappropriate ultimatum” on him to relocate to Thailand, resign, or abandon his post. To the Applicant, because the telecommuting arrangement had “an administrative two year limit,” he had the legitimate expectation for his VS application to be approved because he would not be able to perform his position.

56. The Applicant avers that the IFC is “*de facto* obliging him to choose between his health and work, thereby exercising undue duress and distress upon him and constructively dismissing him.” In the Applicant’s view the VS decision should be “set aside as being entirely arbitrary and void for procedural error, and amounting to a constructive dismissal.”

57. To the Applicant, if his VS application could not be accepted, he should have been declared redundant based on his health circumstances. To the Applicant:

The *impasse* proposed by the [IFC] breaches the basic principle of providing staff with a safe workplace and of treating staff with dignity – the Applicant was basically faced with the decision of either being terminated or to resign without any termination entitlements, despite and in disregard of his known medically proven work-related health condition and medical reports. [Emphasis in original.]

58. The Applicant also contends that he was treated differently than colleagues, noting that “two other principal banking specialists in the same unit [...] were granted VS and that their roles have been maintained and subsequently filled in the new IFC structure.” He further noted that the Head of Asia was permitted a “delayed departure date in order to meet permanent residency requirements and remain living in the country of her former duty station.” While the Applicant acknowledges that these colleagues “may have different individual circumstances” from him, their circumstances nevertheless show that he could have been granted VS and replaced, or that his personal circumstances could have been taken into consideration and his telecommuting been extended.

The IFC's Response

The VS decision had a reasonable and observable basis and was not discriminatory

59. The IFC contends that the decision to reject the Applicant's VS application had a reasonable and observable business rationale and was not discriminatory.

60. The IFC maintains that risk management, the Applicant's expertise, has been a strategic priority for FIG and is one of five critical product offerings for the FIG Advisory Business, which was specifically identified as an IFC 3.0 priority in communications to VS candidates. The IFC explains that "FIG has its largest part of equity and overall portfolio in Asia, among other reasons, because risk management and governance are seen as key factors in improving quality, especially in the context of equity in emerging markets." According to the IFC, the largest clients in the FIG portfolio at the time of the VS decision were in Vietnam, Cambodia, Myanmar, and other East Asia and Pacific (EAP) countries. In the IFC's view, the Applicant's position was critical because he was the only Principal Operations Officer for risk management in EAP countries and had been leading the risk management practice and working on client engagement in key countries for several years.

61. To the IFC, given the Applicant's expertise in a critical advisory service to FIG, his regional experience in Asia, and his high performance, the Applicant's position and functions were essential for FIG.

62. The IFC refutes the Applicant's contention that he was treated differently than similarly situated staff members, namely the two Principal Banking Specialists and Head of Asia who were granted VS. To the IFC, the Applicant's contentions in this respect are baseless personal speculations. The IFC avers that the Applicant was not similarly situated to these staff members because the Applicant was the only Grade Level GH Risk Management Specialist whose position was considered strategically important, whereas, in contrast, there were eight Banking Specialists in FIG and the "number of banking specialist positions had to be reduced under the new WFP FIG structure." The IFC further points out that, unlike the Applicant, the two Principal Banking Specialists had performance issues and were facing redundancy. The IFC also explains that the

Head of Asia had a skills mismatch and FIG required someone with deeper sector or technical expertise in the field.

63. The IFC asserts that the record demonstrates that the COOVPU Panel's VS decisions "were business-driven [and] based on the VS criteria" and that "[the] Applicant fails to provide evidence of discrimination."

64. Last, in response to the Applicant's contention that the decision on his VS application should have taken into consideration that he would be unable to change duty stations, the IFC maintains that, at the time the Applicant applied for VS he had been working from Melbourne for over a year, and the decision not to accept his VS application did not change his telecommuting arrangement, which remained in effect for more than a year after the VS decision was communicated to the Applicant.

65. In sum, to the IFC, the Applicant's position clearly met the FIG's identified business need of advisory services and therefore the discretionary decision to reject his VS application was properly exercised, the Applicant was not treated differently than similarly situated staff, and the decision not to accept his VS application did not affect his telecommuting arrangement that continued more than a year after the VS decision.

The Staff Association's Amicus Curiae Brief

66. The Tribunal granted the Staff Association's request to act as *amicus curiae* and accepted its submission of a brief in support of the Application.

67. The Staff Association agrees with the Applicant that the IFC "did not provide at the time, and still has not provided, clear guidelines for [VS] eligibility." The Staff Association does not question whether the IFC may assert managerial discretion regarding decisions in its WFP VS applications. However, the Staff Association contends that "this discretion must be exercised fairly, subject to a procedure and standards that are transparent and that are not arbitrarily applied."

68. In the Staff Association's view, whatever eligibility criteria were used "do not appear to have been applied in a reasonable manner." Further, to the Staff Association, while the IFC COO claims a spreadsheet was used that indicated how the eligibility criteria were scored for each volunteer, no evidence of such criteria or process has been produced.

69. The Staff Association contends that "no real criteria have been articulated other than the vague, malleable justification of 'business needs,' which is hardly an objective criterion at all when left to the unfettered discretion of the deciding manager." To the Staff Association, the "lack of clear, transparent, and fairly applied procedures and standards was a flaw that infected the entire process, and the manner in which it was applied to the Applicant would by itself constitute sufficient reason to call into question the decision made in his case."

70. Further, in the Staff Association's view, the "IFC has failed to meet the basic threshold of showing that [the Applicant's] position was needed going forward." The Staff Association contends that the "IFC denied [the Applicant's] request for VS on the grounds that his continued employment was critical but then also denied his request for an extension of the telecommuting arrangement that was necessary for him to continue working for [the] IFC."

71. In the Staff Association's view, the Applicant's VS application and telecommuting request are not independent issues. The Staff Association further contends that, while the IFC claims to have made decisions on a case-by-case basis, the IFC "only [took] into account the factors it [chose] to take into account" and did not provide the details of the decision. The Staff Association maintains that the Applicant's health and family circumstances should have been considered in the assessment of the Applicant's VS application, because it was well known that "the Applicant was fully capable of continuing to perform his duties in his telecommuting location but would not be able to relocate."

72. The Staff Association submits that

[the] IFC did have the choice to reach a result that would have been reasonable and fair to the Applicant and consistent with the Bank's Principles of Employment: either to permit the Applicant to continue to work in a location that was consistent

with his health requirements, or to let him voluntarily separate, as nearly 200 other IFC staff were allowed to do.

73. The Staff Association requests the Tribunal to award the remedies sought by the Applicant.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

SCOPE OF THE TRIBUNAL'S REVIEW OF DISCRETIONARY DECISIONS

74. The parties agree that decisions regarding VS applications are discretionary. The Tribunal has consistently held that it will not overturn a discretionary managerial decision, unless it is demonstrated that the exercise of discretion was “arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack[ed] a reasonable and observable basis, constitute[d] an abuse of discretion, and therefore a violation of a staff member’s contract of employment or terms of appointment.” *AK*, Decision No. 408 [2009], para. 41, citing *Desthuis-Francis*, Decision No. 315 [2004], para. 19; *Marshall*, Decision No. 226 [2000], para. 21; *de Raet*, Decision No. 85 [1989], para. 67.

75. 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, otherwise

ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in “the interests of efficient administration.”

Yoon (No. 2), Decision No. 248 [2001], para. 28. *See also EY*, Decision No. 600 [2019], para. 81; *Fidel*, Decision No. 302 [2003], para. 24; *Husain*, Decision No. 266 [2002], para. 50.

76. The Tribunal is mindful that, unlike the applicant in *Yoon (No. 2)* [2001] in which the applicant contested a redundancy decision, here, the Applicant’s appointment has not been terminated. At issue in this case is the benefit of the separation package that the Applicant would

have received had his VS application been accepted under the terms of the WFP exercise and his allegation that the selection process was unfair. The Tribunal is cognizant that the gravity and nature of the claim differ from claims which address an involuntary separation from the WBG. Nevertheless, the Applicant is entitled to the standard of treatment enshrined in Principle 2.1 of the Principles of Staff Employment: “The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members.” Moreover, such standard of treatment must be consistent with the Tribunal’s jurisprudence with respect to due process rights.

77. A similar circumstance of a VS program was addressed by the International Monetary Fund Administrative Tribunal (IMFAT) in *Mr. S. Negrete, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2012-2 (September 11, 2012), in which the applicant contested the decision to reject his VS request. In *Negrete* [2012], that tribunal acknowledged that “in some circumstances a violation of fair and reasonable procedures may result in the rescission of an individual decision.” *Id.*, para.140. In such cases, the IMFAT considers that the burden is on the applicant to establish on the facts of the case “what the outcome [...] would have been in the absence of procedural irregularities.” *Id.*, paras. 140, 147. But the IMFAT acknowledged that, even if an applicant is unsuccessful in demonstrating what the outcome would have been absent procedural irregularities, the IMFAT had the remedial powers to determine “the Fund nevertheless to be liable in part, as by procedural irregularity in reaching an otherwise sustainable decision.” *Id.*, para. 140, quoting *Ms. “C,” Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1997-1 (August 22, 1997), para. 44.

78. In line with the above jurisprudence, the Tribunal considers that it may overturn a discretionary decision if it finds the decision was “carried out in violation of a fair and reasonable procedure” (*de Raet* [1989], para. 56) such that, absent any procedural irregularities found, a different outcome would have been reached (*Negrete* [2012], para. 147).

79. The present case will be reviewed in light of these standards.

WHETHER THERE WERE PROCEDURAL IRREGULARITIES

The VS selection criteria

80. The Tribunal observes the Applicant's own acknowledgment that "the information circulated to staff contain[ed] the procedure and rationale behind VS [selection]." Nevertheless, the Applicant contends that the advertised VS selection criteria, namely "business needs," were not objective and should therefore be viewed as arbitrary.

81. The Tribunal has previously emphasized the importance of a transparent and fair assessment of candidates against advertised criteria. In *DO*, Decision No. 546 [2016], para. 56, the Tribunal found that the assessment criteria used to evaluate the applicant's candidacy "did not conform to the advertised criteria" and rescinded the non-selection decision. In coming to this holding, the Tribunal reviewed the criteria as set out in the advertised vacancy announcement and compared them to the comments made by the Vice President explaining his non-selection decision. *See id.*, paras. 52–53. The Tribunal observed that, in line with the interview panel's assessment and the hiring manager's view, the applicant met the advertised criteria. *See id.*, para. 54.

82. The Tribunal observes that all IFC staff were informed via the IFC Workforce Planning FAQs that VS decisions would be based on the business needs of the VPU.

83. While the Tribunal's judicial review of the propriety of the decision or the process is not possible when "business needs" are invoked as the sole criterion, here, the Applicant was provided with a number of additional communications indicating what his unit's business needs would be moving forward and its restaffing objectives.

84. The record demonstrates that, on 19 September 2018, IFC staff were informed by the IFC CEO that selection for VS would be based on the "business needs" of their VPUs. On that same date, the Applicant received two emails, one from the IFC COO and head of his VPU, outlining the restaffing goals and business objectives of the VPU to align with the IFC 3.0 strategy, and another from the FIG Senior Director, the director of the Applicant's unit, which contained

information on FIG's specific restaffing goals and business objectives to meet the IFC 3.0 strategy. Through these communications and other resources made available, including the Operations Workforce Planning website and town halls, the Applicant was aware that the WFP exercise within his VPU and unit called for, among other things, a "strengthening [of the VPU's] advisory capacity" and that his unit would maintain a group of advisory staff.

85. During the course of the PRS proceedings, the Senior Manager stated that the criteria applied to evaluate and select VS applications were as follows:

- a) Whether the position, not necessarily the person holding the position, is needed. If yes;
- b) Does the incumbent have the skills required to perform; and
- c) Performance and Talent Review results of staff over the preceding three fiscal years (FY16, FY17 and FY18).

86. The Tribunal is mindful that, in the reorganization of a VPU, the actual positions needed, or skills required, may differ from department to department or unit to unit. Hence, it may not be possible for the COOVPU Committee to have more detailed criteria applicable to all departments or units. The Tribunal is satisfied that the business needs communicated by the Applicant's unit in this case serve as the advertised criteria. In contrast with *DO* [2016], here, the Tribunal observes that the criteria applied are consistent with the advertised criteria the COOVPU and FIG put forward in their communications.

87. On balance, the Tribunal is satisfied that the communicated needs of the Applicant's department provided sufficient clarity to its staff and transparency for the Tribunal to review how the criteria were applied to the VS applications.

Documentation of VS decisions

88. In the Tribunal's first judgment, *de Merode*, Decision No. 1 [1981], para. 21, the Tribunal confirmed that

the decision of the Board of Governors to establish this Tribunal introduced into the conditions of employment of Bank staff the right of recourse to this Tribunal, in accordance with the conditions laid down in the Statute. This right forms an integral part of the legal relationship between the Bank and its staff members.

89. In line with this decision, managers need to appreciate that managerial actions that negatively affect a staff member can be challenged ultimately before the Tribunal. Judicial review is a fundamental right of staff who wish to challenge managerial decisions that have an impact upon their legitimate interests. This is also vital to the proper operation of the WBG.

90. The Tribunal has previously commented on the importance of documenting decisions to ensure transparency and avoid the appearance of unfairness. In *Iqbal*, Decision No. 485 [2013], the Tribunal considered that, while a “manager’s discretion to select one suitable candidate over another will not normally be questioned, the lack of transparency surrounding the decision and the absence of contemporaneous documentation of the basis of that decision is problematic,” further stating that “the record before the Tribunal does not shed any light regarding the basis of the decision.” *Id.*, paras. 56–57.

91. The importance of documenting selection decisions was also highlighted in *Perea*, Decision No. 326 [2004], para. 57, in which the Tribunal stated that it was

unable to determine how comparisons were made to select candidates on a competitive basis for reassignment, whether and, if so, how performance assessments were considered, or how the [IFC] met the guidelines it had established for the process. In this regard, the Tribunal consider[ed] that there was a lack of coherence and transparency in regard to the selection process [and determined that the IFC] failed to provide a fair procedure.

The Tribunal further stated that the “significant disregard of the advertised criteria, and the lack of any written evaluation of the skills of each candidate, [led] the Tribunal to conclude that the selection process was lacking in transparency, and was arbitrary and an abuse of discretion.” *Id.*, para. 74.

92. Although *Perea* [2004] addresses the selection process for a reassignment and not for VS, the discussion in that case on the requirements for the WBG to provide a fair and transparent

selection process that is reviewable is relevant in the present case. In the absence of relevant contemporaneous documentation, the Tribunal here is likewise “unable to determine how comparisons were made to select candidates” or how the result of the COOVPU Panel’s assessment of the Applicant for VS was reached. All that is available are oral statements by COOVPU Panel members made during the PRS process when the decision was contested. In the present case, the IFC asks this Tribunal to simply accept management’s ex post facto non-selection explanations at face value.

93. The Tribunal cannot but reemphasize the importance of relevant contemporaneous documentation of the basis of managerial actions affecting a staff member. Contemporaneous documents are generally more reliable records of the decision-making process and tend to be more valuable when a decision is challenged. Of course, the IFC can explain during the course of proceedings its reasoning for a decision. But by then the decision-makers may have left the institution or moved on to other departments. Even if they are still there, memories fade, and their belated explanations may be subject to reinterpretation in light of subsequent knowledge or facts. Therefore, later explanations cannot command the same weight as relevant contemporaneous documentation.

94. The Tribunal observes the email exchanges between HR representatives tasked with advising the COOVPU on the VS program, in which an HR representative aptly stated, “[I]t is useful to have the considerations for acceptance or non-acceptance on record (either in the form of the checklists or in the form of brief summaries of decisions and underlying reasons for those). [...] SA [Staff Association] and Staff [...] could in appeal or otherwise ask why particular volunteers were NOT accepted.” (Emphasis in original.)

95. The Tribunal observes that, despite HR’s acknowledgement of the value in contemporaneous documentation, there is no relevant contemporaneous documentation of the COOVPU Panel’s assessment of VS applications.

96. According to the Senior Manager,

no individual scoring sheets were completed for VS applications as it was practically impossible given the high number of applications received. [...] [N]o minutes or written summaries of the discussions of the COO VPU Panel Review meetings were prepared.

97. The Tribunal is unpersuaded by the Senior Manager's justification for the absence of relevant contemporaneous records on how VS decisions were made. Indeed, with a large number of candidates, the potential for casual review could increase and, in turn, the importance of relevant contemporaneous documentation increases.

98. The Tribunal understands that it could be burdensome to require detailed documentation for every decision of management. Still, without any, however minimal, relevant contemporaneous documentation, it is difficult to ascertain whether managerial discretion was exercised fairly and transparently.

99. Given the absence of even a minimum amount of relevant contemporaneous documentation of the VS decisions, the Tribunal finds that the IFC failed to act with fairness and transparency.

Consideration of the Applicant's personal circumstances

100. The Applicant contends that the COOVPU Panel (i) was required to take into consideration his health and personal circumstances in evaluating his VS application; (ii) failed in its duty to treat him with dignity; and (iii) should have declared his position redundant in lieu of VS based on his health and personal circumstances.

Whether it was a procedural irregularity to not consider the Applicant's personal and health-related circumstances in evaluating his VS application

101. The Applicant's position is that his personal and health circumstances should have qualified him for VS.

102. The Tribunal is mindful that the VS was not considered a work accommodation program and that suitability for VS was based on meeting criteria uniformly applied to all VS applications submitted by COOVPU staff. In considering this claim the Tribunal will therefore consider whether the Applicant's personal and health-related circumstances prevented him from meeting the criteria for VS.

103. The Tribunal observes that the Applicant had held the position of Principal Risk Management Specialist since 2014, and that risk management was an FIG advisory service, a noted priority for the unit to meet the IFC 3.0 strategy. The parties agree that, at the time of the VS decision, the Applicant had been performing his duties well from Melbourne. The record further demonstrates that the Applicant continued to work from Melbourne for at least one year following the VS decision.

104. Noting the criteria by which VS applications were evaluated, the Tribunal observes that the Applicant's personal and health considerations did not, under the circumstances, affect (i) the business need for the Applicant's position, (ii) the Applicant's skills, or (iii) the Applicant's performance. The Tribunal considers that the Applicant's personal and health circumstances were therefore appropriately not given weight in the evaluation of his VS application.

105. Therefore, the Tribunal finds no procedural irregularity in the COOVPU Panel's review process with respect to the Applicant's health and personal circumstances.

Whether the IFC failed to treat the Applicant with dignity in conducting its VS program

106. The Applicant maintains that the IFC failed to treat him with dignity in conducting its VS program because "the Applicant was basically faced with the decision of either being terminated or to resign without any termination entitlements." In the Applicant's view, the VS decision therefore amounted to a constructive dismissal.

107. The record does not support the Applicant's contention. According to the record, the Applicant was permitted to continue employment in his position in Melbourne for another year

following the VS decision, at which point his multi-year telecommuting arrangement came to an end and he went on a combination of short-term disability, annual, and sick leave.

108. While the Applicant may not agree with the IFC's decision to require him to report to his duty station after 2.5 years of telecommuting, the Applicant has not shown that the IFC failed to treat him with dignity in conducting its VS program.

Whether the IFC was required to declare the Applicant's appointment redundant in lieu of VS

109. The Applicant contends that, if his VS application could not be accepted, his position should have been declared redundant based on his health circumstances.

110. Staff Rule 7.01, paragraph 9.02, specifies that employment may become redundant when

the Bank Group determines in the interests of efficient administration, including the need to meet budgetary constraints, that:

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

111. In evaluating the Applicant's VS application, the IFC determined that the Applicant's position was needed and that the Applicant had the skills and experience to perform in the position. There is nothing in the Staff Rule that would suggest the IFC must declare a position redundant on the basis of a staff member's medical condition.

112. The Tribunal finds no irregularity in not declaring the Applicant's appointment redundant.

The IFC CEO's involvement in the VS application review process

113. The PRS Panel, in its review of the Applicant's complaint, stated that "the notice regarding the VPU and Corporate level review processes was provided to [the Applicant] before the November 30, 2018 VS application deadline." The IFC maintains the same position in its pleadings, stating, in response to the Applicant's contention of an absence of a fair and transparent process, that "[t]he two-tier Panel followed the established criteria to review [the] Applicant's VS submission."

114. The record demonstrates that the first mention of a "two-tiered" decision process (the first tier being the VPU Committee, and the second tier being the IFC CEO or "corporate level") was in a mass email to all IFC staff announcing the overall results of the VS program. By the time candidates were aware of this added level of review, the VS process had concluded, and decisions had been announced.

115. The Tribunal observes that, without notice to VS candidates, the IFC departed from its communicated decision-making structure and implemented a two-tiered process, wherein the IFC CEO's office served as the final decision-maker.

116. While the Tribunal has recognized "the importance of flexibility in decision-making," it has also emphasized that "established guidelines cannot be rendered purposeless by awarding managers unfettered discretion to stray from them as they see fit." *DO* [2016], para. 46.

117. In reviewing this claim, the Tribunal refers to its jurisprudence on the WBG's framework of best practices in decision-making discussed in *DO* [2016].

118. In *DO* [2016], the Tribunal observed that, according to the WBG Accountability and Decision-Making Policy (ADM) and the 2013 Guidance on its application, when delegating, "a manager assigns responsibility, establishes accountability, and transfers authority to a direct-report for functions and decisions." *Id.*, para. 38. However, "[b]oth the manager and the direct-report remain accountable for quality, risk management and results to their respective managers." *Id.* The

ADM provides for the delegation of certain roles in the decision-making process, which includes a “decision role,” and clarifies that “[a] person performing this role is responsible for considering the entire proposal and making a decision.” *Id.* The ADM further clarifies that corporate units have the authority to issue procedures that “prescribe roles in business decisions.” *Id.* In delegating roles and functions, managers are required to “adhere to such rules and procedures.” *Id.* Finally, the ADM provides that “a manager who has delegated authority is not divested of that authority and has the right to exercise it concurrently, or withdraw it at any time.” *Id.* Of importance, the ADM further adds that, “to maintain predictability, a manager shall endeavor to maintain established delegations and exercise this right only in exceptional circumstances.” *Id.*

119. In *DO* [2016], the Bank acknowledged that, even outside of operations, the ADM “provides a framework of best practices in decision making based upon generally applicable legal concepts, in order to provide clarity on the delegation of authority.” *Id.*, para. 45.

120. In the present case, the decision-making procedure communicated to staff, and noted in this judgment at paragraph 10, was that there would be a review and decision on the VS applications by the VPU management. The Tribunal notes the IFC Workforce Planning FAQs circulated to all IFC staff, which states in relation to VS applications that “the decision to accept or reject applications will be left to managerial discretion of each VPU.”

121. In *Negrete* [2012], the IMF clearly identified and explained the roles of department directors and the Institutional Panel (panel) in its VS review process through the issuance of published bulletins. According to the facts set out in that judgment, the department directors departed from their obligation to provide a certain number of VS requests to the panel. *Id.*, para. 82. The IMFAT found that a procedural failure occurred when the panel did not request the department directors to provide the “necessary number” of VS requests and instead undertook its own review of the group to come up with the “necessary number,” in contrast with its communicated role. *Id.*, paras. 100–104. The IMFAT stated that the panel “improvised a role for itself more far-reaching than that contemplated by [the] Staff Bulletin” and found that the panel should have required the department to revise its recommendations. *Id.*, paras. 103, 113.

122. As in *Negrete* [2012], here, the IFC CEO's office undertook a role that was not previously communicated as being part of the VS process.

123. The Tribunal observes that the IFC CEO delegated the decisional role to VPU management and, in doing so, was required to adhere to that procedure. While it is acknowledged that the IFC CEO remains accountable for the decisions reached and may exercise authority to review the VS decisions, in the interest of predictability in decision-making processes, and in accordance with best practices as described in the ADM, this authority should be exercised only for compelling reasons or only in exceptional circumstances, which the IFC has not provided in its pleadings.

124. Based on the IFC CEO's involvement in the review of VS applications, without any explanation to warrant departing from the communicated decision-making authority given to VPU management, the Tribunal views the involvement as a procedural irregularity.

WHETHER A DIFFERENT OUTCOME WOULD HAVE BEEN REACHED ABSENT ANY PROCEDURAL
IRREGULARITIES

125. Having found that the lack of relevant contemporaneous documentation and involvement of the IFC CEO in the VS decision amount to procedural irregularities, the Tribunal will now assess whether a different outcome would have been reached absent those procedural irregularities.

126. The Applicant contends that there is no reasonable basis to justify the rejection of his VS application. In support of this contention, the Applicant points out that he has not had any discussion about his role since November 2019 and that he appears to have been removed from various mailing lists, demonstrating a lack of importance for his role.

127. The Applicant's reasoning is unpersuasive and fails to account for temporal relevance. The Applicant's reasoning instead addresses the present need for his position and more likely demonstrates that his unit was respecting the disability leave the Applicant commenced in December 2019. The Tribunal is tasked with the judicial review of whether there was a reasonable and observable need for the position at the point of the contested decision, not years later. The

Tribunal observes that, as an advisory service, risk management was a communicated business need that FIG aimed to retain in IFC 3.0.

128. The IFC explained that, given the Applicant's expertise in a critical advisory service to FIG, his regional experience in Asia, and his high performance, the Applicant's position and functions were essential for FIG.

129. The Tribunal is satisfied that the above justification and the record as a whole support the IFC's position.

130. The Tribunal observes that there is no record of the COOVPU Panel sending its decision to the IFC CEO's office for the second-tier review, so it is not possible to determine with certainty whether the IFC CEO's involvement affected the outcome of the VS decision. However, the IFC produced a spreadsheet with the names of VS candidates and the status of their VS applications. The IFC claims this document was prepared by the COOVPU Panel and sent to the IFC CEO for final decision. In that spreadsheet the Applicant's VS application is marked as "rejected."

131. The PRS testimony of the COOVPU Panel members, namely the Senior Manager and FIG Senior Director, corroborates the IFC's contention that the COOVPU Panel rejected the Applicant's VS application before sending it to the IFC CEO for final decision.

132. On balance, the Tribunal is not convinced a different outcome would have resulted absent the IFC CEO's involvement in the VS process.

133. In *King*, Decision No. 131 [1993], para. 59, the Tribunal stated that, while it "[could not] be sure that if the requirements of procedural due process had been followed, the result [...] would have been the same," in the demonstration of whether an applicant has been harmed, "[i]t is enough that there has been a serious departure from the requirements of due process." Further, as the Tribunal stated in *Medlin*, Decision No. 319 [2004], para. 34, "due process is an inherent requirement in the employment relationship, and therefore it may be appropriate to penalize procedural irregularities even if they did not ultimately lead to a different substantive outcome."

134. Here, given the deficiencies in the VS process as well as the other circumstances in this case, and even though the Applicant has not met the burden of establishing that he would have been selected for VS but for those deficiencies, the Tribunal finds that an award of compensation to the Applicant is warranted.

REMEDIES

135. The Tribunal is not satisfied that the principles ensuring a transparent and fair selection process established in its jurisprudence have been observed in this case. Moreover, the IFC did not furnish sufficient evidence to permit the Tribunal to independently and impartially determine whether a fair assessment of the VS candidates was conducted during the selection process.

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

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

137. In *Iqbal* [2013], where a lack of documentation of the assessment of candidates was found to be a procedural irregularity, the Tribunal ordered that the applicant be awarded “compensation in the amount of seven months’ salary net of taxes for the irregularities in the selection process” and that the Bank pay the applicant’s legal fees and costs.

138. Likewise, in *ET*, Decision No. 592 [2018], the applicant challenged his non-selection for certain positions. The Bank was ordered to pay the applicant compensation in the amount of one year’s salary, for the Bank’s lack of transparency in the selection processes.

139. In *CK*, Decision No. 498 [2014], para. 101, the Tribunal explained, “In assessing compensation the Tribunal considers the gravity of the irregularity, the impact it has had on an applicant and all other relevant circumstances in the particular case.”

140. The Tribunal is cognizant that the applicants in *Iqbal* [2013] and *ET* [2018] were contesting non-selection decisions with respect to new appointments, whereas, here, the Applicant is contesting the non-selection for VS.

141. Nevertheless, the Tribunal finds the gravity of the irregularities to be comparable. In *Iqbal* [2013], the applicant was not facing a loss of employment following the non-selection; rather, the applicant maintained her position and contested the selection decision to a position that would have been a promotion. Likewise, the applicant in *ET* [2018] sought several new positions. The Tribunal noted in both cases, citing *Riddell*, Decision No. 255 [2001], para. 23, that “no staff member has a right to be selected to a particular position.”

142. Similarly, the Applicant in the present case was not entitled to VS, and he suffered no grave consequence of involuntary separation. Yet, in accordance with Principle 2.1 of the Principles of Staff Employment, and as the Tribunal found in *Iqbal* [2013] and *ET* [2018], procedural irregularities warrant compensation.

DECISION

- (1) The IFC shall pay compensation to the Applicant in the amount of two months’ salary net of taxes, based on the last salary drawn by the Applicant, for the procedural irregularities in the VS selection process;
- (2) The IFC shall contribute to the Applicant’s legal fees and costs in the amount of \$3,000.00;
and
- (3) All other claims are dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 8 November 2021

* 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.