



World Bank Administrative Tribunal

2022

Decision No. 672

**GS,
Applicant**

v.

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

(Preliminary Objection)

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

**GS,
Applicant**

v.

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

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal’s Statute, and composed of Judges Mahnoush H. Arsanjani (President), Janice Bellace (Vice-President), Seward Cooper, and Lynne Charbonneau.
2. The Application was received on 1 October 2021. The Applicant was represented by Ryan E. Griffin and Brita Zacek of James & Hoffman, PC. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant’s request for anonymity was granted on 23 May 2022.
3. The Applicant challenges the failure to consider her for the positions of Regional Safeguard Coordinator for West Africa and Regional Safeguard Coordinator for Latin America and the Caribbean.
4. On 16 November 2021, the Bank submitted preliminary objections. This judgment addresses the Bank’s preliminary objections.

FACTUAL BACKGROUND

5. The Applicant joined the Bank in 2003 as a Young Professional in the World Bank Group (WBG) Young Professionals Program. She has served as Program Manager, WBG Young Professionals Program and as a Senior Social Development Specialist in the Regional Director for “AFR [Africa] 2” unit. She currently serves as a Grade Level GG Sector Leader, Sustainable Development, in the Regional Director for AFR 2 unit based in a country office in Africa. Throughout her career with the Bank, the Applicant’s Salary Review Increase ratings have ranged from 3 to 5.

6. In 2020, Human Resources (HR) posted two different requisitions in the WBG's job portal Compass – Requisition No. 5537 and Requisition No. 7260 – in connection with various Lead Social Development Specialist positions. According to the Bank, Lead Social Development Specialists are also referred to as Regional Safeguard Coordinators.

Requisition No. 5537

7. On 3 January 2020, HR posted Requisition No. 5537 as a batch recruitment for Lead Social Development Specialists at Grade Level GH.

8. Requisition No. 5537 was advertised as an international recruitment with the location listed as “Singapore, Kenya or Washington DC.” The closing date was listed as 31 January 2020. The advertisement stated, in part:

Each region has a full work program supporting operational teams in the application and implementation of social safeguards policies as well as the ESF [Environmental and Social Framework]. AFR, EAP [East Asia and Pacific], ECA [Europe and Central Asia], and LCR [Latin America and the Caribbean], each are seeking a lead safeguards/social risk management specialist to fill the role of the regional social safeguard coordinator. Depending on the region, the position may be based in Washington, DC or in the respective regions.

The Social Practice [G]roup is looking to recruit a batch of regional safeguards coordinators to perform [...] duties within the respective regions.

9. The hiring manager for Requisition No. 5537 was the Global Director, Social Development (Global Director). According to the Global Director, the Africa position listed in the advertisement was a Regional Safeguard Coordinator for East Africa.

10. On 6 January 2020, the Global Director sent an email to “Social GP [Global Practice] All Staff” circulating Requisition No. 5537. She stated, in pertinent part, “I would like to share with you the vacancy announcement for Regional Safeguards Coordinators. We have at least two vacancies that are open so we are not yet specifying the specific regions that are hiring at this point. The vacancy announcement will close on January 31st.”

11. On 31 January 2020, Requisition No. 5537 was closed. According to the Global Director, the vacancy “was re-opened on February 3rd for two days to allow two part 2 candidates who had expressed interest to apply.” Within the WBG, members of the International Development Association are classified as Part I or Part II, with Part II members referring mostly to developing countries.

12. The Applicant did not apply to Requisition No. 5537. According to the Applicant, she “did not apply to Requisition [No.] 5537 because she was only one year into her two-year development assignment as Program Manager for the Bank’s Young Professionals Program.”

13. On 11 February 2020, the Selection Advisory Committee prepared a shortlist of candidates for the positions available under Requisition No. 5537. According to the Global Director,

[d]uring the shortlisting process, it became clear that there might be an opening in West Africa, as the incumbent RSC [Regional Safeguard Coordinator] had applied for a position in the batch and was shortlisted thereby opening her DC based RSC AFR-W [West Africa] position.

14. On 18 February 2020, HR confirmed to management that the Requisition No. 5537 batch could include a West Africa position. According to the Bank, this new position was included in Requisition No. 5537 “as the candidate for the RSC position in ECA was the incumbent AFW [West Africa] RSC.” According to the Applicant, Requisition No. 5537 “never publicly listed this vacancy.”

15. The Selection Advisory Committee conducted candidate interviews in the second half of February 2020. On 12 March 2020, the Selection Advisory Committee sent its interview report to the Practice Board for clearance and requested that due diligence reference checks of the candidates be carried out by a consultant.

16. On 3 May 2020, the Global Director consulted with the Regional Directors via email regarding the proposed selections for Regional Safeguard Coordinators for East Africa, East Asia and Pacific, Europe and Central Asia, and Latin America and the Caribbean. The Global Director

indicated that the incumbent Regional Safeguard Coordinator for West Africa had been selected for the Europe and Central Asia position, and that the deputy Regional Safeguard Coordinator for West Africa had been chosen for Latin America and the Caribbean. The Global Director also stated in her email, “With the planned move of [the incumbent Regional Safeguard Coordinator for West Africa] to ECA, the practice will advertise for a GH/RSC position for West Africa. [The incumbent Regional Safeguard Coordinator for West Africa] will move to her ECA assignment after the RSC slot for West Africa is filled.” The Global Director further stated in a follow-up email of 3 May 2020 that “no offers have been made – until I receive confirmation of all RDs [Regional Directors] – given that it is a bit of a chess game.”

17. On 3 May 2020, the Regional Directors for Latin America and the Caribbean and East Asia and Pacific responded to the Global Director’s email stating that they had no objections. The Regional Director for Africa also responded on 3 May 2020, stating, in pertinent part:

Thanks for the note. Glad to know that no offer has been yet [*sic*]. We do have serious concerns about the two key people currently covering West Africa who we may lose (we hope not). There are two factors to consider: (1) the language is an important factor to take into account and, (2) more importantly the need for us to continue to rely on very experienced RSCs considering the complexity of the subregion (FCV [Fragility, Conflict, and Violence], Sahel). As you know this is [a] high priority sub region and we cannot not have a seasoned RSC covering it.

I suggest we discuss this before finalizing.

18. On 7 May 2020, HR sent the Requisition No. 5537 job application link to a “target-sourced candidate” who had been identified for the Regional Safeguard Coordinator position for Latin America and the Caribbean.

19. On 8 May 2020, this “target-sourced candidate” applied to Requisition No. 5537, and, on the same day, HR requested non-objection from the Practice Board to the addition of this “target-sourced candidate” for the Latin America and the Caribbean region to the Requisition No. 5537 shortlist.

20. On 13 May 2020, the “target-sourced candidate” who applied to Requisition No. 5537 was interviewed.

21. On 26 May 2020, the Selection Advisory Committee provided the Practice Board with the candidate recommendations for five Regional Safeguard Coordinators under Requisition No. 5537 – West Africa, East Africa, East Asia and Pacific, Europe and Central Asia, and Latin America and the Caribbean – and sought “comments/objection” from the Practice Board. The candidate selected for West Africa was the then–deputy Regional Safeguard Coordinator for West Africa. The candidate selected for Latin America and the Caribbean was the “target-sourced candidate.”

22. On 27 May 2020, the Global Director sent an email to the Regional Directors with the Regional Safeguard Coordinator assignments and sought agreement from the Regional Directors for the selection of the candidates.

23. On 28 May 2020, the Global Director received agreement from the Regional Directors regarding the selection of candidates for the Regional Safeguard Coordinator positions. The record indicates that the selection process under Requisition No. 5537 was completed, with five candidates for Regional Safeguard Coordinator positions selected under this requisition.

Requisition No. 7260

24. On 8 May 2020, Requisition No. 7260 was posted for Lead Social Development/Social Risk Management Specialist at Grade Level GH, with an application deadline of 22 May 2020. The post was an international recruitment with the location listed as “Dakar, Senegal/Washington, DC.” The advertisement stated, in part:

Each region has a full work program supporting operational teams in the application and implementation of social safeguards policies as well as the ESF. AFR and LCR, each are seeking a lead safeguards/social risk management specialist to fill the role of the regional social safeguard coordinator. Depending on the region, the position may be based in Washington, DC or in the respective regions.

The Social Practice [G]roup is looking to recruit a batch of regional safeguards coordinators to perform [...] duties within the respective regions.

25. The hiring manager for Requisition No. 7260 was the Global Director.
26. On 8 May 2020, the Applicant emailed the Global Director stating, in pertinent part, “I wanted to let you know that I was very excited to see the Dakar-based RSC position posted today. I intend to apply.” On 10 May 2020, the Global Director responded, “Glad to hear that!”
27. The Applicant applied for the two Regional Safeguard Coordinator positions under Requisition No. 7260.
28. On 27 May 2020, a Senior HR Assistant informed the Global Director via email that Requisition No. 7260 had been closed with five applications.
29. On 29 May 2020, the Global Director responded to the Senior HR Assistant regarding Requisition No. 7260 stating, in pertinent part, “[W]e have decided not to proceed with this position. I would be most grateful if you could inform the candidates who applied that the position has been cancelled.”
30. On 9 June 2020, HR indicated to the Global Director via email that Requisition No. 7260 had been cancelled and that all five of the applicants had been informed accordingly. The Applicant was among those so informed. According to the Global Director, Requisition No. 7260 was “a backup” and was cancelled because both the West Africa and Latin America and the Caribbean positions had been filled under Requisition No. 5537 and, as a result, Requisition No. 7260 “was no longer needed.”

Peer Review Services

31. On 6 October 2020, the Applicant filed a Request for Review with Peer Review Services (PRS). As the “Disputed Employment Matter(s),” the Applicant stated:

The process for awarding the positions of [Requisition No.] 7260 was arbitrary, unjustified, and characterized by an abuse of managerial discretion. I applied for a

requisition that was “cancelled” 19 days after the closing date of the posting. The two positions that comprised this requisition (Dakar and DC) were not in fact “cancelled” at all but simply and immediately given (without fair notice or competition) to two individuals. This was not a merit-based decision. This case is NOT about non-selection but about being denied an equal and fair opportunity to even compete for a promotion to H – for a position I was undeniably qualified for.

32. The Applicant further explained in her Request for Review:

There was no reasonable or objective basis 1) for “cancelling” [Requisition No.] 7260 or, 2) having “cancelled” [Requisition No.] 7260, for not providing me (and the other candidates who applied) the same opportunity to apply to the closed [Requisition No.] 5537 that was provided to the less-qualified, “target-sourced” candidate. [Emphasis in original.]

In addition to bias, the selection process for [Requisition No.] 7260 and [Requisition No.] 5537 was characterized by a failure to follow proper procedure or observe a consistent and uniform practice, inconsistency between advertised criteria and the basis for decision and an abuse of discretion.

33. On 8 and 9 March 2021, the PRS Panel conducted a virtual hearing.

34. On 20 May 2021, PRS issued the “Peer Review Panel’s Report in Request for Review No. 531.” The PRS Panel recommended that the Applicant’s Request for Review be dismissed in its entirety and that her requests for relief be denied. The PRS Panel’s Report stated:

The Peer Review Panel (Panel) determined that [the Applicant’s] claims related to [Requisition No.] 5537 were not filed in time pursuant to Staff Rule 9.03, paragraphs 8.01 and 8.02 and, therefore, the Panel’s review of facts pertaining to [Requisition No.] 5537 would be limited to those that are pertinent to [the Applicant’s] timely claims with respect to [Requisition No.] 7260. The Panel reviewed [the Applicant’s] claim within the scope of PRS under Staff Rule 9.03 to determine whether the WBG acted consistently with [the Applicant’s] contract of employment and terms of appointment during the Recruitment Process. In making its determination, the Panel examined: (i) the basis for the Recruitment Process and, specifically, the reasons for the cancellation of [Requisition No.] 7260; (ii) the process followed during the Recruitment Process; and (iii) whether management acted in good faith.

The Panel concluded that the WBG acted consistently with [the Applicant’s] contract of employment and terms of appointment regarding the Recruitment Process in [Requisition No.] 7260. Specifically, the Panel found that the

Recruitment Process in [Requisition No.] 7260 had a reasonable and observable basis, and that management followed a fair and proper process. The Panel found that management acted in good faith in making the decision to cancel the Recruitment Process in [Requisition No.] 7260.

35. On 3 June 2021, the Vice President, Sustainable Development accepted the PRS recommendation, and the Applicant was notified accordingly on 18 June 2021.

The present Application

36. On 1 October 2021, the Applicant filed this Application with the Tribunal.

37. In her Application, the Applicant states that she is contesting

[t]he Bank's decision to award the Latin America and [the] Caribbean and West Africa Social Safeguard Coordinator positions to which [the Applicant] applied to candidates who did not apply for those positions without giving any consideration to [the Applicant's] candidacy.

38. In her Application, the Applicant states that she was denied a fair opportunity to compete for the Requisition No. 7260 positions. The Applicant further specifies in her pleadings that she is contesting her non-selection under Requisition No. 7260, which was affected by the Requisition No. 5537 process, rather than directly challenging the Requisition No. 5537 decisions.

39. In her Application, the Applicant states that she requests “[a]ppointment to a mutually agreeable GH level position with salary adjustment retroactive to the actions complained of herein or, alternatively, appropriate compensation in lieu thereof.” Further, the Applicant states that she seeks “an additional amount deemed just and reasonable by the Tribunal to remedy the damages to [the Applicant's] career and the loss of potential income and benefits resulting from the Bank's unjust decision to deprive her of the opportunity to compete for a level GH position.” The Applicant claims legal fees and costs in the amount of \$19,600.00.

40. On 16 November 2021, the Bank filed its preliminary objections challenging the Application as inadmissible before the Tribunal.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Bank's Contention No. 1

The Applicant has failed to state an alleged non-observance of her contract of employment or terms of appointment

41. The Bank disputes that the hiring decisions which the Applicant is challenging were made under Requisition No. 7260. The Bank submits that the Applicant is in fact challenging hiring decisions made by the Bank under Requisition No. 5537. To the Bank, because the Applicant is challenging a hiring decision under Requisition No. 5537, she “fails to state an alleged non-observance of her contract of employment or terms of appointment as [the] Applicant did not apply for [R]equisition [N]o. 5537.”

42. The Bank avers that, pursuant to Tribunal precedent, “the Tribunal does not review Respondent’s employment policy or practices in abstract but reviews whether Respondent’s action or inaction vis-à-vis an applicant affect an applicant’s employment rights in an adverse manner.” The Bank cites *Briscoe*, Decision No. 118 [1992], para. 30, where the Tribunal recalled its holding in *Agodo*, Decision No. 41 [1987], para. 27: “[T]he Statute contemplates the making by the Respondent of a ‘decision’ that adversely affects the applicant specifically and that will justify ‘compensation...for an injury individually sustained.’”

43. The Bank contends that, as stated in her Application, the Applicant is challenging the “Bank’s decision to award the Latin America and [the] Caribbean and West Africa Social Safeguard Coordinator positions to which [the Applicant] applied to candidates who did not apply for those positions without giving any consideration to [the Applicant’s] candidacy.” To the Bank, such a challenge is inadmissible, and the Bank asserts that “the real issue in the case and the object of [the] Applicant’s claim” is a challenge to the Bank’s employment practices in connection with Requisition No. 5537 to which the Applicant did not apply.

44. In the Bank's view, whether or not the recruitment process for Requisition No. 5537 was carried out in accordance with the Bank's policies and procedures cannot lead to the Applicant's individually sustaining an injury which leads "to some detriment to her own status or otherwise directly affect[s] [the] Applicant's employment rights in any way as required by the Tribunal's case law." The Bank submits that the Applicant did not challenge the closure of Requisition No. 7260, which directly affected her, but rather the appointment of other staff members to the Latin America and the Caribbean and West Africa Regional Safeguard Coordinator positions under Requisition No. 5537, which the Bank maintains the Applicant did not apply for.

45. In the Bank's view, the disputed employment matter which falls within the Tribunal's jurisdiction concerns "the pure and simple question whether [the Bank] violated [the] Applicant's contract of employment and terms of appointment by soliciting [the] Applicant's application under backup [R]equisition [N]o. 7260 and subsequently closing that requisition without further action." The Bank submits that, pursuant to Tribunal precedent, such review by the Tribunal would be to determine whether the decision was biased or an abuse of discretion.

46. According to the Bank, Requisition No. 7260 "was intended to be a mere backup under which all applicants were treated equally when the requisition was closed without consideration of any of the applicants." In this respect, the Bank contends that the Regional Safeguard Coordinator for West Africa position was added to Requisition No. 5537 in February 2020 and was filled with one of the original applicants from Requisition No. 5537. Further, the Bank asserts that the target-sourced candidate for the Regional Safeguard Coordinator for Latin America and the Caribbean position was added to the pool of applicants for Requisition No. 5537 "independently from the posting of [R]equisition [N]o. 7260." In the Bank's view, "[t]here is no causal link between the recruitment of candidates for the RSC positions in West Africa and [Latin America and the Caribbean] under [R]equisition [N]o. 5537 and the non-selection of [the] Applicant for a position under [R]equisition [N]o. 7260."

47. Further, to the Bank, even if the positions in question had not been filled through Requisition No. 5537, pursuant to Tribunal precedent, "there would have been no right of [the] Applicant to be appointed to or even be included in a list of candidates for any position under

[R]equisition [N]o. 7260.” The Bank also submits that the Applicant’s position at the time was not affected in any way by the recruitment process under Requisition No. 5537.

48. The Bank stresses that Requisition Nos. 5537 and 7260 “were two separate processes with separate pools of candidates, who competed against their competitors in the same requisition pool.” The Bank maintains that the Requisition No. 5537 recruitment process did not directly affect the Applicant, and, in the Bank’s view,

[i]f the Tribunal were to consider the recruitment process under [R]equisition [N]o. 5537, the Tribunal would essentially permit staff members to police the Bank’s employment practices generally by allowing staff to review compliance with the Bank’s policies and procedures of any activity which precedes a decision of [the] IBRD [International Bank for Reconstruction and Development] vis-à-vis a particular staff member such as budgetary decisions, workforce planning decisions, termination decisions vis-à-vis other staff members holding a position for which [the] IBRD later recruits.

The Bank submits that “such broad review” is beyond the Tribunal’s jurisdiction.

The Applicant’s Response

The Applicant’s challenge of management’s decision not to consider her for the two positions advertised in Requisition No. 7260 is within the Tribunal’s jurisdiction

49. The Applicant asserts that the Tribunal has jurisdiction to hear her non-selection challenge. She contends that Bank management unfairly failed to consider her for the two Regional Safeguard Coordinator positions for which she timely applied through Requisition No. 7260 and instead filled these positions “through an opaque and noncompetitive process.”

50. The Applicant submits that “the real issue in the case” is her “non-selection to the Requisition [No.] 7260 vacancies due to management’s failure to consider her application for these positions.” The Applicant contends that the Tribunal has jurisdiction to review and decide on this issue “after proper consideration of all facts relevant thereto.” To the Applicant, the Tribunal’s jurisdictional authority in this respect “is not contingent on the particular mechanism that management employed to deny [her] a fair opportunity to compete.”

51. The Applicant submits that the actual decision which she is contesting is management's failure to consider her for the two Regional Safeguard Coordinator positions advertised through Requisition No. 7260. She contends that this issue "is squarely before this Tribunal." The Applicant asserts that "an examination into the Requisition [No.] 5537 selection process is highly relevant [...] because Requisition [No.] 5537 is the vehicle management used for awarding the Latin America and West Africa positions to which [the Applicant] timely applied to other candidates *without requiring them to compete with [the Applicant] for consideration.*" (Emphasis in original.) In the Applicant's view,

the Tribunal has full authority to consider all facts relevant to the contested decision and should not allow management to evade review of its noncompetitive hiring practices merely by channeling its "target-sourcing" efforts through a requisition that has already closed instead of through an open requisition to which non-favored candidates like [the Applicant] are relegated.

52. The Applicant submits that she was directly affected by the Bank's actions in respect of Requisition No. 5537. In the Applicant's view, "[b]ut for management's decision to reopen Requisition [No.] 5537 for a single favored candidate for the Latin America position, that person would have had to apply to Requisition [No.] 7260, just like [the Applicant] did, in which [the Applicant] would have had the opportunity to compete for that opening." Further, in the Applicant's view, "but for management's retroactive decision to use Requisition [No.] 5537 for filling [the West Africa] position *despite publicly advertising it only under Requisition [No.] 7260*, management's preferred candidate would have had to apply to Requisition [No.] 7260, just like [the Applicant] did, which again would have afforded [the Applicant] the chance to compete." (Emphasis in original.)

53. According to the Applicant, the Bank is misconstruing her Application in an attempt to avoid jurisdiction. The Applicant stresses that her main contention is that management unfairly denied her the opportunity to compete for the two open positions which were advertised in Requisition No. 7260. She submits that these vacancies were improperly filled without considering her own application for the positions. The Applicant submits that she "specifically challenges the Bank's apparently unwritten practice of 'backup' requisitioning," which she avers "is precisely the

grounds on which [the Bank] seeks to defend management's cancellation of Requisition [No.] 7260 without considering [her] application."

54. Finally, the Applicant considers the Bank's contention that the Tribunal's accepting jurisdiction would lead to "staff members [...] polic[ing] the Bank's employment practices generally" to be "absurd," and the Applicant reiterates that "she seeks review of two specific actions that unfairly deprived her of the chance to even be considered for two open and publicly advertised positions to which she timely applied."

The Bank's Contention No. 2

The Applicant has failed to exhaust internal remedies in a timely manner

55. The Bank asserts that the Application is inadmissible because the Applicant failed to timely exhaust internal remedies pursuant to Article II(2)(i) of the Tribunal's Statute. The Bank submits that the requirement to exhaust internal remedies has been emphasized in Tribunal precedent and is enshrined in the Staff Rules. Specifically, the Bank points to Staff Rule 9.03, paragraph 7.02, which states:

A Staff Member seeking a review of a disputed employment matter is required to submit the matter first to the Peer Review Services prior to appealing to the World Bank Administrative Tribunal, unless the matter comes under one of the exceptions listed in paragraphs 7.03 or 7.04 of this Rule.

Further, the Bank avers that "the Tribunal has recognized that the failure to challenge an administrative decision before the relevant internal administrative forum in a proper fashion leads to inadmissibility before the Tribunal."

56. The Bank contends that the Applicant challenges before the Tribunal the appointment of other staff members under Requisition No. 5537 to Regional Safeguard Coordinator positions in West Africa and the Latin America and the Caribbean region, but did not make such a challenge before PRS. Rather, to the Bank, "[the] Applicant put before PRS the question of a violation of her contract of employment and terms of appointment by challenging the cancellation of [R]equisition [N]o. 7260 and an alleged violation of her rights by the resulting inability to compete

for the two positions.” The Bank asserts that the PRS Panel determined that its scope of review “was limited to claims concerning [R]equisition [N]o. 7260,” and the Bank further states that the PRS Panel concluded that the Applicant’s Request for Review with respect to Requisition No. 5537 was untimely. Accordingly, the Bank contends that the Applicant has failed to exhaust internal remedies in a timely manner and submits that it has not agreed to a direct submission to the Tribunal.

The Applicant’s Response

The Applicant has timely exhausted internal remedies

57. The Applicant avers that she timely sought review by PRS when she learned that management had filled the two positions in question without considering her candidacy, and that she timely appealed to the Tribunal the decision of the Vice President, Sustainable Development adopting the PRS recommendation.

58. Further, the Applicant submits that she “is not directly challenging the Requisition [No.] 5537 decisions, but rather contesting her own non-selection under Requisition [No.] 7260, which was of course affected by the Requisition [No.] 5537 process.” The Applicant asserts that her Request for Review before PRS concerning her non-selection under Requisition No. 7260, as well as her present Application, “encompassed her challenge to management’s use of Requisition [No.] 5537 as a means of a failing to fairly consider her timely application for open positions under Requisition [No.] 7260.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

59. In her Application, the Applicant states that she is contesting

[t]he Bank’s decision to award the Latin America and [the] Caribbean and West Africa Social Safeguard Coordinator positions to which [the Applicant] applied to candidates who did not apply for those positions without giving any consideration to [the Applicant’s] candidacy.

60. The Bank raises two jurisdictional challenges to the Application. First, the Bank contends that the Applicant has failed to state a claim alleging the non-observance of her contract of employment or terms of appointment. Second, the Bank contends that the Applicant has failed to exhaust internal remedies. The Tribunal will consider these challenges in turn.

FAILURE TO STATE A CLAIM

61. The Bank asserts that the Applicant has failed to put before the Tribunal an alleged non-observance of her contract of employment or terms of appointment. The Bank contends that the Applicant is challenging the hiring decisions with respect to the Regional Safeguard Coordinator positions for West Africa and Latin America and the Caribbean, which the Bank submits it made under Requisition No. 5537. The Bank avers that, because the Applicant did not apply to Requisition No. 5537, she fails to state an alleged non-observance of her contract of employment or terms of appointment.

62. The Applicant submits that management unfairly failed to consider her for the two Regional Safeguard Coordinator positions for which she applied through Requisition No. 7260, and she contends that the Bank improperly filled the positions in question “through an opaque and noncompetitive process.” The Applicant invokes Principle 2.1 of the Principles of Staff Employment, which requires that the Bank “shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members,” as well as Principle 9.1 of the Principles of Staff Employment, which states, “Staff members have the right to fair treatment in matters relating to their employment.” Further, the Applicant cites Principle 4.1 of the Principles of Staff Employment: “The Organizations’ recruitment policy shall be to seek to attract staff members of the highest caliber appropriate to job requirements.” The Applicant states that her main contention is that management unfairly denied her the opportunity to compete for the two positions advertised in Requisition No. 7260.

63. The issue before the Tribunal at this stage is the question of whether it has jurisdiction to review the Applicant’s claims. Accordingly, the Tribunal recalls Article II(1) of the Tribunal’s Statute:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member. The words “contract of employment” and “terms of appointment” include all pertinent regulations and rules in force at the time of alleged non-observance including the provisions of the Staff Retirement Plan.

Further, the Tribunal recalls that “[i]t is sufficient for the Tribunal to exercise jurisdiction that the [a]pplicant has tenably ‘alleged’ that there are circumstances that warrant an examination of the merits of his allegations.” *McKinney*, Decision No. 183 [1997], para. 16. *See also FM (Preliminary Objection)*, Decision No. 631 [2020], para. 118. The Tribunal will now consider the issue of its jurisdiction with respect to each of the two requisitions in this case.

Jurisdiction with respect to claims relating to Requisition No. 5537

64. In its preliminary objections, the Bank takes the position that the Applicant cannot challenge decisions made under Requisition No. 5537 for the simple reason that she did not apply to this requisition. The Bank cites *Briscoe* [1992], para. 30, in which the Tribunal stated:

Article II, para. 1, of the Statute of the Tribunal empowers the Tribunal to pass judgment “upon any application by which a member of the staff of the Bank Group alleges nonobservance of the contract of employment or terms of appointment of such staff member.” The Tribunal, along with other international administrative tribunals, has consistently held that a claim of non-observance of a staff member’s contract or terms of appointment must be directed not against the organization’s promulgation of some general rule or policy but rather against an application of that rule or policy – be it reflected in an action or an omission – that directly affects the employment rights of a staff member in an adverse manner.

The Bank avers that the Requisition No. 5537 recruitment process did not “*directly affect*” the Applicant. (Emphasis in original.) To the Bank, the Applicant lacks standing to challenge hiring decisions made by the Bank pursuant to Requisition No. 5537 due to the Applicant’s failure to apply to this requisition.

65. In considering the Bank’s preliminary objection, the Tribunal recalls *BO*, Decision No. 453 [2011], in which the Bank contended that the applicant lacked standing to challenge a selection

process from which the applicant had voluntarily withdrawn before the completion of the selection process. *Id.*, para. 51. In *BO* [2011], the Tribunal was unpersuaded by the Bank's assertions. Specifically, as the Tribunal explained, "[t]he [a]pplicant is challenging the Bank's actions prior to his withdrawal that he alleges violated his rights. The withdrawal from the selection process does not bar him from raising violations that allegedly occurred prior to his withdrawal." *Id.*

66. In *BO* [2011], the Tribunal did not pronounce more broadly on the question of standing in the context of recruitment processes. The Tribunal considers, however, that an inference could be drawn from its finding in *BO* [2011], para. 51, that the applicant would have been barred from raising alleged violations of his rights which occurred after he withdrew from the selection process.

67. In this regard, the Tribunal takes note of a decision from the Administrative Tribunal of the International Labour Organization (ILOAT). In ILOAT Judgment No. 3449 (2015), para. 2 of Considerations, the ILOAT stated:

Any employee of an international organisation who is eligible for a post may challenge an appointment to that post, regardless of his or her chances of successful appointment to it [...]. In order to be entitled to take such action, however, he or she must have applied for the post or, failing that, must have been prevented from doing so through no fault of his or her own.

The ILOAT went on to explain further:

The complainant says that he learnt of the two disputed vacancy notices by e-mail when they were published. He could have submitted an application within the deadlines set by those notices, i.e. within a fortnight in one case and within 21 days in the other; indeed, he provides no evidence to show that he was prevented from doing so through no fault of his own. As he did not apply, he has no cause of action before the [t]ribunal to challenge the procedures followed and their outcome, and the two complaints are irreceivable insofar as the complainant is acting as an official of the [o]rganization to defend his personal interests.

68. Additionally, the Tribunal takes note of a decision from the United Nations Dispute Tribunal (UNDT), which articulates a view in line with that of the ILOAT. In *Rockcliffe*, Judgment No. UNDT/2015/086, para. 28, the UNDT stated:

Staff members have a right to be fully and fairly considered for appointments within the [o]rganization. However, the exercise of this right is generally contingent on the staff member's submission to the recruitment process by applying for the job. [...] Absent a job application, and absent any alleged infringement of her right to submit her candidature, the [a]pplicant has no standing to invoke the jurisdiction of the [t]ribunal.

69. The Tribunal holds a view consistent with the above jurisprudence and finds that an applicant must submit to the selection process in order to subsequently challenge that selection process, unless the applicant can show that he or she has been prevented from submitting to the selection process through no fault of his or her own.

70. In the instant case, the Tribunal observes that in her Application the Applicant explains that she "did not apply to Requisition [No.] 5537 because she was only one year into her two-year development assignment as Program Manager for the Bank's Young Professionals Program." The record does not indicate that this was anything other than a personal and subjective choice by the Applicant in respect of her own career plan and trajectory, and the Applicant does not allege that the Bank in some way prevented her from applying to this requisition. Further, the Tribunal notes that the Applicant herself states that she "is not directly challenging the Requisition [No.] 5537 decisions, but rather contesting her own non-selection under Requisition [No.] 7260, which was of course affected by the Requisition [No.] 5537 process."

71. It is undisputed that the Applicant did not apply to Requisition No. 5537. In view of the jurisprudence discussed above as well as the Applicant's own contention that she is not directly challenging the Requisition No. 5537 decisions, the Tribunal finds that claims challenging Requisition No. 5537 are outside of the Tribunal's jurisdiction.

Jurisdiction with respect to claims relating to Requisition No. 7260

72. It is also undisputed that the Applicant applied to Requisition No. 7260 in which Regional Safeguard Coordinator positions for West Africa and for Latin America and the Caribbean were advertised. She challenges the failure to consider her for these positions and, further, asserts that Requisition No. 5537 "is the vehicle management used for awarding the Latin America and West

Africa positions to which [the Applicant] timely applied to other candidates *without requiring them to compete with [the Applicant] for consideration.*” (Emphasis in original.)

73. To the Bank, Requisition Nos. 5537 and 7260 “were two separate processes with separate pools of candidates, who competed against their competitors in the same requisition pool.” The Bank submits that “[t]here is no causal link between the recruitment of candidates for the RSC positions in West Africa and [Latin America and the Caribbean] under [R]equisition [N]o. 5537 and the non-selection of [the] Applicant for a position under [R]equisition [N]o. 7260.” The Bank explains that Requisition No. 7260 was “a mere backup,” which was triggered by the need to fill the Regional Safeguard Coordinator positions. In the Bank’s view, the disputed employment matter which falls within the Tribunal’s jurisdiction is whether the Bank violated the Applicant’s contract of employment or terms of appointment by soliciting her application under its “backup” Requisition No. 7260 and subsequently closing this requisition without further action.

74. In considering its jurisdiction to review the Applicant’s claims related to Requisition No. 7260, the Tribunal takes note of a 19 June 2020 email from the Global Director to the Applicant explaining the recruitment process. The Global Director stated, in pertinent part:

We advertised a batch recruitment for RSCs in January [Requisition No. 5537] as we had expected openings in AFR E [East Africa], EAP, ECA and LAC [Latin America and the Caribbean]. The process took a while to advance given the number of applicants that needed to be shortlisted and interviewed and have reference checks, with regional director concurrence. During this process, it became clear that the West Africa position would open as the current RSC applied and was deemed suitable for another region. Given the impending competitive rotation for the incumbent for AFR W [West Africa] and existing batch process, HR granted authority to replace the West Africa vacancy through the batch recruitment process. In addition, a target sourcing was done to find a candidate suitable for the LAC RSC position in terms of experience with complex IP [Indigenous Peoples] cases as well as language skills (fluency in Spanish and Portuguese) as there was no suitable candidate left in the batch recruitment that met the needs for LAC.

[...] The candidate who has been selected for the West Africa position applied for the position in the original job announcement and went through the full process as described above.

As this process was ongoing, OPCS [Operations Policy and Country Services] was going through a parallel process to hire ESSAs [Environmental and Social

Standards Advisors]. Given the concerns of the PMs [Practice Managers] that there was a risk that some of the selected candidates would be offered and accept ESSA positions, and not wanting to further delay the selection of RSCs, I advertised for two new RSCs for West Africa (based in Dakar) and LAC. However, when all the candidates accepted our offers, this vacancy [Requisition No. 7260] was no longer needed and subsequently closed.

75. The Tribunal considers that the 19 June 2020 email from the Global Director indicates that the selection of the candidates under Requisition No. 5537 was precisely the reason Requisition No. 7260 was cancelled without considering any of the candidates who applied under Requisition No. 7260. As the Global Director stated, “not wanting to further delay the selection of RSCs, I advertised for two new RSCs for West Africa (based in Dakar) and LAC. However, when all the candidates accepted our offers, this vacancy [Requisition No. 7260] was no longer needed and subsequently closed.” This explanation from the Global Director suggests that, if not for the success of the hiring practices explained in her email and employed to fill the positions of Regional Safeguard Coordinator for West Africa and for Latin America and the Caribbean, Requisition No. 7260 would have been needed and, presumably, the candidates who applied to this requisition would have been considered – even if not selected – for the two positions in question. Accordingly, the Tribunal considers that, contrary to the Bank’s submission that Requisition Nos. 5537 and 7260 were two separate processes, the record convincingly indicates that the processes were very much connected with respect to the two Regional Safeguard Coordinator positions in question.

76. More specifically, with respect to the West Africa position, the Tribunal notes that the Bank states that this position was added to the Requisition No. 5537 batch recruitment in February of 2020. It is not clear from the record that this position was ever publicly advertised through Requisition No. 5537. This position was, however, advertised on 8 May 2020 through Requisition No. 7260, but ultimately filled through Requisition No. 5537. Additionally, in the case of the “target-sourced candidate” for the Latin America and the Caribbean position, the Tribunal observes that HR sent this specific candidate the Requisition No. 5537 job application link on 7 May 2020, well after the apparent closure on 31 January 2020 of the Requisition No. 5537 vacancy but just one day before HR posted Requisition No. 7260 on 8 May 2020, in which a Regional Safeguard Coordinator for Latin America and the Caribbean position was advertised. Again, this

position was ultimately filled through Requisition No. 5537. The Tribunal considers these facts to be indicative of the overlapping nature of the requisitions.

77. While it is well-established Tribunal precedent that the Applicant has no “right to be selected to a particular position or to be included in a list of candidates for a position” (*Riddell*, Decision No. 255 [2001], para. 23), pursuant to Staff Rule 4.01, paragraph 1.01, the Bank hires through a competitive selection process and, pursuant to Principle 2.1 of the Principles of Staff Employment, has an obligation to treat applicants fairly in the selection process (*see BO* [2011], para. 68). In the instant case, the Tribunal observes that it is this question of fairness that the Applicant puts before the Tribunal for review, and the Tribunal is also called upon to examine serious issues such as transparency and objectivity in the selection process for the positions in question.

78. In view of the above discussion, the Tribunal finds that it has jurisdiction over the Applicant’s claims relating to Requisition No. 7260, a requisition to which the Applicant timely applied. The Tribunal also holds that it has jurisdiction over the Applicant’s claims concerning any Bank actions under Requisition No. 5537 which significantly impacted Requisition No. 7260 and affected the Applicant’s rights thereunder.

FAILURE TO EXHAUST INTERNAL REMEDIES

79. Article II(2) of the Tribunal’s Statute states:

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

(i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and

(ii) the application is filed within one hundred and twenty days after the latest of the following:

(a) the occurrence of the event giving rise to the application;

(b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or

(c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

80. In its jurisprudence, the Tribunal has consistently emphasized the importance of the requirement of exhaustion of internal remedies in Article II(2). *See, e.g., O*, Decision No. 323 [2004], para. 27. In particular, the Tribunal has explained that the requirement to exhaust internal remedies “ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action.” *Ampah (Preliminary Objection)*, Decision No. 522 [2015], para. 55, quoting *Klaus Berg*, Decision No. 51 [1987], para. 30. *See also GL (Preliminary Objection)*, Decision No. 666 [2021], para. 44. The Tribunal has also noted that “a staff member’s failure to observe the time limits for submission of an internal complaint or appeal constitutes non-compliance with the statutory requirement of exhaustion of internal remedies.” *Malekpour*, Decision No. 320 [2004], para. 14. *See also FM (Preliminary Objection)* [2020], para. 86.

81. The Bank asserts that the Application is barred for failure to timely exhaust internal remedies. To the Bank, the Applicant failed to challenge before PRS the appointment of staff members to the Regional Safeguard Coordinator positions under Requisition No. 5537, which she now challenges in her present Application before the Tribunal. According to the Bank, as it has not agreed to allow a direct submission to the Tribunal, this claim is inadmissible.

82. As previously noted, the Applicant submits that she “is not directly challenging the Requisition [No.] 5537 decisions, but rather contesting her own non-selection under Requisition [No.] 7260, which was of course affected by the Requisition [No.] 5537 process.” Further, the Applicant asserts that she has exhausted internal remedies because her PRS Request for Review “encompassed her challenge to management’s use of Requisition [No.] 5537 as a means of a failing to fairly consider her timely application for open positions under Requisition [No.] 7260.”

83. The Tribunal observes that the Applicant filed her Request for Review on 6 October 2020 and stated as the “Disputed Employment Matter(s)”:

The process for awarding the positions of [Requisition No.] 7260 was arbitrary, unjustified, and characterized by an abuse of managerial discretion. I applied for a requisition that was “cancelled” 19 days after the closing date of the posting. The two positions that comprised this requisition (Dakar and DC) were not in fact “cancelled” at all but simply and immediately given (without fair notice or competition) to two individuals. This was not a merit-based decision. This case is NOT about non-selection but about being denied an equal and fair opportunity to even compete for a promotion to H – for a position I was undeniably qualified for.

The Applicant further stated:

There was no reasonable or objective basis 1) for “cancelling” [Requisition No.] 7260 or, 2) having “cancelled” [Requisition No.] 7260, for not providing me (and the other candidates who applied) the same opportunity to apply to the closed [Requisition No.] 5537 that was provided to the less-qualified, “target-sourced” candidate. [Emphasis in original.]

In addition to bias, the selection process for [Requisition No.] 7260 and [Requisition No.] 5537 was characterized by a failure to follow proper procedure or observe a consistent and uniform practice, inconsistency between advertised criteria and the basis for decision and an abuse of discretion.

The Applicant stated in her Request for Review that she received notice of the “Disputed Employment Matter(s)” on 10 June 2020, when she “received a system generated email claiming that the requisition [the Applicant] had applied for, and which had closed 19 days earlier had supposedly been ‘cancelled.’”

84. As stated in the Panel’s Report,

[the Applicant] [...] filed Request for Review No. 531 (RFR) with the Peer Review Services (PRS) requesting a review of the World Bank Group’s (WBG) process for (a) opening two positions of Lead Social Development/Social Risk Management Specialist (Dakar, Senegal/Washington, D.C.) under one requisition ([Requisition No.] 7260), and (b) cancelling this requisition 19 days after the deadline to apply for the position (Recruitment Process) due to the fact that these two positions were awarded to two staff members who had applied to an earlier requisition ([Requisition No.] 5537) for the batch recruitment of ‘Lead Safeguards/Social Risk Management Specialists’ which was allegedly stale because filled after it had been in the job portal (Compass) for more than 90 days. In her RFR, [the Applicant]

further claimed that the process for awarding the two positions of [Requisition No.] 7260 was arbitrary, unjustified, and characterized by an abuse of managerial discretion, which denied her an equal opportunity to even compete for a promotion to Level GH – under [Requisition No.] 5537 – and for the positions under [Requisition No.] 7260 for which she asserts to have been undeniably qualified.

[...]

The Peer Review Panel (Panel) determined that [the Applicant's] claims related to [Requisition No.] 5537 were not filed in time pursuant to Staff Rule 9.03, paragraphs 8.01 and 8.02 and, therefore, the Panel's review of facts pertaining to [Requisition No.] 5537 would be limited to those that are pertinent to [the Applicant's] timely claims with respect to [Requisition No.] 7260. The Panel reviewed [the Applicant's] claim within the scope of PRS under Staff Rule 9.03 to determine whether the WBG acted consistently with [the Applicant's] contract of employment and terms of appointment during the Recruitment Process. In making its determination, the Panel examined: (i) the basis for the Recruitment Process and, specifically, the reasons for the cancellation of [Requisition No.] 7260; (ii) the process followed during the Recruitment Process; and (iii) whether management acted in good faith.

85. The Tribunal observes that the Applicant received notice of the cancellation of Requisition No. 7260 on or around 9 June 2020 and timely filed a Request for Review with PRS on 6 October 2020. The Tribunal therefore finds that she has timely exhausted internal remedies with respect to the Requisition No. 7260 claims.

86. Further, as the Tribunal has already found, the selection process for the Regional Safeguard Coordinators for West Africa and Latin America and the Caribbean involved overlapping requisition processes. The Tribunal finds that, as the Applicant submits, her Request for Review “encompassed her challenge to management’s use of Requisition [No.] 5537 as a means of a failing to fairly consider her timely application for open positions under Requisition [No.] 7260.” That the PRS Panel may have reached a different determination regarding its scope of review is not dispositive. As the Tribunal has previously explained, “[t]he Appeals Committee [PRS] is not a judicial body,” and “[t]he Tribunal’s task is to pass judgment upon whether the Bank has violated the contract of employment or terms of appointment of the [a]pplicant.” *Lewin*, Decision No. 152 [1996], paras. 43, 45. On the facts of the instant case, the Tribunal is satisfied that the Applicant has timely exhausted internal remedies for purposes of Article II(2) of the Tribunal’s Statute.

CONCLUSION

87. In conclusion, the Tribunal finds that the Bank's preliminary objections with respect to Requisition No. 5537 should be upheld. The Tribunal finds that all other preliminary objections raised by the Bank should be dismissed and that the Bank must answer the Application on merits with respect to all claims related to Requisition No. 7260, including those claims concerning any Bank actions under Requisition No. 5537 which significantly impacted Requisition No. 7260 and affected the Applicant's rights thereunder.

DECISION

- (1) The Bank's preliminary objections with respect to Requisition No. 5537 are upheld;
- (2) All other preliminary objections are dismissed; and
- (3) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$7,000.00 for the preliminary objection phase of the proceedings.

/S/ Mahnoush H. Arsanjani

Mahnoush H. Arsanjani

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 3 June 2022

* 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.