



World Bank Administrative Tribunal

2024

Decision No. 702

**HL,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**HL,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Janice Bellace (President), Seward Cooper (Vice-President), Lynne Charbonneau (Vice-President), Ann Power-Forde, Martha Halfeld Furtado de Mendonça Schmidt, Thomas Laker, and Raul C. Pangalangan.

2. The Application was received on 10 August 2023. The Applicant was represented by Neha Dubey of Francis Burt Chambers. 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 18 April 2024.

3. The Applicant, in connection with her non-selection for a Human Resources (HR) Analyst position (Requisition No. 17459) at the IFC, challenges (i) the IFC's application of the HR Analyst Tests Administration Policy (HATA Policy) on the grounds that it was applied retroactively, and (ii) the exemption of candidates from taking the HR Analyst test on the grounds that the exemption lacked any fixed procedure, objective criteria, or records for determining which candidates to exempt.

FACTUAL BACKGROUND

4. The Applicant joined the IFC as an HR Program Assistant, Grade Level GC, on 12 August 2013. On 1 July 2017, the Applicant began working as an HR Assistant with IFC HR, Client Services (CHRCS). She was promoted to Senior HR Assistant, Grade Level GD, with the same team, effective 1 November 2017.

5. On 4 May 2022, the IFC posted an HR Analyst position, Grade Level GE, with CHRCS (based in Headquarters) under Requisition No. 17459.

6. On 12 May 2022, an HR Officer in CHRCS, sent an email to the IFC HR (CHR) Management Team, titled “HR Analyst Test – Governance,” stating:

As discussed earlier, please find attached the Governance for HR Analyst test administration. We have shared it with [a colleague], who develops and administers the test and she is in agreement with outlined approach.

We also suggest that [another colleague] acts as [...] back-up to grade the test, in her capacity as [HR] Analyst, so that she can step in if [the first colleague] is out of office.

Please review the Governance and let us know if you have any questions/suggestions. Please also confirm your agreement with the back-up arrangement.

7. In the PowerPoint file attached to the email, titled “GOVERNANCE [-] HR Analyst Tests Administration” and dated “FY [Fiscal Year] 2022,” under “Governance – CHR HR Analyst Test[,] Terms & Conditions,” the document stated:

- Active IFC HR GE/EC1 level staff is exempt from taking the test, if:
 - S/he took the test at the time of selection for GE/EC1 level HR position, or
 - S/he holds a position where data analysis is part of the direct responsibilities.

8. On 17 May 2022, the Applicant applied to the HR Analyst position (Requisition No. 17459).

9. On 23 May 2022, a longlist of twenty-four candidates, including four external candidates and twenty internal candidates, along with their respective application packages, was shared with the Selection Advisory Committee (SAC). The SAC was composed of Mr. A, a Senior HR Business Partner in CHRCS and Chair of the SAC, two other Senior HR Business Partners in CHRCS, and an HR Analyst in CHRCS.

10. On the same day, Mr. A emailed the SAC stating that the next step in the recruitment process would be to agree on a shortlist of seven to eight candidates who would take the standardized HR Analyst test. He further stated that those who passed the test would be invited to interviews.

11. A few days later, on or around 27 May 2022, the SAC met to discuss and finalize the list of candidates who would take the HR Analyst test.

12. On 1 June 2022, Mr. A emailed the SAC a list of eight candidates, including the Applicant, who would be invited to take the HR Analyst test. In his email, Mr. A wrote that “[t]here might be a few candidates who have taken the test before, so we want to make sure that the test they will take this time is different and also is quite strong for us to be able to assess their skills and capabilities.”

13. According to Mr. A, “[s]ix of the [eight] candidates were invited to take the test while the other two candidates had already passed the test before they were hired as [Extended-Term Consultants (ETCs)], at HR analyst level, and hence they were not required to retake it for this recruitment.”

14. According to the Applicant, the two exempted ETCs “were former colleagues” of Mr. A, who was also acting HR Manager of CHRCS during the recruitment process.

15. According to the Applicant, on 6 June 2022, she took the HR Analyst test. The test consisted of multiple-choice questions, Excel functions, and PowerPoint components.

16. During the test, the Applicant noticed that one of the test questions had a mistake and raised the issue with the support team. In response, according to Mr. A, the error was addressed by providing the Applicant with an additional thirty minutes to complete the test and with the option to email her answer to the test.

17. On 16 June 2022, the HR Officer informed the Applicant that she did not pass the HR Analyst test. On the same day, the Applicant replied to the HR Officer asking if it was “possible to advise on a particular section or overall assessment” regarding the HR Analyst test. Shortly after, on the same day, the HR Officer replied to the Applicant, copying Mr. A and a Senior HR Assistant in CHRCS, stating that feedback would be provided to her shortly.

18. On 17 and 23 June 2022, the Applicant emailed Mr. A, the HR Officer, and the Senior HR Assistant requesting her test scores and assessment.

19. On 24 June 2022, Mr. A replied to the Applicant, stating that he would get back to her by the following week. On the same day, the HR Officer emailed test assessments for three of the candidates, including the Applicant, to Mr. A, stating:

[The Applicant]

- Multiple choice 70% (failed), Excel Functions 42% (failed), PPT [PowerPoint] 46% (failed).
- For the multiple choice, a maximum of 5 error[s] are allowed and she got 6. Recommendation is to work on understanding ratios, percentages, calculating a % change, and apply a % to a number (for instance, what is 30% of 600 staff). I also recommend some training on data visualization principles/best practices.
- For Excel, she missed to address 3 of the 6 [E]xcel tasks. Recommendation is to work on creating variables using formulas [...], including applying a % increase to a baseline amount.
- For the Power[P]oint, similar to the other candidates, she missed to fully address the three areas of concern, she got like 1.5 out of 3 here. The flow of the PPT was not clear, she did not provide recommendations, nor [identify] other data insights nor [provide] an email with her conclusions. Both the recommendations and the email with conclusions are clearly requested in the exercise, the additional insight is not required so we give it as extra point.

20. On 27 June 2022, after another follow-up email from the Applicant, Mr. A informed the Applicant that “[test] scores are not shared with the candidates, however, the feedback provided will include areas where the candidate did not do well in and what could be done for future tests.”

21. On the same day, the Applicant reiterated her request to receive her test scores. The Applicant also mentioned that she knew other candidates who took the same test and received their individual scores. The Applicant further stated that the approach “seem[ed] not transparent as [it] reveal[ed] no scoring, methodology and assessment principles.”

22. Later that day, Mr. A replied to the Applicant, stating that he “had the impression that scores [were] not shared, however, after checking,” determined that they could share the scores separately and discuss the scores in a meeting with the Applicant. Mr. A apologized for the confusion.

23. On 28 June 2022, the Applicant received her test scores with the following results: seventy percent in the multiple-choice section, forty-two percent in the Excel exercise, and forty-six percent in the PowerPoint component. The Applicant did not receive a passing score in any of the test components as the passing scores were seventy-five percent for the multiple-choice section, fifty percent for the Excel exercise, and fifty-four percent for the PowerPoint component.

24. On the same day, the Applicant replied to Mr. A and expressed her objections. For the multiple-choice component, the Applicant stated that she left a question blank because there was no correct answer. The Applicant stated that “no answer [did] not mean that [she] made a mistake. This [was] simply a wrong question and mistake in [the] test.” Regarding the Excel exercise, the Applicant claimed that she completed all the given tasks. Regarding the PowerPoint component, the Applicant stated that her answer “was based on charts built from pivot tables, which [was a] higher level of complexity, includ[ing] main observations to charts.” The Applicant and Mr. A had a call and discussed the feedback later that day.

25. On 14 July 2022, the HR Officer forwarded the Applicant's concerns and written test to a Senior HR Officer for another assessment and feedback. On the same day, the Senior HR Officer gave the following assessment:

Overall, I do think [the] grading of the ppt is generous and that the quality of work that is presented is rather poor. It is also rather evident that this candidate did not read or follow the instructions correctly.

[...]

Part 3

For this section the grey section is the max score and the other is the candidates score. Again, I honestly think [the grader] was very generous here. The quality of this ppt is really subpar. For an internal candidate who has 90 minutes to prepare 5 slides on data they are familiar with, with poor insights, minimal editing to standard [E]xcel charts and no recommendations, I am very very surprised that the comment in the email below says "My PowerPoint was based on charts built from pivot tables, which is higher level of complexity, included main observations to charts."

26. According to the Applicant, on 21 July 2022, she attempted mediation "which was unsuccessful."

27. According to the Applicant, on 26 July 2022, a new HR Manager in CHRCS announced, verbally during a departmental meeting, that the two ETCs who were exempt from taking the mandatory HR Analyst test had both been hired for the position.

28. On the same day, the Applicant filed Request for Review No. 582 with Peer Review Services (PRS) requesting a review of her "[n]on-selection for HR Analyst position (discrimination in [the] recruitment process with retaliation)." For relief, the Applicant requested an "investigation of the facts" and "a job evaluation [...] pursuant to Staff Rule 6.05 as [she] [has] been delivering to GE scope for years and being blocked in a competitive process."

29. On 22 December 2022, the HR Officer sent an email to the CHR Department, titled "GOVERNANCE for IFC HR Analyst Test." The email stated in part:

Dear Colleagues,

As announced [...] in our last Departmental meeting, IFC HR Management Team has agreed on the Governance for the Analyst test.

To ensure the full process [of] transparency, **we are sharing the attached Governance with [the] IFC HR Department.** (Emphasis in original.) In a nutshell, [the HR] Analyst test is administered for all Analyst-level positions in the IFC HR. We will have two types of Analyst tests, depending on the TOR [Terms of Reference], i.e.:

- Test for “Analyst roles that require analytical capabilities”, and includes Part I, Part II and Part III. (Emphasis in original.)
- Test for “Analyst roles that do not require analytical capabilities,[”] and includes Part I and Part II. (Emphasis in original.)

30. In the PowerPoint file attached to the email, titled “GOVERNANCE [-] HR Analyst Tests Administration [i.e. HATA Policy]” and dated “December 2022,” under “TEST Governance,” the Policy stated:

- Active IFC HR Analyst (and EC1) is exempt from taking the Test, if:
 - S/he took the test at the time of selection for IFC HR Analyst position, or
 - Has work program involving analytical support.

31. According to the Applicant, on 1 January 2023, she began sick leave. She stated that she was on “short-term disability leave” from 30 January to 31 August 2023, during which time her salary was reduced by thirty percent.

32. According to the Applicant, and as noted in the “attending physician statements,” she was diagnosed with generalized anxiety disorder and major depression and prescribed medication. According to the Applicant, “[t]he statements confirm that her condition is directly related to her circumstances at work, citing problems with her supervisor, her workload and the stress from having her case referred to [...] PRS.”

33. On 27 March 2023, PRS issued “Peer Review Panel’s Report in Request for Review No. 582.” Under the “Overall Conclusion and Recommendation of the Panel” section of the Report, the PRS Panel stated:

Upon considering the totality of the evidence, the Panel concluded that the Non-Selection Decision had a reasonable and observable basis, and that management followed a fair and proper process. The Panel found no evidence in the record that the Non-Selection Decision was discriminatory, retaliatory, made in bad faith, or otherwise improperly motivated.

The Panel determined, based on the evidence, that the Non-Selection Decision did not violate [the Applicant’s] contract of employment and terms of appointment. The Panel, therefore, recommends the dismissal of RFR [Request for Review] No. 582 in its entirety and does not recommend that any relief be granted to [the Applicant].

34. On 25 April 2023, the IFC’s Vice President, Corporate Support, wrote to the Applicant to inform her that she had accepted the PRS Panel’s recommendation that the Applicant’s claim be dismissed in its entirety and that the relief requested be denied.

35. On 10 August 2023, the Applicant filed this Application with the Tribunal “contesting [the IFC’s] application and adherence to policies and procedures in the recruitment process, which ultimately led to her non-selection and the Impugned Decision [the IFC’s acceptance of the PRS Panel’s recommendation in Request for Review No. 582].” The Applicant states that the “Impugned Decision” should be set aside on two bases: “[i] the retroactive application of the HATA Policy, which gave preference to two ETCs during competitive selection; and [(ii)] the lack of any fixed procedure, objective criteria or records for determining which candidates were exempt from the HR Analyst test.”

36. The Applicant requests the following relief:

- A declaration that the IFC committed procedural errors in the recruitment process for the HR Analyst position;
- Procedural and moral damages in the amount of \$18,277.50, equivalent to three months’ salary, or such other amount as the Tribunal deems appropriate;

- Material damages in the amount of \$12,794.00 for the loss of thirty percent salary during the time she spent on short-term disability from January to August 2023; and
- Any other relief the Tribunal considers appropriate.

37. The Applicant claims legal fees and costs in the amount of €4,350.00.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The IFC's application of the HATA Policy was retroactive in nature

38. The Applicant contends that, by relying on the HATA Policy as the legal basis for granting an exemption to the two ETCs, the IFC gave “effect to retroactive changes to rules and policies.” Specifically, the Applicant asserts that

[t]he HATA Policy was finalised and circulated to the Applicant and to the CHR Department on 22 December 2022, i.e. in the 2023 financial year, which is when “IFC HR Management Team has agreed on the Governance for the Analyst test[.]” [...] The timing of the documents speaks for itself – the recruitment process started in May 2022 and the HATA Policy became effective and was announced to the Applicant and to the CHR Department in December 2022, seven months later. It is self-evident that any reliance on the HATA Policy is therefore retroactive.

39. The Applicant further contends that the IFC has not provided any evidence to establish the suggestion that the HATA Policy was a long-standing practice or that the Applicant knew or should have known about it. The Applicant notes that, for a long-standing practice to become a condition of employment, there must be “evidence that it is followed by the organization in the conviction that it reflects a legal obligation.” The Applicant contends that there is no evidence in the record that would substantiate the IFC having a practice of exempting candidates prior to the publication of the HATA Policy in December 2022.

40. The Applicant contends that the IFC “has not provided any documents to support that such a practice occurred regularly within [the] IFC, and has only provided a singular example of candidates being exempted from taking a test.”

The IFC’s Response

The HATA Policy was a long-standing practice in IFC HR and the IFC’s reliance on it was not retroactive in nature

41. The IFC contends that, contrary to the Applicant’s claim that the HATA Policy was only applied in an *ad hoc* manner “from time to time,” records indicate that this practice has been consistently applied within IFC HR since at least the 2019 Fiscal Year. To the IFC, one important consideration to take into account when looking at the historical application of the HATA Policy is that the hiring of ETCs within IFC HR has been a relatively recent development – i.e., ET-appointments have only been present in IFC HR since 2020. To this end, the IFC asserts that “it has only been since 2020 that there have been considerably more opportunities to actually apply the HATA Policy.”

42. The IFC contends that an application of the HATA Policy does not only mean the exemption of a candidate from writing the HR Analyst test. To the IFC, “[i]t can – and more often does – mean the *non*-exemption of a candidate.” (Emphasis in original.) The IFC further contends that

there have been 11 competitive recruitments for the HR Analyst position within IFC HR that have taken place between 2018 (the 2019 Fiscal Year) and (including) the competitive recruitment that [the] Applicant was a part of (the posting date of which was May 4, 2022)[.] [...] Out of the 11 competitions, the HATA Policy was applied in all 11, and exemptions from the HR Analyst Test were provided in five (5).

The Applicant's Contention No. 2

The IFC lacked an objective and transparent recruitment procedure

43. The Applicant contends that the IFC “does not appear to have employed a fair and reasonable procedure in the recruitment process” for the HR Analyst position. Specifically, the Applicant asserts that there was a lack of any fixed procedure, objective criteria, or records for determining which candidates were exempt from the HR Analyst test.

44. The Applicant contends that the IFC does not provide any evidence of the work program of the two ETCs “in their existing and later roles, which suggests that it exercised absolute, unfettered discretion in granting the exemptions.”

45. The Applicant contends that the HATA Policy specifically provides that a previously taken test is only valid for six months, after which it is to be retaken. To the Applicant, even if the HATA Policy applied to the two exempted ETCs, the IFC did not disclose the dates of when these individuals undertook the test, so it is impossible to establish whether it was within the requisite six-month period. Further, the Applicant submits that the HATA Policy provides a detailed list of skills that are to be assessed in the HR Analyst test and specific methods to judge them. However, to the Applicant, due to the lack of documentation provided by the IFC, it is impossible to establish whether the tests taken by the two ETCs were in line with those requirements or at all comparable to the test taken by the Applicant and the other candidates.

The IFC's Response

The IFC employed a fair and reasonable procedure in granting exemptions to the two ETCs

46. The IFC contends that the two ETCs qualified for an exemption to the HR Analyst test under the HATA Policy based on their “work program involving analytical support.”

47. The IFC contends that the Applicant makes a key faulty assumption in assuming that the only basis by which the two ETCs could have been exempted from re-taking the HR Analyst test

is if the date of the two ETCs' test results fell within the preceding six months of the 6 June 2022 test. The IFC notes that the HATA Policy explicitly states that an “[a]ctive HR Analyst (and EC1) is exempt from taking the Test, if: [s]/he took the test at the time of selection for IFC HR Analyst position, or [h]as work program involving analytical support.” Consequently, the IFC submits that both ETCs qualified under the latter exemption as both were EC1s and did in fact have a “work program involving analytical support.” The IFC further submits:

As the corresponding Terms of Reference (“TOR”) makes manifest, analytical support was a key function of their ETC (EC1) roles. For example, this position required “[u]sing the existing HR information systems, conducting general research, analysis and interpretation of data,” “data retrieval but also interpretation and write-up of analysis and recommendations,” “supporting HR Department’s initiative to improve data quality and accuracy in systems,” and “preparing regular staffing analyses, formal reports, briefs, or presentations to the team and/or for guidance to clients.”

48. Finally, the IFC contends that the Applicant wrongly relies on the World Bank Group Remuneration Guidelines for Extended Term Consultants (ETC) and Extended Term Temporaries (ETT) – Headquarters Appointments (the Remuneration Guidelines) in contending that the IFC’s act of exempting the two ETCs from the HR Analyst test was in contravention of the Remuneration Guidelines. The IFC contends that the Remuneration Guidelines purport to provide guidance on “recruitment, salary setting, benefits and budget monitoring” as it relates to ETCs/ETTs, not the administration of tests for ETC/ETT positions. To the IFC, the latter is a gap that the HATA Policy fills.

The Applicant’s Contention No. 3

The procedural flaws in the selection process entitle the Applicant to compensation

49. The Applicant contends that the IFC has “misunderstood the harm suffered by the Applicant in the recruitment procedure for the HR Analyst position and why she has been forced to bring these proceedings.”

50. To the Applicant, she is

contesting her right to be granted a fair opportunity to compete and the right to transparency and objectivity in the recruitment process. The procedural irregularities in the recruitment process have been identified and they are not explained (let alone cured) by any evidence or explanation in [the IFC's pleadings]. The only conclusion available to the Tribunal is that [the IFC] has failed to follow the established procedures and instead made an *ad hoc*, arbitrary decision [...] in granting the two ETCs exemptions and ultimately hiring them.

51. The Applicant submits that the procedural flaws in the selection process entitle the Applicant to compensation, even though the possibility exists that she might not have been selected for the position absent those deficiencies.

The IFC's Response

Compensation is not warranted because the Applicant suffered no actual harm

52. The IFC contends that it has not misunderstood the harm, or rather lack thereof, allegedly suffered by the Applicant. To the IFC, the fact that there was no possibility that the Applicant could have moved forward in the selection process because the Applicant failed the necessary HR Analyst test “still bears the utmost relevance.”

53. The IFC further contends:

Relying on the case *Iqbal* [Decision No. 485 [2013]], [the] Applicant states that “[t]hese procedural flaws in the selection process entitle the Applicant to compensation, ‘even though the *possibility* exists that [she] might not have been selected for the position absent those deficiencies’” [...]. (Emphasis added by the IFC.) It is important to note that in [the] Applicant’s case it is not a “possibility” but rather an “absolute certainty” that [the] Applicant would not have been selected for the Position even in the absence of any alleged deficiencies. This is a crucial distinction: there is a marked difference between the possibility that the substantive outcome would have been different vs. absolutely zero possibility (i.e., impossibility) that the substantive outcome would have been different. [The] Applicant cannot reasonably claim that compensation is warranted in the latter.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE IFC'S APPLICATION OF THE HATA POLICY WAS RETROACTIVE IN NATURE

54. The Tribunal notes the Applicant's statement that she "is not contesting her non-selection for the Position," but rather is contending that, on the evidence available, the "Impugned Decision" should be set aside on two bases: "[i)] the retroactive application of the HATA Policy, which gave preference to two ETCs during competitive selection; and [(ii)] the lack of any fixed procedure, objective criteria or records for determining which candidates were exempt from the HR Analyst test."

55. From these statements, the Tribunal takes notice that the Applicant does not contest the substantive non-selection decision but rather defines her challenges more narrowly. Therefore, the Tribunal will focus its inquiry on the two bases mentioned above by the Applicant.

56. The Tribunal in *de Merode*, Decision No. 1 [1981], para. 23, noted:

The practice of the organization may also, in certain circumstances, become part of the conditions of employment. Obviously, the organization would be discouraged from taking measures favorable to its employees on an *ad hoc* basis if each time it did so it had to take the risk of initiating a practice which might become legally binding upon it. The integration of practice into the conditions of employment must therefore be limited to that of which there is evidence that it is followed by the organization in the conviction that it reflects a legal obligation.

The Tribunal in *de Merode* [1981], para. 112, further noted, "[T]he established practice, and statements confirming that practice, have created a legal obligation."

57. The Tribunal recalls that the Applicant contends that the application of the HATA Policy to the recruitment process constituted a retroactive change to rules and policies, whereas the IFC submits that the HATA Policy was applied consistently in IFC HR competitive recruitments from FY 2019 to FY 2022.

58. The Tribunal notes that it is well-settled that for a practice to become a condition of employment there must be “evidence that it is followed by the organization in the conviction that it reflects a legal obligation.” *See de Merode* [1981], para. 23. The Tribunal, in its jurisprudence, has held that established practices, and statements and evidence confirming those practices, create binding legal obligations even if not explicitly laid out in formal policies. *See id.*, para. 112. Accordingly, the official publication or codification of an established practice is not a condition precedent to a determination of the binding character of that practice.

59. The Tribunal notes that the parties do not dispute that the HATA Policy was published and communicated to staff in December 2022. However, in order to determine whether the IFC’s application of the HATA Policy with respect to the two exempted ETCs was retroactive and impermissible, the Tribunal must determine if IFC HR had a long-standing practice of exempting active HR Analysts (or those in EC1 roles) from (i) having to retake the HR Analyst test if they had previously taken it within six months or (ii) having to take the test if their current work program already entailed analytical support.

60. As a preliminary matter, the Tribunal notes the IFC’s explanation of the origin and purpose of the HR Analyst test exemption practice in IFC HR:

[O]ne very important consideration to take into account when looking at the historical application of the HATA Policy is that the hiring of ETCs within IFC HR has been a relatively recent development – i.e., ET-appointments have only been present in IFC HR since 2020 [...]. What this means [...] is that it has only been since 2020 that there have been considerably more opportunities to actually apply the HATA Policy. This is because existing ETCs within IFC HR who are applying to a term position (namely, the term equivalent of their ET-appointment) constitute a large portion of the instances which necessitate the application of the HATA Policy [...]. These ETCs usually have already written the HR Analyst Test for the ET-appointment that they presently hold, or the ET-appointment that they presently hold entails analytical support, meaning that they are eligible/requiring of an exemption under one of the two prongs as per the HATA Policy.

61. Given the IFC’s explanation for the practice, and considering the practicality of it, the Tribunal finds the basis for the practice reasonable. Furthermore, the Tribunal notes that the

Applicant has not shown that the practice of exempting eligible candidates from taking the HR Analyst test, which is now codified in the HATA Policy, was inconsistent with the Staff Rules or any other rules of the World Bank Group. In fact, the Applicant states in the record that “[s]he is not contesting [...] [the] overall test validity.”

62. The Tribunal observes that, contrary to the Applicant’s contention that the HATA Policy was only applied “from time to time,” the record indicates that the practice of exempting eligible candidates from the HR Analyst test has been applied consistently within IFC HR since at least FY 2019, which – based on the IFC’s explanation in the previous paragraph – is around the time that a real need for this practice arose. The record shows that from FY 2019 to FY 2022, which includes the relevant period of recruitment here (FY 2022), there were eleven competitive recruitments for the HR Analyst position within IFC HR. Out of the eleven competitive recruitments, the HATA Policy was applied in all eleven (including the exemption and non-exemption of candidates), and exemptions from the HR Analyst test were provided in five competitive recruitments resulting in ten candidates being exempted from taking the HR Analyst test.

63. Specifically, the following competitive recruitments exempted candidates from the HR Analyst test:

- FY 2020, Requisition No. 3851: Two exemptions
 - Senior HR Assistant (already took the HR Analyst test)
 - HR Analyst (current position involved analytical support)
- FY 2021, Requisition No. 11069: Two exemptions
 - HR Analyst (current position involved analytical support)
 - ETC (already took the HR Analyst test and current position involved analytical support)
- FY 2021, Requisition No. 11558: One exemption
 - ETC (already took the HR Analyst test and current position involved analytical support)

- FY 2021, Requisition No. 11815: Three exemptions
 - Two ETCs (both already took the HR Analyst test and both of their current positions involved analytical support)
 - HR Analyst (current position involved analytical support)
- FY 2022, Requisition No. 17459: Two exemptions
 - Two ETCs (both already took the HR Analyst test and both of their current positions involved analytical support).

64. In addition to the aforementioned competitive recruitments, the Tribunal observes that there are two other instances in the record – in the form of statements and documents – that show that the IFC’s practice of exempting eligible candidates from taking the HR Analyst test existed prior to (i) the recruitment process that the Applicant was a part of in May 2022 and (ii) the publication of the HATA Policy in December 2022.

65. First, the Tribunal observes that in March 2021, during the HR Analyst recruitment process for Requisition No. 11069 (mentioned above in paragraph 63), the HR Officer informed the SAC that two candidates, an HR Analyst and an ETC, were exempt from taking the test because the HR Analyst was a “current analyst in CHRCS” and the ETC “did [a] similar test in Nov[ember] during recruitment [...] process for EC1 role in CHRCS.” The Tribunal notes that the HR Officer in this instance, much like Mr. A had done in the recruitment that gave rise to the present case, relied on the practice within IFC HR of exempting qualified candidates from taking the test if they had previously taken it within six months or if their current role already entailed analytical support.

66. Second, the Tribunal observes that on 12 May 2022, approximately seven months before the IFC’s official publication of the HATA Policy on 22 December 2022, the HR Officer shared an earlier iteration of the HATA Policy, in the form of a PowerPoint file, with IFC HR management. With respect to the IFC’s practice of exempting eligible candidates from taking the HR Analyst test, the Tribunal observes that the language in the PowerPoint is nearly identical to the language in the 22 December 2022 HATA Policy quoted above in paragraph 30. More

important, the substantive impact in granting exemptions to eligible candidates is the same in the May 2022 and December 2022 iterations. The Tribunal recalls that the May 2022 iteration states:

- Test results are valid for 6 months and will be counted towards all GE/EC1 level HR positions that a candidate applies [to] during that timeframe. After a 6-month period, [the] candidate needs to retake the test, if s/he applies for another GE level HR staff position or EC1 level HR position with data analysis responsibilities.
- Active IFC HR GE/EC1 level staff is exempt from taking the test, if:
 - S/he took the test at the time of selection for GE/EC1 level HR position, or
 - S/he holds a position where data analysis is part of the direct responsibilities.

67. Based on the foregoing, including the relevant evidence in the record, the Tribunal finds that there was an established practice in IFC HR of exempting eligible candidates from taking the HR Analyst test and that the IFC's application of the HATA Policy was not retroactive in nature or otherwise impermissible. Notwithstanding this finding, however, the Tribunal considers that, in the interest of transparency, notice of recruitment practices that involve exempting certain candidates from specific stages of the recruitment process should be made available to all candidates to avoid any appearance of favoritism.

WHETHER THE IFC EMPLOYED A FAIR AND REASONABLE PROCEDURE IN GRANTING EXEMPTIONS TO
THE TWO ETCs

68. The Tribunal will now examine the record to determine whether the IFC employed a fair and reasonable procedure in granting exemptions to the two ETCs from taking the HR Analyst test.

69. Principle 2.1 of the Principles of Staff Employment states that the Organizations "shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members."

70. It is the Applicant's position that the IFC did not employ a fair and reasonable procedure in the recruitment process for the HR Analyst position. The IFC, by contrast, submits that it followed a fair and reasonable procedure in applying the HATA policy to grant exemptions to the two ETCs.

71. The Tribunal recalls that the HATA Policy states that an "[a]ctive HR Analyst (and EC1) is exempt from taking the [t]est, if: [s]/he took the test at the time of selection for IFC HR Analyst position, or [h]as [a] work program involving analytical support." The Policy further states that HR Analyst test content is updated every six months and that "[t]est results are valid for six months, after which [the] candidate needs to retake the [t]est, if s/he applies for [the] IFC HR Analyst position."

72. While the record shows that the Applicant and the IFC agree that the two ETCs were hired as ETCs in IFC HR in October and December 2021, the Tribunal observes that the record is unclear as to the date they took their HR Analyst tests. However, a determination of the exact date that the tests were taken is not necessary for a proper disposition of this case.

73. The Tribunal observes that analytical support was a key function of the prior roles of the two ETCs (EC1) and notes the IFC's contention that both ETCs were definitively exempted from taking the test on this basis. The corresponding TORs show that these roles required analytical skills such as "[u]sing the existing HR information systems, conducting general research, analysis and interpretation of data," "data retrieval but also interpretation and write-up of analysis and recommendations," "supporting HR Department's initiative to improve data quality and accuracy in systems," and "preparing regular staffing analyses, formal reports, briefs, or presentations to the team and/or for guidance to clients."

74. Based on the foregoing, the Tribunal is satisfied that both ETCs qualified for an exemption from taking the HR Analyst test under the HATA Policy through having a "work program involving analytical support."

75. The Tribunal observes that the HATA Policy states that the HR Analyst test is divided into three parts – multiple choice, basic Excel functions, and a case study/PowerPoint – to assess the skills that are relevant for the HR Analyst role. Each of the three sections contains various skills to be assessed and passing score thresholds.

76. The Tribunal notes the Applicant’s contention that, based on the record, it was impossible to establish whether the tests taken by the two ETCs were in line with the HATA Policy “or at all comparable to the test taken by the Applicant and the other candidates.”

77. The Tribunal observes that a comparison between the test taken by the Applicant in June 2022 and the test taken by the two exempted ETCs in 2021 shows the tests to be analogous and in line with the requirements set out in the HATA Policy. Both tests were composed of the same three components listed in the HATA Policy – multiple choice, basic Excel functions, and a case study/PowerPoint – and weighed the three sections according to the same percentage amounts: thirty percent, thirty-five percent, and thirty-five percent, respectively. Additionally, the tests contained clear similarities in structure and content. Accordingly, the Tribunal finds that the test taken by the two ETCs was in line with the requirements set out in the HATA Policy and was comparable to the test taken by the Applicant.

78. Finally, with respect to the World Bank Group ETC/ETT Remuneration Guidelines, the Tribunal observes that the Remuneration Guidelines purport to provide guidance on “recruitment, salary setting, benefits, and budget monitoring” relating to ETCs and ETTs. The Remuneration Guidelines do not address the administration of tests for ETCs and ETTs. Rather, this was a gap that the HATA Policy and the practice of exempting eligible candidates addressed.

79. Based on the foregoing, the Tribunal is satisfied that the IFC employed a fair and reasonable procedure in granting exemptions to the two ETCs from taking the HR Analyst test.

80. The Tribunal notes that the Applicant submitted her Application on the basis of two main claims: “[i] the retroactive application of the HATA Policy, which gave preference to two ETCs

during competitive selection; and [(ii)] the lack of any fixed procedure, objective criteria or records for determining which candidates were exempt from the HR Analyst test.” The Tribunal has rejected both claims. Therefore, the Tribunal finds that there is no basis to award any compensation to the Applicant in this matter.

DECISION

The Application is dismissed.

/S/Janice Bellace

Janice Bellace
President

/S/ Zakir Hafez

Zakir Hafez
Executive Secretary

At Washington, D.C., 3 May 2024