



World Bank Administrative Tribunal

2024

Decision No. 703

**HM,
Applicant**

v.

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

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

**HM,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Janice Bellace (President), Seward Cooper (Vice-President), Lynne Charbonneau (Vice-President), Ann Power-Forde, Thomas Laker, and Raul C. Pangalangan.
2. The Application was received on 4 October 2023. The Applicant was represented by Nat N. Polito of the Law Offices of Nat N. Polito, P.C. The Bank 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 challenges the Bank's decisions (i) not to select him for a position during a batch rotation exercise and (ii) not to extend his term appointment.
4. On 20 October 2023, the Bank informed the Tribunal of its intention to raise a preliminary objection with respect to the non-selection claim and, further, submitted a request to bifurcate the proceedings and allow the claim relating to the non-selection decision to proceed while staying the claim relating to the non-extension decision until the Tribunal rendered its decision on the preliminary objection. On 4 December 2023, the President of the Tribunal joined the preliminary objection phase to the merits. This judgment addresses both the preliminary objection and the merits.

FACTUAL BACKGROUND

The Applicant's employment history

5. The Applicant joined the Bank in 2006 as a Senior Public Sector Management Specialist, Grade Level GG. During his employment with the Bank, the Applicant held various successive term appointments in several regions of operation.

6. On 22 January 2018, the Applicant accepted a three-year term appointment in Jakarta, Indonesia, as a Senior Public Sector Management Specialist in the Bank's Governance Global Practice (Governance GP).

7. The Applicant's three-year term appointment in Indonesia was extended several times. For example, on 21 August 2020, the Applicant's appointment was extended to 9 December 2021. On 30 September 2021, the Applicant's appointment was again extended to 30 June 2022. And, on 8 April 2022, the Applicant's appointment was extended to 12 September 2022.

8. During his appointment in Indonesia, the Applicant performed well, receiving a 3.5 performance rating in Fiscal Years 2018, 2019, 2020, and 2021.

Batch rotation exercises

9. In Fiscal Year 2021 (FY21) the Bank introduced, for the first time, batch rotation exercises, a process by which staff in global practices would be considered for reassignments.

10. According to the Bank's Career Development and Mobility Framework Staff Guide (Staff Guide), batch rotation exercises aim to facilitate staff reassignments to provide opportunities for staff to "broaden, deepen and diversify their skills and experiences." According to the Staff Guide, this new mobility framework accentuated the concept of time-bound assignments by encouraging staff to stay in their assignment for four years and requiring that staff rotate out of an assignment

or function by their eighth year. The Staff Guide further emphasized “Staff Driving Their Careers,” stating:

Driving one’s career means being clear about one’s own career aspirations, articulating one’s interests and development needs and being proactive about next steps. [...] As staff are nearing the end of an assignment, they should start to think about their next assignment and gaining experiences based on their career plans. Being proactive in this way [helps to] avoid a feeling of stagnation or being stuck. Staff will be limited to two consecutive assignments in the same region or function, and then will be required to move to a different region or function. This is to encourage staff to broaden their experience, but also to apply and bring their knowledge to different parts of the organization.

11. The Staff Guide also sets out the process and options for staff who are not placed during a batch rotation exercise as follows:

In cases where staff are not placed after a batch rotation or recruitment, they will continue to be mapped to their current VPU [Vice Presidential Unit] pending identification of a next step. Their managers (including Talent Board or Council, if applicable) will proactively work with them to pursue and identify emerging opportunities, and consider options that include:

- up to 12 months on a specific assignment that leverages their skills and experiences, provide career coaching, access to relevant learning opportunities and participation in the following year’s batch rotation or recruitment;
- downgrading to a lower level position; and
- mutually agreed separation based on the Bank’s HR [Human Resources] policy.

12. According to the Bank, the Applicant was allowed to participate in the FY21 Batch Rotation Exercise even though he did not at that time meet the eligibility requirement of having completed four years of service in his assignment. He was not reassigned during that exercise.

13. On 30 September 2021, the Applicant’s Line Manager extended the Applicant’s term appointment, which enabled him to participate in the FY22 Batch Rotation Exercise. The Line Manager also arranged with Human Resources for the Applicant to enroll in an executive coaching program.

14. On 9 November 2021, all staff in the Applicant's practice group, Equitable Growth, Finance, and Institutions (EFI), were emailed an announcement of the launch of the FY22 Batch Rotation Exercise. This was the second year that the Bank implemented such an exercise. According to the email, Talent Boards for each global practice within the practice group would conduct their own batch rotation exercises under the same key parameters. The identified parameters were as follows:

Eligibility for this year's Batch Rotations/Recruitment

All GF+ HQ-appointed staff with a minimum of 4 years in assignment (3 years for FCV [fragility, conflict, and violence] locations) mapped to EFI professional families will be considered for Mobility. [...] In addition, staff members who did not find a new assignment at the end of FY21 Mobility exercise [are] invited to participate in the FY22 Mobility exercise. Special support will be provided by Talent Boards and Management to assist them in finding a next assignment.

Priority Placement on Next Assignment

All participating [...] staff with 4+ years in a role will be given priority during the mobility exercise/shortlisting and selection process. Similarly, the following are institutional priorities to be considered as part of placement decisions: i) FCV locations; ii) IDA [International Development Association] locations; iii) locations with significant hardships (pollution, health issues, etc.); iv) locations where there is an absence of unique/specialized skills, etc.

Matching or Selection/Assignment Decisions

The Talent Boards and Council will convene to consider staff for next assignments or to review shortlisting and selections decisions, considering institutional priorities and staff skills based on career mobility principles, business needs, and staff preferences to the extent possible. [...]

As Talent Boards and Council identify next assignments for eligible staff when the Batch Recruitment and Rotation processes are complete, it may happen that some staff are not recruited or placed into a next assignment. Line Management in partnership with the EFI Talent Council is committed to engage with staff to continue to pursue mobility opportunities throughout the year, and manage such situations in line with institutional guidelines. While doing so, careful consideration will be given to the reasons for non-placement, and clear communication about the next steps will be provided to staff by line Managers. The staff guide of the Career and Mobility Framework and the attached Frequently Asked Questions provide comprehensive information for staff on Career Development and Mobility.

Next Steps: [...]

- GF/GG Batch recruitments/rotations: In the next days, Chairs of EFI Talent Boards will share additional information to participating staff with timelines

and on how to express preferences or apply to GF/GG positions included in this year's Mobility exercise.

15. On 15 November 2021, the Chair of the Talent Board for the Governance GP emailed staff members within the global practice who were eligible for the FY22 Batch Rotation Exercise with further information on the process to be followed within their global practice, including the following:

Consideration of Staff's preferences:

- Staff confirmed for participation in this [year's] Batch Rotations, as informed by their Manager, may express preferences for up to 5 positions (in order of preference) [...].
- Follow-up informal interviews may be required between staff and line Managers to assess further fit for the position and define development needs as needed.

Priority placement on next assignment:

The Talent Board will meet to match demand and supply, with a focus on:

- Priority placement for Staff in good performance completing FCV, corporate, and/or 2 consecutive field assignments. [...]
- Staff who have completed 2 consecutive jobs within the same Region (i.e. 8 years maximum), after [which] they have to move to a different region/part of the Bank.

Matching and assignment decisions:

The Talent Board convenes to consider Staff for the next assignments considering institutional priorities and staff skills, based on career mobility principles, business needs, and staff preferences to the extent possible. Line Management will make final decisions on staff rotations, and rotations will occur as lateral reassignments [...].

Timelines:

- You should indicate your top five preferences in Compass [the Bank's job application portal] by Monday, November 29, 2021 [...]
- The Batch Rotation process will conclude by December/early January 2022
- Selection results will be announced by end January 2022
- Next assignments will be effective from July 1, 2022 or a mutually agreed date between staff and receiving/releasing managers as applicable.

Application in Compass:

The batch rotation positions are advertised under one requisition number with the position descriptions listed in one table. [...]

Step by step guide for your application:

[...]

- Your Bank CV [curriculum vitae] is already in the system. A personal CV is not mandatory, but you have the option to upload one if you like.
- A Cover Letter is not required. You can type N/A in the “Type it manually” box and move to the next step.
- You will be asked to answer five questions to indicate your top five choices (in order of preference) among the listed positions.

16. On 20 November 2021, the Chair of the Talent Board sent another email to staff participating in the FY22 Batch Rotation Exercise “recommend[ing] that eligible staff make use of preferences to increase their chance to be selected for a position of their choice” and informing them that they could now express interest in more than five positions. The deadline for submitting preferences was extended to 1 December 2021.

17. The Applicant participated in the FY22 Batch Rotation Exercise for the Governance GP.

18. On 1 December 2021, the Applicant identified, in the Compass portal, nine preferred batch rotation positions located in Nepal, Pakistan, Serbia, and the United States. He did not opt to submit a personal CV or cover letter in the portal.

19. Also on 1 December 2021, the Applicant emailed the hiring manager (Hiring Manager (Nepal, United States)) for two of the batch rotation positions he had identified among his preferences, stating:

I was excited at the opportunity of working in Bangladesh. That was my first choice. However, when I looked at the position carefully, I found that it is for Senior Financial Management Specialist. I am a Senior Public Sector Specialist. While I can deliver the PFM [Public Financial Management] program, I assume I am not eligible for this position as I can't do fiduciary work. Do you think I can be considered if I apply for this position?

If I apply for the Washington DC based position under your unit [...], is there a chance for that position to be relocated to Bangladesh [...]?

I am very keen to work for you but my preference will be for a field based position. Therefore, I am certainly applying for the field-based Nepal position.

20. On 2 December 2021, the Hiring Manager (Nepal, United States) responded, explaining:

Unfortunately, the Bangladesh position is indeed a FMS [Financial Management System] position and we will be looking for a candidate who can handle the FM [financial management] side of work.

Even if you end up in the Nepal position, I may ask you to cross-support the Bangladesh program.

21. On 17 December 2021, the Applicant submitted, via email, a statement of interest, a personal CV, and an assessment of his work on a project in Nepal to the Hiring Manager (Nepal, United States).

22. The batch rotation matching process began with the Talent Board reviewing and identifying one-to-one matches; meaning, any candidate who was rated as a top choice by a project manager, and who had ranked that project manager's available position as his or her first choice, was identified as a match. According to the records kept by the Talent Board, the project managers of the positions the Applicant identified as his top five preferred positions did not rank him as a top choice. Therefore, the Applicant was not "matched" during the FY22 Batch Rotation Exercise.

23. Those same records note that a project manager did identify the Applicant as the first-choice candidate for a "Senior Financial Management Specialist/Senior Public Sector Specialist" position; however, the Applicant did not rank this position as one of his top five preferred positions. It was not considered by the Talent Board to be a "match."

24. In the Talent Board's Meeting Minutes of 18 January 2022, the Talent Board identified various unmatched staff and discussed next steps for them, including potential opportunities pending the outcome of certain planned rotations. In these Meeting Minutes, the Talent Board stated, "It was agreed that one unmatched staff on a term appointment, [the Applicant], will require active management."

25. The Talent Board recorded the status of position rotations in a spreadsheet. According to the spreadsheet, the Applicant's position had been successfully matched with a new candidate. The

comment field in the spreadsheet stated that there was no demand from project managers to hire the Applicant, and, in the field identifying where the incumbent staff would be moving, the spreadsheet indicated that the Applicant was to “[s]tay [p]ut – [n]ot moving.”

26. According to the project manager who had identified the Applicant as a first-choice candidate, she discussed the position with the Applicant and the skills required for it. During this discussion, the Applicant conveyed his preference for a field-based position. Ultimately, the project manager and her line manager decided the Applicant was not a good fit because the Applicant’s “digital skills were more in core government systems [...] and we were looking for [someone] who was working in GovTech in service delivery.”

27. On 16 February 2022, the Applicant’s Line Manager emailed another manager seeking cross-support opportunities for the Applicant; however, the other manager stated that there were no cross-support opportunities available in the unit.

28. On 23 February 2022, the Global Director of the Governance GP informed all staff, via email, that the FY22 Batch Rotation Exercise had been “finalized.” The email further stated:

We have managed to successfully rotate most staff – 86% of staff in the rotation pool.

If you are in the rotation pool this year, your current manager will be in touch with you shortly to inform you of the outcome of your participation in the rotation exercise. Please contact your current manager in the first instance if you should have any questions or need clarification.

Looking ahead, we will continue to provide opportunities for staff who are looking to successfully rotate in the future.

29. On 23 February 2022, the Applicant emailed the Line Manager inquiring about the outcome of the rotation process.

30. On 24 February 2022, the Line Manager informed the Applicant, via email, that “there was no placement for [him] in this rotation round due to lack of demand.”

31. On 6 March 2022, the Applicant traveled to Washington, D.C., to ask the Governance GP senior management to consider him for three positions for which he had given preference during the FY22 Batch Rotation Exercise but which remained vacant. On 9 and 10 March 2022, the Applicant met with the EFI Vice President and the Global Director, respectively, to discuss the possibility of a placement in the remaining open positions.

32. The Applicant also applied for three Senior Public Sector Specialist positions within the Governance GP that were open for placement during the FY22 Batch Rotation Exercise and that remained vacant after the exercise concluded. One of the three positions was cancelled. On 10 March 2022 and 10 June 2022, he was shortlisted and invited to interview for the remaining two positions. He was not hired for either of those positions.

33. On 16 March 2022, the Line Manager emailed the Applicant, stating:

Following our conversation on February 17th, 2022, this is to follow up with the 6 months' notice for the end of your term appointment. The official [...] form is attached. As I noted, we will continue to support you in the next 6 months towards finding other opportunities.

The email included an attachment which stated, "By this memorandum, I am providing you six months' written notice that your term appointment will not be extended and shall end on September 12, 2022." Neither the email nor its attachment included a reason for the non-extension decision.

34. On 1 April 2022, the Line Manager sent the Applicant a link to a position opening with the International Monetary Fund.

35. On 8 April 2022, the Applicant's appointment, then set to expire on 30 June 2022, was extended to 12 September 2022.

36. On 12 September 2022, the Applicant's appointment with the Bank ended. By that date, the sixty-year-old Applicant had concluded a fifteen-year career with the Bank, qualifying him for pension benefits. Upon separation from the Bank, the Applicant opted to start receiving retirement

payments, which maintained his life insurance coverage but which precluded him from applying to other Bank positions for a period of time.

Peer Review Services

37. On 8 July 2022, the Applicant submitted a Peer Review Services (PRS) Request for Review contesting the Bank's decisions (i) not to select him for a position during the FY22 Batch Rotation Exercise and (ii) not to extend his term appointment.

38. On 27 February 2023, the Peer Review Panel dismissed the Applicant's non-selection claim. The Panel noted that the Applicant was informed on 23 February 2022 that the FY22 Batch Rotation Exercise had concluded, and, on 24 February 2022, he was informed that he was not selected for any position through that exercise. The Panel explained that the Applicant had until 24 June 2022 to file his Request for Review; however, he did not file until 8 July 2022. The Panel therefore determined it did not have jurisdiction over the non-selection claim, as it was not filed in a timely manner in accordance with Staff Rule 9.03.

39. The Panel accepted jurisdiction over the non-extension decision, finding that the Applicant's non-extension claim was filed by the 120-day deadline prescribed by Staff Rule 9.03. As a result, the Panel concluded that it would "review the facts relating to the FY22 batch rotation exercise inasmuch as they are pertinent to the Non-Extension Decision." In making its determination, the Panel examined "(i) the basis for the Non-Extension Decision, and specifically the reasons for the decision; (ii) the process followed in making the Non-Extension Decision; and (iii) whether management acted in good faith."

40. In the Panel's report, the Panel summarized the Line Manager's response to the Request for Review as follows:

[The Line Manager] met with [the Applicant] on February 17, 2022. According to [the Line Manager], during this meeting, she informed [the Applicant] of the reasons for the Non-Extension Decision, which were that there was a lack of demand from any of the Practice Managers in the FY22 batch rotation, as well as a lack of possibilities to arrange for any cross-support. [The Line Manager] stated

that [the Applicant] asked her to delay sending the six-month notice of non-extension to him by a week, to allow for the batch rotation to conclude, which she did. [...]

[The Line Manager] also claimed that [the Applicant] would have reached the five-year limit in the EAP [East Asia and Pacific] region and in a field assignment by December 9, 2022, and that under the HR staff mobility rules at the time, such assignments could not be extended beyond five years.

41. In its report, the Panel examined the Line Manager's claim that the Applicant would have reached a "five-year limit." The Panel observed that the Staff Guide specifies that "HQ-appointed staff in all locations are on 4-year time-bound assignments," and that staff "will be limited to two consecutive assignments in the same region or function." The Panel further summarized the testimony of a Human Resources Manager explaining that "the limit on assignments in the same region was not five years, but rather eight years."

42. With respect to the question of whether there was a reasonable and observable basis for the non-extension decision, the Panel made the following findings:

The Panel noted that [the Applicant] was not placed in any positions through the FY22 batch rotation and was not placed in subsequent positions to which he applied, nor were any cross-support opportunities offered to him. The Panel further noted that in accordance with the Staff Guide, [the Applicant's] contract had been extended following his non-placement in the FY21 batch rotation to allow him to participate in the FY22 batch rotation, and that following his non-placement in the latter batch rotation, his exit from the WBG [World Bank Group] was an available option. The Panel observed that [the Applicant] would have reached five years in his position in EAP by January 2023, and that according to [a Regional Director], extending a staff member's contract beyond four years was rare in EAP. Based on the evidence in the record, the Panel concluded that there was a reasonable and observable basis for the Non-Extension Decision.

43. With respect to the question of whether a proper process was followed, the Panel stated:

The Panel observed that the parties dispute whether [the Applicant] was provided a reason for the Non-Extension Decision when it was first communicated to him on February 17, 2022. The Panel further noted that the notice of the Non-Extension Decision, dated March 12, 2022, did not provide any reasons for the Non-Extension Decision and stated only that [the Applicant's] Term appointment would not be extended and would end on September 12, 2022. The Panel observed that during

the Hearing, [the Applicant] stated that he was not provided clear reasons for the Non-Extension Decision, and that during the February 17, 2022, meeting, [the Line Manager] told him that his non-placement through the batch rotation and the Non-Extension Decision were different decisions. The Panel found that, in accordance with the obligation to treat staff members fairly under Principle 2.1 and the Tribunal's jurisprudence, [the Line Manager] should have provided prompt and clear reasons for the Non-Extension Decision to [the Applicant], which would not have left room for [the Applicant] to question why his Term appointment was not extended. Therefore, the Panel concluded that management did not follow a fair process in making the Non-Extension Decision.

44. The Panel found that "management made the Non-Extension Decision in good faith," considering that the Line Manager had extended the Applicant's contract after his lack of placement in the FY21 Batch Rotation Exercise, discussed cross-support opportunities for the Applicant with multiple practice managers, and "shared potential employment opportunities" with the Applicant.

45. Based on the above, the Panel recommended that the Applicant be compensated in the amount of three months' net salary.

46. On 13 June 2023, management accepted the Panel's recommendation, and the Applicant was paid three months' net salary.

The present Application and remedies sought

47. On 4 October 2023, the Applicant filed this Application. The Applicant seeks the following: (i) reinstatement to his former position, (ii) compensation in the amount of three years' salary, (iii) "[r]elief deemed fair and appropriate by the Tribunal for loss of WBG career, and physical and emotional stress," and (iv) legal fees and costs in the amount of \$41,889.00.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

PRELIMINARY OBJECTION

The Bank's Contentions

The non-selection claim is outside the Tribunal's jurisdiction because the Applicant failed to exhaust internal remedies and the Applicant's claim is untimely

48. The Bank asserts that the Tribunal lacks jurisdiction over the non-selection claim for two reasons: (i) the Applicant failed to exhaust internal remedies and (ii) the Applicant failed to timely file his claim with the Tribunal.

49. The Bank contends that the Applicant failed to exhaust internal remedies when he untimely filed his non-selection claim with PRS. The Bank points to the fact that the Peer Review Panel dismissed the Applicant's claim regarding the non-selection decision because the Applicant filed his claim after the 120-day filing deadline. The Bank maintains that, under Tribunal precedent, failing to observe time limits for submitting a complaint to PRS constitutes a failure to satisfy the Tribunal's statutory requirement to exhaust internal remedies prescribed by Article II(2)(i) of the Tribunal's Statute.

50. The Bank further contends that the non-selection claim was filed outside the Tribunal's statutory time limits because the Applicant brought the claim after the 120-day filing deadline prescribed by Article II(2)(ii) of the Tribunal's Statute. The Bank contends that the *dies a quo* for the non-selection claim started to run on 24 February 2022, the date the Applicant received notice that he was not selected for a position through the FY22 Batch Rotation Exercise. To the Bank, the Applicant should have therefore filed a request for review of the matter by 24 June 2022; however, as noted above, the Applicant did not file his Request for Review until 8 July 2022, 134 days after receiving notice of the non-selection decision. The Bank maintains that, considering that the Applicant did not timely file the non-selection claim with PRS, he also did not timely file the non-selection claim before the Tribunal when he submitted his Application on 4 October 2023.

51. The Bank maintains that the Applicant has not alleged any exceptional circumstances that would cure the Applicant's failure to exhaust internal remedies and failure to timely file his non-selection claim; therefore, the non-selection claim must be dismissed.

52. Last, the Bank contends that the Applicant challenges two distinct decisions, and that the date that the Applicant received notice of the non-extension decision cannot serve as the *dies a quo* for the non-selection claim. To the Bank, the non-selection claim is time-barred, and only the non-extension claim is properly within the Tribunal's jurisdiction.

The Applicant's Response

The Tribunal has jurisdiction over the non-selection claim because it is inextricably linked to the non-extension claim

53. To the Applicant, the non-selection claim and the non-extension claim are inextricably linked and, therefore, the non-selection claim was jointly filed with the non-extension claim in a timely manner.

54. The Applicant asserts that there is no viable substantive reason why his two claims should have been filed separately because, in his view, the claims would have been joined or consolidated. The Applicant contends that there is a causal link between the non-selection decision and the non-extension decision, because, but for the failure to be placed in a position during the FY22 Batch Rotation Exercise, his appointment would not have been terminated. The Applicant points to the fact that the non-selection decision was provided as part of the business rationale for the non-extension decision during the PRS review; thus, both claims are inextricably linked and, together, form the basis of his claim.

55. The Applicant also contends that he had no reason to challenge the non-selection decision until he received the non-extension decision, because he reasonably relied on statements from management that the non-selection decision would not result in the termination of his employment. To demonstrate the types of reassurance and messaging staff received regarding batch rotation exercises, the Applicant refers to a January 2023 virtual townhall where the Human Resources

Vice President stated that, “even if [staff] are not placed this year for whatever reason, [they] will remain in [their] current position until we find something for [them].”

56. To further support his contention, the Applicant asserts that, after receiving notice that the FY22 Batch Rotation Exercise had concluded, he was still being considered for positions in the exercise that remained vacant. Additionally, to the Applicant, management’s willingness to meet with him in D.C. to discuss his placement in vacant positions reassured him that, despite not being selected for a batch rotation position, he would continue his Bank employment. Therefore, the Applicant maintains that, because of these reassurances and ambiguities regarding a final decision on a placement, it was not until he received the non-extension notice that he reasonably understood that he would not be placed in a batch rotation position.

57. Last, the Applicant contends that, even if submission of the non-selection claim was delayed, there is no prejudice to the Bank if the Tribunal considers the merits of the non-selection claim because the fourteen-day delay did not result in any loss of documents, evidence, or witnesses, and there is no surprise to the Bank regarding the claim. The Applicant maintains that “the interests of justice and equity” in the present circumstances dictate that the Applicant’s non-selection claim be heard.

MERITS

The Applicant’s Contentions

The non-selection decision was unfair and procedurally flawed; the non-extension decision was an abuse of discretion

58. The Applicant contends that the Governance GP FY22 Batch Rotation Exercise was (i) unfair because he was singled out based on his appointment type and (ii) procedurally flawed because the exercise lacked the requisite transparency and standardized procedures.

59. The Applicant maintains that, in violation of Principle 2.1 of the Principles of Staff Employment, the Bank differentiated, in an unjustifiable manner, between individuals or groups

within the staff. To support this contention, the Applicant points out that, of the seven staff members in the Governance GP who were not placed during the FY22 Batch Rotation Exercise, he was the only one whose employment was terminated “despite assurances to the contrary” and despite his previously consistent contract extensions over the past fifteen and a half years. In the Applicant’s view, he was unfairly differentiated, based on his term appointment type, from the other six staff members who were not placed and whose open-ended appointments with the Bank continued. In the Applicant’s view, had the end of his term appointment not coincided with the end of the FY22 Batch Rotation Exercise, his appointment would have continued like those of the other unplaced staff members.

60. To the Applicant, the absence of a standardized policy and process for batch rotation exercises across different global practices resulted in an outcome that was not fair, transparent, or impartial.

61. The Applicant compares the process followed by the Governance GP to how other global practices conducted their batch rotation exercises to demonstrate that the Bank allowed for different standards and processes across teams without proper basis and at the risk of a recruitment process marred by improper bias and abuse of discretion. The Applicant points out that the Governance GP’s exercise did not include interviews or an option to submit a statement of interest; rather, those participating in the Governance GP’s exercise “were merely told to rank their preferred positions and were expected to rely solely on the advocacy efforts of Line Managers.” The Applicant provides that, in stark contrast, the Macroeconomics, Trade & Investment Global Practice utilized shortlists and allowed candidates to advocate for themselves through statements of interest and interviews.

62. In the Applicant’s view, the process followed by his global practice demonstrates a complete lack of transparency, as there has been, thus far, no contemporaneous record as to what formed the basis for the non-selection decision, especially considering that Governance GP staff did not have the option to submit any materials demonstrating their suitability.

63. The Applicant notes that, despite his requests, the Bank has not produced minutes from the Talent Board meetings regarding decisions on the selection and final placement of the Governance GP staff in the rotation pool. To the Applicant, the Bank should be able to provide the procedure followed, deliberations, and reasons why he was not selected for any positions.

64. The Applicant contends that, because the FY22 Batch Rotation Exercise was unfair and improper, the non-extension decision, allegedly based on the FY22 Batch Rotation Exercise outcome, must also be improper. To the Applicant, the non-extension decision was arbitrary and made without a reasonable and observable basis.

65. In support of his contention, the Applicant first points out that the written notice of the non-extension decision did not provide the rationale for the decision. To the Applicant, this demonstrates that he was not furnished with a specific and true assessment providing him with a fair opportunity to dispute and possibly seek rectification of the Bank's decision.

66. The Applicant maintains that the rationale eventually put forward, namely a lack of demand during the FY22 Batch Rotation Exercise combined with his appointment approaching five years in the region, is not supported by the record.

67. To the Applicant, because he was qualified for at least three positions in the EAP region which were not filled during the FY22 Batch Rotation Exercise, the Bank has not demonstrated a lack of demand for his skills. Moreover, the Applicant maintains that there were other vacancies within his unit that he was qualified for, including his own position.

68. The Applicant further rejects the Line Manager's explanation that the Applicant was approaching a five-year term limit in the region, because the Line Manager's understanding of the term limit was clearly unsupported by Human Resources guidance and the Staff Guide, which stipulates a term limit of eight years. To the Applicant, the Line Manager's error in understanding the rules with respect to term limits in the region negatively affected the non-extension decision and led to the end of his career. The Applicant claims, in this respect, that his role continued after

the non-extension decision and that he could have therefore continued in his position had his Line Manager properly understood the term limitations.

69. The Applicant also points out that the Staff Guide provides for multiple options in situations where staff members are not selected during a batch rotation exercise, including participation in the following year's batch rotation exercise. The Applicant acknowledges that mutually agreed separation is also an option available to management in circumstances of non-selection during a batch recruitment exercise but maintains that, where that option is pursued, it is still mandatory for managers to follow a fair and reasonable procedure and have a reasonable and observable basis for such decisions.

The Bank's Response

The non-extension decision was a valid exercise of managerial discretion

70. The Bank concedes that the written notice of the non-extension decision should have provided the Applicant with the reasons supporting the decision not to extend his appointment. The Bank maintains, however, that the Applicant was nevertheless provided the reason for the non-extension decision. According to the Bank, the Applicant "first became aware of his unsuccessful participation in the Fiscal Year 2022 Batch Rotation, and thus the reasons for the non-extension, during a meeting with his Line Manager on February 17, 2022, during which the Line Manager informed [the] Applicant of the lack of demand and the unavailability of any cross-support opportunity as the reasons for not further extending his Term Appointment."

71. The Bank maintains that, in the absence of any demand for the Applicant's skillset in both batch rotation exercises, the Bank made a business decision within its authority not to extend the Applicant's term appointment.

72. According to the Bank, there was no possibility to allow the Applicant to stay in his position for a second consecutive four-year term because the Terms of Reference for that position "had changed over the course of time and required a breadth of skills (including program management and client relationship skills) that [the] Applicant did not have."

73. Moreover, the Bank contends that “a new incumbent had already been selected for the [Applicant’s former] position as part of the Batch Rotation exercise” and that there was no justifiable business need, nor available budget, to have two incumbents for the same position in Indonesia.

74. According to the Bank, the Line Manager exhausted all reasonable available avenues to secure the Applicant another assignment by (i) permitting him to participate in the FY21 Batch Rotation Exercise even though he had completed only three years in his position, (ii) extending his contract so that he could participate in the FY22 Batch Rotation Exercise during which he would have priority consideration, (iii) providing him with coaching, (iv) referring him to vacancies, and (v) reaching out to other regional practice managers in an attempt to secure him a cross-support opportunity.

75. Finally, the Bank contends that there was no promise to provide the Applicant with another term appointment. In the Bank’s view, absent any evidence of a promise, or an implied promise, by any Bank official for another appointment, the Applicant cannot demonstrate any legitimate expectation that his appointment would be renewed or that he would be offered another appointment.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

PRELIMINARY OBJECTION

Whether the Tribunal has jurisdiction to hear the non-selection claim

76. Article II(2) of the Tribunal’s Statute provides the following regarding the Tribunal’s jurisdiction:

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.

77. Regarding time limitations for requesting peer review, Staff Rule 9.03 provides, at paragraphs 8.01 and 8.02:

8.01 A staff member who wishes to request peer review must submit a Request for Review with the Peer Review Secretariat within 120 calendar days of receiving notice of the disputed employment matter [...].

8.02 A Staff Member receives “notice” of a disputed employment matter when s/he receives written notice or ought reasonably to have been aware that the disputed employment matter occurred.

78. Throughout its jurisprudence, the Tribunal has also underscored the importance of the requirement of exhaustion of internal remedies, which “ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action” (*Brar (Preliminary Objection)*, Decision No. 647 [2021], para. 65) and “greatly assists the Tribunal in promptly and fairly disposing of the cases before it” (*Berg*, Decision No. 51 [1987], para. 30). The Tribunal has also emphasized in numerous decisions that a failure to observe time limits for submitting an internal complaint or appeal, resulting in that complaint or appeal being rejected as untimely, is regarded as a failure to comply with the statutory requirement of exhaustion of internal remedies. *See, e.g., DW*, Decision No. 556 [2017], para. 50; *Sharpston*, Decision No. 251 [2001], paras. 25–26; *Setia*, Decision No. 134 [1993], para. 23; *de Jong*, Decision No. 89 [1990], para. 33.

79. The Tribunal notes that the Applicant was informed via email on 24 February 2022 that he was not selected for a position through the FY22 Batch Rotation Exercise. In that email, the Applicant was expressly informed by his Line Manager that “there was no placement for [the Applicant] in this rotation round due to lack of demand.”

80. The Tribunal observes that the Applicant did not submit a request for review of this communicated decision until 8 July 2022, 134 days after he received notice of the non-selection decision. Accordingly, the Peer Review Panel dismissed the Applicant’s non-selection claim for lack of jurisdiction, as the claim was untimely filed under Staff Rule 9.03.

81. The Applicant claims that, although he received notice of the non-selection decision on 24 February 2022, certain circumstances following the FY22 Batch Rotation Exercise led him to believe that the selection process had not officially concluded for him. Therefore, according to the Applicant, it was not until he received written notice of the non-extension decision on 16 March 2022 that he reasonably understood that he would not be selected for a batch rotation position and that the non-selection decision led to his appointment’s termination. As such, to the Applicant, the date of the non-extension decision sets the *dies a quo* for the non-selection claim.

82. The Tribunal considers that the Applicant’s applications to positions that were advertised as vacant after the batch rotation concluded, and his meeting with management regarding those positions, have no impact on the *dies a quo*.

83. The Tribunal finds that the Applicant’s untimely filing of an internal complaint and the subsequent dismissal of that complaint as untimely by PRS constitute a failure to comply with the statutory requirement to exhaust all internal remedies.

84. Having found that the Applicant did not timely file his non-selection claim and given that the Applicant has not provided any exceptional circumstances to justify the untimeliness of the claim, the Tribunal upholds the Bank’s preliminary objection.

85. However, the Tribunal notes that the Bank itself inextricably linked the non-selection decision to the non-extension decision, when it cited the non-selection decision as a basis for the non-extension decision, stating that the Applicant “first became aware of his unsuccessful participation in the Fiscal Year 2022 Batch Rotation, and thus the reasons for the non-extension.”

86. In *Motabar*, Decision No. 346 [2006], para. 21, the Tribunal determined that the scope of its review over a timely filed non-confirmation claim also extended to its review of an untimely challenge to a performance evaluation. In so deciding, the Tribunal explained that

the validity of the first interim OPE [Overall Performance Evaluation] is so intimately related to the [a]pplicant’s challenge to the decision not to confirm his appointment – a challenge which the [Bank] does not contest on jurisdictional grounds – that attempting to exclude consideration of that OPE would likely prove to be futile. It is therefore the decision of the Tribunal that it has jurisdiction to hear the [a]pplicant’s challenge to his first interim OPE, on both substantive and procedural grounds.

87. The present circumstances are analogous to those of *Motabar* [2006] in that the non-selection decision is so intimately related to the non-extension decision that review of the latter would be futile without consideration of the former. As such, the Tribunal will have regard to the facts relating to the non-selection decision, on both substantive and procedural grounds, to the extent that they are pertinent to the merits of the Applicant’s non-extension claim.

MERITS

Scope of the Tribunal’s review of non-extension decisions

88. Principle 2.1 of the Principles of Staff Employment provides that the Bank “shall at all times act with fairness and impartiality and shall follow a proper process in [its] relations with staff members.” Principle 9.1 further provides that “[s]taff members have the right to fair treatment in matters relating to their employment.”

89. The Tribunal has consistently held that there is no right, absent unusual circumstances, to the extension of term appointments. *See, e.g., CP*, Decision No. 506 [2015], para. 36. “Even so,

the decision not to extend a Fixed-Term contract, like all decisions by the Bank, must be reached fairly and not in an arbitrary manner.” *FK*, Decision No. 627 [2020], para. 60, citing *Tange*, Decision No. 607 [2019], para. 111.

90. As the Tribunal stated in *AK*, Decision No. 408 [2009], para. 41,

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

91. The Tribunal has made clear that, with respect to the non-renewal of a term appointment, the Bank must provide, to the staff member affected, the reasons for the non-renewal decision, and those reasons must be honest rather than pretextual. *See Tange* [2019], para. 129; *CS*, Decision No. 513 [2015], para. 77. This is congruent with the Tribunal’s observation in *Skandera*, Decision No. 2 [1981], para. 28, that

[i]t is in the interest of the Bank that the employment of qualified employees not be terminated on the basis of inadequate facts or ill-founded justifications, and one way to assure this is to furnish the staff member at the time of termination with a specific and true assessment which will provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank.

92. In examining whether the Bank has met the requirement to give honest reasons for a non-extension decision, the Tribunal must determine whether the Bank provided the Applicant with reasons for the non-extension decision and whether the reasons are in fact supported by the record.

93. The Tribunal recognized in *DD*, Decision No. 526 [2015], para. 40, that it may be “‘exceedingly difficult’ for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion.” In *GI*, Decision No. 660 [2021], para. 111, the Tribunal emphasized the importance of contemporaneous documentation of managerial decisions to assist the Tribunal in this review, noting that “later explanations cannot command the same weight as contemporaneous documentation.”

94. The Tribunal will review the present case in light of these standards.

Whether the Applicant's due process rights were respected in the implementation of the non-extension decision

95. In *Chaturvedi*, Decision No. 644 [2021], the Tribunal noted that the reasons for a non-extension decision must be timely provided to the staff member, explaining, at paragraph 114:

The Tribunal recalls that staff members must be provided with “a specific and true assessment” at the time of the decision “which will provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank.” *CS* [2015], para. 77, citing *Skandera* [1981], para. 28. The Tribunal finds that this failure to provide the [a]pplicant with the specific and true reasons for the non-extension decision at the time the decision was communicated to her constitutes a due process violation.

96. In the present case, the parties agree that the Applicant was not provided, in writing, with the reasons for the non-extension decision at the time the decision was conveyed to him.

97. The Tribunal therefore finds that the Bank's failure to provide the Applicant in writing with the reasons for the non-extension decision, at the time the decision was communicated to him, constitutes a due process violation.

Whether the non-extension decision was an abuse of discretion

Breach of promise

98. The Applicant asserts that management made various assurances to staff that batch rotation exercises would not result in termination of employment.

99. The Tribunal observes nothing in the record that would constitute a promise to the Applicant made by “an official with the authority to make a legally valid promise and capable of taking action attributable to the Bank” (*EM*, Decision No. 578 [2018], para. 65) that his appointment would be extended.

100. Based on the record, the Tribunal finds that no legally valid promise regarding the extension of the Applicant's appointment was made to the Applicant.

Differential treatment

101. The Applicant also claims that the non-extension decision was an abuse of discretion because the Bank unjustifiably treated him differently than other Governance GP staff who were similarly unmatched during the FY22 Batch Rotation Exercise but who remained employed by the Bank.

102. Principle 2.1 states that the Bank "shall not differentiate in an unjustifiable manner between individuals or groups within the staff." The Tribunal has previously opined on differential treatment as described in Principle 2.1. In *Crevier*, Decision No. 205 [1999], para. 25, the Tribunal recognized that "staff members in different situations will normally be governed by different rules or provisions," and explained that "discrimination takes place where staff who are in basically similar situations are treated differently."

103. Here, the Tribunal observes a key difference between the Applicant's situation as compared to the situation of the other unmatched staff in the Governance GP, namely, that the Applicant held a term appointment, whereas the other staff held open-ended appointments. The Tribunal notes, pursuant to Staff Rule 4.01, paragraph 2.01, that a "Term Appointment is an appointment for a specified duration"; in contrast, an open-ended appointment is an appointment of "indefinite duration."

104. The Tribunal recalls that an essential characteristic of a term appointment "is precisely that it provides for the exact end date of the contractual engagement between the Bank and the staff member." *Bhadra*, Decision No. 583 [2018], para. 73. The Tribunal considers that a batch rotation exercise cannot serve to insulate a staff member from the managerial decision that all staff members holding term appointments face at the end of their specified term – the determination of whether their appointment will be renewed, extended, converted, or ended.

105. Based on the nature of the appointment types, the Tribunal finds that the difference in the appointment type justifies the Bank's different treatment of the Applicant's appointment compared to the other unmatched staff with open-ended appointments of indefinite duration.

Whether there is a reasonable and observable basis for the non-extension decision

106. The Tribunal observes that there was no written reason for the non-extension decision provided to the Applicant at the time of the decision. During the PRS proceedings, the Line Manager cited, as the bases for her decision, a lack of demand for his services during the batch rotation exercises and her belief that the Applicant had reached the term limit in the region.

107. The Tribunal is mindful that the scope of its review of the FY22 Batch Rotation Exercise is limited. Recalling its determination on the jurisdictional challenge in this case, the scope of the Tribunal's review does not extend to the fairness of the Bank's global mobility framework or to its design, nor can the Tribunal order the Bank to rescind the non-selection decision. However, the Tribunal observes that the Bank itself inextricably linked the non-selection decision to the non-extension decision when it cited the non-selection decision as one of the reasons for the non-extension decision. On that basis, the Tribunal considers that, in order to conduct an effective judicial review of the non-extension decision, it is necessary to examine whether the non-selection decision was arbitrary, discriminatory, or improperly motivated; was carried out in violation of a fair and reasonable procedure; or lacked a reasonable and observable basis thereby constituting an abuse of discretion.

108. The Applicant contends that a lack of demand for his services during the FY22 Batch Rotation Exercise cannot be used as a basis for the non-extension decision because (i) the exercise was conducted in such a way that he was unable to advocate for his candidacy, and (ii) the FY22 Batch Rotation process lacked transparency. The Applicant also maintains that, had the Line Manager correctly understood the regional term limit, he could have remained in a position in the region.

109. The Tribunal observes the numerous emails from management describing the purpose of, eligibility for, and guidance on participating in the FY22 Batch Rotation Exercise.

110. While emails from management did not go into detail regarding the selection criteria and position descriptions of the vacant positions in the FY22 Batch Rotation Exercise, the Tribunal notes that the position descriptions were posted in the Compass portal and available to the candidates.

111. The Tribunal observes that Governance GP staff were explicitly informed that, while it was “not mandatory,” they had the option to upload a personal CV and cover letter in the Compass portal. Governance GP staff were also advised to “make use of preferences to increase their chance to be selected for a position of their choice” and to indicate their top five preferences “and any additional preferences in Compass.”

112. The Tribunal notes that the Applicant indicated a preference for nine positions and did not submit a personal CV or cover letter in the Compass portal. The Applicant did, however, submit his personal CV, his cover letter, and an assessment of a project he worked on to the Hiring Manager (Nepal, United States) via email indicating his interest and suitability for the Nepal-based position posted in the FY22 Batch Rotation Exercise.

113. The Applicant also asserts that the Governance GP’s FY22 Batch Rotation Exercise did not allow candidates to interview for positions, and that this procedure departed from the procedure followed by other global practices.

114. The Tribunal observes that there was no formal interview process within the Governance GP’s FY22 Batch Rotation Exercise but that there was the possibility for an informal interview, the context for which was described by the Talent Board as follows: “Follow-up informal interviews may be required between staff and line Managers to assess further fit for the position and define development needs as needed.”

115. The Tribunal notes the discussion between the Applicant and the project manager who had expressed interest in the Applicant's skills during the FY22 Batch Rotation Exercise. The Tribunal considers this discussion regarding the Applicant's suitability and interest in the Headquarters-based "Senior Financial Management Specialist/Senior Public Sector Specialist" position to be an informal interview in line with the informal interview procedure outlined in the Talent Board's emails to Governance GP staff.

116. In view of the above considerations, the Tribunal observes that candidates were able to submit their qualifications and interests, upon which the Talent Board and managers could form a basis for matching and assignment decisions.

117. The Tribunal observes that the criteria and procedure for the Talent Board to match and assign candidates were described to candidates as follows:

Matching and assignment decisions:

The Talent Board convenes to consider Staff for the next assignments considering institutional priorities and staff skills, based on career mobility principles, business needs, and staff preferences to the extent possible. Line Management will make final decisions on staff rotations, and rotations will occur as lateral reassignments.

118. The Tribunal observes nothing in the record to demonstrate the Talent Board's consideration of the matching and assignment factors identified above or the position descriptions posted in the Compass portal. The Tribunal notes that the Talent Board's Meeting Minutes of 18 January 2022 simply identify the Applicant as "unmatched." The Tribunal considers that the documentation does not provide a transparent deliberation procedure amenable to judicial review.

119. In *GI* [2021], para. 96, the Tribunal explained that contemporaneous documentation demonstrating the reasoning for managerial decisions is not expected to be "overly detailed or exhaustive," but that decisions must be "fair[,] transparent, and [...] amenable to judicial review." It further stated, "The Tribunal understands that it could be burdensome to require detailed documentation for every action of management. Still, without any relevant contemporaneous documentation, however minimal, it is difficult to ascertain whether managerial discretion was exercised fairly and transparently." *Id.*, para. 111. In that case, the Tribunal found that the

International Finance Corporation (IFC) failed to act with transparency and fairness, noting that it was not possible for the Tribunal to judicially review how candidates were assessed.

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

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

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

121. In the present case, the Tribunal also notes a lack of documentation of the Talent Board’s deliberations and/or reasoning in matching and assigning candidates during the FY22 Batch Rotation Exercise. The Tribunal is not satisfied that the Bank furnished sufficient evidence to permit the Tribunal to determine whether a fair assessment of the candidates, vis-à-vis the Applicant, was conducted during the FY22 Batch Rotation Exercise selection process. The Tribunal is therefore unable to review whether there was a “lack of demand” for the Applicant, as alleged by the Bank, such that the lack of demand serves as a reasonable and observable basis for the non-extension decision.

122. Based on the absence of sufficient support for this reasoning provided for the determination that the Applicant was “unmatched,” the Tribunal concludes that the FY22 Batch Rotation Exercise, as applied to the Applicant, lacked transparency and was an abuse of discretion. The Tribunal therefore cannot accept that the results of the FY22 Batch Rotation Exercise serve as a reasonable and observable basis for the decision not to extend the Applicant’s appointment.

123. The Tribunal observes that the result of the FY22 Batch Rotation Exercise was not the sole basis provided for the non-extension decision. The Line Manager also cited a five-year regional

term limit as the basis for her decision. The Tribunal will next determine whether the regional term limit provides a reasonable and observable basis for the non-extension decision.

124. First, the Tribunal observes that, according to the Staff Guide, and with some limited circumstances not applicable in the present case, a staff member's time in a regional assignment is limited to two consecutive four-year assignments. Next, the Tribunal observes the Chair of the Talent Board's email of 15 November 2021, which identifies the regional term limit as "8 years maximum." Last, the Tribunal observes the testimony of the Human Resources Manager provided during the PRS proceedings, explaining that "the limit on assignments in the same region was not five years, but rather eight years."

125. It is clear to the Tribunal that the regional term limit at the time of the non-extension decision was eight years and not, as the Line Manager stated in her reasoning for not extending the Applicant's appointment, five years.

126. The Tribunal therefore finds that the Bank has not provided a reasonable and observable basis for the non-extension decision.

REMEDIES

127. Having found that (i) the Bank failed to provide the Applicant with written reasons for the non-extension decision at the time of the decision and (ii) the non-extension decision lacked a reasonable and observable basis, the Tribunal will now turn to assess the appropriate remedies to be awarded to the Applicant. In so doing, the Tribunal considers the "gravity of the irregularity, the impact it has had on an applicant and all other relevant circumstances in the particular case." *CK*, Decision No. 498 [2014], para. 101.

128. The Tribunal has on several occasions throughout its jurisprudence determined on its own accord that compensation, rather than specific performance, is the appropriate remedy. *See, e.g., AI (No. 2)*, Decision No. 437 [2010], para. 69; *Hitch*, Decision No. 344 [2005], para. 76; *Skandera* [1981], para. 29. The Tribunal will make a similar determination here.

129. In the quantum of damages in the present case, the Tribunal takes into account the three-year term appointment the Applicant held, the successive appointment extensions and/or renewals the Applicant received over a period of fifteen years, the Applicant's age of sixty at the time of the non-extension decision, the Applicant's good performance, and all of the circumstances of the case, including the fact that the Applicant's position has been filled by another staff member. The Tribunal is also mindful that a term appointment "does not provide certainty that a staff member would have been employed indefinitely by the Bank." *HE*, Decision No. 698 [2023], para. 144.

130. Additionally, as stated in *DB*, Decision No. 524 [2015], para. 133, "the Tribunal is free to take into account any compensation already received by an applicant, and to adjust accordingly any award the Tribunal itself chooses to make." In this respect, the Tribunal considers that the Applicant was compensated for the due process violation in the amount of three months' net salary in accordance with the Peer Review Panel's recommendation.

DECISION

- (1) The Bank shall pay the Applicant twenty-one months' net salary based on the last salary drawn by the Applicant, for the improper non-extension decision;
- (2) The Bank shall contribute to the Applicant's legal fees and costs in the amount of \$37,000.00; and
- (3) All other claims are dismissed.

/S/Janice Bellace

Janice Bellace

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 3 May 2024