World Bank Administrative Tribunal

2017

Decision No. 553

Sara González Flavell,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary
1. This judgment is rendered by the Tribunal in plenary session with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The initial Application was received on 28 October 2015. Two subsequent Applications were received on 5 May 2016. The Applications were joined for the purpose of these proceedings. The Applicant was represented by Jazz Omari of Bretton Woods Law. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges: 1) the decision to declare her position redundant; 2) administrative decisions concerning her Fiscal Year (FY) 2015 Overall Performance Evaluation (OPE); and 3) management’s decision following the recommendations of the Peer Review Panel.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in October 1988. She served in different positions within the Legal Vice Presidency until August 2012 when she joined the Independent Evaluation Group (IEG) as a Level GG Special Assistant to the Senior Vice President and Director General of IEG (Director General), Ms. X. The Applicant worked in the “Front Office” known as IEGDG.

5. The position of Special Assistant to the Director General was reestablished when Ms. X joined the Bank in 2011. According to the Bank, Ms. X was informed that, as a Senior Vice President and Director General, it was “typical” for her to have a Special Assistant. As a result, the Special Assistant position was advertised and the Applicant was hired.
6. Shortly after the Applicant joined IEG, the relationship between the Applicant and the Director General began to deteriorate, which the Applicant maintains affected her health.

7. Between May and June 2013, the Applicant informed the Director General that she intended to look for alternative positions within the Bank.

8. In October and early November 2013, discussions about the Applicant undertaking a Developmental Assignment (DAIS) commenced. The parties differ on the genesis of the DAIS. According to the Bank, the Applicant requested to go on this assignment and the Director General agreed to fund the DAIS commencing 1 December 2013. According to the Applicant, the Director General suggested the DAIS and the Applicant found herself subjected to pressure to take the DAIS.

9. On 1 November 2013, prior to the commencement of the DAIS, the Applicant expressed reservations in an email to the Deputy Director General of IEG with copy to the Director General. The Applicant expressed concern that while she was on the DAIS her position may be abolished and declared redundant.

10. On 2 November 2013, the Deputy Director General responded to various points in the Applicant’s email, and stated:

    You have repeatedly expressed this concern that we have hidden plans to declare you redundant, and I have repeatedly responded that this is not the case. So I want to provide a clear written statement, which is copied to HR – we have no intention of declaring your employment redundant or abolishing the position of Special Assistant in the Front Office. We are supporting your request for a Development Assignment so that you can deepen your professional skills and opportunities, which will hopefully contribute to you finding a new position that is well aligned with your skills and professional aspirations. If you do not find a suitable position prior to the end of the Development Assignment, we expect you to return to the Front Office as Special Assistant with GG level accountabilities.

11. Between 3 and 5 November 2013, email messages were exchanged between the Deputy Director General, the Director General and a Senior Human Resources (HR) Business Partner supporting IEG. In these messages they considered the Applicant’s expressed fears of a
redundancy decision and noted that the Applicant had performance issues which, if she did not undertake the DAIS, may result in the institution of an Opportunity to Improve Unsatisfactory Performance plan (OTI).

12. On 1 December 2013, the Applicant began a one-year DAIS in the IEG Public Sector Evaluation Department (IEGPS). The supervisor of the DAIS was the IEGPS Manager.

13. In January 2014, the Director General scheduled a mid-year review with the Applicant to review work the Applicant performed for her between 1 July and 30 November 2013.

14. On 28 January 2014, the Applicant and the Director General met.

15. On 29 January 2014, the Director General sent the Applicant a summary of the feedback shared during the meeting.

16. During the months of January and February 2014, the World Bank Group Executive Board’s Committee on Development Effectiveness (CODE), which oversees the personnel, budget, and work programs of IEG, requested that IEG prepare an Expenditure Review. At CODE’s behest, IEG submitted a plan for an eight percent budget cut in fiscal years 2014-2016. This plan included reductions in staffing levels, consultant and travel costs, and office space.

17. On 30 March 2014, the Applicant sent the Director General an email message in which she raised what she perceived were inaccuracies in the feedback summary sent on 29 January 2014. The Applicant requested a follow-up discussion.

18. On 24 June 2014, the follow-up mid-year review discussion was held between the Applicant and the Director General. Also present was an HR Manager.

19. In July 2014, a Strategic Staffing Exercise (SSE) was launched by the World Bank Group. In light of IEG’s independence, IEG did not participate in the general World Bank Group SSE.
HR requested that IEG conduct a separate review in line with other World Bank Vice Presidential Units.

20. On 29 July 2014, the Applicant and the IEGPS Manager met to discuss the Applicant’s performance between 1 December 2013 and 30 June 2014. They also discussed the Applicant’s work program for the remainder of her DAIS.

21. On 4 August 2014, the IEGPS Manager and the Director General agreed to prepare separate sections of the Applicant’s FY2014 OPE regarding her work in the IEG Front Office and IEGPS.

22. On 27 August 2014, the Applicant met with the IEGPS Manager for her annual OPE discussion.

23. Between August and October 2014, the IEG Leadership Team developed a plan to conduct an IEG-wide SSE covering three parts: the Front Office; the Knowledge and Communications Department; and three Evaluation Departments.

24. In September 2014, an initial SSE for the Front Office, also known as IEGDG, was launched.

25. By 5 September 2014, the IEGPS Manager and the Director General had prepared a consolidated draft OPE for the Applicant and discussed a proposed Salary Review Increase (SRI). The draft OPE and proposed SRI were shared with a new IEG HR Business Partner for feedback.

26. On 8 September 2014, the IEG management team met to review and finalize the OPE and SRI ratings for all IEG staff members.

27. On 24 September 2014, the Applicant’s OPE was corrected to reflect the IEGPS Director as the Reviewing Manager.
28. On 26 September 2014, the Applicant was sent her formal written FY2014 OPE with a “Fully Satisfactory” OPE rating.

29. On 1 October 2014, the Applicant requested a meeting with the Director General to perform an annual OPE discussion. According to the Applicant, the Director General responded that the meeting was not necessary since the Applicant had already held the discussion with the IEGPS Manager.

30. On 10 October 2014, the Applicant discovered that she received a “3” SRI rating after accessing the HR Kiosk System.

31. In October 2014, the initial SSE for the Front Office was completed. Based on the outcome the Director General decided, in consultation with the IEG Senior Leadership Team (SLT) and HR that, among other staffing changes, the position of Special Assistant would be abolished.

32. On 21 October 2014, the Applicant, the Director General, and the HR Business Partner met to discuss the Applicant’s OPE including the comments made by both supervisors. The Applicant requested changes to the comments in the OPE.

33. On 29 October 2014, the Director General sent the amended OPE back to the Applicant and asked her to sign it. The Applicant did not respond.

34. On 7 November 2014, the Director General informed the Applicant that she had until 11 November 2014 to complete the OPE, or HR would be requested to close the OPE. The Applicant did not respond.

35. On 12 November 2014, the Director General requested HR to proceed with closing the Applicant’s OPE.

36. On 14 November 2014, the Director General met with the Applicant to inform her that IEG management intended to abolish the Special Assistant position for business and budget-related
reasons. Present at the meeting were the IEG HR Business Partner, and a Staff Association representative the Applicant had requested to accompany her to the meeting.

37. On 25 November 2014, the Performance Management Hotline advised the Applicant that she had until 1 December 2014 to sign her OPE or it would be closed.

38. On 25 November 2014, the Applicant filed a complaint against the Director General with the Office of Ethics and Business Conduct (EBC). The Applicant alleged retaliation, harassment, and the creation of a hostile work environment.

39. On 26 November 2014, the Director General sent the Applicant an email message to follow up on their 14 November 2014 discussion. She reiterated that IEG was conducting, like the rest of the World Bank Group, the SSE and that:

During the discussion, I informed you that IEG Management intends to abolish the SA position in the interests of efficient administration and budget savings. I explained that I see no business need for a SA, since IEG is a very small VPU, I am self-sufficient, I now have a strong Senior EA to help with administrative tasks, and the functions of the SA position can be reassigned to others.

40. The Director General added that she also explained that:

[T]he SLT has reviewed whether internal reassignment would be possible. I asked the Directors to review your CV, and their own staffing plans and business needs – and they all responded regretfully that they have no positions now or in the near future for internal reassignment that would be suitable for your abilities and experiences, bearing in mind that all IEG Departments are being affected by the IEG Expenditure Review commitments and the SSE.

41. The Director General informed the Applicant that IEG management would move forward with the staffing decisions toward the end of January or early February 2015. She encouraged the Applicant to, in the interim, “stay focused on completing any outstanding work from your 12-month Development Assignment in IEGPS,” and noted other work streams where the Applicant’s contributions would be helpful in December 2014 and January 2015. The Director General stated
that “[h]owever, if you feel that you want to use the interim 2-3 months to stay focused and do more job searching during this period, please let me know and I will be happy to accommodate.”

42. The Applicant accepted the Director General’s offer to focus on job searches.

43. On 1 December 2014, the Applicant requested an extension of one day from HR in order to finalize her OPE comments.

44. On 2 December 2014, the Applicant requested a second extension until 15 December 2014 for her to complete her comments. On the same day the Applicant requested a second round of changes to the OPE with respect to the section related to her work under the IEGPS Manager’s supervision.

45. On the same day, the IEGPS Manager made the changes. The changes were reviewed by the Director General, signed by both the IEGPS Manager and the Director General, and sent to the Applicant.

46. In December 2014, the Applicant requested mediation with the Director General to address a number of issues including the FY2014 OPE. On 18 December 2014, mediation between the Applicant and the Director General commenced.

47. On 22 December 2014, the Applicant requested a third round of OPE changes from the Director General.

48. On 31 December 2014, the Director General sent the revised OPE to the Applicant.

49. On 13 January 2015, the Applicant requested a fourth round of changes to her OPE from the IEGPS Manager.

50. On 15 January 2015, the Applicant was sent the revised OPE.
51. On 4 February 2015, the Applicant signed the OPE.

52. Between January and March 2015, the Applicant worked with HR and a talent development and transition company in her job search efforts.

53. In February 2015, an email was circulated announcing the arrival of a Level GE staff member to the Front Office to undertake some of the Applicant’s functions.

54. In March 2015, mediation between the parties was closed.

55. On 3 March 2015, the Applicant sent the Director General an email message stating that she had received “no communications from [the Director General regarding the abolishment of her position] in the last two months or any update as to any new timeline.”

56. On 4 March 2015, the Director General responded stating that the SSE was ongoing and that she expected the processing of the “HR action [to be made] when the overall SSE [was] completed,” which was now expected to be at the end of March 2015.

57. On 12 March 2015, the Applicant sent the Director General an email message informing her that the Applicant was available to continue her duties since approval from the Severance Review Group (SRG) had not yet been obtained for the abolition of her position. She stated, “I would like to clarify that until my position is abolished I am available to carry out all the duties and responsibilities of my position as Special Assistant.”

58. On 13 March 2015, the Director General responded stating, “If you have now changed your mind and would like to focus on IEG Front Office work during the current transition period, I will ask [the Deputy Director General], who coordinates the work program of the Front Office, to review our needs and follow up with you on possible temporary assignments during the current transition period. We do not need your assistance for any of the work accountabilities in the original job description of the Special Assistant to the Director General […]”. The Applicant was asked to confirm her interest in supporting IEG Front Office work under the supervision of the
Deputy Director General. The Applicant did not respond, believing that it was inconsistent with the terms of reference of her position to report to the Deputy Director General rather than directly to the Director General.

59. On the same day, the Applicant filed a Request for Review with Peer Review Services (PRS). In this Request for Review No. 238 the Applicant challenged the: 1) decision not to extend her DAIS; 2) decision to reorganize the Front Office and to abolish her position; 3) creation of a Level GE position to perform her duties; 4) failure to provide her with a work program; 5) failure to inform her whether the strategic re-staffing exercise will be carried out; 6) failure to use redeployment instead of redundancy; 7) determination that the Applicant should begin job searching; and 8) failure to take the appropriate steps to abolish the Applicant’s position.

60. The Applicant contended that the Director General undertook the above-mentioned action and inaction “capriciously and arbitrarily without regard to my rights as [a] Staff Member under the Staff Rules.” She asserted that the decisions to abolish her position, make her employment redundant, and to “re-grade” her position “were made without any regard to the work programs, staffing needs, business and administrative efficiency or [her] career.”

61. On 18 March 2015, the IEGPS Manager held the FY2015 mid-year performance discussion with the Applicant to review work she did in IEGPS from 1 July to 1 December 2014.

62. On 18 and 19 March 2015, EBC interviewed the Director General with respect to the Applicant’s allegations against her.

63. On 1 April 2015, the Applicant sent an email message to the Director General seeking a number of clarifications. She first stated that:

I was told you were abolishing my position in a matter of weeks. Had you told me it might take months rather than weeks, or how many months, (in a fortnight it will complete five months) then I would have chosen to return to my IEGDG position rather than undertaking immediate job search with the HR Transition Team at such a difficult time.
64. The Applicant then raised the timing of the completion of the SSE, stating:

In your email of March 13 you state “we will proceed with the processing of your HR action when the overall SSE is completed, which is now expected in end-March, 2015.” March has now ended – is there a new new date now? You can imagine the consternation all this uncertainty and lack of timely updates is causing to me and my family. We have financial and life-changing decisions to make and I need to consider the timing for my G4 visa termination.

65. Finally, the Applicant enquired whether the Director General would also hold a mid-year performance discussion with her.

66. On 3 April 2015, the Director General responded to the Applicant. She expressed that she had hoped that giving the Applicant early notification of the abolition of her position and “the possibility that [her] employment could become redundant” was providing her with additional time and opportunities to seek other positions. The Director General further noted that the overall SSE for IEG was being finalized and the Applicant would be informed once the process was completed. Finally, the Director General stated that the mid-year review the Applicant held with the IEGPS Manager satisfied one of the primary reasons for such reviews, and it was unnecessary for her to conduct another mid-year review with the Director General, “considering the ongoing overall Strategic Staff Exercise and HR actions that may arise from this exercise.”

67. On 8 April 2015, the Applicant submitted a PRS Request for Review (Request for Review No. 247) which was ultimately joined to her Request for Review No. 238. In her request the Applicant challenged, *inter alia*, her FY2014 OPE and the “resulting failure to provide a [work program], learning/training plan and career development for the current period.” She also challenged the failure to conduct a “full and appropriate mid-term review discussion,” and the denial of her “right to carry out the duties and responsibilities of [her] position” by the Director General who, the Applicant maintained, was either in the process or had already taken steps to abolish the Applicant’s position.

68. On 8 May 2015, the proposal to declare the Applicant’s position redundant was presented to the SRG for review.
69. Between 28 May and 25 August 2015 the Applicant held discussions with the Deputy Director General and HR regarding supervisor arrangements for her FY2015 OPE, the OPE objectives and feedback providers.

70. On 2 June 2015, the Applicant submitted a request for a period of sick leave greater than twenty-one days from 2 June to 1 July 2015. The Applicant asserts that she was experiencing increasing amounts of stress and anxiety on account of the SSE and the prospect of a notice of redundancy. The cause of the Applicant’s illness was noted as “stress of hostile work environment” and her diagnosis was “adjustment disorder with anxiety and depression.” The sick leave request was approved.

71. On 25 June 2015, the Applicant formally requested to be placed on Short-Term Disability (STD) with the Reed Group, the World Bank Group’s disability administrator.

72. On 1 July 2015, the Applicant received the Notice of Redundancy which stated that the decision to declare her employment redundant with effect 1 July 2015 was taken in accordance with Staff Rule 7.01, paragraphs 8.02(b) and 8.03.

73. On 28 July 2015, the Applicant communicated with some EBC investigators raising complaints on the Notice of Redundancy.

74. On 31 July 2015, the Applicant received an email message from an EBC investigator informing her that EBC had “already reviewed [her] claims relating to redundancy and retaliation,” and that its investigation report was submitted to the Vice President of Human Resources (HRVP) on 30 June 2015. The investigator indicated that he had sent her a message on 7 July 2015 informing her of this fact. He stated that EBC would not “re-review the same claim without any material change or modification to that claim.” In a subsequent email on the same day, the Applicant was informed by the investigator that once a report is submitted to HR, EBC has no further involvement in the matter. She was advised to contact HR.
75. On 12 August 2015, the Reed Group notified the Director General that the Applicant had been approved for STD from 2 June 2015 until 18 September 2015.

76. On 4 September 2015, following enquiries with HR on her FY2015 OPE process, the Applicant sent the IEGPS Manager an email message requesting to set up an OPE discussion with him. The IEGPS Manager responded noting that the fields for staff input on the ePerformance portal, such as the objectives, were empty. He requested the Applicant to prepare her self-evaluation and bring it with her when they meet.

77. The Applicant responded the same day stating that she had not put in the self-evaluation as she was “waiting to hear who/how my OPE would be conducted this year and this still has not been made clear to me.” She agreed to prepare and input a “write-up” and, in light of the holiday weekend, proposed they meet the following Tuesday or Wednesday.

78. On the same day, the HR Business Partner, who was in copy on the Applicant’s email message, responded that the Applicant had been duly made aware of the FY2015 OPE process.

79. The IEGPS Manager responded the same day suggesting they speak over the telephone either that day or the following Tuesday. He stated, “[g]iven the tight time line and my desire to give you feedback, can I suggest we try to do this over the phone sometime between 4:30pm today and 10am next Tuesday? […] Please let me know.” The Applicant did not respond to the IEGPS Manager until 8 September 2015.

80. On 7 September 2015, the Applicant forwarded the correspondence with the IEGPS Manager to the Senior Psychologist in the Health Services Department with copy to the Senior Occupational Health Specialist explaining that she believed the recovery of her health had taken a “serious set-back […] by [her] being requested to attend an OPE meeting and produce a write-up by next Tuesday morning (i.e. prepare over the Labor Day weekend as if I had no plans at all and could drop everything.)” The Applicant expressed frustration that she still did not know how her OPE was to be conducted. She stated that she cancelled her holiday plans and left a message for her doctor while increasing the dosage of her anxiety pills. She stated that she experienced panic
attacks all weekend. The Applicant further stated that she was seeking advice from her lawyer and doctor, but wanted to know whether “it’s reasonable to ask me to do an OPE over Labor Day weekend at short notice when I am on STD?”

81. The Applicant and the Senior Psychologist exchanged emails. In one of the email messages the Senior Psychologist stated that he had received confirmation that “by default all work-related contact is excluded during short-term disability.” The Applicant was advised to inform the IEG management team of this fact.

82. On 8 September 2015, the Applicant responded to an email message sent by the Director General on 4 August 2015. Expressing her apologies for the delay which she attributed to factors, including that she was on STD, the Applicant expressed concern at the proposal to have discussions with the Director General on development objectives and performance development when she did not have any FY2015 work programs in IEGDG.

83. On the same day, the Applicant sent the IEGPS Manager an email message stating, “[a]s I believe you know I am on STD at present, and on medical advice [I] am not attending to office matters outside business hours.” She then addressed matters of her OPE.

84. On the same day, the Applicant had further communications with the Health Services Department. She then sent an email message to HR stating that she was informed by the Health Services Department “that by default all work-related contact is excluded during short-term disability.” She requested that HR advise the IEG management team of this fact.

85. On 10 September 2015, the Director General sent the Applicant an email message in which she informed the Applicant that:

In light of Reed Group’s August 12, 2015 notification of your Short Term Disability (STD), the effectiveness of your July 1, 2015 Notice of Redundancy is being suspended until either i) you are off STD; or ii) the Reed Group advises me that you are fit to engage in a job search.
86. On 2 October 2015, the Director General informed the Applicant that her FY2015 OPE would not be completed until she was better and could fully participate. At the same time, the Director General conveyed that “the management team has assessed [her] performance as fully satisfactory – and [she] will be assigned a 3 rating.”

87. On 16 October 2015, the Applicant received a letter from the World Bank Corporate Secretary and President’s Special Envoy (Corporate Secretary) who had received the 29 September 2015 report of the PRS Panel. The Panel had concluded that

with respect to many aspects of this case, the Bank acted consistently with [the Applicant’s] contract of employment and terms of appointment. Specifically, the Panel determined that management had a reasonable and observable basis for its actions and decisions regarding: (i) the abolishment of her position and determination that her skills and experience were not needed for any other positions in IEG; (ii) the 2014 OPE; (iii) the 2014 performance rating; and (iv) the mid-term review. The Panel further concluded that management did not act with any discriminatory, retaliatory or other improper motivation in connection with its actions and decisions.

88. The Panel however found that:

There were flaws in management’s communication with [the Applicant] with respect to: (i) the process used in abolishing the Special Assistant position, specifically with regard to keeping [the Applicant] informed of the process, and; (ii) lost opportunities for [the Applicant] when she did not perform a work program during the period November 2014 through March 2015. In this regard, the Panel concluded that the Bank did not act consistently with [the Applicant’s] contract of employment and terms of appointment.

89. To compensate the Applicant for the above-mentioned procedural irregularities, the Panel recommended damages in the amount of three months of her net salary. The Corporate Secretary communicated to the Applicant his decision to accept the Panel’s recommendations. The Applicant declined the compensation offered.

90. On 28 October 2015, the Applicant submitted an Application to the Tribunal appealing the abolition of her position and the redundancy decision.
91. On 5 May 2016, the Applicant submitted two additional Applications to be joined to her initial Application. She challenges administrative decisions concerning her FY2014 and FY2015 OPEs and management’s decision following the recommendation from the Peer Review Panel. Collectively the Applicant seeks compensation in the amount of twenty-two and a half years’ salary and legal fees and costs in the amount of $54,172.

92. On 19 January 2017, the Applicant’s doctor completed a Release to Work Form noting that the Applicant was medically fit to return to work on 1 June 2017.

93. On 27 January 2017, the Applicant submitted the Release to Work Form to the Director General.

94. On 14 February 2017, the Director General responded to the Applicant informing her that “[based] on the return to work form you have provided me with,” the redundancy process will resume on 1 July 2017.

95. On 16 March 2017, the Release to Work Form was amended by the Applicant’s doctor to indicate that she was fit to return to work on 19 March 2017.

96. On 6 April 2017, the Bank informed the Tribunal that the Applicant’s STD benefits ended on 19 March 2017. However, the Bank stated that due to the Applicant’s refusal to participate in an independent medical evaluation, the Applicant has been placed on Administrative Leave and continues, for the time being, to receive payments as if she remained on STD status. The Bank also stated that considering the fact that the Applicant’s health status had not yet been established by the Reed Group, the Notice of Redundancy remains suspended.
SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Contentions under Application No. 1 (28 October 2015)

Challenges to the redundancy decision

97. The Applicant asserts that the Notice of Redundancy was affected by procedural irregularities. First, she contends that the Notice failed to specify “whether [the] Applicant had been selected by virtue of an abolition of functions or position.” The Applicant asserts that in order for such a decision to be properly taken the actual reasons must be notified to the staff member in question. Second, the Applicant avers that the manner in which the SSE was undertaken amounted to a procedural irregularity. The Applicant notes that at the meeting in which she was informed of the abolition of her position, she enquired whether approval had been received from the SRG and was informed that the redundancy decision had not yet been approved. She adds that she was subsequently informed by other sources that the SRG initially refused to give its approval. Despite this, she states that she was nevertheless led to believe that her position was being abolished and she was not “permitted to resume her functions.” The Applicant notes that hers was the only position abolished in IEGDG. She maintains that there was no material change in circumstances between when the SRG allegedly initially refused to approve the redundancy and July 2015 when approval was received. She thereby contends that the Bank has failed to provide adequate, full and transparent reasons for the redundancy. The Applicant argues that the Notice of Redundancy was procedurally irregular in that it followed her placement on STD.

98. The Applicant further argues that the redundancy decision was used as a masquerade for termination for perceived unsatisfactory performance. The Applicant asserts that the redundancy decision constituted an act of harassment and was issued in retaliation for her having filed a complaint with EBC. According to the Applicant, the redundancy decision constituted an abuse of discretion founded on bad faith, arbitrariness and improper motive, namely bias and dislike rather than any genuine improvement of the efficiency of the unit. To the Applicant, in light of the fact that a GE Level staff member was hired to carry out many of her functions and a GH Methods Officer position was created, the reason allegedly underpinning the abolition of her position, namely expenditure reallocation, did not materialize.
99. The Applicant contends that, as a result of the ill-motivated abolition of her position and mismanagement of her career, she has suffered significant harm to her professional reputation and a loss of professional opportunities. She asserts that HR and the Director General failed to take adequate and prompt steps to reassign her to another similar post or to provide her with training to facilitate such reassignment. She alleges that HR was negligent and facilitated the ill-motivated Notice of Redundancy. She states that despite knowing that the proposed abolition had not been approved, HR nevertheless encouraged her to undertake a job search. She also avers that she received conflicting instructions about whether she was to be present at the World Bank Group during the period of her job search. It is the Applicant’s case that, as a consequence of HR’s actions and omissions in the manner in which the circumstances surrounding the Notice of Redundancy were handled, she has suffered harm.

100. By virtue of the redundancy notice and decision, the Applicant maintains that she has directly suffered personal psychological injury in the form of depression and personality adjustment disorder, damage to her reputation, injury to her dignity, damage to her personal and family life, violation of her privacy and damage to the progression of her career. She seeks: 1) rescission of the notice of redundancy; 2) reinstatement to her position of Special Assistant or other suitable comparative advisory role; and 3) reinstatement to a GH Level position or higher and a review and increase of her salary. The Applicant seeks in the alternative that the Notice of Redundancy be extended to at least twelve months from such time as the Applicant is declared fit to return to work, to be determined upon medical approval, and therefore fit enough to undertake a meaningful search for alternative employment.

101. The Applicant further seeks compensation for: 1) moral damages; 2) pain and suffering and the damage to her personal and family life; 3) mismanagement of her career and loss of professional opportunity on account of permitting the redundancy after a short period in the position; 4) mismanagement of her career and loss of professional opportunity on account of management’s failure to make meaningful efforts to reassign her internally; and 5) actions taken by the Applicant to her prejudice “in reliance on misrepresentations by the Director General regarding the status of her redundancy.”
102. For the above, the Applicant seeks compensation in the amount of fourteen and a half years’ salary and any other compensation or remedy that the Tribunal deems just and proper.

**The Bank’s Response**

*There was a legitimate basis for the redundancy decision and management followed all applicable policies and procedures in declaring the Applicant’s position redundant*

103. The Bank maintains that the redundancy decision was legitimate and based on managerial considerations in the interest of efficient administration, as a result of the strategic review of the IEG Front Office. According to the Bank, the record shows that all applicable procedures for addressing redundancies were followed, and it made more than reasonable efforts to assist the Applicant to obtain another position. The Bank submits evidence that, in an attempt to redeploy the Applicant to another unit, other IEG Directors were contacted and requested to find alternative employment for the Applicant. However, no other opportunities were forthcoming.

104. The Bank asserts that the Applicant’s position was originally filled when the Director General joined the Bank in October 2011 and was informed that it was typical for a Senior Vice President to have a “Special Assistant.” However, the Director General realized she could manage her own agenda, and the remaining administrative tasks could be reassigned to a lower level administrative position. To the Bank, the decision to declare the Applicant’s position redundant was reasonable, well-founded and in the interest of efficient administration as there was no need for the Applicant’s legal and operational skills.

105. The Bank contends that the Director General delayed submission of the redundancy proposal to the SRG to “ensure that opportunities for reassignment were fully considered” before abolishing the Applicant’s position. The Bank avers that the postponement of submission to the SRG was deliberate and decided upon after the results of various consultations indicated that the entire IEG review should first be completed.

106. Furthermore, the Bank argues that the Applicant has not demonstrated how the redundancy process failed to comply with the Bank’s Staff Rules and Policies. The Bank argues that the
Applicant received more than enough notice of the proposed redundancy, but nevertheless perceives this advance notice as proof of bad faith and bias.

107. The Bank contends that the claims in this regard should be dismissed.

**The Applicant’s Contentions under Application No. 2 (5 May 2016)**

*Administrative decisions concerning the Applicant’s FY2015 OPE*

108. The Applicant challenges: 1) the 2 October 2015 decision by the Director General notifying the Applicant of a “default ‘satisfactory’ performance rating […] instead of postponing such formal evaluation until after the Applicant was no longer on [STD]”; 2) the decision by the Director General that the IEGPS Manager should carry out the performance evaluation when, according to the Applicant, “he was not [her] supervisor and was unqualified to evaluate her work for that period”; 3) the retroactive decision to name the IEGPS Manager as the Applicant’s supervisor for the OPE period under review; and 4) the “serial decisions by the Bank to switch the Applicant’s Reviewing Manager for this OPE period.”

109. In addition, the Applicant argues that the impugned decision, namely her “Fully Satisfactory” performance rating, was communicated to her without the requisite performance meeting which constitutes a procedural irregularity. The Applicant contends that she expended time and energy preparing the development objectives in anticipation of the meeting with the IEGPS Manager despite having to do this outside of business hours and during a public holiday weekend. She argues that the OPE meeting never took place and she was not afforded the courtesy of being informed of its cancellation.

110. The Applicant further contends that the notification of the performance rating after she was placed on STD was procedurally irregular. It is the Applicant’s contention that the Director General “failed to properly ascertain the applicable rules before arriving at the default performance rating of ‘satisfactory.’” According to the Applicant, the Director General “negligently conflated two separate scenarios: (i) where the evaluation meeting falls during a staff member’s STD the meeting should be postponed until such time as the staff member is once again declared fit to work;
and (ii) where the staff member spent period under review on STD leave, in which case a default performance rating applies.” The Applicant maintains that the default rating is applicable to staff who have been unable to work for the majority of the period that is under review.

111. The Applicant also challenges the failure to establish work objectives and the progressive redistribution of her tasks to other existing staff members within IEGDG and to a GE Level staff member whose position was created to undertake her functions. The Applicant further challenges the failure to notify her of her SRI and the failure to reassign her, as well as the mismanagement of her career. She asserts that during the restructuring, the Bank undersold her qualifications and experience to other departments by sending them an outdated CV. In addition, she avers that there were positions for which she would have been eligible within her own department but these were not offered to her.

112. The Applicant maintains that the impugned administrative decisions constituted harassment, abuse of discretion and improper motive. She further maintains that these decisions were made in retaliation for having twice taken recourse to the Bank’s internal justice system.

113. The Applicant seeks the following remedies: 1) revocation of the “Fully Satisfactory” performance rating and replacement with a higher rating; 2) appropriate determination of who her supervisor and reviewing manager are; 3) appropriate determination of her SRI; 4) placement at a Level GH position taking into account her loss of promotion as a result of the Bank’s conduct; and 5) cessation, by the Director General, the IEGPS Manager and any other individual, of conduct “willfully or recklessly designed to cause harm to the Applicant and her career and/or professional reputation or acts which will aggravate her medical condition or hinder her recovery.”

114. As a result of the impugned decisions the Applicant claims that she has suffered work-related psychological injury, personal injury – pain, suffering and loss of amenity, damage to her reputation and career progression, and economic loss. She seeks compensation for: 1) moral damages as a result of the “wrongful issuance of the satisfactory performance rating”; 2) moral damages and injury to her dignity as a result of the Director General’s attempts to amend her supervisor on the OPE without prior consultation or notification; 3) pain, suffering, personal
injury, and loss of amenity; 4) damage to professional reputation and loss of internal reassignment opportunities on account of the inaccurate performance rating; 5) erroneously naming a Reviewing Manager who did not know her work; and 6) mismanagement of her career and loss of professional opportunity on account of the “failure to make meaningful efforts to reassign her internally, resulting in the issuance of a Notice of Redundancy.” The Applicant further seeks back payment of her SRI to take into account a revised performance rating and back payment of any pension contributions or other benefits calculated in relation to her SRI.

115. For the above, the Applicant seeks compensation in the amount of three years’ salary and any other compensation or remedy that the Tribunal deems just and proper.

The Bank’s Response

The administrative decisions concerning the FY2015 OPE were fair and reasonable

116. The Bank first observes that during the 2015 OPE year the Applicant: 1) worked under the supervision of the IEGPS Manager between 1 July and 1 December 2014; 2) chose to focus on job searching between 2 December 2014 and 12 March 2015; 3) was on annual leave between 1 March and 11 May 2015; and 4) was on sick leave between 2 June and 30 June 2015. As a result, the Applicant’s performance for FY2015 could only be assessed on the basis of the work she performed for IEGPS, under the supervision of the IEGPS Manager. The Bank notes that the Applicant held a performance review meeting with the IEGPS Manager on 18 March 2015 which satisfied the requirement of an annual performance meeting. Furthermore, the Bank points out that the Director General sent the Applicant an email message on 4 August 2015 inviting her for an FY2015 OPE discussion, and a follow-up message on 11 August 2015 after the Applicant did not respond. On 12 August 2015, the Director General was informed that the Applicant had been approved for STD.

117. The Bank maintains that due to the Applicant’s own correspondence about her OPE, both the Director General and HR were under the impression that she was willing to complete her FY2015 OPE despite being on sick leave. It is for this reason, the Bank contends, that IEG management was responsive. The Bank argues that to present IEG management’s responsiveness
as harassment is unacceptable. The Bank notes that once the Applicant informed HR to advise IEG management that work-related contact was to be excluded while she was on STD, all communication regarding the OPE ceased. In addition, the Director General informed the Applicant that the OPE would not be completed until the Applicant was better and could fully participate.

118. With respect to the “Fully Satisfactory” rating which was given to the Applicant, and the corresponding SRI of “3”, the Bank contends that these ratings were the result of several consultations between IEG management and HR, and were based on her pre-established objectives and actual work in IEGPS. The Bank argues that there is no evidence that the “Fully Satisfactory” rating was based on bias or impermissible criteria.

119. Finally, the Bank contends that the record shows it worked diligently to accommodate the Applicant’s “numerous requests and demands” and there is no support for any claims of abuse of discretion or improper motive.

120. The Bank contends that the Applicant’s claims in this regard should be dismissed.

**The Applicant’s Contentions under Application No. 3 (5 May 2016)**

*Management’s decision following the recommendation of the Peer Review Panel*

121. The Applicant challenges the decision dated 2 November 2015 taken by the World Bank Corporate Secretary following the PRS Panel’s recommendation dated 29 September 2015 rejecting the Applicant’s full request for relief. It is noted that the Corporate Secretary accepted the Panel’s recommendation to partially uphold the Applicant’s claims. The actions and inactions which the Applicant challenged, which were not upheld and thus the subject of this Application, are: 1) the decision not to extend the DAIS; 2) the decision to reorganize the Front Office and failure to keep the Applicant updated; 3) the insistence that the Applicant commence a job search immediately in November 2014; 4) the creation of a Level GE position; 5) the failure to agree to a work program, training objectives and group mapping; 6) the failure to reassign the Applicant; 7) the failure to hold an OPE meeting during the fiscal year; 8) the refusal to review “unduly
negative content in the 2013-2014 OPE and duress to sign”; 9) the failure to provide feedback from feedback providers; 10) the failure to appoint a Reviewing Manager for the period under review; 11) the refusal to undertake a mid-year review for the 2014-2015 review period; 12) breaches of confidentiality; and 13) the miscalculation and failure to notify the Applicant of her SRI.

122. It is the Applicant’s contention that these managerial decisions, actions and inactions constituted harassment, abuse of authority and were done with improper motives.

123. The Applicant also contends that there were flaws in the PRS process which tainted the outcome of the decision namely: 1) inequality of arms; 2) insufficient time allotted to the hearing; 3) failure of the PRS Panel to take all relevant matters into account; 4) failure of the PRS Panel to address the Bank’s lack of disclosure; 5) the PRS Secretariat’s refusal to accept jurisdiction on matters falling within its sphere of competence; and 6) unreasonable delay.

124. With respect to inequality of arms, the Applicant contends that she should have been allowed to have a legal representative to assist her in drafting her pleadings in light of her medical situation. She maintains that she was “compelled by duress of circumstance to acquiesce” and attend the PRS proceedings in order to defend her interests. Regarding the insufficient time allocated to the hearing, the Applicant observes that due to a delay from the Director General there was insufficient time and the time estimate was not re-evaluated or increased to take the additional case issues, evidential materials and witnesses into account. It is the Applicant’s contention that she was disadvantaged by this. Regarding the alleged failure of the PRS Panel to take all relevant matters into account, the Applicant argues that the PRS Panel “artificially compartmentalized the contested decisions and failed to appreciate the broader picture that they were part of an ongoing course of conduct.”

125. On the Applicant’s contention that the PRS Panel failed to address the Bank’s lack of disclosure, the Applicant refers to her request, and that of the PRS Panel, for the Bank to produce the EBC investigation report. She contends that by failing to insist on the disclosure of this document and ancillary items, the PRS Panel erred, and was not equipped with all the elements
necessary for the determination of the Applicant’s case. Finally, the Applicant claims that the PRS Panel’s issuance of the report two months later than expected breached her fundamental right to a resolution of her case without unreasonable delay.

126. Regarding the conduct of the PRS Secretariat, it is the Applicant’s contention that the Secretariat erred by excluding her claims that the Director General’s conduct amounted to abuse of authority and harassment on the grounds that such claims were outside the PRS Panel’s scope of review. According to the Applicant, she sought a finding of fact that misconduct had occurred for the purpose of granting her a remedy, not the imposition of disciplinary measures on the Director General.

127. The Applicant seeks: 1) removal of the FY2014 OPE from her personnel record; 2) revocation of the satisfactory performance rating and replacement with a higher rating; 3) re-calculation of her SRI based on the higher rating and backdating the increase; 4) re-calculation of pension contributions based on the new increased salary; 5) a fair and impartial review of her salary to be conducted by HR based on comparison with her peers, taking into account specific factors; and 6) cessation by the Director General, the IEGPS Manager and any other individuals, of conduct “willfully or recklessly designed to cause harm to the Applicant and her career and/or professional reputation or acts which will aggravate her medical condition or hinder her recovery.”

128. The Applicant asserts that she has suffered work-related psychological injury, personal injury – pain, suffering and loss of amenity, damage to her reputation and career progression and economic loss, in the form of medical and legal costs, and imminent loss of future income as a result of these specific claims.

129. The Applicant seeks the following remedies: 1) reinstatement to her position (or the same position elsewhere in the Bank) should and when her medical health permits, and with such allowances as her doctor may require; 2) in the alternative, taking into account her loss of promotion, transfer to a Level GH position or higher and a review and increase of the Applicant’s salary; and 3) restoration of her annual leave and sick leave entitlements that would have accrued had the Applicant not gone on STD.
130. The Applicant seeks compensation for: 1) moral damage and injury to her dignity and professional reputation as a result of “the unlawful removal of [her] duties both before and after her DAIS,” among other impugned decisions; 2) pain, suffering, loss of amenity and personal injury as a consequence of the Bank’s actions and the failure of HR and the internal justice system; 3) mismanagement of her career and loss of professional opportunity on account of the pressure and misrepresentations made to her to accept the DAIS; and 4) loss of professional reputation by selecting a Level GE staff member as “Acting Special Assistant,” “publicly denigrating the grade of the post.”

131. For the above, the Applicant seeks compensation in the amount of five years’ salary and any other compensation or remedy that the Tribunal deems just and proper.

The Bank’s Response

The Applicant’s FY2014 OPE and SRI were fair and reasonable and there were no procedural irregularities before PRS

132. With respect to the Applicant’s FY2014 OPE, the Bank notes that the Applicant was not given a negative or poor performance evaluation, nor was she harmed by the favorable evaluation that she received. In light of this, the Bank argues that the “standard of review here should accord [the] Respondent greater discretion in light of the subjective assessments that are at issue.”

133. The Bank contends that the process surrounding the FY2014 OPE was also conducted in the appropriate manner. As the Applicant had worked for both the IEGPS Manager and the Director General during the review period, they both drafted her OPE and held OPE meetings with her. The Bank argues that despite the fact that the rules and procedures were followed, the Applicant “expressed her discontent with the satisfactory ratings and requested some changes to the OPE language.” Both the IEGPS Manager and the Director General complied with all her requests to make amendments in the OPE in a process that lasted almost five months.

134. The Bank argues that the evidence shows that the Director General and the IEGPS Manager “bent over backwards” to comply with Principle 2 of the Principles of Staff Employment which
obliges management to act with fairness and impartiality, and to follow a proper process in its relations with staff members.

135. With respect to the Applicant’s allegations against the PRS process, the Bank first contends that PRS’s decision not to accept jurisdiction for matters under investigation by EBC was consistent with the limitations established in Staff Rule 9.03. Second, the Bank avers that if the Applicant wished to contest EBC’s actions and the inactions of the HRVP in relation to EBC’s investigation, the Applicant should have filed a separate claim before the Tribunal within one hundred and twenty days after the occurrence of the event, or the receipt of notice that the relief asked for would not be granted in accordance with Article II(2) of the Tribunal’s Statute.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

136. Given the volume and detail of the claims before it, the Tribunal will address the Applicant’s main claims in the manner in which they were presented, as separate Applications which were joined for the purpose of these proceedings.

CHALLENGES TO THE REDUNDANCY DECISION

137. The scope of the Tribunal’s review in redundancy cases is well established. The Tribunal recognizes that the decision to declare a staff member’s employment redundant is an exercise of managerial discretion. Nevertheless, such a decision will be reviewed to determine whether there has been “an abuse of discretion such as where a decision is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.” See Harou, Decision No. 273 [2002], para. 27 citing Kahenzadeh, Decision No. 166 [1997], para. 20; and Mahmoudi (No. 2), Decision No. 227 [2000], para. 24.

138. To be upheld, the redundancy decision in question must be based on a legitimate rationale, and must have been made in the interest of efficient administration. See e.g., DI, Decision No. 533 [2016], paras. 85-87 and Marchesini, Decision No. 260 [2002], paras. 30 and 35. To substantiate a claim against a redundancy decision, the initial burden of proof lies upon the Applicant who must
make a *prima facie* case of abuse of power. *See de Raet*, Decision No. 85 [1989], para. 57. However, the Tribunal has recognized, in *DD*, Decision No. 526 [2015], para. 40, that it may be “‘exceedingly difficult’ for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion.” It is thus incumbent upon the Tribunal to require, from the Bank, the strictest observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy. Otherwise,

ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in “the interests of efficient administration.” (*Yoon* (No. 2), Decision No. 248 [2001], para. 28; *Husain*, Decision No. 266 [2002], para. 50; *Harou*, para. 27; and *Fidel*, Decision No. 302, [2003], para. 24.)

139. The record shows that the Applicant’s position was declared redundant pursuant to Staff Rule 7.01, paragraph 8.02(b) which provides:

> Employment may become redundant when the Bank Group determines in the interests of efficient administration, including the need to meet budgetary constraints, that:
> 
> […]
>  
> b. A specific position or set of functions performed by an individual in an organizational unit must be abolished […]

*Whether there was a legitimate rationale for the redundancy decision under Staff Rule 7.01, paragraph 8.02(b)*

140. Having reviewed the record, the Tribunal finds that a genuine strategic staffing exercise was conducted by the Applicant’s managers with the goal of ensuring “alignment of staff resources with IEG strategic directions set out in FY15-17 work program.” The record shows that this exercise was initiated following instructions from CODE to IEG management to submit a plan for budget cuts in fiscal years 2014-2016. The submitted plan for an eight percent budget cut included reductions in staffing levels, consultant and travel costs, as well as office space. The record further shows that the exercise was conducted across three parts of the units namely: the Front Office, the Knowledge and Communications Department, and three Evaluation Departments.
141. The Applicant asserts that she was the only person whose position was declared redundant in the Front Office, despite her functions still being performed. The Tribunal observes that under Staff Rule 7.01, paragraph 8.02(b) either a specific position or the set of functions may be abolished. See DV, Decision No. 551 [2016], para. 58 citing Harou, para. 34. In the present case, the rationale behind the abolition of the Applicant’s position was that her specific position was no longer needed. As a result, the functions she performed were either no longer necessary or could be reassigned to other staff, including junior staff.

142. The Tribunal recalls that the position of Special Assistant was re-introduced by the Director General in 2011 based on the recommendation that someone of her stature should have a Special Assistant. Having determined that the position was no longer needed, the distribution of functions previously performed by the Special Assistant was specified in the Request for Approval of Severance Payment submitted to the SRG:

The functions of the Special Assistant to the Director General, Evaluation will be addressed as follows. Some of the functions spelled out in the original job description of the Special Assistant are no longer needed – i.e. supporting preparation of the IEG work program and budget; supporting DGE and ELT communications to staff, supporting implementation of Staff Survey follow up and D&I Compact, coordination with other WBG oversight groups, supporting development of the work program of the Evaluation Cooperation Group (ECG) and coordinating IEG participation in ECG activities […]

[…]

Some of the functions will be reassigned to the Senior Advisor and Deputy to Director General (i.e. advising the DGE on strategic priorities), who already serves as the principal advisor to the DGE and IEG Leadership Team on strategic priorities[.]

[…]

Some functions will be reassigned to the Senior Resource Management Officer in the FO (who plays the role of CAO in IEG), notably the overall coordination of deliverables […]. Having one person in charge of deliverables coordination will eliminate the current problem of duplication of effort and multiple tracking systems[.]

[…]

Some functions will be reassigned to the Senior EA to the DGE (i.e. chairing the weekly coordination meeting with the departmental Senior EAs, maintaining IEG processing guidelines and informing staff about changes to guidelines, maintaining IEG calendar of activities; coordination of monthly VPU meetings; coordination of briefing materials, talking points, and speeches for the DGE, and facilitating DGE travel) [.]

Some functions will be passed to the new GE-level Evaluation Analyst (i.e. preparing agendas for and minutes of leadership team meetings and retreats, and coordinating IEG engagement at Board and Committee meetings and WBG corporate meetings).

143. The Tribunal is therefore satisfied that there was a legitimate basis for declaring the Applicant’s position redundant. Having held that a legitimate basis for the redundancy decision existed, the Tribunal will now review the record to assess whether the redundancy decision was affected by improper motivations.

Whether the redundancy decision was affected by improper motivations

144. In addition to demonstrating a legitimate basis for the redundancy, it is imperative for the Bank to demonstrate that the abolition of the Applicant’s position was not based on, or tainted by, improper motivations such as perceived performance deficiencies. It is the Applicant’s contention that the redundancy was used as a “masquerade for termination for perceived unsatisfactory performance.” She further contends that the redundancy decision was founded on “bad faith, arbitrariness and improper motive namely bias and dislike rather than any genuine improvement of the efficiency of the unit.”

145. With respect to the Applicant’s claim that the redundancy decision was made to address perceived performance deficiencies, the record contains email messages exchanged in November 2013 between the Director General, the Deputy Director General and a Senior HR Business Partner. The record shows that these messages were exchanged at a time when the Applicant’s managers were processing a DAIS for her and discussing the Applicant’s stated fears that her position would be declared redundant were she to accept the assignment. In one of the email messages dated 3 November 2013, the Deputy Director General stated:
My view is that [the Applicant’s] work issues relate to unsatisfactory performance (not redundancy), as she has not been able to demonstrate that she can perform the functions of the Special Assistant as required, despite one year of “on the job” training, the hiring of the coach, mentoring by me, extensive feedback from you, etc. I know that you have been giving her a lot of clear and specific feedback on her performance, including in her last OPE, and are now regularly sending her written notes after your verbal feedback.

[…]

If she decides to forego the [Developmental Assignment] and stay in the [Front Office] […] then I think we need to discuss with HR about launching now the Opportunity to Improve Performance, as her performance issues are creating extra work and stress for all of us. As you know better than any of us, the way she handled the preparation of your current trip to Switzerland was inexcusable, and the timeliness and quality was well below the standards and accountabilities of a GG.

146. In response, the Director General agreed that the “function needs to be fulfilled and fulfilled well.” She further added that it was “hard to imagine why [the Applicant] is struggling so much, as she seems to be trying, but yet is having difficulties grasping even basic things. Given how this affects not only the [Front Office], but IEG as a whole and relationships with others, it is important and increasingly urgent to find a solution.”

147. The HR Business Partner responded noting that it appeared the Applicant had a “lot of anxiety about her future employment at IEG,” and was “well aware of where she has not met expectations and this causes anxiety.” She added that the Applicant needed to “understand the implications of changing her mind and not taking up the DAIS. However, as her OPE shows fully successful, it becomes [a] difficult base to suggest an Opportunity to Improve at this time.”

148. The Tribunal is of the view that while the Applicant’s managers and the Senior HR Business Partner appeared to conclude that redundancy was not an option at that stage, it is nevertheless clear from the record that there were existing concerns about the Applicant’s performance despite the “Fully Successful”/ “Fully Satisfactory” OPE ratings she was awarded. A solution was actively being sought.
149. During this same period the record shows that the Applicant and the Director General continued to have a difficult working relationship. At the beginning of 2013, the Director General was made aware, by the Deputy Director General, that the Applicant had encouraged colleagues to seek the guidance of the Staff Association and to use the internal justice system. The Director General was also aware that the Applicant had gone to the Ombuds Services Office. According to the Applicant’s EBC complaint against the Director General, the latter had “shouted, screamed, and berated her on several occasions during their weekly one-to-one half hour meetings during the middle and latter parts of 2013.” Some of the witnesses interviewed by EBC testified to seeing the Applicant crying due to the conditions of working in the Front Office, and one was reported as stating that she would hear some “‘high tones of voices’ mainly coming from [the Director General], but not [the Applicant].” The Tribunal takes note of the fact that EBC did not find evidence that the redundancy decision was made in retaliation for the Applicant’s use of the internal justice system. Furthermore, the HRVP, in his letter to the Director General, did not find that she committed misconduct. His letter nevertheless expressed concern about “what appear[ed] to be continuing and serious managerial issues within IEG.”

150. Finally, the record shows that prior to the completion of the IEG SSE, and prior to receiving approval from the SRG, the Director General and the SLT had already earmarked the Applicant’s position for abolition. Following HR’s advice that actual abolition of the Applicant’s position be delayed until the SSE was completed, the Director General enquired whether she should communicate to the Applicant that the decision to abolish her position still “stands.” In addition, the Deputy Director General expressed concern about permitting the Applicant to work in other units during the waiting period. Enquiring from the HR Business Partner whether they were going to “give [the Applicant] an option to either work for two months, or use the time for additional job search,” the Deputy Director General stated, “[i]f she chooses to work […] aren’t we letting her make the case that she could do work and add value there?”

151. The issue is whether these concerns about the Applicant’s performance and her difficult working relationship with the Director General improperly influenced the decision to abolish the Applicant’s position. In other words, “whether the objectivity of the redundancy decision was impaired.” See DV, para. 67. The record shows that the decision to select the Applicant’s position
for redundancy was influenced by the perception that the Applicant was not properly fulfilling the functions of that role. Additionally, the Applicant and the Director General did not have a good working relationship, which is critical for the position of Special Assistant to the Director General. The Tribunal recalls that the position of Special Assistant was re-introduced only when Ms. X became the Director General. As was held in *Husain*, para. 44:

Even though there may have been objective reasons to reconsider the earlier decision to create the position of Office Manager, the Tribunal is of the view that the decision to abolish that position must be considered to have been tainted by improper motivation and extraneous considerations.

152. Similarly, here, the Tribunal finds that the Bank has not convincingly demonstrated that the decision to declare the Applicant’s position redundant was taken independently of the perception of her performance and the working relationship with the Director General.

**Whether the redundancy decision complied with the procedural requirements**

153. The Tribunal will now consider the Applicant’s contention that the Bank failed to observe the procedural requirements in implementing the Staff Rules regarding the redundancy decision. The Tribunal has frequently stressed that “[i]t is of utmost importance for the Bank to follow established procedures closely so as to ensure transparency and avoid the appearance of unfairness.” *Moussavi (No. 2)*, Decision No. 372 [2007], para. 47. It is further well established that the basic elements of due process and the rule of law mandate that a staff member receives clear notification of the exact and correct Staff Rule under which his/her employment is being terminated. *See Yoon (No. 2)*, para. 37. Though Staff Rule 7.01 does not provide for specific advance warning about the issuance of a redundancy notice, “a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspect of his work.” *Garcia-Mujica*, Decision No. 192 [1998], para. 19.

154. The Applicant alleges the following procedural irregularities: 1) failure of the Bank to specify on the Notice of Redundancy “whether the Applicant had been selected by virtue of an
abolition of functions or position”; 2) failure to obtain SRG approval prior to notifying her of the redundancy decision; and 3) declaring her position redundant after her placement on STD.

155. The Tribunal finds that of these claims only one is sustainable, namely that the Bank failed to obtain SRG approval prior to notifying her of, and implementing, the redundancy decision. While it is preferable that staff members are provided with advance notice of any impending negative employment decisions, it is improper to put these decisions into effect without the necessary approval and compliance with the procedures. The record shows that the redundancy decision was communicated to the Applicant in a meeting on 14 November 2014 and she was told that approval was imminent. Following HR’s advice to reframe that discussion as a “heads up,” the Director General sent the Applicant an email on 26 November 2014. In this email it was nevertheless communicated to the Applicant that approval was imminent and she was provided with a choice of a limited number of work products she could support, in the “interim 2-3 months,” or the opportunity to use the “interim 2-3 months to stay focused and do more job searching during this period.” The Applicant was led to believe, by both the 14 November 2014 meeting and the 26 November 2014 email, that approval of the decision was imminent and the abolition of her position was essentially a done deal.

156. Moreover, the Applicant’s position was effectively made redundant and her functions were distributed to other staff members, all prior to obtaining SRG approval. The record shows that SRG approval was obtained seven and a half months after the Applicant was first informed of the redundancy decision. In light of the fact that the Applicant’s position was not officially declared redundant until 1 July 2015, steps should have been put in place to ensure that the Applicant had a work program and was able to perform her duties. On the contrary, it was the Applicant who, on 12 March 2015, contacted the Director General to state that she was available to perform her duties since SRG approval had not been obtained. The Director General’s response that they “do not need [the Applicant’s] assistance for any of the work accountabilities in the original job description of the Special Assistant to the Director General […],” further supports the finding that the redundancy decision was improperly implemented prior to complying with the procedural requirements.
157. With respect to the Applicant’s other claims associated with the redundancy decision the Tribunal finds that these lack merit. The Notice of Redundancy clearly stated the applicable Staff Rule, and the supporting documentation noted the fact that the Applicant’s position was being declared redundant while her functions were being redistributed. Furthermore, the record shows that at the time the Notice of Redundancy was sent to the Applicant, the decision of the Reed Group to place her on STD had not yet been communicated to the Applicant’s managers. The record further shows that shortly after this decision was communicated to the Director General, she sent the Applicant an email message notifying her that the “Notice of Redundancy is being suspended until either i) you are off STD; or ii) the Reed Group advises me that you are fit to engage in a job search.”

CHALLENGES TO THE ADMINISTRATIVE DECISIONS CONCERNING THE APPLICANT’S FY2015 OPE

158. The Tribunal will now consider the Applicant’s claims concerning the administrative decisions associated with her FY2015 OPE. The Applicant’s principal claim in this regard is that the FY2015 OPE process was procedurally flawed. In particular, she contends that the IEGPS Manager was improperly designated as her supervisor for the OPE period and he was “unqualified to evaluate her work for that period.” Furthermore, she asserts that the OPE discussion never took place and challenges the decision to award her a “default” performance rating of “Satisfactory,” which she avers should have been postponed until she was no longer on STD. The Applicant contends that a default rating is applicable to staff who have been unable to work for the majority of the period that is under review. She further contends that the notification of her performance rating after she was placed on STD “was procedurally irregular.”

159. The Tribunal is unpersuaded by the Applicant’s arguments. The record shows that the IEGPS Manager was properly equipped to evaluate the Applicant’s work as he was her supervisor for five months between 1 July and 1 December 2014. The record also shows that the Applicant focused on job searches between 2 December 2014 and 12 March 2015, was on annual leave between 1 March and 11 May 2015, and was on sick leave between 2 and 30 June 2015. The Tribunal notes that it has held that the redundancy decision was improperly implemented leaving the Applicant without a work program. Nonetheless, even if she had performed work for the
Director General upon her return to IEGDG on 1 December 2014, the IEGPS Manager would still have been qualified to evaluate her performance as a supervisor.

160. Concerning the OPE rating, the Tribunal observes that the Applicant was given a positive performance review. Though she may have preferred a more positive rating given her perception of her work, there is no evidence that the rating decision was arbitrary or improperly motivated. The Tribunal observes that, put in context, the Applicant’s arguments appear misplaced. As was held in *Mpoy-Kamulayi (No. 8)*, Decision No. 480 [2013], para. 22, “[r]endering judgment on the appropriateness of a Fully Successful versus a Superior rating comes close to a microscopic review” of the Applicant’s performance. This is a task which would involve an “unwarranted intrusion on managerial discretion.” *Id.* In addition, there is no evidence that the “Fully Successful” rating awarded to the Applicant was a “default” performance rating due to her placement on STD as opposed to an assessment of the work she performed under the IEGPS Manager’s supervision.

161. Regarding the Applicant’s claim that the OPE discussion did not occur, the evidence demonstrates that the IEGPS Manager was prepared to hold the OPE discussion with the Applicant. In light of the fact that the Applicant expressed concern about doing the OPE discussion while on STD, the Applicant cannot now fault the Bank for not holding an OPE discussion with her. Additionally, when the Director General offered to hold an OPE discussion with the Applicant, it was the Applicant who responded querying the purpose of such a meeting.

162. Finally, the Tribunal notes that the Applicant has raised several additional claims connected with the FY2015 OPE process. The Tribunal holds these claims to be unsuccessful, and that the issue of a failure to provide the Applicant with a work program has been appropriately addressed in connection with the redundancy decision.

**CHALLENGES TO MANAGEMENT’S DECISION FOLLOWING THE RECOMMENDATION OF THE PEER REVIEW PANEL**

163. The Applicant submitted an Application in which she contested the 2 November 2015 decision of the Corporate Secretary to accept the PRS Panel’s recommendation to partially uphold
her claims. The action and inaction which the Applicant challenges in Application No. 3 are: 1) the decision not to extend the DAIS; 2) the decision to reorganize the Front Office and failure to keep the Applicant updated; 3) the “insistence” that the Applicant immediately commence a job search in November 2014; 4) the creation of a Level GE position; 5) the failure to agree to a work program, training objectives and group mapping; 6) the failure to reassign the Applicant; 7) the failure to hold an OPE meeting during the fiscal year; 8) the refusal to review “unduly negative content in the 2013-2014 OPE and duress to sign”; 9) failure to provide feedback from feedback providers; 10) failure to appoint a Reviewing Manager for the period under review; 11) refusal to undertake a mid-year review for the 2014-2015 review period; 12) breaches of confidentiality; and 13) miscalculation and failure to notify the Applicant of her SRI.

164. The Tribunal finds that some of these claims overlap with issues hitherto addressed as part of the Applicant’s redundancy claims and will therefore not be re-adjudicated. The remaining claims, particularly concerning the FY2014 OPE rating and process are not supported by the record. The Tribunal observes that there is no evidence that the content in the FY2014 OPE was “unduly negative.” In any event, the record shows that the Applicant’s supervisors, the Director General and the IEGPS Manager, performed several reviews and amendments to the text of the FY2014 OPE at the Applicant’s request. Having reviewed the record, the Tribunal is satisfied that there were no procedural irregularities in the notification of the Applicant’s SRI and in the manner in which her FY2014 OPE was conducted. While it may be preferable for the Applicant’s manager to have verbally informed her of the SRI assigned to her, the record shows that the information was not concealed from her and was readily available on her HR Kiosk page.

165. The Applicant’s claim of duress to sign her OPE is also unsupported by the record, as is her claim that confidentiality was breached. The Tribunal finds that there is no evidence of duress or undue influence exerted upon the Applicant. The record also shows that the Applicant’s managers went to extra lengths to either encrypt email messages concerning the Applicant or communicate the importance of maintaining confidentiality to the recipient of the message.

166. The Tribunal will now turn to the Applicant’s claims of procedural irregularity and lack of due process during the PRS proceedings. It is the Applicant’s contention that there were flaws in
the PRS process which tainted the outcome of the decision. These alleged flaws were: 1) inequality of arms; 2) insufficient time allotted to the hearing; 3) failure of the PRS Panel to take all relevant matters into account; 4) failure of the Panel to address the Bank’s lack of disclosure; 5) the PRS Secretariat’s refusal to accept jurisdiction on matters falling within its sphere of competence; and 6) unreasonable delay.

167. The Tribunal finds that the Applicant’s grievances lack merit and the facts do not support her contentions. As the Applicant is aware, PRS is a non-judicial system and panels designated to review the disputed employment matter are composed of volunteer staff members. Neither party is permitted to have lawyers present during the proceedings. The Applicant was aware of the process prior to initiating a request for review and she did not, at the time, request an exception in light of her medical condition. To state that she was “compelled by duress of circumstance to acquiesce” and attend the PRS proceedings in order to defend her interests in a case which she initiated is not supported by the record. There is no evidence that the Applicant was forced to attend the PRS hearing or prepare her pleadings for the process, nor that the reduction in time was insufficient and the Panel failed to take all relevant matters into account in their deliberation.

168. Lastly, the Applicant’s assertion that the PRS Secretariat erred in its assessment of its jurisdiction is inaccurate. Staff Rule 9.03, paragraph 7.04 expressly provides that Peer Review Panels may not review requests for review concerning “actions, inactions, or decisions taken in connection with staff member misconduct investigations conducted under Staff Rule 3.00, ‘Office of Ethics and Business Conduct (EBC) […].’” The Applicant’s request for “a finding of fact that misconduct had occurred for the purpose of granting her a remedy” was precisely outside the jurisdiction of the PRS Panel.

CONCLUSION

169. Having reviewed the record, the Tribunal finds that, despite the legitimate reorganization process at IEG, the decision to abolish the Applicant’s position and declare her employment redundant was affected by IEG management’s perception of the Applicant’s performance deficiencies and the working relationship she had with the Director General. In addition, the Bank
failed to comply with the requisite procedures by effectively abolishing the Applicant’s position, distributing her functions to others and failing to give her a work program prior to obtaining formal SRG approval. The Tribunal’s decision is made without prejudice to any decision that the Bank may make concerning the Notice of Redundancy.

170. In light of the fact that the Applicant has prevailed in two of her claims, the Bank will be ordered to cover some of her legal fees and costs.

DECISION

(1) The Bank shall pay the Applicant compensation in the amount of nine months’ net salary based on her salary at the time of the contested decisions;
(2) The Bank shall contribute to the Applicant’s legal fees and costs in the amount of $5,000; and
(3) All other claims are dismissed.
/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 21 April 2017