World Bank Administrative Tribunal

2021

Decision No. 657

Chantal Andriamilamina (No. 4),
Applicant

v.

International Finance Corporation,
Respondent

(Merits)
Chantal Andriamilamina (No. 4),
Applicant

v.

International Finance Corporation,
Respondent

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 2 September 2020. The Applicant represented herself and was assisted by Monika Bileris, Esq. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency.

3. The Applicant is challenging the IFC’s decision to make her employment redundant.

FACTUAL BACKGROUND

4. The Applicant joined the IFC on 2 September 1997 as an Investment Officer (IO). She was promoted to Principal Investment Officer (PIO) on 1 July 2010. Throughout her employment with the IFC, the Applicant has worked in many sectors. In August 2012, she joined the Manufacturing, Agribusiness and Services (MAS) department and served as a PIO, Grade Level GH. From 2017, the Applicant worked in the Health and Education Unit (H&E) of Global MAS.

5. On 19 September 2018, the Chief Executive Officer (CEO) of the IFC announced the implementation of a workforce planning exercise. Specifically, the IFC CEO’s announcement stated, in pertinent part:

   We are on a growth trajectory and to deliver, the number of staff in IFC will increase over the next three years by an estimated 600 staff, from fewer than 4,000 today to about 4,600 in FY [Fiscal Year] 21. But the question is what skills are
needed, in which sectors, in which countries and at what level of seniority. That’s what workforce planning is about: ensuring we have the right skills at the right seniority in the right places to execute IFC 3.0.

[...] Another objective of workforce planning is to recalibrate our staffing pyramid so that we are more efficient and that we appropriately leverage senior resources with more junior staff.

[...] We now have a number of senior staff at a grade that is misaligned with their level of responsibilities.

[...] Hence, over the next three years, we plan to rebalance the grade structure and reduce the percentage of GH level staff to around 12 percent – back to the level we had in FY08, but with a significantly higher total number of staff, as we will soon start to increase our staff complement at junior levels.

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

[...] The expansion and rebalancing of the staffing pyramid will also be an opportunity to achieve our diversity and inclusion targets, which my management team and I are committed to do.

6. The IFC CEO’s announcement on the workforce planning exercise also indicated the phases of the exercise, noting that the first phase would be “[a] voluntary separation program open to all, but in most VPUs this will focus mainly on GH level staff” and that, as a second phase, “non-voluntary separations will be considered.”

7. Also on 19 September 2018, the Chief Operating Officer (COO) of the IFC sent an email to “IFC COO All Staff” further detailing the workforce planning exercise announced by the IFC
CEO and announcing the voluntary separation program. In her email, the IFC COO indicated that the workforce plans “**are focused on positions, not people. Which positions, at which levels, and in which locations are needed to deliver IFC 3.0?**” (Emphasis in original.) She also stated that the “workforce plans will result in adjustments in roles, grades, and locations of many positions,” in order to achieve the COO-level objectives of the workforce planning. The IFC COO stated that additional objectives had been developed at the Regional Vice Presidency and Global Department levels, “to support their specific business goals.” She further specified that the IFC planned “to rebalance the mix of junior and senior staff across the COO VPU by reducing GG2 and GH positions.”

8. The IFC COO also stated in her email of 19 September 2018, “Once we have completed the volunteer phase, we will evaluate where we are and proceed to identify positions where further separations may be required.” The IFC COO attached “the full narrative on [the COO VPU] workforce planning strategy” to her email. This narrative included the workforce planning principles for IFC Operations as well as the requirements to execute the IFC 3.0 strategy in IFC Operations, which explicitly included that the COO VPU will “[r]educe GH and G2 grade generalist IO’s in global units.”

9. The voluntary separation program was formally launched via email from the IFC COO on 21 September 2018, with a closing date of 30 November 2018, and was targeted to GH- and GG2-level staff.

10. Similarly, on 21 September 2018, the Director and Global Head of MAS (MAS Director) sent an email to all GH- and GG2-level Global MAS staff stating, “Further to [the IFC COO’s] email regarding implementation of workforce planning and other communications this week, we are formally launching a voluntary separation program targeted at GG2 and GH-level staff. This program will be open until November 30, 2018.” The MAS Director’s email also stated, “If you are considering volunteering for separation, I encourage you to contact […] our HR [Human Resources] Business Partner. Everyone’s situation is different, and you should be well-informed before taking this decision.”
11. Also on 21 September 2018 and following the MAS Director’s email, the HR Business Partner (HRBP) sent an email to all GH- and GG2-level staff in Global MAS to provide “some information to help you make future decisions.” The HRBP’s email included links and relevant contact information to assist staff in exploring separation options, severance payments, pension, and tax matters. It also indicated that the HRBP was available to support staff through one-on-one meetings and that informative sessions would also be arranged for staff to attend “in person or anonymously via [W]eb[E]x.”

12. According to the Applicant, in October of 2018, she consulted the Ethics and Business Conduct Department (EBC) regarding alleged violations of IFC conflict of interest procedures and potential misconduct related to a particular transaction, and was referred to an EBC investigator.

13. On 16 December 2018, the Applicant emailed the IFC COO regarding these conflict of interest allegations. The Applicant stated, “I believe that it is appropriate to report this matter directly to you, given its sensitivity and the context.”

14. According to the Applicant, on 21 December 2018, the IFC CEO announced via email that the voluntary phase of the workforce planning exercise had been successful, with 212 volunteers considered for the option of a 100 percent Mutually Agreed Separation package and with 179 of these volunteers being accepted.

15. On 9 January 2019, the Applicant requested that EBC investigate an allegation of retaliation against her for using the Internal Justice Services (IJS). Her allegations included that “IFC management do not wish to work with her and she is left with little or no work program.”

16. On 11 January 2019, the Applicant again emailed the IFC COO regarding the conflict of interest allegations. The Applicant also stated:

I would also like to request protection from potential retaliation for initiating whistleblowing about activities involving directly or indirectly several directors and managers. As per Staff Rules 8.02 on Whistleblowing, a temporary reassignment to a different unit outside MAS might be appropriate and I would like to explore options with HR.
17. On 15 January 2019, the IFC COO responded to the Applicant’s email. The IFC COO stated, “Management routinely does not and will not interfere with the processes you have set in motion […]. This is for EBC (or INT [Integrity Vice Presidency], depending) to determine.” The IFC COO further informed the Applicant that she “may be temporarily reassigned or placed on Administrative Leave as per Staff Rules 8.02 on Whistleblowing, but only at the direction of the WBG [World Bank Group] HR Vice President with [the Applicant’s] agreement.”

18. The second phase of the workforce planning exercise with respect to the COO VPU began in January 2019. On 20 January 2019, the Senior Manager, Financial Institutions Group (Senior Manager) sent an email to the HRBPs regarding this next phase. The Senior Manager’s email included documents outlining compliance with the Staff Rules in respect of staff separations under the workforce planning exercise, as well as a list of GH- and GG2-level staff with expiring contracts.

19. Further, according to the documents attached to the Senior Manager’s 20 January 2019 email, this phase of the workforce planning exercise included the following specific actions:

- Review of [t]erm [c]ontracts [e]xpiring in FY19
  
  […]

- Review of [t]erm [c]ontracts [e]xpiring in FY20–21
  
  […]

- Review of # of available positions and gaps to target post VS [voluntary separation] – based on December 2019 positions available data with Directors and HRBP to confirm gaps to target by Department and Unit

- Confirm available positions and skills requirements with Regional VP’s/non-Operational VPU’s

- Provide details of available positions by Region and VPU to [Department] Directors

- For units with no at-risk staff, map Staff to positions:
- For unaffected units/positions map staff with relevant skills and in right location to available positions

- Identify remaining positions/units subject to reduction/abolition/change in skills and business needs […]

- Determine whether staff at risk are local or international

- For locally hired staff map (non-HQ [headquarters]), review to determine if to be mapped to available positions based on current fit, skill, grade

- Notify staff not mapped that their position is at risk

- Ask affected staff to provide potential positions and locations of interest (3 options)

- Where relevant (e.g., units where reassignment is not the decided route) agree timeline for advertising positions in units subject to reduction with managers

- Collate list of all staff at risk by unit, region, industry with the selected locations of choice

- Review list of affected staff and preferences for positions to determine opportunities for reassignment

- Agree timeline for potential move/reassignment

- Advise staff of reassignment decisions – discuss rationale and agree timeline and reassignment

- If agreed – advise staff in writing

- If no reassignment – notify staff and HR to follow with [Mutually Agreed Separation] discussion and exits

- Advertise available positions […]

20. On 25 January 2019, the Manager, Human Resources Development Corporate Operations (HRDCO Manager), emailed the Applicant regarding her request for a temporary reassignment pursuant to the whistleblowing provisions of Staff Rule 8.02. The HRDCO Manager described the standard for such reassignment and stated that “it is not at all clear to me whether there is any
imminent risk of irreparable harm to you or anyone else.” The HRDCO Manager further stated, “If EBC were to begin an investigation and advise there is imminent risk of irreparable harm to you, then it would be appropriate for HRDCO to respond. At this point, any such action would be premature and unwarranted.” The HRDCO Manager reiterated this position in another email to the Applicant on 31 January 2019.

21. On 1 February 2019, the Applicant filed Request for Review No. 459 with Peer Review Services (PRS). She stated the “Disputed Employment Matter(s)” as “[c]ontinued career mismanagement stemming from the design of objectives and work program, breach of due process during the Mid-Year Review, unfair Mid-Year [R]eview comments, and unfair annual FY18 evaluation.” She stated that she received notice of these disputed employment matters on “October 4, 2018, date of communication of FY18 SRI [Salary Review Increase rating] and thus completion of the FY18 performance evaluation cycle.”

22. Also on 1 February 2019, the Applicant requested a Performance Management Review (PMR) of managerial decisions regarding her FY18 performance evaluation and performance rating. She stated:

I am requesting a Performance Management Review of my FY18 Performance Evaluation because the evaluation is not balanced, and due process was violated during the mid-year review, resulting in arbitrary comments from the relevant transaction managers. These together with the inability of my supervisor to provide me a work program and business territory on par with other Principal IOs in the H&E Unit are contributing to the continued mismanagement of my career at [the] IFC. I have submitted a separate PRS request.

23. On 22 February 2019, the IFC COO sent an email to the Operations Management Team (OMT) specifying the next steps in the workforce planning exercise. According to the IFC, the OMT was composed of the IFC COO, the Regional Vice Presidents, and the department directors.

24. On 25 February 2019, the MAS Director sent an email to the Applicant’s Manager regarding the next phase of the workforce planning exercise with respect to its implementation in Global MAS. This email included a list of the GH- and GG2-level positions in Global MAS which fit within the structure of the workforce planning exercise. The MAS Director asked for the “names
of all Global MAS staff in grades G2/H who do not have a position in the current structure, either because their unit was abolished/reduced in size or because of a skills mismatch with the current [Terms of Reference] of [the] Global MAS Department.” The MAS Director explained in the email that these staff “will be matched to available positions at the corporate level based on their skills and preferences.”

25. Also on 25 February 2019, the Applicant’s Manager responded to the MAS Director’s email, indicating that the Applicant was one of three “people who may not fit this structure […] in H&E.”

26. On 26 February 2019, the MAS Director sent another email update to MAS managers and directors regarding the workforce planning exercise stating, in pertinent part, “[T]here is a group of Global MAS staff who will be directly affected. Some will be able to get spots in the regional MAS teams or on the global MAS team (in different roles than today) but not all.” The MAS Director further noted, “The list of all available COO [VPU] positions will be consolidated and made available to staff affected by this phase of the process so they can express their preferences.”

27. Further, on 26 February 2019, the MAS Director sent an email to the Senior Manager which stated, in part:

   As requested, please see a list of available Global MAS positions and their status as well as a list of staff who are proposed for reassignments from Global MAS as part of the WFP [workforce planning] process.[…]

   You will notice that some of these “available” positions are already filled (so they are “encumbered”) but since no re-mapping between Global MAS and Regional MAS units has been done, I left them as such[.] […]

   On the list of staff for reassignment, wherever some remapping plans have started I have listed them in the far right column but none have been implemented[.] In the case of #3, #5, #6, #10, and #11, we were about to remap them [to] Regional MAS units a few months ago but then put everything on hold during implementation of the WFP[.]

28. According to the Applicant, the workforce planning exercise “was preceded by a first process of Organizational Realignment which consisted in redefining the roles of the Global Units
and the Regional Units, in order to better align them with the IFC 3.0 strategy’s needs.” According to the Applicant, “[t]his resulted in a shift of transaction and advisory services execution to the Regional Units especially in priority regions (i.e. Africa, the Middle East, and South Asia) and called for the re-mapping of a number of staff.” The Applicant states that the deadline for completing the re-mapping of staff “has been continuously shifted as a result of the mid-course adjustment in the HR staff reduction strategy to rely firstly on a call for volunteers to achieve the objective of reducing the number of Grade G2 and Grade H staff across the corporation.” According to the Applicant, the “Organizational Realignment” phase and the workforce planning exercise “were intrinsically related, and their implementation spanned the FY18–19 period.”

29. The Applicant was included on the list of staff proposed for reassignment in the 26 February 2019 email from the MAS Director.

30. On 8 March 2019, the MAS Director sent an email to the HRBP, copying the Senior Manager, with the subject line “WFP follow-up/confidential.” The email stated, in pertinent part:

   [The IFC COO] has also asked that I “check/confirm with HR” if it is OK to include people like [the Applicant] in the pool of staff subject to reassignment, given the various processes in which she is involved. Would you know/be able to do this or should we check with Case Management?

   I may be getting more guidance on this and will let you know as I get it.

31. On 9 March 2019, the Senior Manager responded to the MAS Director’s email stating, in pertinent part, “Sure, I will take care of [the Applicant’s] case and we can speak on Monday.”

32. On 11 March 2019, the MAS Director responded to the Senior Manager’s email, stating in pertinent part:

   [The HRBP] and I spoke on Friday and he is checking on the 2nd point, including with Case Management, so we may hear from him on Monday. Perhaps wait before you start checking as well.

   My original assumption was that she should be included as her current position is under reassignment given that she is an execution-focused IO.
33. Also on 11 March 2019, the Applicant’s Manager emailed the Applicant stating, in pertinent part:

Main reason for reaching out to you is to make sure you are clear that all H&E sector lead positions are taken. Hence, all other senior staff currently in [the] H&E sector team will have to take on transaction responsibilities or other roles outside of my team.

Please, start looking at open positions across MAS and the rest of [the] IFC and feel free to prioritize that over your work on the H&E technology and distribution teams.

Prior to sending this email, the Applicant’s Manager confirmed with the MAS Director that communicating the above to the Applicant would be permissible.

34. On 12 March 2019, the HRBP responded to the MAS Director’s 8 March 2019 email as follows:

We just came out of a meeting with the Case Management Team and HR and while general consensus is to treat her the same way as every staff in the GH–G2 pool. Everyone is given the opportunity to voice their preferences and Management will later on to the matching. There will be a uniform process for those that are not able to secure a position. You certainly don’t want to give her the opportunity to say she wasn’t treated fairly and wasn’t given the same opportunities as her peers.

35. Also on 12 March 2019, the MAS Director responded to the HRBP’s email, stating, “Thank you […]. Just confirm I fully understand your sentence with ‘while’ in the middle. So we are including her in the list of possible reassignment, right?”

36. On 13 March 2019, the HRBP responded stating, “Yes we are!” The MAS Director then responded the same day stating, “Good! I agree fully.”

37. Also on 13 March 2019, the Applicant was notified via email from the MAS Director that her position was one which was subject to reassignment and was told that she would be asked to provide her preferences from among available opportunities. The Applicant was also informed as follows in the email:
The Operations Management Team will review the list of staff and preferences against the available positions and will make determinations on best fit in line with our business needs. We expect to complete this process by late March, at which time you will receive notification as to whether or not you have been reassigned. If you are not reassigned your Department/Unit will work with you on the next steps.

To reiterate, it is our aim to reassign as many staff as possible to available positions to minimize the need for involuntary separations. There are also a number of managerial and other positions being advertised. Please continue to check Compass [also known as job portal] for available positions that may be of interest to you.

38. On 15 March 2019, the list of available positions for reassignment within the Operations VPU was circulated via email from the HRBP. This email asked staff to provide their top three preferences in order of priority by 20 March 2019. It also stated, “As we proceed with making reassignments, we will take into account your preferences. However, please be aware that this will be just one factor, and the Operations Management Team will make determinations in line with business and [the] IFC’s strategic needs.”

39. On 20 March 2019, the Applicant provided her preferences via email to the HRBP as follows:

#1: Upstream Agribusiness Lead, PIO, position #3
#2: Upstream Health & Education Lead, PIO, position #4
#3: Grain, Oilseed, Commodities sector lead, PIO, position #2

The Applicant stated that she “remain[ed] very interested in supporting market creation and business development activities in Africa (strongest regional knowledge and credentials), but [was not] in a position to apply/commit to jobs that [were] based in the field, due to personal considerations.” In her email, the Applicant also noted that she would reach out to the MAS Director with her questions regarding this phase of the workforce planning exercise and “how the ongoing dispute resolution processes might interfere with [her] reassignment.”

40. On 24 March 2019, the OMT held a meeting to determine the reassignments. Prior to this meeting, on 22 March 2019, the HRBP for the IFC COO (COO’s HRBP) sent an email to the OMT with an “excel sheet with Reassignment preferences as expressed by staff,” as well as “supporting staff data including SRI & Talent Review data for the last 3 years.” In these documents, the
Applicant’s SRI or Performance Rating was listed 3 for FY16, FY17, and FY18. For FY16, the Applicant’s Talent Indicator was listed as “DT,” or “difficult transition.” In FY17 and FY18, the Applicant’s Talent Indicator was listed as “UP,” or “under performer.”

41. According to the IFC, during the 24 March 2019 meeting, the OMT “reviewed the suitability of staff who had expressed interest in the relevant position and determined the most suited candidate to execute [the] IFC’s business plan.”

42. Also on 24 March 2019, the COO’s HRBP sent an email to the OMT with the subject line “Strictly Confidential: Summary and action Sunday meeting.” The email stated, in pertinent part:

   Dear OMT members,

   As discussed during today’s meeting, please find attached summary notes, and list of actions to be completed by Wednesday, March 27, 2019. In addition to the excel sheets I have also attached Notes from the meeting taken by [a colleague] and capturing our discussion.

With respect to the 24 March 2019 meeting notes referenced in and attached to the email from the COO’s HRBP, a section entitled “Discussion of 14 non-assigned staff” is included. In this section of the meeting notes, brief notes are provided next to the names of each of 13 staff members. The Applicant is not listed in this section as one of the non-assigned staff, nor is she referenced anywhere in the meeting notes.

43. The Applicant was not selected for any of the three positions for which she expressed a preference.

44. On 2 April 2019, the Director, Human Resources (HR Director) sent an email to various HR colleagues including the HRBP, the COO’s HRBP, and the HRDCO Manager. The HR Director’s email stated, in pertinent part:

   This morning, after the Board Meeting […] [the IFC COO] and I discussed about [the Applicant’s] case.
[The IFC COO] wanted to reconfirm I was OK with the previously discussed strategy of not reassigning her (as part of Phase II), particularly in light of her claims (e.g. whistleblowing). I confirmed this is indeed the case, and this is in line with what [the HRDCO Manager] and I discussed, as well as the conversations I had with most of you.

She requested that we prepare the talking points for [the Applicant’s Manager/the MAS Director] to have the conversation with her. Given the sensitivities, I think this is indeed critical.

In response, the HRBP stated:

Noted [HR Director]!
Now that we are almost done with global staff re-assignment. Will be good to factor that as well considering she’s likely not to land a position.

And the COO’s HRBP stated:

I do not know the background story. Not sure what the timeline is, however until we have green light from [the IFC COO] on reassignments within operations we should not include that in the talking points.

Confidentially and only within this group, she is one of the staff without position to be reassigned to, however as mentioned above this is still not to be shared with staff or anyone.

The HR Director then further clarified:

I think I should have been more clear – apologies.
[The IFC COO] asked to prepare the talking points in preparation for that meeting, i.e. where management will tell her she has not been reassigned. We need to get ready for that conversation – I also think it would be good if one of you could join Management during that meeting (I would join but I think it’s best if I am used as an “escalation”).
Please let me know if this clarifies.

Finally, the HRBP responded stating:

Clear now!
I typically attend all meeting of sensitive nature between [the Applicant] and [the Applicant’s Manager].
We will prepare. This has to be coordinated [though]. Will be concerns if she’s the only one impacted. So far we managed to have her accept the process as we clearly
articulated that operations was following a process applicable to all impacted G2 and GH.
She’s meeting with [the MAS Director] this week to discuss her options. Keeping him in the loop.

45. Also on 2 April 2019, the IFC COO notified the Applicant via email of the Performance Management Reviewer’s recommendations regarding the PMR which the Applicant had requested on 1 February 2019. Based on the previous revision of the Applicant’s FY18 Staff Annual Review, the Performance Management Reviewer recommended that management not take any other actions in response to the Applicant’s PMR Request. The Applicant was also informed that the Performance Management Reviewer noted that, “in view of the history of the conflicts during the last three years of [the Applicant’s] employment in MAS, it would be beneficial if [the Applicant] could be moved to another department in IFC or elsewhere in the World Bank Group.” The IFC COO declined to accept this recommendation regarding transferring the Applicant and informed the Applicant accordingly in the email of 2 April 2019.

46. Further, on 2 April 2019, EBC closed the Applicant’s case filed on 9 January 2019, on the basis that the Applicant did not provide documentation in support of her allegation of retaliation.

47. On 5 April 2019, the Applicant and the HRBP exchanged emails. The Applicant inquired as to whether the 13 March 2019 email from the MAS Director and/or the 11 March 2019 email from her Manager constituted “the official ‘notice of redundancy.’” The HRBP responded stating, in pertinent part, “At this point in time I am not aware of any one being declared redundant. From my understanding redundancy (if at all there is or will be) will only kick in once staff is not able to secure his/her next position. We will know this once we hear [from] the reassignment exercise.”

48. On 8 April 2019, the IFC COO shared with the OMT an Excel sheet summarizing the COO VPU reassignment decisions and instructed the OMT that the respective manager should communicate the relevant decisions to staff. Additionally, the IFC COO provided talking points for Operations Managers regarding the reassignment process for purposes of communicating with staff, including the following statements:
• There were fewer GH positions available than GH grade staff to be reassigned. Some staff at GH grade applied for (and or have agreed already to) reassignment to G2 grade positions.

[...]

• [The IFC COO] and the OMT reviewed the list of staff available for reassignment with their preferences, met and reviewed the staff names and positions in detail and matched the staff against the available positions.

[...]

• The principles for reassignment the OMT applied were as follows:
  o Reassign as many staff as possible;
  o Assign staff to their primary or secondary choice to the extent possible;
  o Where staff are assigned to a position outside DC, there will be flexibility for staff to remain in DC (or current location) – decision on length of time to be made based on circumstances by the regions;
  o Allow for reassignment of staff at GH grade or G2 positions where applied for and with agreement with staff in line with HR Rules;
  o Review remaining available positions to ensure no further reassignments are possible before advertising the positions; and
  o Advise staff of the reassignments.

[...]

• Staff history and background, knowledge of their prior experience and hence fit for the position as well as talent ratings were factored in by the OMT.

[...]

• Staff who have not been reassigned should be advised by their manager and HRBP that they are now slated for redundancy.

[...]

• [Positions that were not assigned] will be advertised and all WBG staff (including those not reassigned) will have the opportunity to apply for them.

49. On 10 April 2019, the Applicant’s Manager confirmed via email to the Applicant that she was not matched for reassignment during the reassignment phase of the workforce planning exercise and based on the business needs of the IFC. The Applicant was further informed that her current position was “identified as being affected by business changes within CMGCS [MAS Global – H&E],” and that “[i]t is therefore planned that your position will be abolished.” The
Applicant was asked to inform management by 26 April 2019 as to whether she was willing to separate voluntarily.

50. According to the Applicant, on 18 April 2019, EBC investigators informed her that EBC had closed the investigation regarding her allegations of conflict of interest violations because it had found insufficient evidence of a personal conflict of interest amounting to misconduct regarding a former MAS manager whom the Applicant had referenced. Further, according to the Applicant, EBC informed her that any potential operational conflict of interest in the transaction would not be subject to EBC’s review or jurisdiction, but instead “a decision that is subject to [the] IFC’s discretion to manage.”

51. On 24 April 2019, the Applicant spoke with the HRBP regarding the terms of a voluntary separation. The Applicant also discussed separation from the IFC with her Manager on 25 April 2019.

52. On 26 April 2019, the Applicant sent an email to her Manager, copying the HRBP, and stating that she was “not prepared to accept a [Mutually Agreed Separation] on the standard terms,” and that she came “into this process with major existing claims that [she was] unwilling to waive.” The Applicant stated that, “[i]f a tailored [Mutually Agreed Separation] cannot be envisaged, [she] would opt for redundancy, without waiving any of [her] existing claims and rights to appeal to all relevant judicial instances.” The Applicant also noted that she was opting for an administrative leave. She further stated in the email, “If I default to redundancy, I would waive the severance package, given that accepting it would result in a huge cut to my annual pension and given my overall circumstances. I ask HR to confirm in writing by when I have to confirm this choice and it would be binding.” In the email, the Applicant also specified, “I am awaiting clarification of [the IFC COO’s] position regarding my ability to apply and be considered for jobs [sic] opportunities that open up in the WBG before my departure date.”

53. The same day, the HRBP responded to the Applicant’s queries. The HRBP noted that “[t]here won’t be any tailored or customized solution” with respect to a Mutually Agreed Separation, and that the Applicant should let HR know with respect to her decision to forgo
severance “4 weeks or so prior to the end of [her administrative] leave.” The HRBP also advised the Applicant that while on administrative leave she would remain IFC staff with access to the IFC system and, accordingly, the ability to apply to any job available in Compass. The HRBP noted, “Should you be selected before the end of your [administrative] leave, your redundancy memo will be void.”

54. On 2 May 2019, the Applicant confirmed via email to her Manager that she was opting for redundancy along with a job search and administrative leave period. She further stated, “I intend to [forgo] the severance payment in order to avoid a major reduction of my pension under the gross plan.”

55. On 5 June 2019, the Applicant received a Notice of Redundancy memorandum from the IFC COO dated 29 May 2019. The Notice of Redundancy stated that the Applicant’s employment would become redundant with effect 1 July 2019, and that the decision was “taken in accordance with Staff Rule 7.01, paragraphs 9.02 (b. A specific position or set of functions performed by an individual in an organizational unit must be abolished) and 9.03.”

56. The Applicant was placed on administrative leave during her six-month job search period beginning on 1 July 2019.

57. In August 2019, the Applicant consulted an IFC career coach.

58. On 24 October 2019, the Applicant received from HR a memorandum regarding the “Terms and Conditions for Notice of Redundancy.”

59. On 7 November 2019, the Applicant received from HR a memorandum regarding “Information/Benefits Upon Ending Employment.”

60. On 12 December 2019, the Applicant submitted a “Form F03131: Request for Accrued Pension At 50 Option SEVERANCE WAIVER,” signed 10 December 2019, to HR.
61. The Applicant’s employment with the IFC ended on 31 December 2019.

62. On 22 February 2020, the PRS Executive Secretary issued a memorandum regarding “Request for Review No. 459 (Chantal Andriamilamina) Panel’s Decision to Dismiss the Request for Review.” The PRS Panel concluded that all claims in the Applicant’s Request for Review No. 459 were either untimely or outside of PRS subject-matter jurisdiction under Staff Rule 9.03 and dismissed the Applicant’s claims in their entirety.

63. On 2 September 2020, the Applicant filed her Application with the Tribunal after having been granted extension requests from the President of the Tribunal.

64. This is the Applicant’s fourth application with the Tribunal. In her first application before the Tribunal, the Applicant challenged the reassignment of two projects from her work program for FY16, her FY16 performance evaluation, her performance cycle for FY17, and the IFC’s alleged mismanagement of her career. With respect to these claims, the Tribunal, in EQ (Preliminary Objection), Decision No. 584 [2018], upheld the IFC’s preliminary objection regarding the Applicant’s claims relating to her FY17 performance cycle and alleged career mismanagement. In EQ (Merits), Decision No. 595 [2018], the Tribunal addressed the Applicant’s claims regarding her FY16 work program and FY16 performance evaluation, and dismissed them.

65. In her second application before the Tribunal, the Applicant challenged her FY17 performance evaluation and alleged that the IFC failed to act fairly in the management of her career. In Andriamilamina (No. 2), Decision No. 614 [2019], the Tribunal found there was “a reasonable and observable basis for the substance of the performance evaluation,” and dismissed the career mismanagement claim, “finding no basis.” Id., para. 111.

66. Finally, in her third application with the Tribunal, the Applicant sought a revision of EQ (Merits) [2018], invoking Article XIII of the Tribunal’s Statute. The Tribunal dismissed this application in Andriamilamina (No. 3) (Preliminary Objection), Decision No. 620 [2019].

67. In this current Application, the Applicant challenges
a) The [...] decision to make her employment redundant, as per Notice of Redundancy dated May 29, 2019 and received by [the] Applicant June 5, 2019;
b) the PRS decision to dismiss her PRS [Request for Review No.] 459, dated February 22, 2020;
c) the undated Performance Management Review (PMR) of [the] Applicant’s FY18 performance evaluation, submitted to the IFC COO on March 28, 2019; and
d) the [IFC’s] decision regarding the PMR recommendations, dated April 2, 2019.

68. The Applicant seeks compensation in the amount of four years’ salary based on her last salary before termination, as well as legal fees and costs in the amount of $5,600.00. The Applicant also seeks

a) Access to her Talent Review ratings and assessments as recorded in HR files;
b) [A] Restoration Letter;
c) Moral damages in the amount of US$200,000; [and]
d) All other relief as the Tribunal may deem just and appropriate.

69. On 22 October 2020, the IFC filed preliminary objections challenging several of the Applicant’s claims as inadmissible before the Tribunal. In Andriamilamina (No. 4) (Preliminary Objection), Decision No. 654 [2021], the Tribunal upheld the IFC’s preliminary objections regarding the Applicant’s claims related to FY18 performance management–related decisions, FY18 assignments and work program, career mismanagement, and violations of due process by PRS. The Tribunal held it would address the Applicant’s claim regarding the “decision to make her employment redundant” on the merits.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

70. The Applicant asserts that the decision to make her employment redundant was an abuse of discretion because it was “improperly motivated,” “rife with procedural errors,” and “inconducive to the efficiency of the IFC.” She submits that the redundancy decision and the
failure to place her in another position should be quashed and redress given. The IFC contends that the Applicant’s termination due to redundancy had a reasonable basis and adhered to proper procedure and that, accordingly, the Applicant’s challenge to her termination is unjustified. According to the IFC, the Applicant’s employment was terminated due to redundancy in connection with the institutionwide workforce planning exercise which observed the Applicant’s terms of employment, did not specifically target her, and included a coherent procedure for all affected staff. The IFC submits that the scope of the Tribunal’s review with respect to redundancy decisions is for abuse of discretion, citing FJ, Decision No. 626 [2020], para. 59. The Applicant’s specific contentions and the IFC’s responses are provided below.

**The Applicant’s Contention No. 1**

*The IFC did not provide the correct rationale for declaring the Applicant’s position redundant, thereby violating the Staff Rules and the Applicant’s terms of employment*

71. The Applicant contends that the rationale for the redundancy of her position as provided in the Notice of Redundancy was not aligned with the rationale communicated to her during phases one and two of the workforce planning exercise. In this respect, the Applicant invokes Staff Rule 7.01, paragraph 9.02, which states:

> Employment may become redundant when the Bank Group determines in the interests of efficient administration, including the need to meet budgetary constraints, that:

a) An entire organizational unit must be abolished;

b) A specific position or set of functions performed by an individual in an organizational unit must be abolished;

c) The responsibilities of a position no longer match the skills and experience of the incumbent and are unlikely to do so within a reasonable period of time; or

d) Types or levels of positions must be reduced in number.

The Applicant asserts that, per her Notice of Redundancy, her employment was made redundant pursuant to Staff Rule 7.01, paragraph 9.02(b), and further states that her Manager notified her on 10 April 2019 that “she was not matched for reassignment and her position was going to be
abolished.” The Applicant contends, however, that the rationale communicated during phases one and two of the workforce planning exercise was “the need to reduce the number of Grade H and Grade G2 positions in full compliance with Staff Rule 7.01.”

72. The Applicant also submits that the IFC did not clarify the set of functions performed by her which needed to be abolished pursuant to Staff Rule 7.01, paragraph 9.02(b). According to the Applicant, when her Manager indicated to her on 11 March 2019 “that all Sector Leads positions in her unit were taken, and […] recommended that [the] Applicant start looking at other jobs in MAS or somewhere else in [the] IFC, she indirectly confirmed that, as a result of [the] IFC’s failure to map [the] Applicant […] [the] Applicant’s functions as a Principal Investment Officer based in HQ, were abolished and [the] Applicant had to look for a job.”

73. The Applicant submits that the “true rationale” for the redundancy of her employment is Staff Rule 7.01, paragraph 9.02(d) – “types or levels of positions must be reduced in number” – rather than paragraph 9.02(b) as cited by the IFC. In the Applicant’s view, “it was more difficult to defend the redundancy decision based on the requirements of subsection (d).” She contends that the alleged incorrect rationale for the termination of her employment “deprived [her] of her right to a fair and transparent process, and irreparably harmed her chances of securing reassignment or addressing any alleged inadequacies with respect to her skills or performance.” She asserts that the IFC’s legal logic for using two different categories under Staff Rule 7.01 for separations pursuant to the voluntary separations phase and those pursuant to the non-voluntary separations phase of the workforce planning exercise is unconvincing and lacks transparency.

The IFC’s Response

The redundancy of the Applicant’s position was supported by the correct legal basis

74. The IFC contends that Staff Rule 7.01, paragraph 9.02(b), was the basis for the Applicant’s redundancy and that, accordingly, IFC management communicated to the Applicant on 10 April 2019 that her position would be abolished. The IFC submits that the “Applicant’s redundancy was decided when management completed the reassignment exercises and [the] Applicant had not been identified as suited to occupy any of the available positions.” The IFC specifies that the workforce
planning exercise included various phases which implicated different Staff Rules, but that “the redundancies of those staff members whose positions were identified as not fitting under the new staffing model and [who were] not re-deployed through the reassignment process left on the basis of Staff Rule SR 7.01, paragraph 9.02 (a), (b), or (c).” According to the IFC, the redundancy of the Applicant’s position was correctly supported by Staff Rule 7.01, paragraph 9.02(b), and “had a reasonable and observable business rationale in the interest of efficient administration.”

**The Applicant’s Contention No. 2**

The IFC abused its discretion by failing to act with transparency in informing the Applicant of the redundancy of her position

75. The Applicant contends that the IFC failed in its duty to act with transparency with respect to the redundancy and, as a consequence, prevented her from being in a position to make an informed decision about her departure from the IFC. The Applicant submits that she received the Notice of Redundancy eight weeks after she was informed by her Manager that she was not matched for reassignment and that her position was going to be abolished. She submits that, “[a]ccording to [the HRBP], the delay was due to the need to clarify questions from the Severance Review Group before [the Severance Review Group] could provide clearance.” The Applicant questions why her post was abolished and her employment declared redundant before approval was obtained for these decisions from the Severance Review Group. She states that “the delay in the clarification of the redundancy rationale, whether formally or informally, penalized [her] in that she did not have all the information she needed to inform her choice of modality of exit and take the appropriate course of action in a timely manner (e.g. whether, when and how to negotiate a customized agreed separation agreement).”

76. Further, the Applicant asserts that the criteria used to reassign staff during phase two of the workforce planning exercise were not published and that, as a result, the members of the OMT were left with “full discretion […] to make decisions in an opaque way.” She submits that her attempts to obtain the criteria used and why she could not be reassigned “were fruitless.”
The IFC’s Response

The Applicant was provided with clear reasons for the redundancy of her employment and was kept informed during the workforce planning exercise.

77. The IFC disputes the Applicant’s contentions that the redundancy decision was flawed because of a lack of transparency with respect to the process of the workforce planning exercise. The IFC contends that the Applicant was provided clear reasons for the redundancy of her position by her Manager, and highlights that staff were kept informed through multiple institutionwide emails as well as the IFC’s intranet page for the workforce planning. The IFC also submits that the Applicant had several meetings with management and HR during the workforce planning exercise. The IFC asserts that the “Applicant was fully informed about options, both in terms of exit modalities and financial implications in relation to her redundancy.”

The Applicant’s Contention No. 3

The IFC violated the Principles of Staff Employment by failing to adequately map the Applicant during the IFC’s reorganization.

78. The Applicant invokes Principle 5, paragraph 5.1(a), of the Principles of Staff Employment and avers that the IFC failed to map her to the Africa and Middle East and North Africa (MENA) regions as promised. To the Applicant, “the insufficient transparency with [the] IFC’s second process of staff mapping between the summer of 2018 and the spring of 2019 constitutes another serious procedural irregularity for which the IFC must be held responsible,” and “[t]he failure to map [the] Applicant represents a failure on the part of the IFC to engage in efficient administration.”

The IFC’s Response

The Applicant’s claim is outside of the Tribunal’s scope of review.

79. The IFC submits that the redundancy decision is the only matter before the Tribunal and that, accordingly, the Applicant’s contentions concerning the reassignment of staff prior to the workforce planning exercise which led to the Applicant’s redundancy are outside of the Tribunal’s scope of review. Specifically, the IFC asserts that the Applicant’s claim regarding the failure to
map her to Africa and MENA was part of the Applicant’s PRS Request for Review No. 459, and was dismissed by the Tribunal in Andriamilamina (No. 4) (Preliminary Objection) [2021].

**The Applicant’s Contention No. 4**

*The IFC abused its discretion by not adequately assisting the Applicant with strengthening her work program, and this resulted in the mismanagement of her career*

80. The Applicant asserts that the record shows that her Manager “deliberately set up her objectives for FY19 in a way that was tantamount to under-programming for a Principal Investment Officer,” and she contends that “the IFC failed to assist the Applicant in developing a proper work program, largely as a context by which to justify her redundancy, leaving her without a clear understanding of her position within the Organization, which necessarily affected her career with the WBG.”

**The IFC’s Response**

*The Applicant was provided with clear instructions from IFC management regarding her FY19 work program and objectives*

81. The IFC disputes the Applicant’s claims that IFC management interfered with the Applicant’s work program for purposes of justifying the redundancy of her employment. The IFC asserts that the Applicant has not presented clear evidence of improper motivation on the part of management with respect to her work program. Rather, the IFC asserts that the Applicant was provided clear instructions regarding her FY19 work program and submits that management “engaged in an in-depth discussion” with the Applicant regarding same, and that management provided the Applicant with “concrete performance objectives.” To the IFC, “[t]he fact that these objectives were not to [the] Applicant’s liking and [the] Applicant resisted to accept these objectives […] cannot be seen as evidence of improper motivation on management’s part […] to justify her redundancy, but merely constitute a detailed critique of her work program as though she [has] a power of veto.”
The Applicant’s Contention No. 5

The IFC used redundancy as a pretext to remove the Applicant without dealing with her alleged performance issues, thus violating her due process rights by denying her the safeguards in place to protect against termination for deficient performance

82. The Applicant submits that, per Tribunal precedent, “the redundancy process cannot be used as a convenient substitute to terminate a staff member without giving him or her the benefit of the due process safeguards that apply to termination for defective performance.” BT, Decision No. 464 [2012], para. 40. The Applicant avers that her managers in MAS “expressed recurring concerns about her allegedly inadequate performance” and that management “deliberately attempted (but in the end failed) to avoid explicitly mentioning the issue of poor performance during the period preceding the redundancy process.”

83. To the Applicant, management’s views on her performance were inconsistent over the years. She submits that the IFC’s redundancy rationale attempts to claim that her “alleged poor performance was not an explicit factor in the redundancy decision, but did negatively affect her work program (nobody wants to work with her),” and, at the same time, that “her work program was not an explicit factor in the redundancy decision but the set of functions she performed were no longer needed.” She contends, “Such a position crumbles under the weight of its internal contradictions and is fundamentally illogical.” She asks the Tribunal to confirm that the IFC’s decision to abolish her position was improperly affected by views about her performance.

The IFC’s Response

The termination of the Applicant’s employment was correctly based on redundancy

84. The IFC contends that the Applicant’s claim that the termination of her employment should have been based on “Unsatisfactory Performance” and that she should therefore have been given an “Opportunity to Improve” is unconvincing.

85. The IFC reiterates that the Applicant’s termination of employment was the result of the institutionwide workforce planning. To the IFC, “even if performance was an issue which may
The Applicant argues, those issues were overtaken by the workforce planning exercise.” Pursuant to the workforce planning exercise, “staff history and background, talent ratings and prior experience all informed the fit for positions in the reassignment exercise to ensure that the IFC has ‘the right staff in the right position to execute [the] IFC’s strategy’ […] and these factors combined led to the Applicant’s termination based on redundancy.”

**The Applicant’s Contention No. 6**

*The IFC violated the Staff Rules by failing to make a good faith effort to place the Applicant in another IFC position*

86. The Applicant contends that Tribunal precedent and the Staff Rules required the IFC to make a good faith effort to help her secure an alternative position given the redundancy of her employment. She asserts that IFC management “exhibited a complete lack of support for – and even obstructed – her reassignment during the involuntary phase of the WFP” and that, unlike some of her peers, she “was not even considered for lower level positions.”

87. The Applicant highlights the 2 April 2019 email in which the IFC COO informed her of the PMR Reviewer’s recommendations. The Applicant notes that the IFC COO did not accept the recommendation to transfer the Applicant outside of the MAS department, and she states that when she asked the IFC COO for the basis of her decision, as well as how the decision could affect the Applicant’s ability to apply for future positions with the WBG, she did not receive a response. Further, the Applicant submits that the HRDCO Manager denied her request for a temporary reassignment outside of MAS which the Applicant made in relation to her concerns of retaliation for reporting misconduct and initiating IJS proceedings. To the Applicant, “HR Case Management appeared to have colluded with IFC Sr. Management to give [the] Applicant no option but exit the WBG or enroll into the WBG Short-Term Disability, presumably as another pathway to forced exit.”

88. The Applicant submits that “[t]here is not much evidence that [her] managers and HR fulfilled their obligation to make good-faith efforts to assist her during her subsequent six-month
‘reassignment/job search’ period […] including by offering her any available lower-level positions.” She states that she identified four new positions on Compass and wrote to the HRBP on 20 September 2019 seeking support for her application for these positions. The Applicant states that the HR Director responded and encouraged her to apply, but submits that the only assistance she received from HR was the assignment of a career transition counselor, six weeks after she inquired about support resources and more than two months after her Notice of Redundancy. To the Applicant, the IFC “did the minimum required by the Staff Rules by providing [the] Applicant generic support during the job search period (e.g. provision of career consultant etc…),” and she underscores that “[t]here is no evidence in the record that [the IFC] helped [the] Applicant identify specific alternative positions, during the job search period.”

89. The Applicant asserts that her circumstances were unique in that she had pending claims against the IFC and had previously challenged managerial decisions. In her view, her history with the IFC meant that she “required hands-on support and unequivocal sponsoring by HR and IFC Sr. Management if she were to stand any chance to find an alternative position at [the] IFC or elsewhere in the WBG.” She further highlights the 2 April 2019 email in which the HRBP stated that she was “likely not to land a position.” To the Applicant, the OMT’s conclusion that she could not be reassigned meant that the OMT members’ units would not support [her] for any open positions and, as a result, she “lost hope and did not complete her formal applications.”

The IFC’s Response

The Applicant was provided support for alternative employment as required by the Staff Rules

90. The IFC asserts that it fulfilled its obligations under Staff Rule 7.01, paragraphs 9.06 and 9.07, with respect to assisting the Applicant with alternative employment. The IFC notes that the Applicant was offered an IFC career coach and that available positions not filled during the reassignment phase of the workforce planning exercise were advertised on Compass and that the Applicant was encouraged to apply to open positions by the HR Director. Further, the IFC underscores that the Applicant’s Manager offered, as of 11 March 2019, for the Applicant to prioritize her job search over her ordinary work. The IFC submits that the Applicant’s failure to apply for any positions on Compass between January and December 2019 means the Applicant
did not play her part with respect to securing alternative employment. To the IFC, “[t]he type of engagement suggested by [the] Applicant is plainly not required.”

**The Applicant’s Contention No. 7**

The IFC’s decision to make the Applicant’s employment redundant was discriminatory, arbitrary, or otherwise improperly motivated

91. According to the Applicant:

Not only did [she] demonstrate all the required credentials in terms of competence, skills, experience, and interest to be retained for the execution of the IFC 3.0 strategy, but as a female Sub-Saharan African staff with over 20 years of successful career in the WBG, she was a unique and valuable asset for the institution in terms of her fit with the WBG’s Diversity & Inclusion priorities. It is thus incomprehensible that in light of the breadth of [her] experience working across all sectors at [the] IFC and across boundaries in the WBG she could not be reassigned to an existing open position within or outside the COO VPU during Phase II of the WFP or during her Administrative Leave. Instead of providing support for [the] Applicant’s career advancement, the IFC and actually the WBG including its HR complex openly discriminated against and ostracized her and [she] was pushed out by the WBG after facing systemic retaliation and systemic dismissal of her claims of unfair treatment by the Internal Justice Services over a period of three years.

92. The Applicant points to an internal “2015 WBG Diversity Report” and asserts that, with respect to its level of tolerance and integration of racial differences, the WBG was rated between 2 and 3 on a scale of 6. The Applicant submits that this rating means that “racial and cultural differences are tolerated, provided those relegated to second class status refrain themselves from challenging the status quo.” She contends that she did in fact challenge the status quo and the “unwritten rules on standards of behavior expected of discriminated groups.” Specifically, the Applicant asserts that she “i) persistently protest[ed] unfair treatment by her hierarchy, ii) engag[ed] candidly with senior level decision-makers to seek resolution, and iii) us[ed] the Internal Justice Services extensively to assist with dispute resolution after informal efforts failed.”

93. The Applicant also contends that “[s]ystemic institutional discrimination […] translated into the MAS management’s decision to set up [the] Applicant for poor performance and exit to the advantage of selected male peers belonging to ‘non-diverse’ race groups.” In this respect, she
submits that a male Caucasian colleague was appointed to one of the positions she had identified in the reassignment process, but that she “had significantly stronger credentials with respect to the specific skills and experience that [the] IFC is seeking to have more of, for the execution of the IFC 3.0 strategy.”

94. Further, the Applicant claims that she was discriminated against during the reassignment phase of the workforce planning exercise by not being offered a Grade Level GG2 position. She states that “[t]here was no procedure provided for applying specifically for G2 positions” and claims that her Grade Level GH peers across various units were granted the opportunity to take lower-level GG2 positions. To the Applicant, the IFC’s claim that she “has not explicitly applied does not stand as a valid reason for not making [her] an offer.”

95. Additionally, the Applicant claims that “evidence of discriminatory treatment against [her] was very strong and tangible” in the MAS department, and, reiterating the failure to map her to Africa and MENA, she lists various examples of staff who were PIOs or Senior IOs and who have been mapped to regional units or who have focused regional territories.

96. To the Applicant,

[t]he way [she] was systematically retaliated against through her process of seeking redress with the Internal Justice Services and through the wrongful termination of her employment, is reflective of the institutional racism across the WBG that does not tolerate that a Black African staff stands up firmly and persistently against unjust treatments.

She further contends:

The discrimination that [the] Applicant suffered through the WFP reassignment process and the preceding re-mapping of staff across the Global/Regional lines is also reflective of the systemic, institutional racism within the IFC that manifests through inequity in the allocation of resources and career enhancing opportunities amongst staff. As a former Investment Officer that was based 6 years in two country/regional offices in Africa, [the] Applicant concurs with the applicant in [FZ (Preliminary Objection), Decision No. 653 [2021]], that there are indeed at [the] IFC “systemic practice and barriers that provide differential access to resources and opportunities, thus perpetuating and preserving the long-term inequalities faced by Black professional[s].”
97. The Applicant submits that the IFC’s decision to make her employment redundant was retaliatory. In this regard, the Applicant notes that she engaged in a total of 16 dispute resolution or appeal processes from April 2016 to February 2020. She points to a 22 January 2019 email from her Manager to the HRBP inquiring whether it was still necessary to define FY19 objectives for the Applicant. To the Applicant, this email suggests that, while discussions with the HRDCO Manager were taking place, the “IFC had already decided to let go of [the] Applicant, and the so called process that ensued, to try and reassign [the] Applicant to one of the available positions across the institution was perfunctory.”

98. The Applicant maintains that the decision not to reassign her during phase two of the workforce planning exercise was made before the completion of the reassignment of affected staff which would have been on or around 8 April 2019. She contends that her assertions are supported by the email correspondence of 12 March 2019 and 2 April 2019 between HR, the Case Management Team, and management. More specifically, the Applicant points to correspondence between the HR Director, the HR team, and the Case Management Team as proof that the decision not to reassign her during phase two of the workforce planning and to ultimately declare her employment redundant was retaliatory and, in the Applicant’s view, “especially motivated by her reporting of business conflict of interest and integrity issues.” The Applicant notes that on the same date as these emails – 2 April 2019 – she was informed by the IFC COO of the IFC COO’s decision not to accept the PMR Reviewer’s recommendation to transfer the Applicant to another department.

99. The Applicant therefore contends that “the whole HR complex has colluded with IFC Management to masquerade the decision to rid of [the] Applicant by not reassigning her to any of the available position[s],” and she asserts that “[t]he whole HR Complex […] cooperated with IFC Management to give a semblance of fairness to the process.” She concludes that “the ultimate motive of these meticulously coordinated decisions to oust [her] was to cover up the integrity issues” previously raised by her in Andriamilamina (No. 3) (Preliminary Objection) [2019], considering that EBC “specifically pointed out IFC Management’s sole discretion (thus ultimately the responsibility of the IFC COO) to manage operational conflict of interest risks and integrity due diligence issues across the institution’s operations.”
100. The Applicant also asserts that her participation in a 15 January 2019 IJS Learning Event “put the seal on the WBG’s decision to force her exit.” She states that she “was likely to be perceived as a ‘troublemaker’ given her unrelenting use of the IJS” and also that she was likely perceived as one that may know too much, because she witnessed and spoke out about live evidence of the insufficient independence of the Internal Justice Services and of the inherent conflict of interest to which the WBG’s Internal Justice Services, the WB Legal Department, the Staff Association and part of the WBG HR Complex are exposed to, as they collaborate as one extended family.

101. The Applicant “suspects that the imperative to keep these matters out of the public domain” is one of the reasons her transfer outside of MAS to elsewhere within the WBG was opposed by the IFC COO and HR Case Management. She asserts that the IFC silenced her “by ridding of her, after unethically and unsuccessfullly attempting to frame her as needing Short-Term Disability, and not being fit for duty,” in violation of the WBG Code of Conduct.

The IFC’s Response

*There was no improper motivation for the redundancy decision*

102. The IFC disputes the Applicant’s claims that the redundancy decision was discriminatory, arbitrary, or otherwise improperly motivated.

103. The IFC submits that the redundancy decision did not constitute an abuse of discretion. In this respect, the IFC defends the email exchanges during the period 9 March 2019 to 12 March 2019 as well as the email exchanges of 2 April 2019 between HR and IFC management. The IFC notes that, in the period 9 March 2019 to 12 March 2019, the redundancy decision had not yet been taken and the emails reflect the question of whether the Applicant should be included in the reassignment process. According to the IFC, the HRBP’s “statement that any reason for a challenge of unequal treatment should be avoided is consistent with the IFC COO’s intent to ensure fair and equal treatment of all affected staff.” The IFC contends that by 2 April 2019 the non-reassignment decision had been made. To the IFC, the COO’s HRBP’s statement that the Applicant “is one of the staff without position to be assigned to,” as well as the HRBP’s statement
that the Applicant was not likely to have success “land[ing] a position,” is consistent with the facts and timeline and shows no impropriety.

104. The IFC submits that the Applicant’s claim that she was discriminated against cannot stand because the Applicant has not met her burden of proof. To the IFC, the Applicant has not provided evidence to establish a prima facie case of discrimination in relation to the redundancy decision. The IFC reiterates the position that “questions of reassignment outside the reassignment exercise forming part of the workforce planning leading to [the] Applicant’s redundancy are outside the scope of the Tribunal’s review.” With respect to the reassignment process in the workforce planning exercise, the IFC submits that “[t]he fact that other staff members may have been reassigned during the workforce planning to a G2 level position does not demonstrate prima facie that [the] Applicant was treated differently.” The IFC asserts that the Applicant did not express interest in or flexibility to take on any roles beyond the three positions for which she applied during the workforce planning exercise, and it maintains that the Applicant had the same options as those staff members whose positions were also at risk and who therefore participated in the reassignment exercise.

105. The IFC also submits that the Applicant’s contention that her redundancy was motivated by racial discrimination lacks clear evidence. With respect to allegations of systemic racism, the IFC asserts that “the invocation of generic statements in townhalls and diversity reports do not meet the Tribunal’s standard of evidence regarding discrimination specific to the Applicant’s case which show facts supporting the claim of an individualized wrongdoing which amount to [the] Applicant’s terms of employment.”

106. The IFC contends that management has the discretion to organize the IFC’s business and staffing. The IFC states that the workforce planning had a “clear and consistent business rationale and process,” that is, “the need to position the right skills at the right seniority and location in the institution in order to execute IFC 3.0 and to recalibrate the staffing pyramid.” The IFC submits that the business rationales for the abolition of the Applicant’s position and the staffing of the other positions the Applicant expressed interest in are present and documented.
The Applicant’s claim that the redundancy of her position was based on retaliation is unsubstantiated

107. The IFC submits that retaliation against a staff member for using the IJS constitutes misconduct under the Staff Rules and that, pursuant to Tribunal precedent, “[t]here must be a direct link between the alleged motive and the adverse action to amount to retaliation.” *Iqbal*, Decision No. 485 [2013], para. 63, citing *AH*, Decision No. 401 [2009], para. 36. The IFC notes that the Applicant contends that her redundancy was motivated by her use of IJS and her reporting of an alleged operational conflict of interest. The IFC asserts that the Applicant’s allegations of retaliation are unproven and that she has not provided clear evidence linking the redundancy decision to a protected activity.

108. Further, the IFC asserts that the Applicant’s claims of retaliation must be limited to the subject matter of the present case – termination due to redundancy. The IFC avers that, in *Andriamilamina (No. 4) (Preliminary Objection)* [2021], the Tribunal rejected as inadmissible the Applicant’s claims regarding her work program and mapping and that, accordingly, the scope of review regarding retaliation should be limited to the redundancy claim.

109. According to the IFC, the Applicant has not met her burden of proof with respect to retaliation and, further, her arguments are contradicted by the IFC’s reasonable and observable business rationale. The IFC cites Tribunal precedent to contend that the Applicant must establish “some factual basis to establish a direct link in motive between [a protected activity] and an adverse action. A staff member’s subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation.” See *Atkinson (Merits)*, Decision No. 641 [2020], para. 97, quoting *O*, Decision No. 337 [2005], para. 47.

110. The IFC asserts that the fact that the Applicant had IJS proceedings “in process before and while the redundancy decision was taken does not, in and of itself, lead to a motive, let alone a link between the redundancy decision and [the] Applicant’s use of the [IJS].” Further, the IFC underscores that “no statement by the IFC COO, as the decision maker of [the] Applicant’s redundancy, nor any other statements quoted by [the] Applicant, demonstrate such a link.”
111. The IFC maintains that the decision regarding the redundancy of the Applicant’s employment “was taken in connection with the reassignment exercise which took place on March 24, 2019.” The IFC submits that the 2 April 2019 email from the HR Director regarding the “strategy of not reassigning [the Applicant] (as part of Phase II) particularly in light of her claims (e.g. whistleblowing)” may represent “an unfortunate formulation” by the HR Director, but also merely reflected a summary of the facts, namely that at this point, the reassignment exercise was completed for [the] Applicant, management had taken the decision that [the] Applicant could not be matched for a position under the new IFC staffing structure, and that the IFC COO intended to assure herself before informing [the] Applicant that this step was permissible considering [the] Applicant’s proceedings in the [IJS].

112. To the IFC, the email exchanges between IFC management and HR in March and April 2019 in fact “present evidence of the absence of retaliatory animus.” The IFC asserts that “the record shows that management took special care to ensure that [the] Applicant’s redundancy was permissible under the given circumstances,” proceeding only “once HR advised that [the] Applicant should be treated equal to other staff members at grade level G2 and GH.”

113. Specifically, the IFC contends that “[t]he IFC COO’s intent was to treat all affected staff equally and to ensure that the institutional exercise was communicated in a coherent manner to all staff, therefore maintaining fairness within the broader affected cohort, while preserving any potential rights and needs of [the] Applicant as a participant in [IJS] proceedings.” In this respect, the IFC refers to a written statement from the IFC COO dated 13 October 2021 and filed with the Tribunal. The IFC COO states, in pertinent part:

My intention was to ensure that the workforce planning exercise was conducted in accordance with the Principles of Staff Employment and Staff Rules. Specifically, my goal was to make certain that all G2 and GH staff affected by the process were treated equally and through a similar process, thereby safeguarding fairness. Leaving [the Applicant] out of the process would have been treating her differently than other involved staff, which I did not feel was fair to her or others. That said, I value the importance of the Internal Justice System and did believe that it was important to protect [the Applicant’s] rights as a staff member availing herself of the IJS, thus my ask outlined in the attached exchanges about whether she should be considered eligible given the ongoing cases.
114. Further, the IFC submits that the email exchanges show the intent of the MAS Director with respect to including the Applicant in the reassignment exercise, noting that the MAS Director stated, “My original assumption was that she should be included as her current position is under reassignment given that she is an execution-focused IO.”

115. According to the IFC, based on Tribunal precedent, specifically, *FI*, Decision No. 625 [2020], para. 128, “it would be simply impossible for a Vice President to meet the Tribunal’s expectations of due process in a redundancy decision if knowledge and consideration of [IJS] proceedings of a staff member during a workforce planning exercise would lead to a case of retaliation.”

*The Applicant’s Contention No. 8*

*The IFC breached the Applicant’s employment contract by forcing her to separate without adequate financial compensation and to retire early and against her will*

116. The Applicant contends that she was forced to retire from the IFC at the age of 51, and, further, was forced to choose “between receiving severance and her right to accrued pension.” She submits this was an abuse of discretion. According to the Applicant, her visa status meant that her options post-redundancy were to return to her home country or to apply for U.S. residency, which required her “to retire from the WBG immediately after her employment was terminated.” She states that she “opted to retire on January 1st, 2020 or her termination date, essentially for the purpose of applying for a [U.S.] green card.” She thus contends that the IFC breached the terms of her employment and violated Principle 7.01 of the Principles of Staff Employment “by unilaterally terminating her contract without granting her any financial compensation and forcing her to retire.”

117. Further, the Applicant states that she notified IFC management and HR that she would forgo severance payments but that the Terms and Conditions for Notice of Redundancy communicated to her on 24 October 2019 indicated that she would receive a severance payment in January 2020. She states that she did not receive a Notice of Termination explaining her rights as far as future employment with the WBG, and she questions the accounting of her departure from the IFC in the IFC’s records. The Applicant asserts that she was “targeted for exit” because she
had reached 50, the minimum retirement age, and that such retirement would be “at a minimal cost for the institution.” She questions the validity of the “Request for Approval of Severance Payment” form submitted in the IFC’s document production.

**The IFC’s Response**

*The IFC complied with its obligations under the Staff Rules in relation to severance payments*

118. The IFC contends that with respect to a redundancy only severance payments are required under the Staff Rules. The IFC submits that the Applicant was offered and waived severance payments in order to prevent an impact upon her pension. The IFC states that the Applicant’s pension was not reduced due to her waiver of severance, and submits a letter from a Manager, Pension Administration Division of the WBG, dated 2 September 2021 in support of this contention.

**The Applicant’s Contention No. 9**

*The IFC failed to follow proper procedure with respect to the redundancy decision*

119. The Applicant contends that the redundancy decision was procedurally flawed in that there was “an abundance of abuse of discretion, negligence of conflict of interest, and bad faith.” She claims that there was an “institutional failure to mitigate […] layers of conflict of interest affecting various levels of decision-makers in [the] Applicant’s termination,” and that this “gravely prejudiced” her.

120. Specifically, the Applicant asserts that the IFC COO decided on the redundancy, but that “the process that led to the decision to terminate [the] Applicant’s employment by not reassigning her during Phase II of the WFP and by tying severance payment to her acceptance of significant reduced pension was fraught with conflict of interest.” She proffers that the IFC COO “could have incentives to support [the] Applicant’s separation” given that the IFC COO was “the ultimate decision-maker” with respect to the integrity and operational conflict of interest issues previously raised by the Applicant with EBC. The Applicant also reiterates that the IFC COO was the
decision-maker with respect to the Applicant’s FY18 PMR recommendations and that, on 2 April 2019, the IFC COO rejected the recommendation to transfer the Applicant.

121. The Applicant also asserts a conflict of interest with respect to the HRDCO Manager as Chair of the Severance Review Group. She again refers to the emails of 2 April 2019 to contend that the HRDCO Manager was “party to the decision jointly made by IFC Management and HR to not reassign [the] Applicant during Phase II of the WFP.” According to the Applicant, “[w]hile it is understandable that the [HRDCO Manager] may be called to advise Management on complex HR issues, as the Chair of the Severance Review Group, his function required full independence to confirm that the terms and conditions of [the] Applicant’s termination were fair and in line with institutional rules and requirements.”

122. Finally, the Applicant alleges a conflict of interest with respect to the IFC’s Vice President for Africa and MENA. The Applicant asserts that the Vice President for Africa and MENA was a member of the team reassigning staff during phase two of the workforce planning, and, according to the Applicant, he “was bound to undermine [the] Applicant’s prospects of reassignment given his damaged relationship with [the] Applicant and his primary association with [the] Applicant’s pending Internal Justice Services claims.”

**The IFC’s Response**

*The redundancy decision was made by the appropriate decision-maker and the Applicant received proper notice in compliance with the Staff Rules*

123. The IFC submits that the IFC COO, the Applicant’s line Vice President, made the redundancy decision and that she was the appropriate decision-maker pursuant to Staff Rule 7.01, paragraph 9.03. Further, the IFC submits that the Applicant’s appointment ended on 31 December 2019, “six months from the effective date of the Notice of Redundancy, dated May 29, 2019, and delivered on June 5, 2019,” and, accordingly, in compliance with Staff Rule 7.01, paragraph 9.04.

124. The IFC avers that the Applicant has not provided evidence of a conflict of interest on the part of the IFC COO which would have rendered her unable to take the redundancy decision,
further noting that Staff Rule 7.01 “does not foresee a recusal process in relation to the redundancy decision.” The IFC submits that the record does not suggest that the Applicant’s reporting of operational conflict of interest allegations to the IFC COO would have led to a conflict of interest, nor does the record suggest that the Applicant’s reporting of such allegations would have influenced the IFC COO so as to disqualify her from being a decision-maker in respect of the redundancy of the Applicant’s employment. The IFC stresses that the IFC COO responded to the Applicant’s operational conflict of interest allegations “with attention and care.” The IFC further submits that the Applicant’s conflict of interest allegations regarding the IFC COO being the decision-maker with respect to the PMR recommendations do not stand because “the IFC COO’s involvement and knowledge of both processes cannot disqualify her from either process in light of the Tribunal’s case law.”

125. Additionally, with respect to the Applicant’s allegations of conflicts of interest, the IFC asserts that the record does not suggest that the HRDCO Manager, “as the designated representative of HR for concurrence with redundancy decisions, was somehow unfit to act in this capacity pursuant to [Staff Rule] 7.01, paragraph 9.03.” To the IFC, the Applicant has not provided evidence or substantiated her arguments to show that the HRDCO Manager “indeed suffered from a conflict of interest which would have tainted his ability to validly concur with the IFC COO’s decision.”

126. The IFC also submits that the Vice President for Africa and MENA was not a decision-maker with respect to the redundancy decision.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

127. In the present Application, the Applicant challenges

a) the […] decision to make her employment redundant, as per Notice of Redundancy dated May 29, 2019 and received by [the] Applicant June 5, 2019;

b) the PRS decision to dismiss her PRS [Request for Review No.] 459, dated February 22, 2020;
c) the undated Performance Management Review (PMR) of [the] Applicant’s FY18 performance evaluation, submitted to the IFC COO on March 28, 2019; and

d) the [IFC’s] decision regarding the PMR recommendations, dated April 2, 2019.

128. In Andriamilamina (No. 4) (Preliminary Objection) [2021], the Tribunal upheld the IFC’s preliminary objections regarding the Applicant’s claims related to FY18 performance management–related decisions, FY18 assignments and work program, career mismanagement, and violations of due process by PRS. The Tribunal held it would address the Applicant’s claim regarding the “decision to make her employment redundant” on the merits. Accordingly, the sole claim now before the Tribunal is the Applicant’s challenge to the redundancy decision, as certain of the Applicant’s claims have already been deemed inadmissible.

129. In particular, the Applicant’s claims regarding the failure to map her during the IFC reorganization which preceded the workforce planning are inadmissible pursuant to Andriamilamina (No. 4) (Preliminary Objection) [2021]. Further, the Applicant’s claim that the IFC abused its discretion by not adequately assisting her in strengthening her work program, thereby leading to career mismanagement, is also inadmissible. The Applicant claims that the IFC engaged in irregularities with respect to her annual objectives, work program, assignments, and performance evaluations which had the cumulative effect of career mismanagement, which then led to the termination of her employment. The Applicant has not pursued internal remedies with respect to any FY19 claims, and the Tribunal upheld the preliminary objections of the IFC with respect to the Applicant’s FY18 claims in Andriamilamina (No. 4) (Preliminary Objection) [2021]. The Tribunal finds there is no basis, therefore, to consider the Applicant’s career mismanagement claim, which she contends ultimately led to her termination due to redundancy.

130. The Tribunal will consider the remainder of the Applicant’s contentions related to the redundancy decision in turn:

• “The IFC violated Staff Rule 7.01 and the Applicant’s terms of employment by failing to provide her with the correct rationale for declaring her position redundant[.]”
• “The IFC failed to act with transparency in informing the Applicant of her redundancy, resulting in an abuse of discretion.”
• “The IFC violated the Applicant’s right to due process by using the redundancy as a pretext to remove her from service instead of dealing with her purported performance issues, thereby denying her the safeguards that exist to protect against termination for deficient performance.”

• “The IFC’s decision to render [the] Applicant’s employment redundant was not grounded in a legitimate rationale and instead was discriminatory, arbitrary, or otherwise improperly motivated[.]”

• “The IFC failed to make a good faith effort to place the Applicant in another position within the IFC in violation of [the] Staff Rules[.]”

• “The IFC’s decision breached [the Applicant’s] employment contract by forcing [the] Applicant to separate without any adequate financial compensation, and to retire early against her will[.]”

**Scope of the Tribunal’s Review in Redundancy Cases**

131. The Tribunal recalls that “the decision to declare a staff member’s employment redundant is an exercise of managerial discretion.” González Flavell, Decision No. 553 [2017], para. 137. Accordingly, the Tribunal reviews such decisions for abuse of discretion, that is, the Tribunal examines whether “a decision is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.” Id., para. 137, citing Harou, Decision No. 273 [2002], para. 27.

132. The Tribunal has also recognized that in challenging a redundancy decision “the initial burden of proof lies upon the applicant who must make a *prima facie* case of abuse of power.” FI [2020], para. 106, citing de Raet, Decision No. 85 [1989], para. 57. At the same time, the Tribunal has recognized “that it may be ‘exceedingly difficult’ for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion” (FI [2020], para. 106, quoting DD, Decision No. 526 [2015], para. 40), and considers it “incumbent on the Tribunal to require the strictest observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy” (FI [2020], para. 106, quoting Yoon (No. 2), Decision No. 248 [2001], para. 28).
133. Finally, “[t]o be upheld, the redundancy decision in question must be based on a legitimate rationale and must have been made in the interests of efficient administration.” *FI* [2020], para. 105.

**WHETHER THE REDUNDANCY OF THE APPLICANT’S POSITION WAS PURSUANT TO THE CORRECT LEGAL BASIS**

134. As the Tribunal stated in *EY*, Decision No. 600 [2019], para. 104, “[t]he basic elements of due process require that a staff member receives clear notification of the exact and correct Staff Rule under which his or her employment is being terminated.” Pursuant to Staff Rule 7.01, paragraph 9.02,

> Employment may become redundant when the Bank Group determines in the interests of efficient administration, including the need to meet budgetary constraints, that:

a) An entire organizational unit must be abolished;

b) A specific position or set of functions performed by an individual in an organizational unit must be abolished;

c) The responsibilities of a position no longer match the skills and experience of the incumbent and are unlikely to do so within a reasonable period of time; or

d) Types or levels of positions must be reduced in number.

135. In the instant case, the Applicant contends that the IFC attributed the redundancy of her position to Staff Rule 7.01, paragraph 9.02(b) – “A specific position or set of functions performed by an individual in an organizational unit must be abolished” – but that, in reality, her redundancy was due to Staff Rule 7.01, paragraph 9.02(d) – “Types or levels of positions must be reduced in number.” To the Applicant, the alleged incorrect rationale for the termination of her employment “deprived [her] of her right to a fair and transparent process, and irreparably harmed her chances of securing reassignment or addressing any alleged inadequacies with respect to her skills or performance.”
136. The IFC contends that the redundancy decision “had a reasonable and observable business rationale in the interest of efficient administration” and was supported by the correct legal basis – Staff Rule 7.01, paragraph 9.02(b). The IFC submits that the workforce planning exercise implicated different Staff Rules in its various phases, but maintains that “the redundancies of those staff members whose positions were identified as not fitting under the new staffing model and [who were] not re-deployed through the reassignment process left on the basis of Staff Rule SR 7.01, paragraph 9.02 (a), (b), or (c).”

137. The Tribunal finds the IFC’s position convincing. As the Tribunal has previously acknowledged, “there may be some degree of overlap between the four possible bases […] for deciding that a staff member’s employment has become redundant.” Perea, Decision No. 326 [2004], para. 33, quoting Harou [2002], para. 34. And, as the Tribunal further explained, “these provisions are not completely separated or detached from one another, and […] ‘[m]anagerial necessities must allow for more than mathematical and literal interpretation of the Staff Rules.’ (Lee, Decision No. 241 [2001], para. 26).” Perea [2004], para. 33, quoting Harou [2002], para. 34.

138. The record indicates that the workforce planning exercise which began in 2018 was centered on ensuring that the IFC has “the right skills at the right seniority in the right places to execute IFC 3.0.” Its objectives included recalibrating the IFC’s staffing pyramid in an effort to make the IFC more efficient and to “appropriately leverage senior resources with more junior staff.” As explained in the record, the workforce planning included a voluntary and a non-voluntary phase. With respect to the non-voluntary phase, the IFC has explained, and the record supports, that this phase included a process of identifying staff who fit under the staffing structure and mapping them to the available positions. The remaining positions or units subject to reduction, abolition, or change were to be identified by management, which would then notify such staff that their positions were at risk. This process led to staff providing their three choices for potential reassignment.

139. The Tribunal concludes that this process comports with the IFC’s contention that in the second phase of the workforce planning exercise the basis for redundancy decisions was not Staff Rule 7.01, paragraph 9.02(d) – “Types or levels of positions must be reduced in number” – as it
had been in the voluntary phase, but, rather, Staff Rule 7.01, paragraph 9.02(b) – “A specific position or set of functions performed by an individual in an organizational unit must be abolished.” In simple terms, the process became more specific as the workforce planning exercise proceeded, and the Tribunal finds this to be reasonable and within the managerial discretion of the IFC.

140. The Tribunal also observes that the explanation of the IFC is supported by the Proposed Staff Redundancy form, which cites paragraph 9.02(b) as the relevant section of Staff Rule 7.01 for the redundancy decision and which states, “Considering the [s]hift of project related work to the region, [the Applicant’s] position wasn’t required in the new Health and Education Sector Unit.” The form further explains the reassignment process and the fact that the Applicant was not matched, thus leading to redundancy. It also states that the functions formerly assigned to the abolished position would be “done in the regions and not in the Global Sector” and that “[r]emaining work is reassigned to other staff or dropped.” The Tribunal finds this description consistent with Staff Rule 7.01, paragraph 9.02(b).

141. The Tribunal also observes that the Notice of Redundancy memorandum of 29 May 2019 states that the redundancy decision was “taken in accordance with Staff Rule 7.01, paragraphs 9.02(b). A specific position or set of functions performed by an individual in an organizational unit must be abolished) […].” Further, the Tribunal observes the 13 March 2019 email communication from the MAS Director to those subject to reassignment, including the Applicant, which stated that “the Workforce Planning Voluntary program was quite successful, helping us get much closer to our objectives. We are now moving forward at the departmental and unit level to make some additional, targeted adjustments to ensure that we have the right staff in the right positions to execute on our strategy.” This communication suggests that the IFC was no longer reducing the overall number of types or levels of positions, in line with Staff Rule 7.01, paragraph 9.02(d), but rather had moved to determining which specific positions were to be abolished, in line with Staff Rule 7.01, paragraph 9.02(b). Moreover, on 10 April 2019, the Applicant’s Manager informed the Applicant that her current position was identified as being affected by business changes within MAS Global – H&E, and that “[i]t is therefore planned that your position will be abolished.”
142. Given the convincing explanation by the IFC regarding the different phases of the workforce planning and how these phases related to the various sections of Staff Rule 7.01, paragraph 9.02, as well as the supporting documentation, the Tribunal concludes that it was not an abuse of discretion for the IFC to effect the redundancy decision pursuant to Staff Rule 7.01, paragraph 9.02(b). The redundancy of the Applicant’s position was supported by the correct legal basis.

**Whether Proper Procedure was Followed in Respect of the Redundancy Decision**

143. Pursuant to Staff Rule 7.01, paragraph 9.03:

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

a. The performance (including professional and work-place behavior) of Staff Members;

b. Whether the abilities and experience of Staff Members can be used elsewhere in the Bank Group; and

c. The existence of volunteers for termination who are willing to accept severance payments pursuant to paragraph 9.08 of this Rule.

144. Further, pursuant to Staff Rule 7.01, paragraph 9.04:

Staff Members will receive a written notice of redundancy. The notice will state that the Staff Member’s employment is redundant, and that unless the Staff Member is reassigned, the Staff Member’s employment will be terminated six months from the effective date of the notice of redundancy.

145. The Applicant submits that the IFC failed to follow proper procedure with respect to the redundancy of her employment. She alleges conflicts of interest with respect to the decision-
makers involved in the redundancy decision as well as in the reassignment phase of the workforce planning exercise, specifically, the IFC COO, the HRDCO Manager, and the Vice President for Africa and MENA.

146. The IFC asserts that the redundancy decision met the requirements of appropriate decision-maker and notice under Staff Rule 7.01, paragraphs 9.03 and 9.04, and that the Applicant has not substantiated her claims of conflicts of interest with respect to either the IFC COO or the HRDCO Manager. Further, the IFC contends that the Applicant’s conflict of interest allegation regarding the Vice President for Africa and MENA is misplaced as this Vice President was not a decision-maker with respect to the redundancy of the Applicant’s position.

147. The Tribunal finds the IFC’s position plainly supported by the record. The IFC COO took the decision on the Applicant’s redundancy, with the concurrence of the HRDCO Manager, as communicated in the Notice of Redundancy memorandum dated 29 May 2019. This is further supported by the written statement of the IFC COO, filed with the Tribunal and dated 13 October 2021, in which the IFC COO states, “I was the IFC Chief Operating Officer from January 1, 2018 until March 1, 2021 and [the Applicant’s] line Vice President from January 1, 2018 until the end of her appointment with [the] IFC.” Accordingly, the Tribunal concludes that the IFC complied with Staff Rule 7.01, paragraph 9.03.

148. Further, with respect to notice, the Notice of Redundancy memorandum carries an effective date of 1 July 2019 and was given to the Applicant on 5 June 2019 by the HRBP. The Applicant’s employment with the IFC ended on 31 December 2019, six months from the effective date of the redundancy as required by Staff Rule 7.01, paragraph 9.04.

149. Moreover, as the Tribunal has previously noted, “[i]t is well established that, ‘[a]lthough Staff Rule 7.01 does not provide for a specific advance warning about the issuance of a notice of redundancy, 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.” F1 [2020], para. 136, quoting Garcia-Mujica, Decision No. 192 [1998], para. 19. In the instant case, the Tribunal finds that this standard of due process, too, has
been met. As the Applicant herself acknowledges, she was informed of her redundancy on 10 April 2019, eight weeks before receiving the Notice of Redundancy memorandum. From the effective date of the latter, she was entitled to and received a six-month notice period. In fact, the Applicant received almost seven months between receipt of the Notice of Redundancy and the end of her employment, and she had been notified by her Manager on 10 April 2019 that she was not matched for reassignment and her position would be abolished, almost two months before the Notice of Redundancy memorandum was issued. Accordingly, the requirements of Staff Rule 7.01, paragraphs 9.03 and 9.04, have been met, as have the Tribunal’s requirements of due process.

150. With respect to the Applicant’s allegations of conflicts of interest, the record does not indicate that the Vice President for Africa and MENA was involved in the redundancy decision. Accordingly, the Tribunal finds the Applicant’s claim of a conflict of interest in this regard to be irrelevant. Pursuant to Tribunal precedent, managers’ “prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in ‘the interests of efficient administration.’” Yoon (No. 2) [2001], para. 28. The Tribunal finds that there is no clear evidence in the record to substantiate the Applicant’s claims of conflicts of interest which would render the decisions by the IFC COO or HRDCO Manager improper. The Tribunal concludes that management has provided a sufficient business justification for the abolition of the Applicant’s position. The allegations of conflicts of interest asserted by the Applicant remain speculative inferences which neither vitiate the legitimate rationale of the redundancy decision nor show that the Applicant was denied proper procedure.

**WHETHER THE REDUNDANCY DECISION LACKED TRANSPARENCY AMOUNTING TO AN ABUSE OF DISCRETION**

151. The Applicant contends that the IFC abused its discretion in that the decision to make her employment redundant lacked transparency and, in turn, prevented her from making informed decisions about her departure from the IFC. Specifically, the Applicant contends that there was a delay in the clarification of the redundancy rationale in that she received the Notice of Redundancy memorandum some eight weeks after first being informed by her Manager on 10 April 2019 of the abolition of her position. To the Applicant, this delay inhibited her ability to take appropriate,
timely action in respect of negotiating a customized separation agreement. The Applicant further contends with respect to transparency that the criteria used to reassign staff during the reassignment phase of the workforce planning exercise were not published and therefore resulted in opaque managerial decisions.

152. The IFC submits that the Applicant’s Manager provided the Applicant with clear reasons for the redundancy of her position and, further, that staff members were kept well-informed of the workforce planning exercise through means such as institutionwide emails, a dedicated intranet page, and the availability of IFC management and HR which, the IFC submits, the Applicant utilized. The IFC contends that the Applicant was made fully aware of the exit options and financial implications in relation to the redundancy of her employment.

153. The Tribunal takes note of the above steps which the IFC took prior to the redundancy. As previously discussed, the Applicant received appropriate written notice on 5 June 2019 from the appropriate decision-maker regarding the redundancy of her employment. Given this, the Applicant’s earlier notification from her Manager, on 10 April 2019, regarding her impending redundancy is of additional benefit to the Applicant and in line with Tribunal precedent. See, e.g., Garcia-Mujica, [1998], para. 19. The Tribunal considers that this aspect of the Applicant’s criticisms of the redundancy decision in respect of transparency lacks merit.

154. The Tribunal is also unconvinced that the Applicant was inhibited in her ability to take appropriate, timely action with respect to negotiating a customized separation agreement. In an email to her Manager and copying the HRBP on 26 April 2019, the Applicant stated, “I remain open to exploring a [Mutually Agreed Separation] tailored to my situation, that would include an acceptable settlement of existing claims and an exit modality that would not reduce my pension; terms to be agreed if [the] IFC is interested,” and further stated, “If a tailored [Mutually Agreed Separation] cannot be envisaged, I would opt for redundancy, without waiving any of my existing claims and rights to appeal to all relevant judicial instances.” The HRBP responded the same day stating, “There won’t be any tailored or customized solution.” Thereafter, the Applicant indicated on 2 May 2019 via email to her Manager:
Further to your communication of April 10, 2019 regarding my involuntary separation from [the] IFC and follow-on exchanges below with HR to clarify a number of points, I would like to confirm that I am opting for:

1. Redundancy
2. Job search and administrative leave period

The record therefore demonstrates that the Applicant had ample time to consider her separation options and that she engaged with HR in respect of these options.

155. The Tribunal will consider the Applicant’s contentions regarding the alleged opacity of the reassignment exercise. In this respect, the Tribunal notes that on 13 March 2019 the Applicant received an email from the MAS Director indicating that she was subject to reassignment and should submit her job position preferences. The MAS Director stated, “The Operations Management Team will review the list of staff and preferences against the available positions and will make determinations on best fit in line with our business needs.” On 15 March 2019, the HRBP followed up on the MAS Director’s 13 March 2019 email and stated, “As we proceed with making reassignments, we will take into account your preferences. However, please be aware that this will just be one factor, and the Operations Management Team will make determinations in line with business and IFC’s strategic needs.” On 22 March 2019, the Applicant emailed the MAS Director inquiring about the transparency of the reassignment process and requesting further specificity. She stated, in pertinent part:

One of the constraints that we have faced is the absence of job description (especially for the newer upstream positions) and of clear candidate selection criteria that will be used to match candidates with the available positions, in a context where most likely many job seekers would have to take on a position that is not well aligned with their field of expertise and/or geographic preferences. Many of us that received a reassignment notice […] are quite concerned that the matching will simply be implemented at management’s full discretion, with limited transparency.

The Applicant further asked for clarification of the selection criteria for the three positions for which she applied during the reassignment phase.

156. It does not appear that the Applicant received a response to her inquiries. Further in this respect, the Tribunal observes that the record is thin on the question of whether and how the
selection factors stated by the IFC – “staff history and background, talent ratings and prior experience” – were applied in respect of the Applicant. The Tribunal explained in Perea [2004], para. 34, that it is “important that the selection process follow a fair and transparent procedure.” See also Yoon (No. 2) [2001], para. 28. In Perea [2004], para. 57, the Tribunal found 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.” The Tribunal therefore considered in Perea [2004], para. 57, “that there was a lack of coherence and transparency in regard to the selection process, a process which led directly to the [a]pplicant’s redundancy.” In that case, “[t]he [IFC] failed to provide a fair procedure.” Id.

157. In the instant case, however, the Tribunal is satisfied with the IFC’s explanations of how the selections for the positions were made during the reassignment process. Specifically, the IFC submits that applicants’ SRIs and talent ratings were considered along with the applicants’ qualifications as well as the experiences of the OMT members in their past work with the applicants. The documentation in the record supports this contention, and business rationales, though very brief, are provided for each of the chosen candidates for the positions for which the Applicant applied. Fuller, available documentation regarding consideration of the Applicant for the positions would have more clearly substantiated the basis for her non-reassignment and, perhaps, would have helped to assure the Applicant that the process was fair and transparent. The IFC has explained, however, that management considered the top candidates for the positions and that, as the Applicant was not considered a top candidate for the positions for which she applied, she was not, or was only briefly, discussed at the 24 March 2019 OMT meeting. The Tribunal finds this explanation satisfactory, recalling that “[t]he decision to select a staff member for a particular position is firmly a matter of the Bank Group’s discretion” (FR (Merits), Decision No. 651 [2021], para. 66) and that “no staff member has a right to be selected to a particular position or to be included in a list of candidates for a position” (id., quoting Riddell, Decision No. 255 [2001], para. 23).
WHETHER THE TERMINATION OF THE APPLICANT’S EMPLOYMENT DUE TO REDUNDANCY WAS PRETEXTUAL

158. In Husain, Decision No. 266 [2002], para. 43, the Tribunal noted that it “has previously expressed concern about the practice of mixing redundancy issues with decisions about the performance of staff, since redundancy does not give staff an opportunity to consider allegations or respond to them. (See de Raet, Decision No. 85 [1989], para. 62.)” As the Tribunal explained, “[r]edundancy procedures are not appropriate mechanisms for addressing performance issues, as they do not provide procedural protection, nor enable staff to respond to accusations.” Husain [2002], para. 43.

159. The Applicant contends that the decision to terminate her employment by abolishing her position was improperly affected by views about her performance. She submits that, pursuant to Tribunal precedent, “the redundancy process cannot be used as a convenient substitute to terminate a staff member without giving him or her the benefit of the due process safeguards that apply to termination for defective performance.” BT [2012], para. 40.

160. The IFC avers that the Applicant’s contentions in this regard are unconvincing and insists that any performance issues of the Applicant which may have ultimately needed to be addressed “were overtaken by the workforce planning exercise.” The IFC submits that “staff history and background, talent ratings and prior experience all informed the fit for positions in the reassignment exercise to ensure that [the] IFC has ‘the right staff in the right position to execute [the] [IFC’s] strategy’ […] and these factors combined led to [the] Applicant’s termination based on redundancy.” The IFC underscores that, rather than being personally targeted, the Applicant was “affected as one of several staff members in Global MAS and throughout the institution in the voluntary and involuntary separation phases.”

161. In EY [2019], para. 115, the Tribunal underscored that it “has made a distinction ‘between the selection of a staff member for redundancy because of perceived poor performance, which is impermissible, and consideration of the relative ‘performance of staff members’ as part of an exercise to select one individual rather than another.’ See Prakas, Decision No. 357 [2007], para.
Further, in *EY* [2019], para. 117, the Tribunal also “observe[d] that the Staff Rules do not provide for a particular method to conduct comparisons of staff members’ performance and [found] that the Bank has discretion in determining which methods are most suitable to carry out that task.”

162. The Tribunal considers that the stated factors used by the IFC to compare staff members in making the reassignment decisions – “staff history and background, talent ratings and prior experience” – which then led to the Applicant’s termination based on redundancy are reasonable and within managerial discretion. Moreover, the Tribunal observes that these factors applied to all staff subject to reassignment.

163. The record indicates that the workforce planning exercise was a tremendous, institutionwide undertaking. Pursuant to this endeavor, as the Applicant herself states, over 200 staff members volunteered for the voluntary separation phase with 179 accepted by management. In the second phase of the workforce planning exercise, 49 staff members were subject to reassignment with 35 staff successfully reassigned and 14 not reassigned. Of the 14 staff not reassigned, nine were at Grade Level GH and four were PIOs. In the instant case, therefore, the Tribunal finds it unconvincing that the Applicant’s employment was declared redundant in circumstances which suggest she was individually targeted in this manner as a pretext for termination for deficient performance. *See BT* [2012], para. 40. Moreover, from a due process perspective, the Tribunal notes that the Applicant had the opportunity to challenge, through the IJS, performance management decisions and decisions relating to her work program with respect to the fiscal years considered in the reassignment exercise, namely FY16, FY17, and FY18.

164. Given the factual context as established in the record, the Tribunal cannot conclude that the decision to abolish the Applicant’s position was contrived to target her specifically for some deficient performance, or that the decision to abolish the Applicant’s position was unfairly or improperly affected by considerations about the Applicant’s performance. The reality is that the Applicant was one of a larger group subject to reassignment and her performance was compared against that of others in the pool as is permissible pursuant to Tribunal precedent. The IFC has shown a legitimate rationale for the abolition of the Applicant’s position as previously discussed,
and the Tribunal does not find that the IFC abused its discretion in comparing and selecting staff members during the reassignment process.

**WHETHER THE REDUNDANCY DECISION WAS RETALIATORY**

165. Retaliation is expressly prohibited under the Staff Rules. See Staff Rule 8.01, paragraph 2.03. As the Tribunal observed in *Bauman*, Decision No. 532 [2016], para. 95,

the Staff Rules are clear that retaliation against any person “who provides information regarding suspected misconduct or who cooperates or provides information in connection with an investigation or review of allegations of misconduct, review or fact finding, or who uses the Conflict Resolution System” is prohibited. See Staff Rule 3.00, paragraphs 6.01(g) and 7.06, and Staff Rule 8.01, paragraph 2.03; see also *CS*, Decision No. 513 [2015], para. 104; *Sekabaraga (No. 2)*, Decision No. 496 [2014], para. 60. This prohibition extends also to retaliation against any person who is believed to be about to report misconduct or believed to have reported misconduct, even if such belief is mistaken.

166. Staff Rule 8.02, paragraph 3.01, provides as follows:

Where a Staff Member has made a prima facie case of retaliation for an activity protected by this Rule (i.e., by showing that the Staff Member reported suspected misconduct under this Rule and has a reasonable belief that such report was a contributing factor in a subsequent adverse employment action), the burden of proof shall shift to the Bank Group to show – by clear and convincing evidence – that the same employment action would have been taken absent the Staff Member’s protected activity.

167. Pursuant to Tribunal precedent, an applicant bears the burden of proof with respect to making “a prima facie case to show the retaliatory motives behind the impugned decision.” *EO (No. 2) (Merits)*, Decision No. 629 [2020], para. 83. Further, as the Tribunal has established, “[t]here must be a direct link between the alleged motive and the adverse action to amount to retaliation.” *AH [2009]*, para. 36. In this regard, “[i]t is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person.” *Id*. Instead, the “direct link” must be shown, and “[a] staff member’s subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation, which in essence is that the [alleged reason for the adverse action] is a pretext to mask the improper
motive.” *Bauman* [2016] para. 97, quoting *O* [2005], para. 47. If an applicant has established a *prima facie* case, the burden shifts to the IFC “to disprove the facts or to explain its conduct in some legally acceptable manner.” *de Raet* [1989], para. 57.

168. The Applicant contends that the IFC’s decision to make her employment redundant was retaliation for her repeated use of the IJS and “to cover up the integrity issues” she had previously raised in *Andriamilamina (No. 3) (Preliminary Objection)* [2019]. The Applicant insists that the decision not to reassign her during the workforce planning exercise was made before the completion of the reassignment of affected staff. The Applicant points to correspondence between the HR Director, the HR team, and the Case Management Team as proof that the decision not to reassign her during phase two of the workforce planning exercise and to ultimately declare her employment redundant was retaliatory and, in the Applicant’s view, “especially motivated by her reporting of business conflict of interest and integrity issues.”

169. The IFC submits that the Applicant’s allegations of retaliation are unproven and that she has not provided clear evidence linking the redundancy of her employment to a protected activity.

170. The Tribunal will consider whether the Applicant has met her burden of proof with respect to establishing a *prima facie* case that she was the subject of retaliation. The record is clear that the Applicant has engaged in protected activities with respect to her various IJS claims, applications to the Tribunal, and reporting of her allegations of suspected misconduct and conflict of interest issues to EBC. To prove retaliation for engaging in these protected activities, the Applicant is required by the Tribunal’s standard to show “a direct link between the alleged motive and the adverse action.” *AH* [2009], para. 36. In the instant case, the termination of the Applicant’s employment due to redundancy stemming from her not being selected for a position during the reassignment process constitutes an “adverse action” for purposes of a retaliation claim. However, the Applicant must also establish a direct link between the alleged motives – “to cover up the integrity issues raised by [the] Applicant” and/or silencing the Applicant as a “perceived […] ‘troublemaker’ given her unrelenting use of the IJS” – and the adverse action – the decision to abolish her position.
171. The Applicant relies upon email correspondence in March and April of 2019 between HR and IFC management concerning her inclusion in the reassignment process to support her claim. The Tribunal will therefore carefully scrutinize this correspondence to determine whether any of the various statements in these emails demonstrate a direct link between the improper motives alleged by the Applicant in respect of her engagement in protected activities and the redundancy decision.

172. The correspondence of 8 March 2019 indicates that the IFC COO and the MAS Director sought permission from HR “to include people like [the Applicant] in the pool of staff subject to reassignment, given the various processes in which she [was] involved.” On 11 March 2019, the MAS Director stated, “My original assumption was that she should be included as her current position is under reassignment given that she is an execution-focused IO.” Further on 12 March 2019, the HRBP stated:

   We just came out of a meeting with the Case [M]anagement [T]eam and HR and while general consensus is to treat her the same way as every staff in the GH–G2 pool. Everyone is given the opportunity to voice their preferences and Management will later on to the matching. There will be a uniform process for those that are not able to secure a position. You certainly don’t want to give her the opportunity to say she wasn’t treated fairly and wasn’t given the same opportunities as her peers.

In the Tribunal’s view, none of these statements establishes a direct link between improper motive and action for purposes of retaliation. Rather, the Tribunal considers that management’s seeking this kind of guidance and clearance from HR appears practical and prudent.

173. The Tribunal next notes the 2 April 2019 email from the HR Director to various HR colleagues, sent after the conclusion of the reassignment exercise and before staff were notified of the outcomes, which states:

   [The IFC COO] wanted to reconfirm I was OK with the previously discussed strategy of not reassigning her (as part of Phase II), particularly in light of her claims (e.g. whistleblowing). I confirmed this is indeed the case, and this is in line with what [the HRDCO Manager] and I discussed, as well as the conversations I had with most of you.
She requested that we prepare the talking points for [the Applicant’s Manager/the MAS Director] to have the conversation with her. Given the sensitivities, I think this is indeed critical.

The Tribunal takes note of the IFC’s submission that the language used by the HR Director may constitute “an unfortunate formulation,” in that the language, “the previously discussed strategy of not reassigning her (as part of Phase II), particularly in light of her claims (e.g. whistleblowing),” could be easily interpreted as suggestive of an improper motive on the part of the IFC. The Tribunal finds that, for purposes of the Applicant’s retaliation claim, the above language from this 2 April 2019 email establishes the necessary “direct link between the alleged motive and the adverse action,” and the Applicant has therefore met her burden of proof with respect to establishing a *prima facie* case. Accordingly, the burden of proof shifts to the IFC “to disprove the facts or to explain its conduct in some legally acceptable manner.” *de Raet* [1989], para. 57.

174. The Tribunal notes the IFC’s explanation, with respect to the discussion of the Applicant in the relevant emails, that management sought to ensure the equality of all staff with respect to the reassignment process. In this regard, the Tribunal considers the IFC COO’s explanation of these emails in her written statement of 13 October 2021 and filed with the Tribunal:

> My intention was to ensure that the workforce planning exercise was conducted in accordance with the Principles of Staff Employment and Staff Rules. Specifically, my goal was to make certain that all G2 and GH staff affected by the process were treated equally and through a similar process, thereby safeguarding fairness. Leaving [the Applicant] out of the process would have been treating her differently than other involved staff, which I did not feel was fair to her or others. That said, I value the importance of the Internal Justice System and did believe that it was important to protect [the Applicant’s] rights as a staff member availing herself of the IJS, thus my ask outlined in the attached exchanges about whether she should be considered eligible given the ongoing cases.

175. The Tribunal finds the IFC’s position convincing. While the emails may, at first glance, give pause, the Tribunal finds that there are other clear and reasonable interpretations for the references to the Applicant besides improper motive. Further, the Tribunal considers that IFC management has an important interest in internally communicating candidly and clearly with respect to personnel issues. On the facts of the instant case, the Tribunal is of the view that the IFC’s overall communication with HR was entirely responsible with respect to handling a complex
and challenging personnel issue, and ensuring that the Applicant was treated fairly during the 
reassignment process with particular consideration of her numerous pending IJS claims. In the 
Tribunal’s view, the emails suggest that the Applicant was to be treated the same as other staff in 
the reassignment process.

176. This perspective leads to a clear and important conclusion – pursuant to the Staff Rules and 
Tribunal precedent: the Applicant has no fewer rights than the other staff members subject to the 
reassignment process due to her engagement in protected activities, but the Applicant also cannot 
assert immunity from legitimate managerial actions. In other words, a position of an applicant is 
not guaranteed to be preserved from redundancy simply because that applicant has used the IJS or 
reported suspected misconduct. In the Tribunal’s view, therefore, so long as the reasons or 
motivations for not reassigning the Applicant are legitimate, the use of the IJS does not provide 
immunity from the managerial authority and discretion to carry out the reassignment process, in 
accordance with procedure, even if it leads to non-reassignment, as was the case with the Applicant. 
*See generally, Al, Decision No. 402 [2010], para. 126.*

177. Having explained its conduct in relation to the emails in question in a legally acceptable 
manner, the IFC has met its burden of proof. Accordingly, the Tribunal finds that the emails in 
question do not substantiate acts of retaliation or sufficiently evidence an intent to retaliate on the 
part of the IFC.

178. Beyond the email correspondence, the Tribunal finds to be more questionable the meeting 
notes from the 24 March 2019 OMT meeting, in which the reassignment discussions and matching 
in fact took place. The absence of discussion of the Applicant in the records of this meeting is 
notable, yet the Tribunal still finds that it can draw no clear conclusions from this omission. The 
IFC has explained that the “Applicant would have been discussed but may not be listed as the 
discussion may have been short or there was an oversight in minute keeping. Specific details at 
this time cannot be recalled due to the passage of time.” While this explanation from the IFC 
provides little insight, the Tribunal reiterates that the initial burden of proof is on the Applicant in 
establishing a claim of retaliation. Here, there is no “direct link” evident in any of the statements
included in the 24 March 2019 meeting notes, and any inferences to be drawn from the Applicant’s omission in the meeting notes would be too speculative to sustain the retaliation claim.

179. The Tribunal recalls that, “[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes.” O [2005], para. 49. The Tribunal concludes that the non-reassignment of the Applicant which led to the redundancy of her position was not retaliatory.

WHETHER THE REDUNDANCY DECISION WAS DISCRIMINATORY

180. The Applicant links her allegations of retaliation to “the institutional racism across the WBG that does not tolerate that a Black African staff stands up firmly and persistently against unjust treatments.” She submits that she challenged the status quo and the “unwritten rules on standards of behavior expected of discriminated groups,” in terms of persistently protesting unfair treatment by her hierarchy, engaging candidly with senior-level decision-makers to seek resolution, and extensively using the IJS. The Applicant also claims that she was discriminated against during the reassignment phase of the workforce planning exercise by not being offered a Grade Level GG2 position, noting that “[t]here was no procedure provided for applying specifically for G2 positions” and asserting that her Grade Level GH peers across various units were granted the opportunity to take lower-level GG2 positions.

181. The IFC submits that there was no improper motivation for the redundancy and contends that the Applicant has not provided evidence to establish a prima facie case of discrimination in relation to the redundancy decision. With respect to the reassignment process, the IFC submits that “[t]he fact that other staff members may have been reassigned during the workforce planning to a G2 level position does not demonstrate prima facie that [the] Applicant was treated differently.” In particular, the IFC stresses that the Applicant did not express an interest in any roles beyond the three positions for which she applied during the workforce planning exercise, and submits that the Applicant had the same options as those staff members whose positions were also at risk and who therefore participated in the reassignment exercise. The IFC notes that, while the Applicant stated
that she “remain[ed] very interested in supporting market creation and business development activities in Africa (strongest regional knowledge and credentials),” she also stated that she “[was not] in a position to apply/commit to jobs that [were] based in the field, due to personal considerations.” Further, the IFC disputes the Applicant’s contention that her redundancy was motivated by racial discrimination. With respect to the Applicant’s contention regarding systemic racism, the IFC asserts that “the invocation of generic statements in townhalls and diversity reports do not meet the Tribunal’s standard of evidence regarding discrimination specific to the Applicant’s case which show facts supporting the claim of an individualized wrongdoing which amount to [the] Applicant’s terms of employment.”

182. At the outset, the Tribunal observes that the Applicant has decided not to pursue her allegations concerning “systemic, institutional racism” before EBC. As the Tribunal recently stated in FZ (Preliminary Objection) [2021], para. 91, “[i]t is not within the purview of the Tribunal to conduct the kind of factual investigations necessary to substantiate or refute the [a]pplicant’s claims of systemic racism, and, although EBC typically investigates allegations of individual misconduct, EBC is better structured to undertake review of the [a]pplicant’s allegation.” See also, Sekabaraga (Preliminary Objection), Decision No. 494 [2014], para. 42. From the record, it is evident that the Applicant knew she had the option to raise these allegations before EBC but did not do so.

183. Principle 2.1 of the Principles of Staff Employment provides that the IFC “shall not differentiate in an unjustifiable manner between individuals or groups within the staff.” And, under Staff Rule 3.00, paragraph 6.01(e), wrongful discrimination by IFC staff members including “on the basis of age, race, color, sex, sexual orientation, national origin, religion or creed” constitutes prohibited misconduct. Further, Staff Rule 3.01, paragraph 4.01, states that supervisors’ treatment of staff shall not be influenced by “the race, nationality, sex, religion, political opinions or sexual orientation of the Supervisor or the Staff Member.”

184. In Hitch, Decision No. 344 [2005], para. 43, the Tribunal explained that “discrimination takes place where staff who are in basically similar situations are treated differently” (quoting
Crevier, Decision No. 205 [1999], para. 25), and in de Raet, [1989], para. 57, the Tribunal set out the burden of proof with respect to allegations of discrimination:

[I]t is not the obligation of the Bank to demonstrate that there has been no discrimination or abuse of power – not, that is, until an [a]pplicant has made out a *prima facie* case or has pointed to facts that suggest that the Bank is in some relevant way at fault. Then, of course, the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner.

*See also* DJ (*Merits*), Decision No. 548 [2016], para. 58. As the Tribunal further explained in AI [2010], para. 42,

[t]here is no magic test; the proof needed to establish a *prima facie* case will vary from case to case, depending on the facts and circumstances of each case. But as indicated by the Tribunal in Bertrand, [Decision No. 81 [1989], para. 20,] the [a]pplicant must at least provide “detailed allegations and factual support” for his claim of racial discrimination. Applicants make *prima facie* cases of racial discrimination if they adduce evidence from which the Tribunal can reasonably infer such discrimination.

185. Further, as stated in Bodo, Decision No. 514 [2015] para. 77,

[t]he Tribunal recognizes that applicants may face challenges obtaining evidence to support a discrimination claim. As was observed in Sekabaraga (*No. 2*), para. 31 “[s]tatements indicating discrimination on the part of the decision-maker and other forms of direct evidence are likely to be available only in the most egregious cases. Claims must often rely principally on circumstantial evidence from which discrimination may be inferred.” Yet, an applicant asserting discrimination or retaliation must still make a *prima facie* case with some evidence to show the discriminatory or retaliatory motives behind the impugned decision.

186. In the instant case, the Tribunal finds that there is insufficient evidence in the record to indicate that the Applicant was treated differently from others in the same position. As the Tribunal has already stated, the absence of discussion of the Applicant in the 24 March 2019 meeting notes is notable. However, the Tribunal considers that this particular lack of documentation, by itself and without more, does not constitute sufficient evidence of discrimination. The Applicant was informed that her position was at risk and subject to reassignment and was given the opportunity to provide three preferences from a list of available positions. The record indicates that this process applied to all staff subject to reassignment. As previously stated, the reassignment process involved
49 staff, 14 of whom were not successfully reassigned. Of the 14 staff not reassigned, nine were at Grade Level GH, including the Applicant. Further, four of the non-reassigned staff were PIOs, including the Applicant. These statistics do not support the Applicant’s contention that she was singled out, nor do they suggest that the Applicant was treated differently from other similarly situated staff members. Quite the contrary.

187. Further, the Tribunal observes that not only did the Applicant choose not to apply to any Grade Level G positions during the reassignment but she also explicitly indicated that she was unwilling to relocate. In her email of 20 March 2019 to the HRBP providing her three position preferences for the reassignment process, the Applicant stated that she “remain[ed] very interested in supporting market creation and business development activities in Africa (strongest regional knowledge and credentials), but [was not] in a position to apply/commit to jobs that [were] based in the field, due to personal considerations.” And the Tribunal notes the Applicant’s email of 22 March 2019 to the MAS Director, in which she stated, in part, “Downgrading from H1 position to G2 position: I understand that this would primarily be driven by the need to reach the target staffing pyramid structure, and salaries will not be changed, nor the recognition of staff’s skills vis-à-vis the existing competency framework. Is my understanding correct?” While the record does not indicate that the Applicant received a response to this email, the Tribunal considers that the Applicant was aware of the option of applying to Grade Level GG2 positions yet did not indicate such a willingness to management. The Tribunal considers this lack of flexibility, in terms of not indicating a willingness to move to a lower grade position and/or to relocate, to be to the Applicant’s detriment.

188. Further, the Tribunal finds that the Applicant also has not met her burden of proof with respect to establishing a prima facie case of racial discrimination. The Tribunal has previously acknowledged that “significant systemic challenges, such as accountability deficits and disparities in career prospects on the basis of race” may result from institutional racism. FZ (Preliminary Objection) [2021], para. 90. In this regard, the Tribunal takes note of the 2021 WBG Anti-Racism Charter and, in particular, Principle One of the Charter, “The World Bank Group commits to zero tolerance of racism and racial discrimination in all forms and contexts,” and Principle Two of the Charter, “Tackling institutional racism and racial discrimination in all forms and contexts is
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HETHER THE IFC PROVIDED THE APPLICANT WITH SUPPORT IN FINDING ALTERNATIVE EMPLOYMENT

189. Principle 7 of the Principles of Staff Employment states, in pertinent part, that staff members may be separated from the Bank

when the Organizations determine that a position or positions are no longer necessary, or that the responsibilities of a position have changed so that the staff member is not qualified to fill it, provided that no vacant position in the same type of appointment exists for which the Organizations determine that the staff member is eligible and has the required qualifications or for which he or she can be retrained in a reasonable period of time[.]

190. Further, pursuant to Staff Rule 7.01, paragraph 9.06:

Following the effective date of the notice of redundancy, the Bank Group will assist redundant Staff in seeking another position within the Bank Group by providing access to career counseling services. Staff are responsible for applying to existing vacancies in the World Bank Group’s recruitment portal. Placement also may be offered in a vacant lower level job in accordance with Staff Rule 5.06. “Assignment to Lower Level Positions.”

191. The Applicant asserts that IFC management “exhibited a complete lack of support for – and even obstructed – her reassignment during the involuntary phase of the WFP” and that, unlike some of her peers, she “was not even considered for lower level positions.” The Applicant submits that the only assistance she received from HR was the assignment of a career transition counselor. To the Applicant, the IFC “did the minimum required by the Staff Rules.” She maintains that “there is no evidence in the record that [the IFC] helped [her] identify specific alternative positions, during the job search period.” The Applicant further asserts that her circumstances were unique in
that she had pending claims against the IFC and had previously challenged managerial decisions, which meant that she “required hands-on support and unequivocal sponsoring by HR and IFC Sr. Management if she were to stand any chance to find an alternative position at [the] IFC or elsewhere in the WBG.”

192. The IFC submits that it fulfilled its obligations under Staff Rule 7.01 with respect to assisting the Applicant with seeking alternative employment. In particular, the IFC notes that the Applicant was offered an IFC career coach. Further, the IFC highlights that available positions which remained unfilled after the reassignment phase of the workforce planning exercise were advertised on Compass and that the Applicant was encouraged by the HR Director to apply to open positions. Additionally, the IFC notes that, from 11 March 2019, the Applicant’s Manager offered for the Applicant to prioritize her job search over her ordinary work. To the IFC, the Applicant’s failure to apply to any positions on Compass between January and December 2019 suggests that she did not play her part with respect to securing alternative employment, and the IFC stresses, “The type of engagement suggested by [the] Applicant is plainly not required.”

193. The Tribunal finds the IFC’s contentions entirely persuasive. Staff Rule 7.01, paragraph 9.06, states that redundant staff members are to be provided with career counseling services. This the Applicant received in August 2019, several months before her termination date of 31 December 2019. Further, as Staff Rule 7.01, paragraph 9.06, notes, “[s]taff are responsible for applying to existing vacancies in the World Bank Group’s recruitment portal.” The HRBP specifically notified the Applicant on 26 April 2019 that she would continue to have access to the IFC’s job portal and could apply to any available positions. The Applicant also herself states that the HR Director encouraged her to apply to four positions which she had identified in Compass. In these respects, the Tribunal finds the fact that the Applicant did not apply to any jobs in Compass to be “overly passive,” for, as the Tribunal has previously noted, “the job-search exercise requires efforts from both sides.” Marshall, Decision No. 226 [2000], para. 45.

194. In the Applicant’s view, as evidenced in her statement to the HRBP in email correspondence of 30 April 2019, “[i]f [the] IFC wanted to keep me as a valuable resource for the WBG, wouldn’t HR proactively do everything possible to help me identify openings in the WBG
in the same way the institution tried to reassign as many staff as possible?” The Tribunal finds that the IFC may go above the minimum requirements of the Staff Rule but that it is not required to do so. Further, the very nature of the reassignment exercise and its validity suggest that the Applicant was indeed considered for alternative vacant positions as required by Principle 7 of the Principles of Staff Employment. The Tribunal concludes that the IFC has fulfilled its obligations in respect of the Staff Rules in providing the Applicant with support in finding alternative employment.

**WHETHER THE IFC COMPLIED WITH ITS FINANCIAL OBLIGATIONS IN RELATION TO THE REDUNDANCY DECISION**

195. Pursuant to Staff Rule 7.01, paragraph 9.08:

Staff Members whose appointments are terminated on grounds of redundancy will be entitled to severance payments equal to the larger of:

a. Three months’ net pay; or

b. One month net pay for each complete year of continuous service, up to a maximum of 18 years.

196. The Applicant contends that the IFC abused its discretion in relation to her redundancy in that she was forced to retire from the IFC at the age of 51 and was forced to choose “between receiving severance and her right to accrued pension.” The Applicant states that she “opted to retire on January 1st, 2020 or her termination date, essentially for the purpose of applying for a [U.S.] green card.” She therefore contends that the IFC breached the terms of her employment and violated Principle 7.01 “by unilaterally terminating her contract without granting her any financial compensation and forcing her to retire.” Further, the Applicant makes repeated claims in her pleadings that her pension has been unduly affected pursuant to the redundancy process, and she questions the validity of the “Request for Approval of Severance Payment” form.

197. The IFC contends that, with respect to a redundancy, only severance payments are required under the Staff Rules. The IFC notes that the Applicant was offered and waived severance payments and insists that the Applicant’s pension has not been reduced due to her waiver of severance.
198. The Tribunal finds that the Applicant’s contention in respect of forced retirement for the purposes of applying for a U.S. green card is irrelevant. This would appear to be a personal decision of the Applicant relating to her choice of residence and is not implicated in the Tribunal’s assessment of the redundancy decision.

199. With respect to the Applicant’s concerns regarding her pension, the Tribunal takes this opportunity to stress the importance of a staff member’s pension and the need for transparency in this context. It is incumbent upon the WBG to maintain accurate records in this regard, pursuant to its obligation of fairness to staff members. In the instant case, the record indicates that the Applicant has chosen to waive severance payments in relation to the redundancy, having submitted a signed Severance Waiver Form dated 10 December 2019 to HR Operations. Further, the Tribunal is of the view that the Applicant’s concerns regarding a reduction or discrepancy in respect of her pension should be assuaged by the letter from the WBG’s Manager, Pension Administration Division, dated 2 September 2021, providing a detailed statement of the Applicant’s Pension Benefits.

200. In conclusion, the Tribunal finds that the full evidentiary record, including documents and explanations provided by the parties, demonstrates that the redundancy decision was based on a legitimate rationale and was in the interest of efficient administration and should therefore be upheld.

201. Finally, the Tribunal recalls that in *Andriamilamina (No. 4) (Preliminary Objection)* [2021], it reserved the question of legal fees and costs for the merits stage. Upon consideration, the Tribunal has decided not to award the Applicant any legal fees and costs.

DECISION

The Application is dismissed.
In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.

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

* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.