



World Bank Administrative Tribunal

2021

Decision No. 644

**Gitanjali Chaturvedi,
Applicant**

v.

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

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

**Gitanjali Chaturvedi,
Applicant**

v.

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

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges 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 29 October 2020. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the Bank's decision not to extend her term appointment.

FACTUAL BACKGROUND

4. The Applicant first joined the Bank in 2011 as a Short-Term Consultant (STC) with the Agricultural and Rural Development Unit. Between 2011 and 2016, the Applicant worked as an STC and as an Extended-Term Consultant (ETC) with the same unit and later with the Agriculture Global Practice and Social Development Global Practice. On 16 September 2016, the Applicant began a three-year term appointment as a locally recruited Senior Social Development Specialist, Level GG, with the South Asia Region's (SAR) Social Development Unit in Delhi, India. The Applicant's appointment was subject to a one-year probation which could be extended for up to one additional year.
5. The main focus of the Applicant's position was to work on the cultural heritage and tourism portfolio, a field in which the Applicant had significant experience. Because the tourism portfolio

was still under development, though, the Applicant was recruited with the understanding that her work program would also include work on gender and safeguards.

6. Around the time her term appointment began, the Applicant became pregnant. The Applicant explains that it was a high-risk pregnancy due to her age and the high levels of pollution in Delhi that were known to have negative effects on young children and fetuses. In December 2016, the Applicant advised her Manager that she was pregnant. On 1 April 2017, with the agreement of her Manager, the Applicant began telecommuting from Geneva, Switzerland, where her husband was based, in order to avoid the environmental risks.

7. The Applicant began her maternity leave on 1 June 2017. At this time, the Applicant had completed nine months of her one-year probation. The Applicant's baby was born in June 2017.

8. On 18 July 2017, the Manager emailed the Applicant regarding her probation, writing:

Given that you will have been on extended leave for about three months of this first year, we would like to extend the probation period by three months, from September 16, 2017, to January 16, 2018. The purpose of the extension is simply to allow us to have one full year of experience with each other before we conclude the probationary period.

9. The Applicant responded to this email on 20 July 2017, noting that "it would be good for the Bank to work to minimize any HR [Human Resources] impact of maternity leave *as a matter of policy*." (Emphasis in original.) The Applicant continued, "[Y]our proposed decision will put an extension of probation on my personal record. This would normally be seen as a negative entry, and almost certainly nobody will remember down the line that this extension was triggered by pregnancy." The Manager sought advice from HR in response to the Applicant's concerns.

10. On 16 August 2017, the Applicant emailed her Manager regarding the extension of her probation, stating that she believed that "even availing of maternity leave leads to continued job uncertainty" and asking that her Manager consider "whether extending probation is indeed the right thing to do." She continued, "I accept that this may have been common practice until now,

but I really do believe it is time to reconsider whether this practice creates the right set of incentives for new mothers like me.”

11. The Manager responded on 18 August 2017, noting that he had discussed the matter with HR and management and that they had concluded that “the extension is justified by the interest in having one full year’s worth of work experience with each other before reaching a decision to conclude the probationary period, just as [he had] had with all other new staff in [his] unit.” He also noted that “[p]robationary periods are typically one year, but they may be extended by the staff member’s Manager in consultation with the next-in-line Manager, up to two years, so there is nothing unusual about an extension in terms of policy.” There were no further discussions on the matter, and the Applicant’s probation was extended from 16 September 2017 to 16 January 2018.

12. The Applicant’s maternity leave ended on 12 September 2017. The Applicant claims that she intended to take additional leave following her maternity leave but instead returned to work immediately after because she did not want to risk another extension of her probation.

13. The Applicant was approved to telecommute from Geneva from 25 September 2017 to 13 October 2017.

14. The Applicant’s term appointment was automatically confirmed in January 2018.

15. In order to avoid the high levels of pollution in Delhi and to allow her child to see a Swiss pediatrician, the Applicant requested and was approved to telecommute from Geneva from 22 January 2018 to 9 March 2018.

16. In January 2018, the tourism portfolio on which the Applicant worked was transferred from the SAR Social Development Unit to the Urban Unit, and the Applicant’s work on tourism-related matters ended. In an email exchange in late January 2018 between the Applicant and her Manager, the Applicant expressed her disappointment with the change in her work program given that she was hired as a tourism expert. The Manager responded that, while the Applicant was hired with an

intent to focus on tourism, it was understood from the start that the tourism line of work was still developing and that the Applicant would also focus on gender and safeguards. The Manager added that work on gender and safeguards would fill a work program but noted that he would be happy to help the Applicant explore other opportunities if she did not feel that the SAR Social Development Unit could offer her a fulfilling career. The Applicant ended the exchange by acknowledging that her skill set fit with the SAR Social Development Unit and that she would prefer to work there and noting that she looked forward to conversations regarding how she should pursue her career aspirations.

17. Also in January 2018, the Bank announced the Pilot Initiative to Support New Mothers in the Delhi Office (the Pilot Program), designed to provide flex-work options for new mothers at the end of their maternity leave with the goal to “assist our female staff during the first months after child-birth, protecting breastfeeding time, facilitating child support during the first year, and allowing them to gradually resume work.” The key features of the Pilot Program included:

1. For nine months after end of maternity leave, staff are authorized to opt for the following arrangements, covered by existing policies:
 - a. Access up to three months of additional leave using Accrued Annual Leave or by Advance Annual Leave (to be charged against entitlements accruing in the future if allowed by duration of contract).
 - b. Up to six months by default for Flextime and/or Home Based Work, as long as staff remain in their duty station, and commit to take part in missions and attend essential meetings as determined by their manager. For staff interested in considering home based work, child care arrangements will need to be available during core work hours, so that disruptions will be minimized during working times from home. If the staff fails to meet any of the conditions stated above in a satisfactory manner including performance expectations, Management (at the Director level) retains the discretion to end or modify the Flextime and/or Home Based Work arrangements.
 - c. Staff will also be given the opportunity to take LWOP [Leave Without Pay] or request part time work after the completion of the maternity leave period.
2. All other Flex-work options will continue to be available with managerial approval, for example, LWOP, telecommuting, reduced work schedule, or

extending these default Flextime or Home Based Work arrangements beyond one year.

18. The Bank notes that participation in the Pilot Program required managerial approval. The Pilot Program entered into effect on 1 February 2018.

19. As the Pilot Program was aimed at assisting new mothers during the first year after the child's birth, the Applicant was eligible to participate in the Pilot Program until her baby's first birthday in June 2018.

20. On 16 March 2018, after she returned from Geneva, the Applicant emailed her Manager to request to participate in the Pilot Program. The Manager responded on 4 April 2018, noting that he was happy to offer any flexibility and asking for more details on what kind of arrangement the Applicant envisioned. The Applicant responded that her hope was to have a flexible and varied schedule whereby she worked from the office on most days but worked from home on days without scheduled meetings when her work would be on the computer. The Manager responded on 11 April 2018 authorizing the Applicant's participation in the Pilot Program.

21. The Applicant and her Manager decided that she would submit weekly Home-Based Work (HBW) requests during her participation in the Pilot Program. In response to an HBW request submitted on 24 April 2018, the Manager stated that he approved the request but asked that in the future the Applicant include a description of her expected deliverables during the HBW period. The Bank notes that an HBW request "requires a description of deliverables that all staff members must complete in order for the manager to approve the request, not just for staff members in the Pilot Program." The Applicant responded to her Manager's email, writing:

My HBW is a continuation of the work I would do at the office, ie work on the gender platform and provide support to the safeguards aspects of the projects that I work on. What I do is come for all meetings and interactions that require me to be in the office and use that time to maximize my interaction with the team and the TTLs [Task Team Leaders] I work with. I then do the work I would normally do behind my computer in the office from my home office. Thanks to Jabber, I can be called there just like I can on the office. As such, it is difficult to identify specific deliverables for any given day, similarly as it would be to do so for any normal day in the office.

22. The Manager responded, writing:

When we spoke a couple weeks ago, we agreed that we would implement the flexibility under the pilot utilizing the HBW form as a tool. Since you prefer to vary your schedule, we agreed that you would fill the form weekly and that you would keep key colleagues with whom you interact informed as to how they can reach you as needed. As is the case in my interaction with all staff reporting to me and for whom I am responsible, I just ask for an indication of whereabouts. I'm happy to offer flexibility, and if you need to change the plan you identified at the beginning of the week, we can work with that.

The HBW form includes a space for staff to indicate deliverables. There are many staff in the unit who work on HBW from time to time, and all of them include a brief description of that day's or week's main deliverables in the form. This is usually a little more specific than the general work plan. For instance, you might say "review gender dimensions of project x, y, or z; or prepare presentation on component X, or participate in meeting Y". This helps us also as an institution, because we are occasionally called to account (e.g., by senior management) to show that even with flexwork arrangements, like HBW, we remain efficient.

23. During this time, the Applicant's work on gender developed as she became the co-TTL for the India Gender Platform and the India Component of the South Asia Regional Trade Facilitation Program (SARTFP) in March 2018 and was appointed the Country Gender Focal Point for India in May 2018. Also around this time, the Applicant was trained and certified for the Bank's new Environmental and Social Framework (ESF) as she continued to expand her work on safeguards.

24. On 15 May 2018, the Applicant emailed her Manager indicating that she had decided not to continue her participation in the Pilot Program. In the same email, the Applicant requested arrangements to telecommute from Geneva from 4 June 2018 to 31 August 2018, noting that she also planned to take annual leave during this time but had not yet solidified plans. The Manager responded on 17 May 2018, writing:

I have consulted with the GP [Global Practice] Management Team on this request, as [the Vice President's] guidance on telecommuting requires. We are not able to grant this request. There are several considerations. These include business needs: presence in Delhi of the India Gender Focal Point / co-TTL for both the India Gender Platform and the SARTFP Gender Platform is important for the role, for interactions with CMU [Country Management Unit] and other colleagues, and to work with visiting missions; occasional short absences are manageable, but a three

month absence would not be practical. Considerations also include equity of treatment of all staff.

25. The Applicant replied to the denial on 18 May 2018, asking for a discussion with her Manager regarding the situation. The Applicant also provided more details on her telecommuting and leave request, and wrote:

When we talk, it would probably be good to discuss how we can manage the situation going forward as well. My hope is that for the time being, it would be possible to do two stints of telecommuting each year, for a duration similar to what I have done earlier this year and still hope to do over this Summer. I would plan these periods around the time when missions are less (and air pollution high), i.e. one period in the summer and one period in winter, around the holidays, to minimize disruption. I would require no other flex work arrangements, as I have full time child care in both locations and actually I prefer to work from the office, as I discovered during the short experiment with the Delhi pilot.

26. The Manager responded on 23 May 2018, writing:

Let us discuss this next week in Delhi. I sympathize with you, and we can explore the instruments available to see how to manage the situation. But I also have to be clear that from a unit perspective, the contributions you can make in your current role with our unit are not the same from Geneva as they are from Delhi. From the unit perspective, the gender work – both for the India program and [...] for the SARTFP pipeline and portfolio – is intense between now and September, and both the CMU and the SARTFP Secretariat have made it clear to us that they really crave someone on the ground in Delhi. A big component of the value of the work, in your current role, is having you in Delhi to interact with teams, proactively. This includes interacting with our team as well – being present for and even driving missions. Of course, when family imperatives force us to find alternative arrangements, we do that, and there are various flextime and leave instruments available. But we have to find the right balance. Please give some thought to options so that we can have this discussion next week.

27. The Applicant emailed her Manager on 31 May 2018 following an in-person discussion on the subject of her request. The Applicant noted that they had not reached a conclusion and repeated her motivations for the telecommuting request. The Applicant added that she and her child needed to be in Geneva the following week for medical tests and suggested that she would take LWOP for the seven weeks following, or until a different arrangement could be made. The Manager responded on 1 June 2018 suggesting that they continue the discussion and requesting that the

Applicant submit a leave request to cover her travel for the upcoming week. The Applicant submitted a sick leave request which was approved by her Manager, and she subsequently left for Geneva.

28. On 8 June 2018, the Manager emailed the Applicant to continue the discussion regarding her leave options. In his email, the Manager referenced the in-person conversation and reiterated why it was important for the Applicant to be present in Delhi for her role:

During our conversation, I explained why, from the unit perspective, it was important to have our Gender Focal Point, and the co-TTL of both the India Gender Platform and the SARTFP Gender Platform, be present in Delhi over the coming months. The next few months will see intense activity as the entire pipeline will have to be prepared in the first two quarters of the new FY [Fiscal Year]. As we have seen from work by Gender Focal Points in other countries, availability to interact with project teams upstream, including during their missions and including being able to accompany teams on field visits, has proved to be invaluable in opening up spaces for engagement on gender. This is the type of engagement we seek and expect. STCs are called in to supplement, but the Gender Focal Point does the heavy lifting. Furthermore, as we are expecting some changes in staffing in the coming FY, we would also need all of our Social Development Specialist team members to be prepared and on the ground to carry safeguards work. My consultations with the CMU and with task teams confirmed my understanding that the coming months will be busy and that this will not be a very slow period. In short, if you are absent, we will have to make alternative arrangements to ensure coverage.

As you note, we did have some discussions on your performance. Performance is a factor in decisions regarding flexible working arrangements. In your email message of 5/18, you stated, "I believe I have shown in the past that I am capable of being productive while telecommuting. I have handled complex safeguards issues without disruption and actually produced the concept note for the Gender Platform while on telecommute. I have never received a single complaint from any of my teams about not being available or responsive." I explained, I *have* received complaints from team members on tasks that you co-TTL, and I have had concerns of my own. These included issues related to timeliness, quality, and proactivity of your contributions-reaching out to teams to support gender work in operations (including writing to teams working on Q1 [Quarter 1] operations), scheduling missions and meetings, and contributing to specific documents (such as the SARTFP Concept Note and Decision Note, and TORs [Terms of Reference] for a senior consultant). You have expressed, to other team members and to me, reluctance to join the planned gender workshop in Delhi during your proposed telecommuting; and below, you describe your willingness to participate as a way of "accommodating my concern". This kind of event is an important part of the Gender Platform, and

rather than reluctantly participating, our expectation is that you should be a driver of the event. Team members have shared with me the impression that they need to send reminders to you regarding expected contributions [...]. Our expectation is that in your role, you should be driving the work forward, identifying needs to cover key tasks, like decision notes (instead of having to be asked), and either volunteering or organizing to make things happen. You have done that on occasion, but to my observation, you have not done so consistently. [(Emphasis in original.)]

The Manager finally noted in this email that

[w]e are sympathetic to your and your family's circumstances, and the difficult choices this poses. That said, this job is based in Delhi and we believe the incumbent must be present in Delhi to be effective in the role. While we do try to offer staff as much flexibility as possible – and I would note that we have authorized telecommuting for about 4.5 months out of the past 21 months – the GP is not prepared to authorize telecommuting for roughly two months out of every six.

You requested the telecommuting arrangements only two and a half weeks before leaving, at what we had already indicated was a critical time, and this left us little time to work through the implications or to find an alternative way of covering the duties in the way we need them covered over the coming months. From your message, I gather that you are not planning on returning to Delhi next week ([i.e.] upon conclusion of your approved week of sick leave). I have consulted with GP Management on your request, and we are prepared to grant Leave Without Pay until July 30 (seven weeks from this Monday) with conditional reentry.

29. The Applicant, still in Geneva, responded the same day, noting that she would request annual leave before taking LWOP so that she could discuss the implications of LWOP and conditional reentry with HR. The Applicant also noted her disappointment with the situation and stated, “I do want to say that on first appearance, what you put on the table for me to accommodate my family situation at this time is not in fact an accommodation.” The Applicant also stated that she was “taken aback” by the in-person discussion with her Manager, which “left [her] in a situation where [she] could not defend [herself], feeling completely blindsided.” The Applicant continued by listing what she believed were her accomplishments in her role thus far, concluding by asking her Manager “to make an attempt to seek balanced feedback and consider whether the tenor of [his] message [...] would not be more negative than is truly justified.”

30. The Manager replied later that day, writing:

It is not the Bank's obligation to "put on the table" proposals to accommodate every circumstance that a staff member might encounter. The Bank strives to accommodate unique staff circumstances and requests, subject to consideration of business requirements. Alternative working arrangements are not an entitlement. Even in the case of annual leave, requests and approval must be made and obtained in advance.

We have tried to accommodate every request you have ever made for flexibility; I can't think of a single one we have not granted before now. In consideration of business needs, as I outlined during our conversation and in these communications, we are not able to grant your request for telecommuting this summer; nor are we able to authorize telecommuting for two months every six. In your previous message, you requested leave without pay. I consulted with GP management, and we are able to authorize this, with conditional reentry. The circumstances of your request are not what determine the conditionality of the reentry. This is a function of the fact that we will need to make alternative arrangements to cover the unit's business needs (and to allocate resources for this), and this precludes holding a position for you during your extended absence. For your reference, Staff Rule 6.06, para 7.02, states: "In order for leave without pay of 31 calendar days or more to be approved, a senior manager at the level of Director or above must give the staff member a written commitment to provide the staff member a position at the end of leave without pay, or the staff member must agree in writing that his/her appointment will terminate within a period not to exceed 6 months after his/her leave without pay ends if the staff member cannot find a suitable position in the same type of appointment."

Although, as I have noted, the timing of your request is not ideal and the notification period is short, I am prepared to approve a request for annual leave. Please submit the form through the system as soon as possible, or at least let me know via email your proposed dates.

I will not address, in this email, the issues you raise regarding performance. We can review at another time. I will note, however, that your departure from your duty station, with little notification or work-planning, either with me or with your teammates, and without prior approval for leave after today, is not the standard of behavior that we expect from our staff.

31. Subsequently, the Applicant used a combination of family leave, annual leave, and LWOP through 31 August 2018.

32. The Applicant returned to Delhi for two weeks in July 2018 for a training session and to have an in-person performance discussion for her FY18 Annual Review. In her pleadings, the Applicant describes the conversation as "acrimonious" and claims that, during the discussion,

[the Manager] began by listing a number of occasions when [the Applicant] had allegedly not been available – all of them outside working hours, most of them during her baby’s breastfeeding times, and most of them in the period immediately after she had returned from maternity leave when her baby’s breastfeeding schedule was still very frequent. [The Applicant] became annoyed at having to defend herself for taking care of her baby especially because she had in fact, made arrangements to attend many after-hours meetings by arranging specific [childcare] – something which obviously required lead time. [The Manager] then became hostile, stating that he felt uncomfortable with the conversation, and ended it abruptly.

They met again later in the day, this time in the presence of an HR representative. [The Manager] repeated the same complaints. He said he would not allow any further telecommuting and said that it was not up to him to find a solution for her childcare problems. He stated repeatedly that because [the Applicant] was a locally recruited staff (“LRS”), she was expected to be in her duty station at all times. [The Applicant] asked whether the health concerns of babies of LRS staff were less legitimate than those of IRS [internationally recruited] staff (since several Delhi-based IRS staff telecommute or otherwise change location for health reasons).

33. The Applicant claims that, following the performance discussion, she spoke with the Ombudsman who told her to prepare to be placed on an Opportunity to Improve plan. No such plan was put into place.

34. The Applicant’s FY18 Annual Review contained a positive assessment of her performance, and her Manager wrote under “Overall Supervisor Comments” that the Applicant “is to be commended for her good work this year, especially on gender and safeguards, and we look forward to her continued contributions.” The Reviewing Official signed off on the Annual Review on 29 September 2018, writing that the

GSURR [Social, Urban, Rural and Resilience Global Practice] Management Team fully endorses the assessment of [the Applicant’s] performance in FY18, and is particularly pleased to note her work on gender in the India program, and her contributions on safeguards. We thank [the Applicant] for her contributions, and look forward to her continued success and professional growth in GSURR in FY19.

35. In September/October 2018, the GSURR management team met to “consider the business needs of the unit and how best to fulfill those needs going forward,” and in this context discussed the Applicant’s position. According to the Bank, the management team considered the following:

- [The] Applicant was initially recruited to the SAR Social Development team primarily because of her strengths and passions for work on cultural heritage and tourism, a line of business that seemed to hold some promise for further development at the time of [the] Applicant's recruitment, but which ultimately did not develop. That outcome was a known risk at the time of [the] Applicant's recruitment, so from the start of [the] Applicant's assignment, [the] Applicant was provided with a work program with some diversity across Social Development (in areas like safeguards and gender). Eventually, around the beginning of 2018, the unit's business in tourism ended, and the remaining work in that area was transferred to another unit. [The] Applicant's work program was reoriented to tasks related to gender and safeguards. [The] Applicant had expressed disappointment at the idea of no longer having a work program aligned with her expertise.

- [The] Applicant had performed satisfactorily in her work on gender and safeguards, but there was no business case for retaining [the] Applicant in a level GG position to work in areas where she was not an expert and had little experience. The rationale for hiring [the] Applicant at a GG level was her expertise in tourism. [...] In management's views, [the] Applicant did not possess the kind of broad/deep skills needed for the gender/safeguard work, which was the strongest growth area for the business of the South Asia Social Development unit. GG level Safeguard Specialists typically have many years of on the ground experience working specifically on safeguards; it is generally a primary, not secondary or tertiary, area of specialization.

- With regard to the work on gender, a role [the] Applicant herself had indicated that she did not want, this was a less stable line of business over the long-term than safeguards and the [GSURR] Council determined that the work [the] Applicant had been doing could be done more cost-effectively by [...] i) drawing on GF level staff, which is what was used as the gender focal point role in other country management units ("CMUs"), ii) partly drawing on specialists with deeper safeguards experience, using a small share of their time, and/or, iii) by hiring lower level and less costly consultants. In short, it did not make business sense for the unit to extend a GG level position for [the] Applicant's work program.

36. On the basis of these discussions, the management team decided in September/October 2018 not to extend the Applicant's appointment.

37. On 30 October 2018, the Applicant submitted a telecommuting request for the period of 7 January 2019 to 22 February 2019. The Manager responded the next day stating that the management team would consider the request and revert back to her. The Manager followed up on the email in December 2018 to inform the Applicant that the telecommuting request was still being

reviewed. The request was never approved or denied, but the Applicant did telecommute from Geneva during the requested period.

38. On 14 February 2019, the Applicant and her Manager had a Mid-Year Discussion, which the Applicant states was “very positive.”

39. In March 2019, the Applicant visited Washington, D.C., for the GSURR Forum. While there, she met with her Manager on 19 March 2019, and he informed her that her appointment would not be extended other than by the number of days necessary to provide for six months’ notice. The Applicant states that when she asked the reason for the non-extension decision the Manager replied that it was for the business needs of the GSURR and provided no further details. The Manager emailed the Applicant the same day, writing:

As discussed in our meeting this morning, we have processed a five day extension of your term appointment from September 15 to September 20, 2019.

Please find attached the written notification that your term appointment will not be extended beyond that date and shall end on September 20, 2019.

40. The Applicant emailed her Manager on 20 March 2019, writing that she was shocked by the decision and requesting that it be reconsidered or that she be provided with a specific justification. The Applicant states that she received no response. The Applicant further states that she met with the Senior Director of GSURR who informed her that “term contracts have an end date and given the business needs of the new GP, they had decided to let [the Applicant] go.”

41. On 22 March 2019, the Applicant filed a Request for Review with Peer Review Services (PRS), requesting review of the non-extension decision and claiming that the decision was discriminatory on the basis of her gender.

42. On 17 May 2019, the Applicant submitted a complaint to the Ethics and Business Conduct Department (EBC) alleging discrimination based on gender, bullying, harassment, abuse of power, and reprisal. EBC closed the case on 19 July 2019 and explained that the Applicant’s claims would be more appropriately addressed through the PRS process.

43. The Applicant's term appointment ended on 20 September 2019.

44. PRS conducted a hearing on 21 January 2020. During the hearing, detailed reasons for the non-extension decision were discussed, specifically that the Applicant lacked the depth of skills required for a level GG safeguards specialist, that her work on gender could be performed by a lower-level staff member, and that there were issues with her performance.

45. On 26 June 2020, the PRS Panel issued its Report, concluding:

Upon considering the totality of the evidence, the Panel finds that the Non-Extension Decision was not supported by sufficient evidence in terms of it being based on reasonable and observable grounds i.e. as between business needs versus a skillset mismatch or "lackluster" performance; that management did not follow a fair and proper process in making the Non-Extension Decision; and that WBG [World Bank Group] management did not act in good faith in making the Non-Extension Decision, although there was no evidence that the Non-Extension Decision was discriminatory.

46. The PRS Panel recommended that the Applicant be compensated in the amount of six months of her net salary, which "corresponds to the time [the Applicant] would have had to improve her skills deficiencies had she been provided with notice of the skills gaps and offered the opportunity to improve them." On 24 July 2020, the Bank accepted the PRS Panel's recommendation.

The present Application

47. The Applicant filed the present Application with the Tribunal on 29 October 2020. The Applicant challenges the decision not to extend her term appointment.

48. The Applicant requests the following relief: (i) a new employment contract of at least three years' duration as a Senior Social Development Specialist, Level GG, in SAR but under different management and in a position that will permit her to exercise flexibility in order to safeguard her daughter's health; (ii) a lump sum payment in the amount of her salary and benefits, including pension benefits, between the end of her employment on 20 September 2019 and the date on which

she begins work under her new contract; and (iii) “[s]uch additional compensation as the Tribunal deems fair and just for the violations of due process; the intangible damages and terrible distress caused to [her] by the discrimination against her because of her gender and motherhood; the impact on her personal life and on her financial commitments; and the long-term harm to her career trajectory and earnings.”

49. The Bank submitted a preliminary objection on 11 December 2020 but requested to withdraw the objection on 13 January 2021. The Tribunal granted the request on 21 January 2021 and will consider the case on the merits.

50. The Applicant claims legal fees and costs in the amount of \$28,737.50.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The non-extension decision did not have a reasonable or observable basis and was discriminatory

51. The Applicant contends that the non-extension decision did not have a reasonable or observable basis as the “belated and contradictory justifications” for the decision were neither honest nor true. The Applicant notes two reasons that were given for the non-extension decision during the PRS process: (i) that her gender work could be more effectively performed by a level GF staff member and (ii) that she lacked the breadth and depth of skills required for the safeguards work. The Applicant contests both of these justifications.

52. With regard to the Bank’s suggestion that the work on gender could be done by a level GF staff member at a lower cost, the Applicant notes that during the PRS hearing it was confirmed that her gender work was taken over by a GG-level staff member. To the Applicant, this fact demonstrates that the Bank’s justification was not an honest explanation.

53. The Applicant next contests the Bank's assertion that she lacked the skills necessary for safeguards work. The Applicant's contention is threefold: first, the Applicant received feedback from management specifically commending her for her work on safeguards; second, because the new ESF replaced the older safeguards procedures and because she was trained and certified in the new ESF, the Applicant was equally as experienced with the new procedures as other safeguards specialists; and, third, if the management team did believe she lacked the necessary skills in safeguards, they had an obligation to inform the Applicant and provide her with an opportunity to improve.

54. The Applicant further notes that poor performance was suggested as a justification for the non-extension during the PRS proceedings, although her Manager told her that the decision had nothing to do with her performance. The Applicant avers that, if poor performance was a factor in the non-extension decision, her Manager had an obligation to notify her of any deficiencies and place her on an Opportunity to Improve plan.

55. The Applicant also contends that the non-extension decision was discriminatory, citing a series of events from after the birth of her baby to the non-extension decision as evidence of a pattern of discrimination.

56. As a first instance of discrimination, the Applicant cites the extension of her probation by the length of her maternity leave. The Applicant notes that her Manager offered a business rationale for the extension, but she contends that there is a disparate impact of the Manager's right to extend probation on new mothers. To the Applicant, the extension imposed a huge emotional burden as she believed her use of maternity leave resulted in continued job uncertainty.

57. As a second instance of discrimination, the Applicant contends that her Manager made her participation in the Pilot Program so burdensome that she was prevented from obtaining the protections offered to new mothers. To the Applicant, her Manager's requests that "she complete weekly a form that set out her daily schedule" demonstrated that her Manager was not willing to make the Pilot Program work, and as a result the Applicant withdrew from the Program.

58. Next, the Applicant contends that the denial of her telecommuting request in the summer of 2018 was discriminatory. The Applicant states:

By denying [her] the option of flexible work arrangements, the Bank made it not only very costly for her to continue as a staff member, but also created a hostile work environment where [the Manager] attempted to prevent her from taking care of her young child. The Bank discriminated against her, while giving others such flexible arrangements.

59. The Applicant further submits that her Manager's criticism of her performance during the FY18 Annual Review performance discussion was "grossly discriminatory." The Applicant submits that her Manager's criticisms of her performance "consisted almost entirely of complaints that [she] was not always available for meeting after hours *because of her breastfeeding schedule* in the period immediately after her return from maternity leave." (Emphasis in original.) To the Applicant, this criticism was "grossly discriminatory and contrary to all norms of decency and respect for working mothers."

60. The Applicant states:

In sum, then, [her] employment at the World Bank was plagued with discrimination based on the fact that she was a woman, that she took maternity leave (resulting in an extension of her probation), that she sought flexible work arrangements so that she could work from home or telecommute in order to protect her child from the dangerous pollution of Delhi (denied because she tried to be as accommodating as possible instead of taking a single two year arrangement), and that her performance was lacking because she had to miss some out-of-hours meetings because of breastfeeding requirements. Regardless of what excuses the Bank subsequently tried to fabricate to justify the Non-Extension Decision, there cannot be any serious doubt that the driving force behind it was [her Manager's] objections to [her] repeatedly seeking justifiable and sensible accommodations for her childcare needs.

The Bank's Response

The non-extension decision was based on legitimate business needs, and the Applicant's claims of gender discrimination are unfounded

61. The Bank contends that the non-extension decision was based on legitimate business needs and thus had a reasonable and observable basis. The Bank submits that, in response to the

Applicant's Request for Review with PRS, she was provided with the specific justifications for the non-extension decision:

i) the decision not to renew [the] Applicant's appointment was a business decision, focused on whether there was a match between the unit's skills profile and the business/revenue trajectory of the unit [...], ii) there was no business case for retaining [the] Applicant in a GG level position as Social Development Specialist working on safeguards because, typically, a Safeguards Specialist has extensive on the ground experience working specifically on safeguards as his/her primary area of specialization, none of which was [the] Applicant's case [...], and iii) with regard to [the] Applicant's work on gender, a portfolio [the] Applicant stated that she did not want, [the] Applicant's manager explained that the work [the] Applicant had been doing could be done more cost-effectively by drawing on GF level staff (which was the case for the gender focal point role in other CMUs) or on specialists with deeper safeguards experience, and/or by hiring lower level and less costly consultants. [...] It simply made no business sense for the unit to extend the GG level position for the remainder of [the] Applicant's work program.

62. The Bank submits that, although the Applicant was deservedly commended for her work on safeguards, her skills did not qualify her as a GG-level safeguards specialist, which was what her position had essentially become following the removal of the tourism portfolio. The Bank further responds to the Applicant's claims that her work on gender was taken over by a GG-level staff member by explaining that this staff member "spent only 20% of her time on gender" and was assisted by an ETC at a lower cost.

63. The Bank next contends that the Applicant's claims of gender discrimination are unfounded as she does not allege sufficient facts to constitute a *prima facie* case. The Bank submits that the Applicant "has failed to provide *any evidence or factual support*, other than her own allegations, of the suspected gender discrimination." (Emphasis in original.)

64. With respect to the Applicant's contention that the non-extension decision was discriminatory, the Bank states that the "Applicant's arguments are simply unfounded conjecture." To the Bank, the correspondence between the Applicant and her Manager regarding the probation extension demonstrates that there was no "hidden agenda" behind the decision other than a desire on the Manager's part to have the benefit of a full year of the Applicant's work before confirming her position.

65. With respect to the Applicant's contentions regarding the flexible work arrangements, the Bank submits that flexible work arrangements are not designed to resolve family situations and that most of the Applicant's requests were approved. The Bank notes that an important part of the Applicant's position was being available in Delhi to proactively interact with clients and teams, and it cites the Guidelines and Principles for telecommuting staff, which provide:

Telecommuting should not be used as a permanent arrangement to accommodate personal or family needs such as long term dependent care, or personal or family preferences. Long term telecommuting arrangements are not a prevailing flexwork practice in most work places given its potential impact on team work, collaboration, learning, team productivity and organizational culture.

66. The Bank notes that many of the Applicant's requests for flexible work arrangements cited as their basis her family needs, for which, to the Bank, long-term telecommuting was not meant to provide a solution. The Bank notes that the environmental circumstances in Delhi were challenging for Bank staff and submits that it tried to mitigate staff concerns as much as possible by allowing for HBW (in the duty station), allowing children to be brought to the office when schools were closed to benefit from the air filtration systems, allowing staff members to leave the office early to avoid peak traffic times, and offering financial support to purchase air purifiers and filters. The Bank submits that it is sympathetic to the Applicant's concerns regarding the air quality and her child but acknowledges that the air pollution was a reality of being based in Delhi.

67. The Bank further contends that it accommodated the Applicant's flexible work requests as much as practicable and notes that nearly all of the requests were granted. With respect to the Pilot Program, the Bank disagrees with the Applicant's characterization and notes that the Manager's request for the Applicant to provide details of her HBW deliverables is "a requirement applicable to all staff members requesting home-based work and is not onerous." With respect to the Applicant's other requests, the Bank asserts that it was only the Applicant's request for telecommuting in the summer of 2018 which was denied and notes that the Manager's explanation that the Applicant's physical presence was required at the time was a legitimate reason for the denial. The Bank also notes that, instead of telecommuting, a combination of family leave, annual leave, and LWOP was granted. To the Bank, it is "difficult to fathom that a one-time, reasonable

and justifiable, refusal of [the] Applicant's request to telecommute is illustrative of discriminatory animus toward [the] Applicant."

The Applicant's Contention No. 2

The non-extension decision was carried out in violation of a fair and reasonable procedure

68. The Applicant contends that the non-extension decision was carried out in violation of a fair and reasonable procedure, as the Bank failed to provide a reason for the decision, the decision lacked transparency, and the Bank failed to provide appropriate notice.

69. With respect to the first contention, the Applicant submits that the Bank failed to provide a reason for the non-extension decision until the PRS proceedings, in violation of due process and the Tribunal's requirement that a notice of termination "should communicate to the affected staff member the true reasons for the Bank's decision," citing *Bhadra*, Decision No. 583 [2018], para. 74.

70. With respect to the second contention, the Applicant submits that the non-extension decision "was – and continues to be – shrouded in secrecy and obscurity." The Applicant submits that the PRS hearing established that the decision was made in September/October 2018 by the GSURR management team without any contemporaneous documentation. Further, the Applicant was not notified of the management team's decision until months after it was made.

71. With respect to the third contention, the Applicant submits that, "[o]ver and over again, the Bank failed to provide [her] with appropriate notice and the opportunity to defend herself or to take corrective action," constituting repeated violations of due process. Specifically, the Applicant cites the fact that the non-extension decision was not conveyed to her until months after it was made, that the justifications for the decision were not provided until months later, and that she was not given any notice with regard to an alleged lack of safeguards skills or to any alleged problems with her performance.

The Bank's Response

The Applicant was provided with proper notice and has been adequately compensated

72. The Bank contends that the Applicant was provided proper notice of the non-extension decision at the proper time. The Bank submits that there is no requirement that the Applicant should have been notified when the GSURR management team made the decision that her appointment would not be extended; rather, the Applicant was notified of the decision six months in advance of the end of her appointment in the same manner as other similarly situated staff members.

73. The Bank next notes that the PRS Panel found that management did not follow a proper process in making its decision and recommended that the Applicant be compensated in the amount of six months' net salary. The Bank notes that the recommendation was accepted and that the Applicant was awarded the compensation on 31 July 2020. The Bank submits that this amount has adequately compensated the Applicant for any actual damages suffered and that as such she should be awarded no further compensation.

Staff Association Amicus Curiae Brief

74. On 9 April 2021, the Tribunal received a request from the Staff Association to participate as an *amicus curiae*. The request was accompanied by a brief. On 12 April 2021, the Tribunal granted the Staff Association's request to act as *amicus curiae* and accepted its submission of a brief in support of the Applicant's Application.

75. The Staff Association contends that the Bank failed to follow its own policy in making the non-extension decision. Specifically, the Staff Association submits that the Bank did not provide the true and honest reasons for the decision and asserts that real reasons were

[f]irst, her manager's displeasure that she aggressively sought to avail herself of the Bank's leave and flexwork options in the interest of taking care of her newborn child; and second, that her manager was unhappy with the effect that her – entirely legitimate – use of leave and flexwork had on her attendance.

76. The Staff Association avers that the “Tribunal has set a very high bar – one could say prohibitively high – for [a]pplicants to prove claims of discrimination.” As such, the Staff Association submits that the Tribunal should adopt the approach of the U.S. Supreme Court whereby “the factfinder in a discrimination case may draw inferences against the employer from the fact that the employer has put forward a false reason for the decision” and further that “the inference that may be drawn is not only that the reason given by the employer is not the true reason, but that the true reason is an impermissible one, such as discrimination, if there is *prima facie* evidence to support a claim of discrimination.” The Staff Association cites the U.S. Supreme Court’s decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000), at 147–48, where it stated that, “once the employer’s justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision” and held that “a plaintiff’s *prima facie* case, combined with sufficient evidence to find that the employer’s asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated.”

77. The Staff Association therefore “urge[s] the Tribunal to consider that the false reasons given by the employer permit the inference that the real reasons for her non-extension were discriminatory.” The Staff Association concludes that “the strong inference from the evidence in this case is that the true reason was gender discrimination based on the Applicant’s legitimate use of the Bank’s policies for childbearing, childrearing and nursing.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE NON-EXTENSION DECISION WAS AN ABUSE OF DISCRETION

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

79. The Tribunal’s jurisprudence in relation to the non-extension of term appointments is well established. In *CP*, Decision No. 506 [2015], para. 36, the Tribunal recalled that there is no right, absent unusual circumstances, to the extension or renewal of temporary appointments. “Even so, the decision not to extend a Fixed-Term contract, like all decisions by the Bank, must be reached fairly and not in an arbitrary manner.” *FK*, Decision No. 627 [2020], para. 60, quoting *Tange*, Decision No. 607 [2019], para. 111. As the Tribunal held in *Barnes*, Decision No. 176 [1997], para. 10, “the Bank’s decision not to renew the contract at the expiration of its predetermined term, however discretionary, is not absolute and may not be exercised in an arbitrary manner.” *See also Carter*, Decision No. 175 [1997], para. 15.

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

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

See also ET, Decision No. 592 [2018], para. 91; *DO*, Decision No. 546 [2016], para. 33; *Desthuis-Francis*, Decision No. 315 [2004], para. 19; *Marshall*, Decision No. 226 [2000], para. 21; *de Raet*, Decision No. 85 [1989], para. 67.

81. The Bank submits that the non-extension decision “was a business decision, focused on whether there was a match between the unit’s skills profile and the business/revenue trajectory of the unit.” Specifically, the Bank contends that, following the removal of the tourism portfolio from the unit, the primary focus of the unit was on safeguards and the Applicant’s skills did not qualify her as a GG-level safeguards specialist. The Bank further contends that the Applicant’s work on gender could be done by a GF-level staff at a lower cost to the unit.

82. In *CA*, Decision No. 475 [2013], para. 39, the Tribunal recognized that “[t]he staffing needs of a unit are determined by management and the Tribunal does not interfere in such decisions unless abuse of discretion is apparent.” Moreover, at para. 44, the Tribunal acknowledged that “[m]atters of Term appointments, their extension or conversion to Open-Ended appointments, all

depend on individual circumstances and the discretion of each manager in considering the business needs of his or her unit.”

83. In *DA*, Decision No. 523 [2015], para. 108, the Tribunal found evidence to support “the Bank’s contention that there was a skills mismatch regarding the [a]pplicant and department in question, such that the non-renewal of her contract was taken for business reasons. This constitutes a reasonable and observable basis for the non-renewal decision.”

84. In *DW*, Decision No. 556 [2017], para. 68, the Tribunal was satisfied that the non-renewal decision was not arbitrary because the record supported the Bank’s explanation “that the changing business needs [...] required a different skillset which the [a]pplicant did not possess.”

85. In *EG*, Decision No. 567 [2017], the Tribunal upheld the Bank’s decision not to renew the applicant’s STC contract because the record showed that the decision was a response to a shift in the staffing needs and skills needed in the team. There, the Tribunal contrasted the applicant’s experience in traditional safeguards policies with the new skills needed to implement the reforms related to the Bank’s new ESF. *Id.*, para. 75.

86. The Tribunal will first consider whether the record supports the Bank’s contentions that there were changing business needs in the SAR Social Development unit.

87. The Tribunal observes that the Applicant was hired to work for the unit as a tourism expert with the understanding that she would do some work on safeguards and gender. The Tribunal also notes that in January 2018 the tourism portfolio was removed from the unit and that the Applicant was instructed that she should do no further work on tourism and should instead focus only on safeguards and gender.

88. Further, during the PRS hearing, one member of the GSURR Council testified that, in response to the new ESF, there was a focus “on having staff members with strong safeguards professional experience and skills.” The Applicant also notes in her Application that, in the spring of 2019, two GG-level staff were hired by the unit to focus on safeguards. During the PRS hearing,

a Senior Social Development Specialist in the unit testified that these newly hired staff members were “highly experienced in safeguards and that their experience by far exceeded [the Applicant’s] experience in the area.”

89. In view of the above, the Tribunal finds that the record supports the Bank’s assertion that the business needs of the unit changed and shifted away from tourism to safeguards. The question now is whether the Applicant had the necessary skills for a position focused on safeguards.

90. The Tribunal has recognized that it is the Bank’s prerogative to decide “which skillsets adapt best to changing needs.” *León*, Decision No. 602 [2019], para. 90, citing *DW* [2017], para.

70. In *DM*, Decision No. 542 [2016], para. 49, the Tribunal held:

Identifying the skills that are suitable for these changing needs and who is the most suitable staff to perform these tasks are discretionary decisions of the IFC [International Finance Corporation] (*see Jassal*, Decision No. 100 [1991], para. 37). The IFC concluded that Mr. D, the new supervisor of the [a]pplicant, was in the best position to carry on managing the P7 portfolio and also concluded that the [a]pplicant’s skills with a GH level position were no longer in need. The Tribunal is not convinced that this discretionary decision of the IFC had been abused.

91. Likewise, in *Koçlar*, Decision No. 441 [2010], para. 45, the Tribunal stated:

The changing demands of the Bank require that it adapt to meet evolving needs and circumstances; the Bank is free to make changes to its staffing needs in accordance with the Staff Rules. [...] Here too, the Tribunal will not review the wisdom of the Bank’s assessment of its future staffing needs. Its review is confined to whether the Bank abused its discretion in arriving at its decision that it would not extend the [a]pplicant’s contract of employment or provide her with a new one.

92. During the PRS hearing, the GSURR Council member explained that the Applicant “was hired for the cultural heritage work and tourism business line; and she did not have the experience depth nor breadth of safeguards skillset which were required at that time.” Specifically, the GSURR Council member stated that the Applicant

did not have the GG level skills, which included independently working in the field on 20 (twenty) to 25 (twenty five) projects, overseeing the analysis of technical

safeguards documents, preparation of various instruments, and surviving in an environment of high-risk projects.

93. The Applicant notes that she was commended by management for her work on safeguards and contends that she was equally as qualified as other safeguards specialists because she was trained and certified in the new ESF at the same time. The Tribunal observes that the Bank does not deny that the Applicant's work on safeguards was commended and that the Bank reiterates that the non-extension decision was not performance related. The Bank maintains, however, that the Applicant's safeguards skills were not sufficient for a GG-level position. To the Bank,

[s]ocial safeguards is a specialized field, and a GG-level social standards/safeguards specialist requires extensive and deep technical experience in this field. [The] Applicant simply did not have the social standards/safeguards experience required. This was also clearly borne out by the fact that in spite of applying for several GG-level social standards/safeguards positions in different Regions, [the] Applicant was not short-listed for any of them.

94. The Tribunal recalls that it is the prerogative of the Bank to identify which skill sets are required by a position and to determine which staff member is suitable for the position. The Tribunal finds that the record supports the Bank's assertion that there was a skills mismatch with respect to safeguards between the Applicant and the business needs of the unit.

95. The Tribunal also considers that the Applicant contests the Bank's assertion that her work on gender could be done by a lower-level staff member. The Applicant notes that during the PRS hearing it was confirmed that her work on gender was taken over by a GG-level staff member. The Bank explains, however, that this GG-level staff member spends only 20% of her time on gender and is assisted by lower-level staff members who spend most of their time on gender. The Tribunal is satisfied that the Bank's explanation does not call into question the validity of its justifications for the non-extension decision.

96. The Tribunal will not interfere in management's decisions about the staffing needs of a unit "unless abuse of discretion is apparent." *CA* [2013], para. 39. The Tribunal is not persuaded that management abused its discretion in the present case when it decided not to extend the Applicant's appointment.

Discrimination

97. The Applicant also contends that the non-extension decision was discriminatory, citing a series of events from after the birth of her baby to the non-extension decision as evidence of a pattern of discrimination. The Bank maintains that the Applicant has not established a *prima facie* case of discrimination, noting that the instances cited by the Applicant do not amount to discrimination.

98. The Tribunal notes that Principle 2.1 of the Principles of Staff Employment provides that the Bank “shall not differentiate in an unjustifiable manner between individuals or groups within the staff.”

99. The Tribunal has made clear that it will not hesitate to rescind discretionary decisions if there is evidence of discrimination on prohibited grounds. *AI*, Decision No. 402 [2010], para. 39. In *Hitch*, Decision No. 344 [2005], para. 43, the Tribunal noted that discrimination “takes place where staff who are in basically similar situations are treated differently.”

100. In *Sekabaraga (No. 2)*, Decision No. 496 [2014], para. 31, the Tribunal

recognized that it may be challenging to obtain evidence to support a discrimination claim. Statements 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. In a case like the present, an applicant carries the initial burden of establishing a *prima facie* case of discrimination. If the applicant meets this burden, the Bank then must provide a non-discriminatory rationale for its decision. The applicant may then challenge the Bank’s stated rationale and provide evidence to show that it is a pretext for a discriminatory decision. *AI* [2010], para. 41.

101. With respect to the burden of establishing a *prima facie* case of discrimination, the Tribunal explained in *AI* [2010], para. 42, that

[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.

As further explained in *AI* [2010], para. 46, “[t]he Tribunal’s jurisprudence requires that a staff member must provide evidence of discrimination specific to his or her case.”

102. The Tribunal will thus consider whether the Applicant has met the burden of establishing a *prima facie* case of discrimination based on pregnancy and maternity.

103. The Applicant first submits as evidence of discrimination the fact that her probation was extended by the length of her maternity leave. As justification for this decision, the Manager stated that “the extension is justified by the interest in having one full year’s worth of work experience with each other before reaching a decision to conclude the probationary period, just as [he had] had with all other new staff in [his] unit.” To the Applicant, even though her Manager offered a business rationale for the extension, the fact that a manager has the discretion to extend a new mother’s probationary period constitutes disparate impact.

104. In *FM (Merits)*, Decision No. 643 [2020], paras. 123–125, the Tribunal determined that it was neither an abuse of discretion nor discriminatory for the Bank to extend the applicant’s probation where the applicant had been on Short-Term Disability leave and therefore performed for only a fraction of her original probation. Here, the Tribunal likewise concludes that it was not discriminatory for the Bank to extend the Applicant’s probation where she had performed for less than a full year of her original probation. As the Tribunal explained in *FM (Merits)* [2020], para. 123, had management not extended the Applicant’s probation in view of her absence due to maternity leave, the Applicant would not have been provided with the required time period to demonstrate that she was suitable for the position.

105. The Applicant next submits that her Manager made her participation in the Pilot Program so burdensome that she was prevented from obtaining the protections offered to new mothers. In this respect, the Tribunal observes that the Applicant overstates the onerousness of completing the documentation associated with the HBW requests, and notes that the Applicant’s previous HBW

requests did provide sufficient details for her Manager. The Tribunal therefore finds that it was not discriminatory for the Manager to request that the Applicant provide more details in her Pilot Program HBW requests.

106. The Applicant next contends that the denial of her telecommuting request in the summer of 2018 was discriminatory. The Applicant states that,

[b]y denying [her] the option of flexible work arrangements, the Bank made it not only very costly for her to continue as a staff member, but also created a hostile work environment where [the Manager] attempted to prevent her from taking care of her young child.

107. With respect to the lack of accommodation, the Tribunal first observes that nearly all of the Applicant's requests were granted. In fact, the Applicant's request for telecommuting during the summer of 2018 was the first request for accommodation that was denied. The Tribunal notes that this telecommuting request was made for a time when the Applicant's child would already be a year old and therefore considers that the request was not an issue of pregnancy or maternity leave but rather one of family accommodation. In this respect, the Tribunal notes the Guidelines and Principles for telecommuting staff provide that telecommuting should not be used as a permanent arrangement to accommodate family needs. The Tribunal further notes that Staff Rule 6.06, paragraph 6.05, provides that "[a]ll Parental leave, including any sick leave taken in connection with Parental leave, is completed within one year after the birth of the child." The Tribunal observes that the Applicant's child was one year old in June 2018 and that the Applicant's requests for flexible work arrangements after this time would not fall under the parental leave category.

108. The Tribunal also observes that the Applicant's request for telecommuting for two months in the summer of 2018 was made two weeks before she planned to, and did in fact, leave for Geneva. In the Manager's emails communicating the denial of the request, the Manager explained that the Applicant's position required that she remain in Delhi during the relevant time as it was an intense period for her unit and that the short notice of the request left little time to plan for the Applicant's absence. The Tribunal also considers that the Manager noted a concern, based on team members' comments, that the Applicant's contributions to the work of the team while telecommuting were not the same as when she was present in the office interacting with the team.

109. In light of the above considerations, the Tribunal finds that the Bank was not unreasonable in denying the Applicant's telecommuting request and that the denial was not discriminatory. The Tribunal recognizes the Applicant's concerns regarding the pollution levels in Delhi and the health of her child. The Tribunal observes, however, that the air pollution was unfortunately a reality of working in Delhi and that the Bank did make efforts to mitigate the health concerns of its staff based there, including allowing children to be brought into the office and providing funds for home air filtration systems.

110. The Tribunal finally considers the Applicant's contentions of her Manager's hostility, in particular her allegations that her Manager's criticisms of her performance "consisted almost entirely of complaints that [she] was not always available for meeting after hours *because of her breastfeeding schedule* in the period immediately after her return from maternity leave." (Emphasis in original.) The Tribunal notes that the Applicant has offered no evidence to support her allegations. In reviewing the record, the Tribunal considers the Manager's emails of 8 June 2018 in which he recounts an in-person discussion with the Applicant regarding her performance. The Tribunal observes that nothing in these emails suggests the hostility alleged by the Applicant or even references any missed meetings. Further, the Tribunal notes that the Manager's approval of nearly all of the Applicant's requests for accommodation does not support the notion that he had discriminatory motives when making the non-extension decision.

111. Accordingly, the Tribunal finds that the Applicant has not established a *prima facie* case of discrimination.

WHETHER THERE WAS A VIOLATION OF DUE PROCESS

112. The Applicant contends that the non-extension decision was carried out in violation of a fair and reasonable procedure, as the Bank failed to provide a reason for the decision, the decision lacked transparency, and the Bank failed to provide appropriate notice.

113. In *CS*, Decision No. 513 [2015], para. 77, the Tribunal stated that

the Bank must give an honest reason for the non-renewal of a Term appointment. This is congruent with the Tribunal's observation in *Skandera*, Decision No. 2 [1981], para. 28, that:

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

See also Atkinson (Merits), Decision No. 641 [2020], para. 120; *FB (Merits)*, Decision No. 613 [2019], para. 113; *Tange* [2019], para. 128–129; *Bhadra* [2018], para. 74.

114. The Tribunal notes that the Applicant was given no specific reason beyond the general reference to “business needs” for the non-extension decision when it was communicated to her. Nor did she receive a specific reason after asking her Manager and the Senior Director of GSURR for one. During the PRS process, the Manager did state that the decision was made as “part of a general review of alignment between the GP’s staff skills/aptitudes and our evolving business.” This justification may meet the standard of an honest reason but was provided to the Applicant long after the non-extension decision had been communicated to her and her appointment had ended. The Tribunal recalls that staff members must be provided with “a specific and true assessment” at the time of the decision “which will provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank.” *CS* [2015], para. 77, citing *Skandera* [1981], para. 28. The Tribunal finds that this failure to provide the Applicant with the specific and true reasons for the non-extension decision at the time the decision was communicated to her constitutes a due process violation.

115. The Tribunal is also concerned with the lack of transparency in the Bank’s actions toward the Applicant. The Tribunal recalls its decision in *Garcia-Mujica*, Decision No. 192 [1998], para. 19, whereby it held that “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 aspects of work.”

116. In *B*, Decision No. 247 [2001], para. 21, the Tribunal stated that due process

guarantees refer precisely to adequate warning about criticism of performance or any deficiencies that “might result in an adverse decision being ultimately reached,” and the corresponding opportunity for the staff member to defend himself. (*See, e.g., Samuel-Thambiah*, Decision No. 133 [1993], para. 32.)

117. Although a non-renewal decision was based on business needs, the Tribunal held in *CS* [2015], para. 101, that the applicant had not been treated fairly because his manager failed “to alert the [a]pplicant to the possibility that his reluctance to take on certain tasks could be a factor in the renewal of his contract.”

118. In *León* [2019], para. 126, the Tribunal “urge[d] the Bank to be more candid about a staff member’s need to obtain or demonstrate certain skills and the consequences of the failure to do so. The Bank’s lack of candor in [that] case was unfair to the [a]pplicant and warrant[ed] compensation.”

119. In this case, a decision was made around September/October of 2018 not to extend the Applicant’s appointment. Additionally, the Manager stated during the PRS process that there is no contemporaneous documentation of this decision-making process. The Tribunal notes that the Applicant was not notified until 19 March 2019 that her appointment would not be extended, around six months after the decision had been made, nor was she given any warning that such a decision was possible. The Tribunal finds that this delay in notification and lack of warning, while not a violation of the six-month notice requirement, nevertheless demonstrated a lack of fairness to the Applicant.

120. The Tribunal finds that this lack of fairness is problematic given that a skills gap was cited as the reason for the non-extension decision. The Tribunal considers that, had the Applicant been adequately warned of the potential non-extension decision, she could have worked to improve her skills or search for a position that was a better match. The Tribunal notes the Bank’s assertion that the Applicant was aware that her work program was a cause for concern. The Bank cites the Applicant’s communications with her Manager in which she references the shifts and uncertainty in her work program. The Tribunal considers, however, that any concern the Applicant may have

expressed toward her shifting work program would be insufficient warning from the Bank that her employment might end. Rather, it is the obligation of the Bank to unambiguously inform its staff members of any concerns with their continued employment. In this respect, the Tribunal finds that the Bank has failed to satisfy this obligation.

REMEDY

121. As stated in *DB*, Decision No. 524 [2015], para. 133, “the Tribunal is free to take into account any compensation already received by an applicant, and to adjust accordingly any award the Tribunal itself chooses to make.” The PRS Panel recommended that the Applicant be compensated six months’ salary relief, which corresponded “to the time [the Applicant] would have had to improve her skills deficiencies had she been provided with notice of the skills gaps and offered the opportunity to improve them.” The Tribunal notes that the Applicant was compensated in accordance with the PRS Panel recommendation.

122. Having found due process violations in the Bank’s treatment of the Applicant, the Tribunal now considers whether additional compensation is warranted. *See FP*, Decision No. 637 [2020], para. 102. The Tribunal finds that the Applicant was sufficiently compensated by the PRS award.

123. The Applicant has prevailed in some of her claims, and the Tribunal finds that in light of this some contribution to the Applicant’s legal fees and costs is warranted.

DECISION

- (1) The Bank shall contribute to the Applicant’s legal fees and costs in the amount of \$9,500.00; and
- (2) All other claims are dismissed.

/S/ Andrew Burgess

Andrew Burgess

President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., * 7 June 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.