



**World Bank Administrative Tribunal**

**2021**

**Decision No. 650**

**GC,  
Applicant**

**v.**

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

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

**GC,  
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 14 September 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. The Applicant's request for anonymity was granted on 21 May 2021.

3. The Applicant challenges the Bank's decision not to extend her appointment and the Bank's failure to provide a reason for the non-extension.

**FACTUAL BACKGROUND**

4. The Applicant first joined the Bank on 6 March 2008 as a Short-Term Consultant (STC) with the Global unit. Between July 2008 and December 2014, the Applicant held multiple STC and Extended-Term Consultant (ETC) appointments in the Leadership and Governance units of the World Bank Institute. From May 2011, the Applicant worked as a Leadership Development Specialist with the Collaborative Leadership for Development (CL4D) team.

5. On 15 May 2015, the Applicant was offered and accepted a term appointment for two years as a Leadership Development Specialist, Grade Level GF, with the Leadership and Culture unit. The Applicant continued to work with the CL4D team and was appointed as a Task Team Leader (TTL) in 2017.

6. In May 2017, the Applicant's term appointment was extended for one year, until May 2018.
7. In June 2017, the Applicant's team was transferred to the Revenue, Open Government, and Local Justice (GGO28) unit in the Public Sector and Institutions unit, part of the Governance Global Practice (GGP).
8. In September 2017, the Applicant became pregnant. From 2017 through 2018, the Applicant received medical treatment related to pregnancy care. During this time, the Zika virus was a serious threat for pregnant mothers, and as a result the Applicant received approval from her manager not to travel on missions.
9. Also in September 2017, the Applicant's unit was restructured. Four of the CL4D team members, including the Applicant, were transferred to another unit within the GGP, the Solutions and Innovations in Procurement (SIP) unit. One team member moved to a different unit, and one team member left the World Bank Group.
10. When the four CL4D staff members moved to the SIP unit, it was not clear how the team would be funded, as it did not have a dedicated administrative budget. According to the Bank, the only reliable source of funds for the CL4D team was through GGP cross-support. As explained by the Bank,  
  

[a] Governance Global Practice unit provides technical cross-support to all regionals while the staff member keeps their organizational and professional mapping to their respective Global Practice ("GP"). Technical staff in a GP are effectively "loaned out" to the regions on an as needed basis, who in turn, pay for the staff member's services during the time the staff is working on projects assigned to them by the region. In this way, regions benefit from the multiple technical skills available within a GP without having to add to their individual work force planning budget. A GPP [Global Payment Provider] does not generally have a designated budget but is rather financed through this cross-support.
11. In January 2018, a new manager (the Manager) was appointed to lead the Global/East Asia and Pacific (GGOPG) unit within the SIP unit which included, among other teams, the CL4D team.

12. Throughout January and February 2018, the Applicant and her Manager met to discuss the Applicant's upcoming maternity leave and her ongoing projects. On or around 12 March 2018, the Applicant and her Manager met for her mid-year review discussion. On 18 April 2018, the Applicant and her Manager met again to discuss the Applicant's fiscal year objectives. According to the Applicant, during this discussion the Manager expressed concern about the Applicant's ability to travel upon her return from maternity leave. The Applicant shared that her health concerns which prevented her from traveling would end with the birth of her child and that at that point she was "absolutely willing" to resume mission travel. The Applicant also states that they discussed the upcoming extension of her contract and that the Manager expressed a preference for a two-year extension and gave "no indication at all that there was any doubt about [the Applicant's] continuing employment."

13. On 26 April 2018, the Applicant's term appointment was extended for one year, until 19 May 2019.

14. On 30 April 2018, the Applicant communicated to her Manager a "hand-over note" detailing the arrangements the Applicant had made in preparation for her extended leave. The Applicant noted that she had arranged for the hand-over of her work and had notified clients, and she included:

In the past month, I've moved to close as many sub-tasks as possible and there are just 4 sub-tasks that remain to be closed. After these are done in June, the ACS [Activity Completion Summary] should be very straightforward for approval as I have already prepared the ACS in the portal – including the more substantive pieces such as the lessons learned, for which I facilitated a team discussion two weeks ago and sought all team member inputs then consolidated into a report last week (attached). I also pulled together the various outcomes for the program, though the team may like to do more additions/edits on this draft version. Overall, the bulk of the leg-work is done already for wrapping up/closing.

15. Sometime in April 2018, the Applicant prepared and submitted a report to the GGP and SIP management discussing, among other matters, the financial difficulties facing the CL4D team. In this report, the Applicant explored the advantages and disadvantages of various funding models under which the CL4D team operated.

16. The Applicant began Home-Based Work on 23 April 2018 and commenced her maternity leave on 1 May 2018. The Applicant's baby was born later in May 2018, but there were serious complications and the Applicant was eventually placed on Short-Term Disability (STD), which was backdated to 1 May 2018.

17. On 21 May 2018, GGP Practice Managers, including the Manager, received an email from one of the Bank's directors which stated that the GGP had "\$6 million in BB [Administrative Budget] commitments (STCs) projected in the next 6 weeks, this does not include BB travel – this would lead to an overrun of \$2-3 million." On 22 May 2018, the Manager was informed that many staff in the GGOPG unit were behind in charging their time to trust funds. On 30 May 2018, the Manager was informed that the GGOPG unit had an "overall BB budget overrun by \$695K" and "BB+ [Administrative Budget Plus Bank Executed Trust Fund] by \$807K." An additional email to the Manager on 1 June 2018 attached the GGOPG unit's Work Program Agreement (WPA) and asked the Manager to see if she could "repost any staff time from BB to these TFs [trust funds]."

18. On 24 July 2018, the Applicant and the Manager met to discuss the Applicant's leave situation and work planning for Fiscal Year 2019 (FY19). The Applicant states that the Manager suggested they also discuss the Applicant's FY18 performance evaluation and that the Manager informed the Applicant she received good feedback. The Applicant further states that they also discussed future work objectives and a potential new position title for the Applicant.

19. Between August and October 2018, management and the senior leadership of the GGP conducted a budgeting and workforce planning exercise as a result of the continuing budget overruns. According to the Bank, this "extensive review made it clear that there was a steady decline in [the] Applicant's work program and that there was no viable source of funding for her position, making her position unsustainable and unaffordable." A hiring freeze on staff positions in the GGP was also implemented effective 1 November 2018. The Bank states:

Through the remainder of the fiscal year, as the GPP reviewed the activities and budget situation, it became apparent that [the] Applicant's work program no longer existed. [The Manager] monitored the budget closely and was reviewing the source of funding identified as well as availability of funds. Through the review, it became clear that three of [the] staff of the GGOPG team were fully funded through GPP

cross-support. In [the] Applicant's case, however, it was determined that her program was not funded, and it was also unrealistic. For example, further review of the Time Recording System ("TRS") reports indicated that most of [the] Applicant's time in FY18, over \$107,000, was charged to an activity code that had no funding. The FY18 expenditure totaled over \$132,000, thus affecting the unit's overall budget standing. Almost all of the other activities that [the] Applicant worked on in FY18 were closed and there was no further demand for cross support.

20. The Bank asserts that, as there "was no actual work program for [the] Applicant (due to the closure of the activities she was working on) nor any demand for [the] Applicant's skills, management, in consultation with Human Resources [HR], made the decision not to extend [the] Applicant's Term Appointment."

21. The Applicant remained on STD from 1 May 2018 until 17 September 2018. At this time, the Applicant began her maternity leave.

22. On 29 September 2018, the Applicant submitted her FY18 Annual Review, which was approved and signed by her Manager and Director on 22 October 2018. On 23 October 2018, the Applicant sent her Manager her proposed FY19 objectives.

23. On 29 October 2018, the President of the Bank announced changes to the parental leave policy, which increased maternity/primary caregiver leave to 100 days, effective 1 December 2018. Staff already on parental leave, such as the Applicant, were able to utilize this new policy.

24. On 19 November 2018, while she was on maternity leave, the Applicant received an email from her Manager which stated, "Attached please find the notice regarding the end of your term appointment." The attached memorandum stated, "Dear [Applicant], By this memorandum, I am providing you six months' written notice that your term appointment will not be extended and shall end on May 19, 2019."

25. The Applicant responded the following day, writing, "This has come as a shock. Could you please let me know the reason for the end of my appointment and non-extension?" The Applicant claims that she had received no prior indication that non-extension was a possibility.

26. On 7 December 2018, the Manager responded to the Applicant's inquiries, writing:

Dear [Applicant], I am just back from a mission. I have answered several of your messages while traveling and wanted to ensure that this one was responded [to] as well. As you know your term contract will come to an end on May 19, 2019, and we have an obligation to inform you that the contract will not be extended 6 months in advance.

27. The Applicant responded to the Manager's email on 11 December 2018, writing:

Thanks for your message, and noting the obligation to provide 6 months['] notice of a non-extension of a contract. I was aware of this requirement, and in my last email was asking rather for more information on the reason for the non-extension.

Given that I have been out of the office on short-term disability and maternity leave since May, I'm not fully plugged in to all that has been happening in the office, and with the GGOPG team since then. As mentioned in my email below, this notice has come as a shock. I would appreciate if you could please share the rationale surrounding the decision to not extend my contract.

28. On 13 December 2018, the Manager replied and wrote, "The appointment expires on the completion of the appointment as set forth through the following statement in your term appointment letter dated 05/15/2015," quoting the Applicant's Letter of Appointment (LOA).

29. The Applicant's maternity leave ended on 15 February 2019, and, from 18 February 2019 to 16 April 2019, the Applicant was on a combination of Leave Without Pay (LWOP) and annual leave, ultimately returning to work on 22 April 2019.

30. On 26 February 2019, the Applicant filed a Request for Review with Peer Review Services (PRS). The Applicant requested the review of the non-extension decision, claimed that she was not provided with sufficient notice of the non-extension decision, and claimed that the decision was "discriminatory based on her pregnancy, childbirth, and associated leave (maternity and short-term disability)."

31. In the Manager's Response to the Request for Review, the Applicant's Manager stated: "The decision of not extending [the Applicant's] time bound term contract is based on the fact that

there is/was no business needs [*sic*] for the position. The business need had been reviewed and it was determined that the contract cannot be extended due to the lack of demand and funding.”

32. The Applicant’s term appointment ended on 18 May 2019. The Applicant has since received two STC contracts with the Bank, one from 14 January 2020 to 22 June 2020 (for forty days’ work) and the second from 1 July 2020 to 30 June 2021. According to the Applicant, she is performing the same functions as under her term appointment, though assigned to the East Asia & Pacific region of the Financial Management and Public Sector. The Applicant further states that her other CL4D colleagues were similarly assigned to carry out their same functions in different regions, though retaining their regular staff status.

33. On 8 May 2020, the PRS Panel issued its report. The PRS Panel concluded,

(i) the Non-Extension Decision was based on a reasonable and observable basis as it was made in response to [...] budget constraints and in the interest of efficient administration; (ii) management followed the applicable procedures and a proper process in making the Non-Extension Decision; and (iii) there is no evidence that the Non-Extension Decision was discriminatory or based on improper motive or bad faith.

34. However, the PRS Panel did find that

management did not abide by WBG [World Bank Group] best practices of openness and transparency by waiting for [the Applicant] to file her RFR [Request for Review] with PRS before sharing with her the reason for the Non-Extension Decision.

The PRS Panel recommended the Bank provide the Applicant with either an apology or monetary compensation, or both.

35. On 29 May 2020, the Vice-President, Equitable Growth, Finance and Institutions Practice Group, issued a letter to the Applicant accepting the PRS Panel’s recommendation and writing:

I regret any misunderstandings that may have occurred regarding the Decision for which you sought review of in Peer Review Services. I understand, however, the Decision was validly exercised and made in good faith.

*The present Application*

36. On 14 September 2020, the Applicant filed this Application with the Tribunal. The Applicant challenges (i) the Bank's decision not to extend the Applicant's term contract and (ii) the Bank's failure to provide sufficient notice of her termination.

37. The Applicant requests the following relief: (i) conversion of her current consultant contract to a regular term contract of duration in alignment with the term contract duration of other team members, but not less than two years' duration; (ii) a lump sum payment in the amount of the difference between her salary and benefits (including pension) before her termination and what she has been able to earn up to the time her contract is converted to a regular term contract of at least two years' duration; (iii) a lump sum payment in the amount of three months' salary to compensate her for the three months out of the six months' notice period of termination when she was on maternity leave; (iv) compensation for medical costs accruing to her – at a time when she faced serious medical issues both for herself and for her daughter – as a result of her termination, including but not limited to increased monthly premiums, higher deductibles, higher co-pays, purchase of dental insurance, and the non-coverage of certain critical medical tests, therapies, and services; and (v) such additional compensation as the Tribunal deems fair and just for the violations of due process, for the intangible damages and terrible distress caused to the Applicant by the discrimination against her and the lack of proper notice of her termination, and for the impact on her personal life and financial commitments and the long-term harm to her career.

38. The Applicant claims legal fees and costs in the amount of \$30,418.75.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

***The Applicant's Contention No. 1***

*The non-extension decision was an abuse of discretion because the Bank's ultimate justifications were not honest or true and because the decision was discriminatory*

39. The Applicant first contends that the Bank's ultimate justifications for the non-extension decision were not honest or true. The Applicant notes three explanations given by her Manager during the PRS process: (i) that the Applicant had no work program; (ii) that there was no demand for her services; and (iii) that a serious budgetary shortfall required the reduction of her position. The Applicant contests each of these reasons in turn.

40. First, the Applicant asserts that she "had no work program" at the time the decision was made not to extend her contract because, before her STD/maternity leave, she had handed off her work to her colleagues. To the Applicant, the sole reason for any lack of work program was as a consequence of her maternity leave. The Applicant responds to the Bank's contention that there was a steady decline in her work program by asserting that any decline in her hours billed was either miniscule or the result of her maternity leave. The Applicant also addresses the Bank's contention that a significant amount of work in FY18 was charged to a single billing code that would no longer be funded in the next fiscal year by explaining that, as the TTL of that program, she was the staff member doing most of the work in wrapping it up. The Applicant also claims that the code was used for various other activities such as team meetings and strategic planning for which the Manager did not provide another code.

41. Next, the Applicant contends that, despite her Manager's claims, there was still a substantial demand for her to work. The Applicant claims that there was "no reason to doubt that she would have been able, once she had returned to the office, to generate requests for work, as she had done in her previous 8 years of work." To support these claims, the Applicant first notes that any decrease in demand for her services prior to her maternity leave was related to her medical (and temporary) inability to travel. The Applicant next asserts that Bank departments that had worked with her in the past knew she was on leave and thus knew she would be unavailable, though

she notes she still received requests for work while she was on maternity leave. The Applicant further notes that she was rehired as an STC following her termination to perform the same functions, demonstrating the continued demand for her work.

42. The Applicant further contends that, despite the Bank's claims, the reason for her non-extension was not because of budget shortfalls. The Applicant asserts that, if the Bank's reasoning was true, then all four members of her unit should have been carefully analyzed as to their net worth since they all performed similar and interchangeable functions. The Applicant points to Staff Rule 7.01, paragraph 9.03, which lays out the detailed process for determining which particular staff member should be selected for redundancy, taking into account such factors as performance, whether the abilities and skills of the staff member can be used elsewhere in the Bank, and whether there are any volunteers willing to accept a voluntary separation package.

43. The Applicant finally submits on this contention that the non-extension decision was discriminatory because the only difference between her and her colleagues – “including her lack of a work program, the re-directed demand for her services to others, and her lower billing because of not going on operational travel – was that she had medical issues related to pregnancy and maternity leave while they did not.”

44. The Applicant cites the International Labour Organization, *Maternity Protection Convention*, C183, art. 8, *adopted* Jun. 15, 2000 (the ILO Convention), which states:

It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 [...] except on grounds unrelated to the pregnancy or childbirth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

The Applicant also notes the Tribunal's decision in *Bernstein*, Decision No. 309 [2004], para. 30, where it established that, “under recognized international standards, absence from work due to pregnancy and childbirth should not result in loss of continuity of employment, seniority or status.”

45. The Applicant submits that, because of her absence from work due to pregnancy and a difficult childbirth, she lost having her contract extended, which

goes against all norms of decency, against international law, against the Bank's rules of non-discrimination, against the Bank's recent efforts to *improve* parental leave, and certainly against the fundamental principles of employment, including Staff Principle 2.1. [(Emphasis in original.)]

### ***The Bank's Response***

*The non-extension decision was based on a reasonable and observable basis and was not discriminatory*

46. The Bank contends that its decision not to extend the Applicant's term appointment was a reasonable exercise of managerial discretion, supported by legitimate business needs, untainted by improper motives, and procedurally sound.

47. The Bank submits that the Applicant's term appointment expired under its own terms because her LOA clearly sets out her appointment ending "at a two-year period unless it is extended, or a new appointment is made." The Bank cites the Tribunal's decision in *EG*, Decision No. 567 [2017], para. 69, which states that "there is no right, absent unusual circumstances, to the extension of temporary appointments."

48. Further, the Bank submits that, according to a guidance issued by HR on the non-extension of term appointments (the HR Guidance), "[m]anagement has broad discretion to simply allow an appointment to expire under its own terms. This discretion is limited only where non-extension is based on inappropriate considerations such as retaliation or discrimination."

49. To the Bank, as the Applicant does not cite any promise of an extension or provide any other justification why the terms of her LOA should not control this case, her term appointment was allowed to expire as expressly provided for in her LOA and pursuant to the HR Guidance.

50. The Bank next contends that the non-extension decision was based on legitimate business needs, that management has the discretion to make staffing decisions based on its determination

of its business needs, and that the Tribunal will not reexamine the substance of the Bank's decision with a view to substituting the Tribunal's decision for the Bank's, citing *Koçlar*, Decision No. 441 [2010], para. 45. The Bank asserts that, "[g]iven the financial constraints faced by the CL4D team, the decline in [the] Applicant's work program, the lack of cross support, and the absence of demand for [the] Applicant's work, management decided not to extend [the] Applicant's Term Appointment."

51. The Bank references documents illustrating that the GGP was running on significant budget overruns and that the Applicant's Manager's unit specifically had significant budget overruns. The Bank claims that, as a result of these overruns, the management team undertook a significant budgeting and workforce planning exercise and that a hiring freeze on staff positions in the GGP was implemented effective 1 November 2018.

52. The Bank also asserts that the Applicant knew of the steady decline in her work program and that there was no viable source of funding for her position, making her position unsustainable and unaffordable. The Bank claims that a "substantial amount of [the] Applicant's time and corresponding staff costs for FY18 were charged to a single business line/cost objective" which was "at the closing stage and would not be sustained in the next fiscal year." In addition, the Bank claims that most of the Applicant's other activities were also closed and that no demand for support had been expressed.

53. The Bank finally submits on this contention that the Applicant has not established a *prima facie* case of gender discrimination. The Bank submits that the Applicant "has failed to provide *any evidence or factual support* of the alleged gender discrimination." (Emphasis in original.) The Bank asserts that the "mere fact that she *believes* she was discriminated against based on her gender without providing supporting evidence, does not make it so." (Emphasis in original.) The Bank references the recommendation of the PRS Panel, which examined the allegation of gender discrimination and concluded that the Applicant had not produced evidence to substantiate her claim and that the non-extension decision was based on legitimate business needs.

***The Applicant's Contention No. 2***

*The Applicant's due process rights were violated because the Bank failed to provide a reason for the non-extension decision and failed to provide proper notice of the non-extension decision*

54. The Applicant first contends that the Bank “failed utterly” to meet the requirement that a notice of termination should communicate the true reasons for the Bank’s decision. The Applicant cites the Tribunal’s decision in *Bhadra*, Decision No. 583 [2018], para. 74, which states that a notice of termination “should communicate to the affected staff member the true reasons for the Bank’s decision [...] [in order to] provide a fair opportunity to the individual to dispute, and possibly to seek rectification of the decision of the Bank.”

55. The Applicant notes that, despite asking her Manager multiple times, the “first glimmer of an explanation was provided in the Responding Manager’s Response on June 26, 2019,” more than a month after her contract had already ended. To the Applicant,

the complete lack of transparency about the reasons for [the Applicant’s] termination raises serious questions about whether the decision was ill-founded and arbitrary, and its justification dreamed up after the fact for litigation purposes. Indeed, the complete lack of any contemporaneous documentation considering or assessing the matter is nothing short of extraordinary and reinforces the appearance that the decision was reached first and some kind of justification dreamed up subsequently. [The Manager] herself informed PRS that “there are no minutes or written documents regarding management’s deliberation concerning the non-extension decision.” And Human Resources was unable to produce a single document that discussed or reflected any consideration of reasons for the non-renewal.

56. The Applicant next contends that the Bank failed to give her sufficient notice of the non-extension decision. The Applicant cites Tribunal precedent, which has repeatedly held that one of the basic guarantees of due process is that a staff member must be “adequately informed with all possible anticipation of any problems concerning his career prospects, skills, or other relevant aspects of work.” *See, e.g., FJ*, Decision No. 626 [2020], para 89; *FI*, Decision No. 625 [2020], para. 136 (both quoting *Garcia-Mujica*, Decision No. 192 [1998], para. 19).

57. The Applicant received the notice of non-extension on 19 November 2018, which was six months before her contract's end date of 19 May 2019. To the Applicant, because she was on maternity leave at the time of notice and would be until February 2019, her notice amounted to no more than three months. The Applicant asserts that, in the case of terminations, one of the principal purposes of the notice is to provide a staff member with time to challenge the decision and to apply for other jobs; however, she was unable to either search for and apply for other positions or dispute the situation since she was out of communication with the Bank for half the notice period.

58. The Applicant notes that during the PRS proceedings the HR Director even recognized there was a conflict in purposes between the two policies (the notice requirements and maternity leave) which provide for a six-month notice period to help look for a new job, while simultaneously providing maternity leave to stay home and care for her new baby.

59. The Applicant therefore requests that the Tribunal compensate her for the three months of her notice period that were lost to her while she was on maternity leave.

### ***The Bank's Response***

*The Applicant's due process rights were at all times respected because she was provided a reason for the non-extension decision and proper notice of the non-extension decision*

60. The Bank contends that the Applicant was provided with the reasons for the non-extension decision. To the Bank, the Applicant was provided the reasons for the non-extension decision in her Manager's emails of 19 November 2018, 7 December 2018, and 13 December 2018, where it was indicated that "[t]he appointment expires on the completion of the appointment as set forth [...] in your terms of appointment letter dated 05/15/2015." According to the Bank, the Manager was following the protocol as provided in the HR Guidance, which stated at the time, "The WBG need not provide reasons for the non-extension of a Term Appointment (See Tribunal Decision: CA, Decision No. 475, [2013], para. 50)." The Bank further claims that the specific reasons for non-extension were given to the Applicant in response to her Request for Review with PRS, specifically that "i) there was no work program for [the] Applicant, ii) there was no further demand for her services, and iii) the unit did not have a designated budget."

61. The Bank next contends that the record demonstrates that the Applicant was provided with the full six-month notice period and that the Bank followed the Staff Rules in so doing. The Bank refers to Staff Rule 6.06, paragraph 6.02, which provides, “A Staff holding an appointment of a specified duration is not entitled to Parental leave extending beyond the date on which his/her appointment ends.” To the Bank, this provision indicates that a term appointment may expire while a staff member is on parental leave. Consequently, it would follow that notice of a non-extension decision may have to be given during the parental leave.

62. Further, the Bank claims that the Applicant was able to access all Bank systems while on maternity leave and that “[n]othing prevented [the] Applicant from applying for open positions during the notice period or otherwise seeking alternate employment.” Additionally, the Bank cites the Tribunal’s decision in *González Flavell (Nos. 11 and 12)*, Decision No. 617 [2019], para. 79, which states that an “[a]pplicant remains responsible for her own employment.”

### ***Staff Association Amicus Curiae Brief***

63. On 28 January 2021, the Tribunal received a request from the Staff Association to participate as an *amicus curiae*. The request was accompanied by a brief. On 29 January 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.

64. The Staff Association asserts that this case concerns the right to fair treatment with respect to non-extension of a term contract and concerns the rights of staff to enjoy the benefits of the Bank’s parental leave policy without discrimination. The Staff Association “supports the Applicant’s contention that her rights as a staff member were violated when her term contract was not extended, and that her non-extension constituted discrimination based on her maternity leave.”

65. The Staff Association first submits that the Bank failed to follow its own policy in making the decision not to extend the Applicant’s contract, “first by failing to give a reason for the non-renewal of her term contract, and then for giving reasons that are patently unsustainable.”

66. The Staff Association next asserts that the non-extension decision raises issues of fairness concerning the implementation of the Bank's parental leave policy. The Staff Association states that "[o]ne of the core principles behind parental leave benefits offered by employers generally is that a new parent should not only be able to take leave to care for a newborn child, but also that their job is protected when they are ready to return to work." Further, the Staff Association submits that, "if the principle of parental *leave* is to be honored, rather than parental *dismissal*, it must be a basic requirement that any decision concerning contract renewal take into account the effects that being on parental leave may have had on the staff member's work." (Emphasis in original.)

67. To the Staff Association, the decision not to extend the Applicant's contract, and the timing and manner in which it was conveyed, constitute discrimination in that the Bank failed to take the effects of her leave into account in making its decision. Specifically, the Staff Association states that the

manager in this case attempted to justify her decision not to renew the Applicant by noting that she had taken a "snapshot" of the work programs and demand for services of the Applicant and others in her unit and concluded that the Applicant was expendable. However, this "snapshot" approach does not amount to fair treatment when one of the staff members being considered is on maternity leave. Rather, fair treatment requires that the effects of being on leave on the Applicant's work program must be factored into any assessment of her work program; otherwise, she is *de facto* being discriminated against based on taking that leave. And, as noted above, the burden of proving that the decision was *not* based on illicit considerations rests with the employer. [(Emphasis in original.)]

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### WHETHER THE NON-EXTENSION DECISION WAS AN ABUSE OF DISCRETION

68. 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."

69. 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.

70. 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.

71. The Applicant contends that the non-extension decision was an abuse of discretion because the Bank's ultimate justifications for the decision were not honest or true. The Bank submits that the non-extension decision was made on the basis of "the financial constraints faced by the CL4D team, the decline in [the] Applicant's work program, the lack of cross support, and the absence of demand for [the] Applicant's work." The Tribunal notes that the Applicant was given no specific reason for the non-extension decision when it was communicated to her. Nor did she receive a reason after asking her Manager for it. However, during the PRS process, the Manager did state that the decision was made on the basis of a lack of demand and funding for the position.

72. To support its assertion that the Applicant's appointment was not extended due to lack of demand and funding, the Bank submits documents illustrating that the GGP was running on significant budget overruns and that the Applicant's Manager's unit specifically had significant

budget overruns. The Bank claims that, as a result of these overruns, the management team undertook a significant budgeting and workforce planning exercise which resulted in the non-extension decision. The Bank further claims that a “substantial amount of [the] Applicant’s time and corresponding staff costs for FY18 were charged to a single business line/cost objective” which was “at the closing stage and would not be sustained in the next fiscal year,” demonstrating to the Bank that her position was unsustainable and unaffordable. In addition, the Bank asserts that most of the Applicant’s other activities were also closed and that no demand for support had been expressed.

73. After reviewing the record, the Tribunal observes that the submitted documents do demonstrate that the GGP, and the unit which included the Applicant’s team, was faced with significant budget difficulties. The Tribunal further observes that, at the time the non-extension decision was made, the Applicant’s projects had either closed or been assigned to other members of the team. Accordingly, the Tribunal considers that the record supports the Bank’s assertions that the lack of funding and demand formed the basis for determining that a reduction in staff was necessary. The Tribunal, however, observes that its finding in this regard does not conclude the matter; the Bank’s decision to effect the reduction of staff through non-extension of the Applicant’s appointment must also be assessed in light of her pregnancy and maternity leave.

74. In *Bernstein* [2004], para. 21, the Tribunal explained:

[T]he Bank’s prerogative to develop policies by rules of general application does not preclude the Tribunal from examining specific instances of arbitrariness or unreasonableness in the application of such policies. Although it would be improper for the Tribunal to require that the Bank adopt policies on a case-by-case basis without setting general rules, it would be equally wrong for the Tribunal to decide specific cases without considering extraordinary circumstances. The Tribunal has often conducted a fact-specific review in respect of the business rationale invoked in the application of a policy in question. *See Prescott*, Decision No. 253 [2001], *Lavelle*, Decision No. 301 [2003], and *Elder*, Decision No. 306 [2003].

75. *Bernstein* [2004] addresses the situation where the application of a seemingly neutral policy becomes an abuse of discretion because of the specific facts at hand. The Tribunal in that case did not find that the policy itself was unfair or discriminatory yet concluded that its application

under the circumstances still resulted in arbitrariness or discrimination. It follows, then, that, while the Bank generally has the discretion to decide not to extend term appointments in light of such business rationales as lack of funding or demand for a position, the Tribunal may conduct a fact-specific review of those rationales in the exercise of that discretion. In this case, the Tribunal will consider the business rationales proffered by the Bank with regard to the circumstances of the Applicant's pregnancy and maternity leave.

76. The Tribunal will first consider the Bank's assertions with respect to the lack of funding for the Applicant's position. As noted above, the record is clear that the GGP was facing a significant budget overrun at the time of the non-extension decision. The Tribunal observes, however, that a budget overrun throughout an entire Global Practice is not sufficient by itself to justify the non-extension of an individual staff member's contract. The context and the circumstances of the Bank's non-extension of that individual staff member's contract need to be examined. The Bank asserts that the unit in which the CL4D team worked faced budget overruns and claims that this was in part due to the Applicant's recording a large part of her time to an underfunded budget code rather than to trust funds. The Bank submits that this lack of cross-support by the Applicant demonstrated that her position was unsustainable moving forward.

77. The Tribunal notes that, with regard to the Bank's assertion that the Applicant was recording a large part of her time to an underfunded budget code, the Applicant has asserted that, as the TTL of that program, she was the staff member doing most of the work in wrapping it up. The Tribunal also considers the Applicant's assertion that

time recording to this code was artificially inflated in FY18 because, unlike other years, [the Manager] refused to provide codes for activities such as participating in team meetings, strategic planning, business development work, and training. Accordingly, such activities had to be inaccurately recorded under the CL4D code.

The Tribunal notes that the Bank has not answered these assertions.

78. The Tribunal considers that the Bank's assertions do not account for the circumstances of the Applicant's pregnancy and maternity leave. Specifically, there is no consideration by the Bank of the fact that the Applicant was unable to partake in and was medically excused from mission

travel while pregnant due to the risks posed by the Zika virus at that time. The Tribunal notes the Applicant's assertion that this inability to travel prior to her maternity leave contributed to her lack of cross-support to other units, as well as her assertion that she had every intention of resuming mission travel upon her return from leave and had stated this intention to her Manager during her maternity leave. These assertions of the Applicant have not been answered by the Bank.

79. The Tribunal now considers the Bank's assertion that there was a lack of demand for the Applicant's position, which justified the non-extension decision. The Bank submits that there was a steady decline in the Applicant's work program, demonstrated by the decrease in the number of overall activities from FY17, FY18, and FY19. The Bank also cites the Applicant's hand-over note to her Manager prior to her maternity leave that indicated there were only four of her tasks left open, which she anticipated would be completed soon.

80. The Tribunal again observes that the Bank's assertions do not take into account the fact of the Applicant's pregnancy and maternity leave. The Tribunal is persuaded by the Applicant's contention that any decrease in her activities in FY18 was due in part to her inability to travel. The Tribunal also considers that, as the Applicant was on STD and maternity leave for the majority of FY19, any decrease in activities during that year cannot fairly be relied upon to support the non-extension decision. Further, in considering the documents submitted by the Bank reflecting the Applicant's activities, the Tribunal observes that FY17 seems to be an outlier with respect to the number of activities and that the number of activities billed in FY18 more closely resembles FY16.

81. The Tribunal also is not convinced by the Bank's reliance on the Applicant's hand-over note to her Manager to support the assertion that the Applicant had no work program. The Tribunal observes that the Applicant's note to her Manager states that she worked to close as many tasks as possible because of her upcoming leave. The Tribunal finds that this communication demonstrates the Applicant's initiative in preparing for her maternity leave and her commitment to her team not to leave tasks unfinished, rather than any lack of work program.

82. The Tribunal notes the Bank's assertions in its response to the Staff Association's *amicus curiae* brief, in which the Bank claims that the non-extension decision was made on the basis of

an assessment of the future needs of the CL4D team as a whole. The Tribunal observes, however, that the Bank has not demonstrated how it made such an assessment other than by considering the state of the Applicant's work program while she was on maternity leave. The Tribunal further notes that the Applicant has demonstrated a continued demand for her services, as evidenced by requests from clients while she was on maternity leave and by her subsequent rehiring as an STC by another unit, thus calling into question the legitimacy of the Bank's assessment.

83. In light of the above considerations, the Tribunal finds that the Bank's justifications for the non-extension decision depended on facts inextricably tied to the Applicant's pregnancy and maternity leave. During the PRS hearing, the GGP Director stated that, although the staffing needs assessment occurred while the Applicant was on maternity leave, the fact of her maternity leave was not a factor in making the non-extension decision. The Tribunal finds that this failure to account for the Applicant's maternity leave in making a staffing needs assessment was unreasonable. The Tribunal notes that it is evident that a staff member's parental leave and disability leave will necessarily affect their work program for the duration of the leave. Such leave, however, should not negatively affect their employment status. The Bank therefore has a duty to recognize these inevitable consequences and properly account for them when making decisions on the staff member's employment, a duty which it failed to meet in this case.

84. The Tribunal has had few occasions in which to consider the negative ramifications pregnancy and parental leave may have on a staff member's career, yet its jurisprudence on the matter is unambiguous. In *Bernstein* [2004], para. 30, the Tribunal clearly articulated the principle that, "under recognized international standards, absence from work due to pregnancy and childbirth should not result in loss of continuity of employment, seniority or status."

85. The Tribunal also looks to the jurisprudence of the United Nations Dispute Tribunal (UNDT), which, in *Lemonnier*, Judgment No. UNDT/2016/186, considered the termination of an applicant's appointment while he was on paternity leave. As the UNDT explained in that case, the applicant's appointment was "terminated through no fault of his own. He did not engage in any type of misconduct. He was a good employee with a good performance record and had a continuing appointment." *Id.*, para. 45. The UNDT considered that the "Administration did not give due

weight to these factors and took no cognizance of his particular situation, separating him while he was taking care of his newborn child” and concluded that the termination of his “appointment while he was on paternity leave was a flagrant breach of the requirement of good faith and fair dealing.” *Id.*, paras. 42, 45.

86. Although the Bank asserts that the non-extension decision had a reasonable and observable basis, it failed to acknowledge and account for pregnancy and maternity leave as the cause of the same facts it used to underpin its justification. This approach indirectly and unfairly penalizes pregnancy and maternity leave and is thus impermissible under the standard articulated in *Bernstein* [2004]. When faced with staff reductions, the Bank may choose not to renew the appointment of a person who is pregnant or on parental leave. However, it must make its decision fairly and in good faith on the basis of factors other than those which are inextricably intertwined with the pregnancy or parental leave. The Tribunal considers that, but for the Applicant’s pregnancy and maternity leave, the non-extension decision would not have been made as it was. Accordingly, the Tribunal finds that the non-extension decision was an abuse of discretion and a breach of the requirement of good faith and fair dealing.

87. Having determined that the non-extension decision was an abuse of discretion which must therefore be rescinded, the Tribunal does not also need to determine whether the non-extension decision was discriminatory. Accordingly, the Tribunal will not consider the Applicant’s remaining claims regarding the substance of the non-extension decision.

#### WHETHER THERE WAS A VIOLATION OF DUE PROCESS

88. The Applicant contends that her due process rights were violated because the Bank failed to provide a reason for the non-extension decision.

89. 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], paras. 128–129; *Bhadra* [2018], para. 74.

90. The Bank contends that the Applicant was provided the reasons for the non-extension decision in her Manager’s emails of 19 November 2018, 7 December 2018, and 13 December 2018, where it was indicated that “[t]he appointment expires on the completion of the appointment as set forth [...] in your terms of appointment letter dated 05/15/2015.” According to the Bank, the Manager was following the protocol as provided in the HR Guidance, which stated at the time, “The WBG need not provide reasons for the non-extension of a Term Appointment.”

91. The Bank’s contentions are inconsistent with the Tribunal’s established precedent. The Applicant twice requested the reason for the non-extension decision from her Manager, and on both occasions the Manager failed to provide one. The Tribunal notes that the Manager offered a reason for the non-extension in her response to the Applicant’s Request for Review with PRS; however, this justification came after the decision was made and communicated to the Applicant and after the Applicant’s 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.

92. 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* [1998], para. 19, wherein 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.”

93. The Tribunal notes that, although issues with the GGP’s budget were apparent to management in May 2018, the Applicant was given no warning that these budgetary issues could affect her employment. In this respect, the Tribunal observes that the Applicant met with her Manager in July 2018, while she was on STD, to discuss her performance as well as her work in the upcoming fiscal year. There is no indication that the Manager gave any warning to the Applicant that her employment could be impacted by ongoing budget concerns. Transparency and fair treatment would require that staff members be alerted to such concerns.

94. The Tribunal notes the Bank’s assertion that the Applicant was aware of the funding issues for her position, citing the April 2018 report prepared by the Applicant which discussed, among other things, the funding challenges faced by the CL4D team. However, the Tribunal finds that it is one thing to be aware of funding challenges facing one’s unit, but that it is quite another to be aware that those challenges may negatively impact the continuity of one’s own employment. Accordingly, the Tribunal finds that the Bank failed to adequately inform the Applicant of any potential problems concerning her position.

95. The Applicant also contends that the Bank failed to provide her with sufficient notice of the non-extension decision. The Applicant received the notice of non-extension on 19 November 2018, which was six months before her contract’s end date of 19 May 2019. To the Applicant, because she was on maternity leave at the time of notice and would be until February 2019, her notice amounted to no more than three months.

96. The Bank asserts that the Applicant “cannot [...] argue the validity of providing a staff member with the six-month notice while she was on parental leave.” The Bank cites Staff Rule 6.06, paragraph 6.02, which provides, “A Staff holding an appointment of a specified duration is not entitled to Parental leave extending beyond the date on which his/her appointment ends.” To the Bank, this indicates that a term appointment may expire while a staff member is on parental

leave and that it would follow that notice of a non-extension decision may have to be given during the parental leave.

97. The Tribunal does not accept the Bank's reasoning. In doing so, the Tribunal notes that there is nothing in the Staff Rules which prohibits notice being given to a staff member while on parental leave. The Tribunal nevertheless finds that it is unfair to give notice while a staff member is using his or her entitlement of parental leave and that doing so defeats the purpose of granting such leave. The Tribunal considers the Bank's assertion that "[n]othing prevented [the] Applicant from applying for open positions during the notice period or otherwise seeking alternate employment" to be untenable. Particularly in the case of maternity leave, a staff member may require time to recuperate physically from childbirth and time to meet the demands of feeding a newborn. Allowing for this time to be interrupted by a notice of non-extension, introducing the possibility of having to challenge the decision and search for alternate employment, is unacceptable. The Tribunal recalls that the Bank may choose not to renew or extend the appointment of a person who is pregnant or on parental leave. However, when such decisions are made, the interests of fairness require that every effort be made to respect the entitlement of parental leave. The Tribunal therefore concludes that, by effectively shortening the Applicant's notice period to three months in light of her maternity leave, the Bank failed to provide her with sufficient notice of non-extension.

#### CONCLUDING REMARKS

98. The Tribunal wishes to address the *amicus curiae* brief of the Staff Association, in which the Staff Association submits that this case presents serious issues of fairness with respect to the implementation of the Bank's parental leave policies. The Tribunal agrees. Particularly with regard to the requirements of notice and the interests of parental leave, the Tribunal notes that in specific situations the implementation of these policies may come into conflict. The Bank may wish to study and address such possibilities.

99. The Tribunal further observes that this case suggests there is a need for specific protections for staff members during pregnancy and parental leave. In this respect, the Tribunal again recalls the decision of the UNDT in *Lemonnier*, Judgment No. UNDT/2016/186, para. 43, where it stated:

How an employer deals with staff on maternity and paternity leave speaks volumes about the working conditions and the working environment. Maternity and paternity leave signifies a particularly vulnerable time in an employee's life. When staff members use their entitlement to a maternity or paternity leave, they place a lot of reliance on predictability of income and access to health insurance. It is also difficult for staff members in such situations to present their position or mount an urgent legal challenge to such terminations. This explains why particular care should be taken with regard to staff members who exercise their rights to maternity and paternity leave.

100. The Tribunal concludes by referencing the protections long enshrined by the International Labour Organization and most recently restated in the ILO Convention:

1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.
2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

The Tribunal of course notes that the ILO Convention does not form a part of the Bank's internal law. However, it observes that the protections contained therein comport with the Tribunal's jurisprudence in *Bernstein* [2004] and that its principles are recognized in international law. The Bank may consider examining its internal policies and practice in this area to ensure that it remains a place where the employment status of pregnant staff is not placed at an undue risk and new parents are not placed at an unfair disadvantage.

#### REMEDY

101. Article XII(1) of the Tribunal's Statute provides:

If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked unless the Tribunal finds that the respondent institution has reasonably determined that such rescission or specific performance would not be practicable or in the institution's interest. In that event, the Tribunal shall, instead, order such institution to pay restitution in the amount that is reasonably necessary to compensate the applicant for the actual damages suffered.

102. In this case, the Tribunal has found that the non-extension decision was an abuse of discretion and violated the Applicant's due process rights. The Tribunal notes that the Applicant has requested that her current STC contract be converted to a term contract in alignment with the terms of the remaining CL4D team members, as well as compensation for the actual damages suffered as a consequence of the Bank's decision. The Tribunal finds that the Applicant should be awarded (i) a conversion of her STC contract to a one-year term appointment as a rescission of the non-extension decision; (ii) two years' net salary, minus the payments received during her STC appointments; (iii) six months' net salary to account for lost benefits and medical expenses; and (iv) six months' net salary for the violations of due process.

#### DECISION

- (1) The non-extension decision is rescinded, and the Applicant's STC contract shall be converted to a one-year term appointment in a same or similar position as her last term appointment, within sixty days of receipt of this judgment;
- (2) The Bank shall pay the Applicant two years' net salary based on the last salary drawn by the Applicant, minus any payments received during the Applicant's STC appointments following the end of her term appointment;
- (3) The Bank shall pay the Applicant six months' net salary based on the last salary drawn by the Applicant to account for lost benefits and medical expenses;
- (4) The Bank shall pay the Applicant six months' net salary based on the last salary drawn by the Applicant for the violations of due process in making the non-extension decision;
- (5) The Bank shall pay the Applicant's legal fees and costs in the amount of \$30,418.75; and
- (6) 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

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\*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.