



World Bank Administrative Tribunal

2019

Decision No. 602

**Karel R. León,
Applicant**

v.

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

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

**Karel R. León,
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 Mónica Pinto (President), Andrew Burgess (Vice-President), Mahnoush H. Arsanjani (Vice-President), Abdul G. Koroma, Marielle Cohen-Branche, and Janice Bellace.
2. The Application was received on 17 July 2018. The Applicant was represented by Ryan E. Griffin and Marie Chopra of James & Hoffman, P.C. The Bank was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the nonrenewal of his appointment.

FACTUAL BACKGROUND

4. On 22 August 2011, the Applicant joined the Bank on a two-year term appointment as an Information Officer, Level GF, with the Consultative Group to Assist the Poor (CGAP). The Applicant led the CGAP Information Technology (IT) team, which was responsible for managing CGAP's primary website and its other web assets. The Applicant reported to the CGAP Head of Communications, and one of his functions was to liaise with CGAP communications staff and CGAP technical staff.
5. In the Applicant's 2011–2012 Overall Performance Evaluation (OPE), he was rated as Outstanding/Best Practice, Superior, or Fully Successful in the five work program areas and as Outstanding/Best Practice or Fully Successful in the criteria for behavioral assessment. His Supervisor commented that the Applicant

is one of the best project managers I have worked with because he understands which levers to pull when, when he needs to jump in at some level of detail, and

when to delegate and bring in others. [...] Throughout [the Applicant] acquired the learning he needed to stay ahead of the game [...]. He has also shown that he is able to draw on resources around him as appropriate, pulling in people from across the World Bank and working with them to deliver in a highly co-operative way.

6. In the Applicant's 2012–2013 OPE, he was rated as Outstanding/Best Practice, Superior, or Fully Successful in the five work program areas and as Superior or Fully Successful in the criteria for "Core Bank Competencies," titled "behavioral assessment" in the previous year's OPE. His new Supervisor commented that the Applicant

is very effective at forging strong working relationships with key people within the organization and good at seeing what needs to be done to succeed in a project. He is a very good project lead because he drives things to completion.

7. On 3 May 2013, the Applicant's appointment was renewed for another two years.

8. The Applicant was rated "Box 7 – High Performer" in the Fiscal Year 2013 (FY13) Talent Review.

9. In 2014, as part of an overall restructuring, the IT function at the Bank was centralized to form the IT Services (ITS) department, which would provide IT services to all units in the Bank, including CGAP.

10. In the Applicant's 2013–2014 OPE, his new Supervisor commented that the Applicant "is open to new ideas and able to keep tabs on multiple projects at once. [...] [The Applicant] has great promise as a manager or leader in his area [...]." In terms of his teamwork skills, the Applicant was praised for his work with the Customers' Team and was characterized as responsive. However, his new Supervisor stated:

One suggestion was that [the Applicant] could make a greater attempt at working with other leads at the same level. [...] [The Applicant] can sometimes be a little impatient with his colleagues, particularly when he feels they are not pulling their weight and a project might fall behind. [...] One feedback provider, who praised [the Applicant's] strong wish to get the job done, said [the Applicant] potentially could be more collaborative in setting deadlines that involved many moving parts.

11. During a meeting on 2 April 2015 and by email dated 8 April 2015 to the CGAP Subdirector, the Applicant raised concerns about problems in the relationship between the IT and communications teams and claimed that his new Supervisor was treating him poorly. He also took issue with his new Supervisor's decision to contract with a certain vendor, a decision which he believed was a poor use of CGAP's resources. In his email, the Applicant stated:

The whole situation I've been experiencing makes me feel intimidated and vulnerable. I also feel that silencing my professional opinions and receiving retaliation for what I believe should be the future of the digital presence of CGAP shows that I am not being treated fairly.

12. On 22 April 2015, the Applicant's appointment was renewed for another two years.

13. In the Applicant's FY15 Staff Annual Review, his technical skills, particularly in managing a major deliverable, were praised. Regarding his interpersonal skills, according to his Supervisor, "some reviewers noted that his personal style can sometimes be abrasive. [The Applicant] needs to work on balancing his drive for results so that it does not get in the way of working well with others." In the Areas of Improvement section, his Supervisor wrote:

Several feedback providers encouraged [the Applicant] to work on his interpersonal skills, both with team members and vendors. One commented that when [the Applicant] was disinterested, or not passionate about a subject there was less sharing and cross-collaboration.

14. The Applicant was rated "Box 5 – Good Contributor" in the FY15 Talent Review.

15. In September 2015, the Applicant met with the CGAP Subdirector to discuss issues relating to his Supervisor. The CGAP Subdirector notified the CGAP Chief Executive Officer (CEO) of this meeting and briefed her on the discussion with the Applicant.

16. At a communications team meeting on 3 November 2015 and by email on the same day, the Applicant raised concerns to his Supervisor, who was the Head of Communications, about CGAP's use of a publishing platform that appeared to the Applicant to be noncompliant with internal Bank guidance, and he identified potential risks to CGAP of using such platform. The

Head of Communications nevertheless decided to use the publishing platform, deeming it to be in CGAP's business interests.

17. In February 2016, CGAP was reorganized and the IT team was moved from the communications team to the corporate team. The Applicant's new Supervisor was the Head of the corporate team while the Head of Communications, who was his former Supervisor, became his co-Supervisor.

18. By email dated 21 April 2016 to the CGAP CEO, the CGAP Marketing & Media Outreach Manager conveyed issues about a staff member's negative experiences with the Applicant, citing examples of the Applicant's "non-collaborative and unproductive behavior" on several projects. The CGAP Marketing & Media Outreach Manager wrote: "We have not made attempts in the past to bring these issues to management – and they have been going on for some time. However, in light of recent issues emerging from the Guide implementation process – and potential reputational risk issues at hand – we felt it was important to alert you."

19. In an exchange of emails on 6 July 2016 with a Senior IT Officer, Security, Risk and Compliance, the Applicant reiterated his concerns about using the publishing platform.

20. In the Applicant's FY16 Staff Annual Review, his technical skills and completion of major deliverables were praised. He was also reviewed positively for having "developed [a] great network of support among Corporate IT network which is beneficial for CGAP as [an] organization." The following were noted as Areas of Development: "[The Applicant] needs to actively interact with CGAP teams and establish deep partnership relationships [...]. [The Applicant] committed to address any issue related to perceived gender bias and this will be closely monitored during FY17." According to his Supervisor, the Applicant

contributed to a number of deliverables critical for web implementation of CGAP program. [...] [The Applicant] organized efficient work of staff and consultants [...]. He showed maturity in dealing with a serious issue related to feedback received during mid-term evaluation.

Regarding the Applicant's interpersonal skills, the Reviewing Official commented:

I have seen big improvements in how he is dealing with his colleagues in comms [communications] and would encourage him to continue to stay on this track. The way he [...] walked back a big disagreement [...] was admirable. Managing disagreements with colleagues constructively should continue to be an objective for [the Applicant].

21. The Applicant was rated “Poor Fit (3)” in the FY16 Talent Review and, according to the comments, he “has behavi[or]al issue leading to performance issue.”

22. By email dated 5 October 2016, the Applicant advised his team that they had obtained temporary authorization to use the publishing platform and that the Office of Information Security was in the process of “complet[ing] the full [security] accreditation process.”

23. By email dated 9 December 2016 to the Head of Corporate, the Office of Information Security approved the security accreditation for the publishing platform.

24. According to the Bank, by early 2017, CGAP’s IT needs shifted from managing CGAP’s web assets to “providing a bridge, and playing an integrating role, between CGAP and ITS” and CGAP needed a person who could “define and lead overall CGAP’s IT agenda in future and be a true client support to CGAP staff and members.”

25. On 22 February 2017, the Applicant received an automated reminder from Human Resources (HR), with CGAP management in copy, that his appointment would expire in six months. The Applicant forwarded this email to his Supervisor and inquired about the status of his appointment. According to the Applicant, the Supervisor told him “not to worry” because he had not received six months’ notice that his appointment would not be renewed and that the CGAP CEO had not expressed any concerns about the Applicant’s performance.

26. By email dated 15 March 2017 to the Head of Communications, the Head of Corporate suggested the following “to strengthen CGAP IT function”: “extension of [the Applicant’s] contract for one year, with a clear indication that his project management skills need to improve, as well as his communication to CGAP MT [Management Team] and Comms in particular. Link any potential additional contract extension to full delivery of agreed work program.” He also

envisioned “a competitive hiring process for GG level CGAP IT Lead [...] with demonstrated business support skills, vision that fits CGAP’s role as the cutting edge knowledge hub, and an extensive project management experience in management of complex web based platforms.” The Head of Communications responded on the same day that she supported this proposal.

27. In or around March 2017, the CGAP Management Team conducted a Talent Review and rated the Applicant as “Solid Performer (4).”

28. In April or May 2017, the CGAP CEO “consulted with the management of the Finance and Markets Global Practice and confirmed her understanding that the decision not to offer the Applicant another term contract was one of skills, not performance.”

29. By email dated 4 May 2017 to the CGAP CEO, the Head of Corporate stated that they would need

someone who will define and lead overall CGAP’s IT agenda in future and be a true client support to CGAP staff and members. I would argue that we would need to seek [a] more senior (GG) person, preferably outside talent and someone with the proven track record in delivering IT support to medium/large organizations. Given the increasing importance of web based products that CGAP needs to deliver externally and internally we should be able to justify this position.

30. In late May 2017, management decided not to renew the Applicant’s term appointment.

31. In a meeting on 1 June 2017, the CGAP CEO and the Supervisor informed the Applicant that his contract would not be renewed. According to the Applicant, the CGAP CEO justified the nonrenewal on the basis that the Applicant was not a team player, lacked a service provider mentality, and made decisions without speaking to the Head of Communications.

32. By email later on the same day to the Applicant, the CGAP CEO confirmed the nonrenewal decision and wrote that “[i]t has become increasingly clear to me during my time at CGAP that our needs on the IT front are different from your skills, interests and aspirations, and for this reason, we think it would be best to recruit an IT lead with a different profile.” She also informed the

Applicant that his contract would be extended through 1 December 2017 to give him six months' notice.

33. On 4 October 2017, the Applicant submitted Request for Review No. 399 to Peer Review Services (PRS), challenging the decision not to renew his appointment.

34. The Applicant's appointment ended on 1 December 2017.

35. At a meeting on 12 January 2018, the Management Team discussed CGAP's IT requirements and "agreed to draw up a TOR [Terms of Reference] for a position that will serve an intermediary role, translating CGAP needs into the IT sphere and interfacing with ITS, but that we do not require a large, independent IT team that replicates skills or outsources to contractors [...]."

36. At a meeting on 18 January 2018, the Management Team discussed, *inter alia*, staffing issues and CGAP's new organizational structure. Regarding CGAP's IT requirements, the Management Team stated that CGAP needed "a point person [...] housed in the comms team, who will play a coordinating role between CGAP teams and ITS or any vendors we may hire." The Management Team envisaged an Online Communications Officer position, Level GF, which would be "an intermediary between ITS, other contractors and the rest of CGAP. The person will sit in Comms and be responsible for translating the IT needs [...] to IT. The role traditionally at the World Bank is an online comms officer who brings knowledge about the end results desired, for which IT provides the technical solutions."

37. Ultimately, the Bank advertised for an Online Communications Officer, Level GF. According to the job posting, the incumbent should have "excellent online skills experienced in coordinating the website delivery of dynamic and engaging knowledge outputs in a range of multimedia formats." Among the duties and accountabilities, the representation function required the incumbent to "represent unit or team in online communications, IT, and information security governance groups or other forums to help advocate effective digital communications, coordination across the WBG [World Bank Group], and effective knowledge sharing."

38. On 7 and 8 February 2018, PRS conducted a hearing in Request for Review No. 399.

39. On 14 March 2018, the PRS Panel issued its report, determining “that management acted consistently with [the Applicant’s] contract of employment and terms of appointment in making the non-extension decision” and that the decision was made “on a reasonable and observable basis, that management followed the applicable procedures, and that management acted in good faith.” The PRS Panel “concluded that the evidence did not support that [the Applicant’s] performance, as opposed to his skillset, was the determining reason for the non-extension decision.” With respect to the procedure for informing the Applicant of the non-extension, “[t]he Panel noted that although the required minimum level of communication was satisfied, additional communication prior to the decision could have been provided to [the Applicant].” The PRS Panel recommended that the Applicant’s requests for relief be denied.

40. On 19 March 2018, the Vice President for Equitable Growth, Finance and Institutions accepted the PRS Panel’s recommendation and denied all of the Applicant’s requests for relief.

41. In his Application of 17 July 2018, the Applicant challenges the nonrenewal of his appointment.

42. The Applicant seeks “reappointment to a comparable, mutually-agreeable position at level GF or higher for a term of at least two years or, alternatively, two years’ compensation” based on his last annual salary. In addition, the Applicant seeks financial compensation “for the harm to [his] career, professional reputation and personal life; the loss of potential benefits and income; and the intangible damages and distress caused to [him] as a result [of] losing his employment and his G4 visa” and legal fees and costs in the amount of \$26,082.74.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1*There was no proper justification for the nonrenewal*

43. The Applicant argues that management gave him different explanations on different occasions regarding the reason for the nonrenewal. According to the Applicant, the CGAP CEO's explanation at the meeting on 1 June 2017 was that the Applicant was not "a team player" and had a "strained relationship with the Communications team." The Applicant notes that the CGAP CEO added another reason in her email of the same day, where she claimed that "CGAP's IT needs had changed, resulting in a 'skills gap' between [the Applicant's] qualifications and the purportedly new demands of the position."

44. In response to the Bank's argument that its staffing decisions were made because of organizational restructuring and not "with Applicant, or any other individual staff member, in mind," the Applicant argues that the staffing decisions were made in January 2018, more than seven months after the Applicant was notified about the nonrenewal. The Applicant asserts that the decision was personal to him because the Bank argues that he was not the right fit for the position.

45. The Applicant contends that the examples of behavioral issues, cited by the CGAP CEO, are contradicted by his performance evaluations. Regarding the first example, namely a dispute between the Applicant and another staff member about the development of a website, the Applicant claims that this dispute was successfully resolved and that the resolution of this dispute was described as "admirable" in the Applicant's FY16 Staff Annual Review. Regarding the second example, namely, complaints that the Applicant had a dismissive attitude towards female colleagues, the Applicant points to the CGAP CEO's statement in his FY16 Staff Annual Review that the Applicant's behavior had improved and that, at the PRS hearing, the CGAP CEO stated that she did not report the Applicant to the Office of Ethics and Business Conduct (EBC) because she did not believe that there was any basis for doing so. The Applicant further cites his Supervisor's praise for his "maturity" in handling the complaints and for the measures the

Applicant was taking to prevent problems in the future. Finally, the Applicant rejects the third example that he was at fault for a delayed website redesign. Rather, the Applicant asserts that the communications team failed to provide the content and organizational structure of that content to the IT team in a timely manner. The Applicant also claims that in past performance evaluations he was praised for “keep[ing] himself abreast with the latest IT developments and trends” and “staying on top of the ever changing technology landscape” whereas the CGAP CEO subsequently criticized him for prioritizing the exploration of emerging IT and technology trends.

46. In sum, the Applicant has regard to the positive comments in his FY16 Staff Annual Review and his Salary Review Increase (SRI) rating of 3, which means “fully satisfactory.” He also cites positive comments in his past performance evaluations from different supervisors regarding his “soft” project management and teamwork skills.

47. The Applicant denies that there was a “skills gap” between CGAP’s needs and his abilities, and rejects the examples cited by the CGAP CEO. First, regarding a project in 2015 which the CGAP CEO claims that the Applicant refused to work on, the Applicant states that he offered technical advice, which the project leader ignored, and explains that he was fully engaged in other work at the time. The Applicant also relies on his SRI rating of 4, which means “exceeds expectations,” in 2015 and the fact that his FY15 Staff Annual Review did not flag this project as a problem. Second, the Applicant contends that there were good reasons for recommending a certain customer relationship management platform, for which the Bank criticizes him. Finally, the Applicant argues that the appropriate benchmark for assessing CGAP’s changing needs is his business objectives, as set out in his FY15 and FY16 Staff Annual Reviews, which reflect the expanded role. He asserts that his “fully successful SRIs” reflect his strong performance and ability to perform such an expanded role.

48. The Applicant argues that, to the extent CGAP’s IT needs were changing, the fact that he was awarded above-average SRI ratings of 4 and 5 in three of his last four years and a 3 in his fourth year demonstrates that he “was clearly exceeding expectations in meeting those changing demands.” Moreover, the Applicant claims that “the soft skills that CGAP’s changing needs

supposedly demanded are essentially identical to the soft skills expressly required” in the Applicant’s 2011 Terms of Reference.

The Bank’s Response

The nonrenewal decision had a reasonable basis

49. The Bank claims that, by early 2017, CGAP’s IT needs “had shifted from management of CGAP’s Web assets to an emphasis on providing a bridge, and playing an integrating role, between CGAP and ITS.” The Bank describes the new position as one that “would require a much greater focus on translating the editorial needs of the CGAP communications and technical CGAP staff into the IT realm and functioning as the interface between CGAP and ITS.” Therefore, the Bank argues that the most important skills of the position shifted “from a focus on *technical* Web management and programming skills to a focus on *soft* interpersonal, communication skills.” (Emphasis in original.)

50. The Bank notes that the staffing discussions about CGAP “took place during the preparation of the CGAP VI Strategy in the spring of 2017” before the Applicant’s departure and properly formed the basis for the nonrenewal decision. It claims that “CGAP considered whether Applicant had the communications skills, the ability to work effectively with others and collaborate across boundaries to effectively be the interface between CGAP, IT providers and ITS.”

51. However, according to the Bank, the Applicant did not have the skills to fulfill these needs since he seemed to want “to build an independent ITS function in CGAP” rather than to be “a ‘service provider’ for their outward facing communications initiatives.”

52. The Bank reiterates CGAP management’s assessment of the Applicant as one who “struggled to collaborate with colleagues and caused strained relationships with a number of supervisors and colleagues,” lacked teamwork skills, was “not transparent, lacked communication and project management skills, and did not provide support when it did not suit his interests.” The Bank argues that the Applicant “was able to successfully carry out his role overall for several

years,” notwithstanding some documented behavioral issues, because the relevant “soft skills were not central to the role” in the past.

53. As an example of the Applicant’s lack of soft skills, the Bank describes the Applicant’s insistence on using a specific customer relationship management platform, contrary to CGAP’s corporate decision to use another platform. The Bank also highlights references in the Applicant’s past performance evaluations, which the Bank claims are “evidence [of] the gap in [the Applicant’s] soft skills.”

54. The Bank argues that the Applicant “demonstrated that he did not consistently have the ability to work well with others.” For example, the Bank cites the Applicant’s “difficulties working with his immediate supervisors,” a dispute between the Applicant and another colleague about the development of a micro-site, complaints from four female colleagues about the Applicant’s behavior, and other colleagues’ perceptions that the Applicant was “rude, and dismissive of the views of others and unwilling to seek solutions to common problems.” Moreover, the Bank claims that the Applicant was late in delivering CGAP’s new website because he did not effectively communicate with his Supervisor and colleagues.

55. The Bank urges the Tribunal to defer to the Bank’s discretion in deciding which skills are needed for a position and in assessing whether there is a skills mismatch between a staff member and a position.

56. Regarding the terms of reference for the new Online Communications Officer position, the Bank asserts that it “may search for a different person with skills that, in part, may overlap with Applicant’s technical skills, to fulfill the business needs that Applicant did not, in the eyes of his manager, fulfil[.]” The Bank claims that it has the right to “‘find someone else’ that better met the criteria for the new position.”

The Applicant's Contention No. 2

The nonrenewal decision was motivated in part by a retaliatory animus

57. The Applicant claims that retaliation was, at least, a “contributing factor” in the decision not to renew his appointment. According to the Applicant, he was retaliated against because he had raised concerns in 2015 about the Head of Communications’ decisions to enter into a contract with a vendor and to use a certain publishing platform, and the CGAP CEO was aware of the Applicant’s history of reporting concerns. The Applicant asserts that “it was his history of taking responsibility for safeguarding CGAP’s IT resources and users in the face of what he viewed as risks created by the Communications team, and not any performance issues, that led to” the nonrenewal decision.

58. The Applicant argues that the kinds of concerns he raised, relating to a hostile working environment and his perception that CGAP’s resources were being misused and Bank cybersecurity policies were being violated, fall within the scope of protected activity. The Applicant recalls that protection against retaliation does not require him “to confirm that misconduct has occurred” but rather that he is entitled to protection as long as he “raise[d] genuine concerns regarding perceived contracting improprieties or cybersecurity risks.”

The Bank's Response

The nonrenewal decision was not retaliatory

59. The Bank argues that the Applicant has not established a *prima facie* case of retaliation. The Bank states that “[t]here is no evidence in the record that Applicant’s disagreements with [the Head of Communications and the CGAP Subdirector] were factors that were considered in the decision not to renew his Term Appointment. Nor can any between the two be fairly construed from the facts.” To support this argument, the Bank cites the two-year gap between the Applicant’s criticisms of the Head of Communications and the nonrenewal decision, and that the Applicant’s appointment was renewed once subsequent to his having raised concerns. The Bank also notes that the nonrenewal decision was taken by the CGAP CEO, who did not know that the Applicant had reported the Head of Communications to the CGAP Subdirector, and that none of the CGAP

managers who were involved in the nonrenewal decision knew about the Applicant's report until the PRS hearing.

60. The Bank denies that the Applicant engaged in protected activity that might have been the basis for retaliation. Rather, it characterizes the Applicant's actions as "workplace complaints and criticisms of management decisions." Regarding the alleged reporting of "misuse of funds" by the Head of Communications, the Bank characterizes the Applicant's email of 8 April 2015 as "only indicat[ing] that he considered the employment of a consultant as inefficient." The Bank relies on the fact that this decision by the Head of Communications was within her authority.

61. Regarding the alleged reporting of the Head of Communications' failure to comply with IT procedures with respect to the use of a certain publishing platform, the Bank argues that the record is not clear as to whether anyone in IT confirmed the Applicant's concern. The Bank notes that the Applicant did not make a report to EBC or raise the issue through any of the reporting channels for suspected misconduct. The Bank claims that, once the Applicant brought his concerns to ITS's attention, "they were considered and assuaged" and the Applicant should have been aware that the use of the platform had received the requisite approvals. The Bank argues that, in any event, "CGAP management did not discuss or consider" the Applicant's report to ITS when they decided that the Applicant "was not a good fit for CGAP's IT function going forward."

The Applicant's Contention No. 3

The Applicant was denied due process

62. The Applicant states that he was informed of the nonrenewal decision only after it had been made, so "he had zero opportunity to correct any issues that might have justified his non-renewal (to the extent any actually existed) [...]."

63. The Applicant argues that the real reason for his nonrenewal was related to performance and rejects the distinction the Bank makes between "fit" and "skills mismatch." To illustrate the overlap between "skills" and "behavior," the Applicant refers to his performance evaluations, which "clearly show that management formally evaluated [the Applicant's] performance for years

based in significant part on the exact teamwork, collaboration, and project management skills that it now disingenuously claims are unrelated to performance.” According to the Applicant, he was entitled to address any performance issues through the Opportunity to Improve (OTI) process, but was denied the protections of the OTI process. Without the opportunity to go through the OTI process, the Applicant states that he did not have “a fighting chance – indeed, even better given his demonstrated history of successfully responding to performance-related feedback – of being reappointed for at least another two years.”

64. The Applicant rejects the argument that comments in his past performance evaluations should have put him on notice that he had a “skills gap.” The Applicant explains that he received SRIs of 3 and 4 and that the comments relied upon by the Bank “are hardly the kind of red flags that would fairly warn of impending non-renewal.” The Applicant states that “even consistently high-performing staff members like [himself] inevitably have areas in which they can improve.”

The Bank’s Response

The nonrenewal decision was procedurally sound

65. The Bank argues that the Applicant was given the requisite six months’ notice prior to the nonrenewal. Moreover, the Bank claims that the Applicant was informed of “the true reason for his non-renewal” when the Applicant was told that he did not have the necessary skills to meet CGAP’s changing business needs.

66. The Bank claims that the Applicant was on notice, through the years, that there was a “skills gap” with respect to his interpersonal skills, which he needed to improve. According to the Bank, the Applicant’s “lack of interpersonal diplomacy became more significant” as CGAP’s web platforms and software expanded and developed, thus requiring more collaboration with ITS, vendors, and other CGAP staff.

67. The Bank denies that the Applicant had any legitimate expectation of renewal, nor did the Bank make such a promise.

68. The Bank characterizes the Tribunal's jurisprudence as not requiring the Bank to provide reasons for the nonrenewal of a temporary, fixed-term appointment and relies upon the Bank's "Guidance, Non-Extension of Term Appointments" (Guidance), issued on 29 June 2017.

69. Finally, the Bank contends that it was not obliged to place the Applicant on an OTI plan because the nonrenewal was not related to unsatisfactory performance. The Bank explains that "[t]he OTI is a formal instrument to allow for a regularized procedure before terminating the employment of a staff member, before the end of any term, for unsatisfactory performance" and is distinct from a nonrenewal decision.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

NONRENEWAL DECISION

70. Staff Rule 7.01, paragraph 4.01 regarding the expiration of a term appointment, provides: "A Staff Member's appointment expires on the completion of an appointment for a definite term, as specified in the Staff Member's letter of appointment, or as otherwise amended."

71. The Applicant's Letter of Appointment stated:

Your appointment will terminate at the end of this two-year period unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of the appointment.

72. With respect to the renewal or extension of term appointments, the Tribunal, in *Kopliku*, Decision No. 299 [2003], para. 9, stated:

A staff member appointed to serve for a fixed period is not entitled, absent unusual circumstances, to the extension or renewal of that appointment. [...] As the Tribunal has held before, in *Mr. X*, Decision No. 16 [1984], para. 35: "A fixed-term contract is just what the expression says: it is a contract for a fixed period of time." [...] 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.

73. The rule, then, is that there is no right of renewal with respect to term appointments, “absent unusual circumstances.” See *Kopliku*, para. 9.

74. 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.”

75. 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.”

76. In *DW*, Decision No. 556 [2017], para. 68, the Tribunal was satisfied that the nonrenewal 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.”

77. In *EG*, Decision No. 567 [2017], the Tribunal upheld the Bank’s decision not to renew the applicant’s short-term consultant contract because the record showed that the decision was a response to a shift in the staffing needs and skills needed in the team. 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 Environmental and Social Standards Framework. *Id.*, para. 75.

78. The Tribunal will examine whether the record shows that CGAP’s business needs changed in FY17.

79. According to the CGAP CEO, in an affidavit provided to the Tribunal, CGAP’s changing business needs in FY17 consisted of “the development of substantial new web and database assets,

for which the Management Team felt Applicant also lacked important technical skills. [...] [T]he focus of Applicant's role was shifting from a more technical role (Web development/management) to a more communications-based role (liaison between ITS and CGAP)."

80. The Tribunal notes that, during the relevant period, the CGAP Management Team was preparing CGAP's new five-year strategy. According to a Senior Communications Officer, the restructuring discussions to implement the new strategy included restructuring the IT team, taking into account that the IT support function would be provided, instead, by the Bank's ITS department and the need for a Communications Officer instead of an IT specialist with technical expertise.

81. The Tribunal also has regard to an email from the Supervisor to the CGAP CEO, dated 4 May 2017, where he identified the need for a staff member to "define and lead overall CGAP's IT agenda in future and be a true client support to CGAP staff and members. [...] [W]e would need to seek [a] more senior (GG) person, preferably outside talent and someone with the proven track record in delivering IT support to medium/large organizations."

82. The Supervisor testified at the PRS hearing that the Applicant "did not have the service mentality to support the CGAP teams [...] [and] that CGAP needed someone with project management skills while [the Applicant's] profile pertained more to web management and user experience."

83. The CGAP CEO testified at the PRS hearing that "CGAP has growing IT needs that [the Applicant] could not fulfill." She also testified that the Management Team "reached the conclusion that the issue with [the Applicant] pertains more to 'fit' than performance, in view of the 'mismatch' between [the Applicant's] behavioral and technical skills and CGAP's changing needs."

84. The Head of Communications testified at the PRS hearing that the Applicant lacked a "service delivery mentality and project management skills that would render timely delivery possible. [...] She conceded that [the Applicant] had skills to offer, but that they do not fit CGAP's more complex skills requirements."

85. At a meeting on 12 January 2018, the Management Team discussed a number of staffing issues, including the future of CGAP's IT team. The Management Team "recognized that we do need an IT function though it can be slimmed down. We agreed to draw up a TOR for a position that will serve an intermediary role, translating CGAP needs to the IT sphere and interfacing with ITS, but that we do not require a large, independent IT team that replicates skills or outsources to contractors [...]."

86. Staffing issues were discussed again at a Management Team meeting on 18 January 2018, in light of the new CGAP strategy which "has different staffing requirements." The Management Team reiterated the need to work more closely with ITS for CGAP's IT needs, including "a developer, who will continue to be housed in ITS but dedicated full-time to CGAP." The Management Team prioritized the creation of an Online Communications Officer position, which would be "an intermediary between ITS, other contractors and the rest of CGAP. The person will sit in Comms [...]. The role traditionally at the World Bank is an online comms officer who brings knowledge about the end results desired, for which IT provides the technical solutions." At this time, the Management Team also evaluated the need for two current members of the CGAP IT team.

87. The Tribunal observes that, although these Management Team discussions took place well after the decision not to renew the Applicant's appointment, they support the Bank's explanation that CGAP's restructuring directly affected its IT team, including the Applicant, insofar as a general decision had been made to outsource CGAP's IT needs to ITS, rather than rely on an IT team within the unit, as it had done in the past.

88. The Applicant argues that, as reflected in the business objectives in his most recent Staff Annual Reviews, his role became "much broader than mere website management, but instead involve[d] digital strategy, support for a range of CGAP online products and the teams responsible for each, and coordination with ITS and OIS [Office of Information Security] on information security matters."

89. Notwithstanding, the question is whether the Applicant had the necessary skills for the new Online Communications Officer position.

90. The Tribunal has recognized that it is the Bank's prerogative to decide "which skillsets adapt best to changing needs." *DW*, 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. The Bank argues that the "Applicant was deficient in precisely the core competencies for the new Online Communications Officer role" and identifies "the essential competencies" for that role as "centered on interpersonal, or communication, skills." According to the Bank, the essential competencies of this position were as follows:

- Collaborate Within Teams and Across Boundaries – [...] Actively seeks and considers diverse ideas and approaches displaying a sense of mutuality and respect [...];
- Lead and Innovate – [...] Adapts as circumstances require and manages impact of own behavior on others in context of WBG's values and mission;

[...]

- Client Understanding and Advising – Looks at issues from the client's perspective and advocates for clients within own area as well as urges others to focus on meeting client's needs; Works with others across VPU [Vice

Presidential Unit] to define client needs and develop the best approach to meet those needs (e.g., finds appropriate solutions and negotiates internally for needed resources and support) [...].

93. As examples of the Applicant's deficiencies in these "essential competencies," the Bank relies upon comments in the Applicant's 2013–2014 OPE, where it was observed that the Applicant "can sometimes be a little impatient with his colleagues, particularly when he feels they are not pulling their weight and a project might fall behind." The Applicant was praised for his motivation to finish tasks, but it was noted that he "potentially could be more collaborative in setting deadlines that involved many moving parts." He was also assessed as "respond[ing] promptly to client needs" and being "very collegial."

94. With respect to the FY15 Staff Annual Review, the Supervisor noted the Applicant's positive working relationships with some colleagues, but added that "some reviewers noted that [the Applicant's] personal style can sometimes be abrasive. [The Applicant] needs to work on balancing his drive for results so that it does not get in the way of working well with others." As an area for development, "[s]everal feedback providers encouraged [the Applicant] to work on his interpersonal skills, both with team members and vendors. [...] [T]here was less sharing and cross-collaboration."

95. In the FY16 Staff Annual Review, the Applicant's strengths included "good leadership skills within IT team that includes [a] number of staff and consultants. He developed [a] great network of support among Corporate IT network [...]." As areas for development, it was noted that the Applicant needed "to actively interact with CGAP teams and establish deep partnership relationships. [The Applicant] committed to address any issue related to perceived gender bias and this will be closely monitored during FY17."

96. In its report, the PRS Panel concluded that "management made its decision on a reasonable and observable basis" and that "the evidence did not support that [the Applicant's performance], as opposed to his skillset, was the determining reason for the non-extension decision."

97. The Tribunal will not interfere in management’s decisions about the staffing needs of a unit, “unless abuse of discretion is apparent.” *CA*, para. 39. The Tribunal is not persuaded that management abused its discretion in the present case when it decided not to renew the Applicant’s appointment.

RETALIATION

98. In *Bauman*, Decision No. 532 [2016], para. 95, the Tribunal stated:

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

99. The Bank’s “Living Our Values: Code of Conduct” describes retaliation in the workplace as follows:

Retaliation is “any direct or indirect detrimental action recommended, threatened, or taken because an individual engaged in a [protected activity].” (SR 8.02) It undermines trust among staff members as well as between staff and management and can have a debilitating effect on morale and workplace productivity. This can lead to serious consequences for the World Bank Group: nobody will bring issues forward if they fear retaliation.

Retaliation in the workplace encompasses a range of behavior, from something as small as a remark to something as serious as an administrative action affecting a staff member’s work program or employment. When taken as a means of retaliation, other examples can include: reprimand, discharge, suspension, demotion, denial of promotion, and denial of transfer. Any staff member who in good faith raises a concern is protected from retaliation.

100. In *O*, Decision No. 337 [2005], para. 47, the Tribunal held that an applicant alleging retaliation must discharge the burden of proof by

establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse action. A staff member's subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation [...].

101. In other words, the standard of proof for retaliation is that an applicant "must still make a *prima facie* case with some evidence to show [...] retaliatory motives behind the impugned decision." *Bodo*, Decision No. 514 [2015], para. 77.

102. It is the Applicant's contention that the nonrenewal decision was motivated, at least in part, by the concerns he raised in 2015 about being subjected to a hostile working environment, the misuse of CGAP's resources, and the violation of the Bank's cybersecurity policies.

103. To the CGAP Subdirector in early April 2015, the Applicant raised his concern about the Head of Communications' decision to contract with a certain vendor, which the Applicant believed was a misuse of CGAP's resources. The Applicant also raised the issue of a hostile working environment to the CGAP Subdirector in an email dated 8 April 2015. There is no evidence in the record that the Applicant escalated his complaints, either to EBC or to the Internal Justice Services.

104. In *DK (Merits)*, Decision No. 552 [2017], para. 149, the Tribunal found "it difficult to reconcile the [a]pplicant's claims of retaliation with this job offer and subsequent renewals, all of which happened after the [a]pplicant's reporting of misconduct to EBC."

105. The Tribunal notes that the Applicant's appointment was renewed for another two years, on 22 April 2015, two weeks after he raised concerns to the CGAP Subdirector.

106. To the Office of Information Security on 6 July 2016, the Applicant raised concerns with the Head of Communications' decision to use a publishing platform that, to the Applicant, appeared to violate the Bank's cybersecurity policies. The Applicant did not pursue this concern further.

107. In *ET*, Decision No. 592 [2018], the Tribunal found that the applicant had not established facts sufficient to amount to a *prima facie* case of retaliation in the context of nonselection. In reaching this conclusion, at para. 142, the Tribunal found that “the [a]pplicant has not substantiated his claim that any or all of the [interview] panel members knew that he had expressed his concerns to the Senior VP.” Similarly, in *DK (Merits)*, para.128, the Tribunal found that there was no clear indication that the decision maker knew about the applicant’s report of misconduct prior to the date of expiration of the applicant’s contract.

108. In the present case, the Bank denies that any of the managers who were involved in the nonrenewal decision were aware that the Applicant had raised concerns regarding the actions of the Head of Communications. The Tribunal finds that the Applicant has not established facts sufficient to amount to a *prima facie* case of retaliation.

109. The Applicant did not bring a claim of retaliation to EBC before coming to the Tribunal. In *Bodo*, para. 78, the Tribunal held:

Given the severity of allegations of discrimination and retaliation, thorough investigations of the facts are imperative, and staff members should avail themselves of the investigative body that is the Office of Ethics and Business Conduct (EBC).

The Tribunal reiterates that EBC is the appropriate avenue to undertake an investigation into a retaliation claim. *ET*, para. 145; *EM*, Decision No. 578 [2018], para. 100; *Sekabaraga*, Decision No. 494 [2014], para. 42.

DUE PROCESS REGARDING NONRENEWAL DECISION

110. The Bank relies upon the Guidance and the Tribunal’s jurisprudence for the proposition that the Bank does not need to give reasons for the non-extension of a term appointment. Nevertheless, the Bank admits that it provided the Applicant with the reasons for the nonrenewal.

111. As the Applicant was informed on 1 June 2017 that his appointment would not be renewed, the Guidance is not applicable since it was issued after the decision in question.

112. The question of whether the Bank was required to give reasons for the non-extension of a term appointment does not arise in this case since reasons were given to the Applicant, as set out in the CGAP CEO's email of 1 June 2017.

113. Having found that the nonrenewal decision, based on CGAP's change in business needs, was not an abuse of discretion, the Tribunal holds that the reason for this decision was not false, pretextual, or fabricated.

114. 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.)

115. Although a nonrenewal decision was based on business needs, the Tribunal held in *CS*, 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."

116. The Applicant claims that he did not have actual or constructive notice that management was considering the nonrenewal of his appointment, thus denying him an opportunity to correct any identified issues. The Applicant disagrees that he was on notice of a "skills gap" and relies on the positive comments about his performance throughout the years. The Applicant asserts that he was entitled to address any performance issues through the OTI process.

117. The Bank argues that, throughout his appointment, the "Applicant was aware of this skills gap and that he was trying to 'improve' his interpersonal skills." The Bank further argues that "as part of the overall feedback discussions Applicant was made aware that his ability to work well with others was important in his role" and this requirement "was further reflected in Applicant's FY17 behavioral objective."

118. Although the PRS Panel recommended the denial of all of the Applicant's requests for relief, it "noted that management's communications to [the Applicant] informing him of the non-extension decision may have caused him confusion. [...] The Panel noted that although the required minimum level of communication was satisfied, additional communication prior to the decision could have been provided to [the Applicant]."

119. As early as the FY16 Talent Review, the Bank identified the Applicant as lacking some competencies. In the FY16 Talent Review, the Applicant was rated "Poor Fit (3)." According to the Bank, such a rating generally means, *inter alia*, that the staff member "may lack some competencies required for his/her current role. [...] [H]e/she is underperforming in current role overall or lacks potential to transition to a higher grade."

120. The Applicant was rated a "Solid Performer (4)" in the FY17 Talent Review. A Senior HR Business Partner explained that a rating of 4 may be given "if there is no clear next move for the staff member, whether that is due to the staff member's interest or ability or the organizational demand (i.e. business needs of the unit)."

121. These Talent Reviews were not shared with the Applicant, although the Bank maintains that "as part of the overall feedback discussions Applicant was made aware that his ability to work well with others was important in his role." The Talent Reviews played an important role in the Bank's determination that there was a skills mismatch. In her Manager's Response to PRS, the Supervisor stated that she "flagged [the Applicant] as a Poor Fit (3) in the 2016 talent review, as it was becoming clear that we needed a different sort of IT lead."

122. In *DP*, Decision No. 547 [2016], para. 66, the Tribunal observed:

According to the [a]pplicant's 2013 Talent Review, it was already clear to the Bank that there were such serious issues with the [a]pplicant that her departure was a possibility. The Tribunal is troubled that these concerns were not brought to the [a]pplicant's attention; instead, she was given a positive 2013 OPE, arguably misleading her to believe that her performance was satisfactory. In the Tribunal's view, this goes beyond the Bank's failure to give the [a]pplicant sufficient notice that her performance was deficient.

123. In this case, the Tribunal finds that it was not reasonable for the Bank to rely on the Applicant's "overall feedback discussions" over the years as constituting notice of a lack of skills that would lead to nonrenewal. The Bank refers to comments in the Applicant's performance evaluations in FY13, FY14, and FY15 as putting the Applicant on notice. However, the Applicant's appointment was renewed in April 2015 so, as far as the Applicant was concerned, it was reasonable for him to interpret the feedback given between FY13 and FY15 as areas for improvement rather than notice of imminent nonrenewal.

124. The Tribunal finds that the adverse outlook for the Applicant's career at the Bank was not reflected in the FY16 Staff Annual Review or year-end discussion. Rather, at best, it was reflected only in the FY16 and FY17 Talent Reviews, which were not shared with the Applicant.

125. Principle 2.1 of the Principles of Staff Employment states that "[t]he Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members."

126. The Tribunal urges 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 this case was unfair to the Applicant and warrants compensation.

127. Staff Rule 5.03, paragraph 3.02(b), identifies placement on an OTI plan as one of the options when "a Manager or Designated Supervisor determines that a staff member's performance (which includes professional and work-place behavior) is not satisfactory [...]." In this case, while there were issues with the Applicant's performance, the main reason for the nonrenewal was the mismatch between the Applicant's skills and the Bank's evolving business needs. The Tribunal finds that the Bank did not abuse its discretion when it did not consider the OTI process as an option for the Applicant.

CONCLUDING REMARKS

128. The Tribunal is not persuaded that the information in the FY16 and FY17 Talent Reviews, which turned out to have very serious consequences for the Applicant's employment, was shared with the Applicant through the "overall feedback discussions." The Tribunal is troubled by the Bank's repeated reliance on Talent Reviews that are inconsistent with performance evaluations but which are relied upon by the Bank to make staffing decisions.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of three months' net salary, based on the last salary drawn by the Applicant;
- (2) The Bank shall pay the Applicant's legal fees and costs in the amount of \$26,082.74;
and
- (3) All other claims are dismissed.

/S/ Mónica Pinto
Mónica Pinto
President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., 26 April 2019