



Tribunal awards applicant 1.5 years’ salary for flawed recruitment process

In this issue

Feature Cases.....	1
Recent Judgments.....	2
Re-election.....	3
Upcoming Session.....	3
Key Features.....	3

Contending that the recruitment process for two posted vacancies lacked transparency and objectivity, the applicant in *GS v. IBRD* claimed that the Bank denied her a fair opportunity to compete.

In 2020, the Bank posted two separate requisitions for Regional Safeguard Coordinator (RSC) positions. Requisition No. 5537, posted on January 3 with a closing date of January 31, advertised RSC positions in Africa, East Asia and Pacific, Europe and Central Asia, and Latin America and the Caribbean. Requisition No. 7260, posted on May 8, 2020, advertised RSC positions in West Africa and Latin America and the Caribbean. The applicant in this case, who has served with the Bank since 2003, applied for the two positions advertised in Requisition No. 7260.

In June 2020, the Bank canceled Requisition No. 7260 without considering any candidates who had applied, including the applicant in this case. It filled the West Africa and the Latin America and the Caribbean positions with candidates who had applied under Requisition No. 5537, and contended that the second requisition was only a “backup” for the first. The applicant claimed that the Bank’s decision to award the positions advertised in Requisition No. 7260 to candidates who did not apply under that requisition denied her a fair opportunity to compete for the two positions and that the Bank’s overall recruitment process lacked transparency.

In determining whether the applicant was denied a fair opportunity to compete, the Tribunal assessed “the propriety of the recruitment efforts employed by the Bank.”

With respect to both RSC positions, the Tribunal found that the Bank’s failure to identify the second requisition as a “backup” was inconsistent with the principle of transparency. Regarding the West Africa position, the Tribunal noted that it was publicly advertised only in Requisition No. 7260 and observed that the Bank did not consider the applicant who applied to this requisition but instead selected a candidate who applied to Requisition No. 5537 which did not advertise the West Africa position. The Tribunal found that by filling it under Requisition No. 5537, and by not considering the candidates who applied under Requisition No. 7260, the Bank did not meet its obligations of fairness and impartiality as set out in the Principles of Staff Employment.

The Bank’s use of target sourcing for the RSC position for Latin America and the Caribbean raised several areas of concern for the Tribunal about the recruitment process: the lack of a formal Bank policy on target sourcing; the lack of documentation supporting the selection of the chosen candidate; the “the simultaneous solicitation of additional candidates ... who were never considered”; the Bank’s lack of explanation for not offering the opportunity to the applicant, who met all the requirements and had been the acting RSC; and the Bank’s reference to a language requirement not stated in the posting.

Finding “substantive flaws in the Bank’s recruitment process,” the Tribunal concluded that the Applicant was denied a fair opportunity to compete for the two RSC positions advertised in Requisition No. 7260. After considering previous compensation decisions, it awarded the applicant one and a half years’ salary net of taxes and ordered the Bank to pay the applicant’s full legal fees and costs.

“ When the Bank posted Requisition No. 7260, it created a reasonable expectation among staff members, including the Applicant, that this vacancy would be filled through an open, competitive, and transparent process in which they would have a fair chance to compete. This was not the reality.”

- *GS*, Decision No. 679

Decision clarifies who can bring a case before the Tribunal

In *Marafie v. IBRD*, the applicant—a former staff member at the Bank—challenged the Bank’s decision not to select her for an Operations Analyst position. The Bank submitted preliminary objections, contending that the applicant does not have standing to file an application with the Tribunal.

From 2013 to 2020, the applicant held several positions with the Bank. Almost three months after her last day of employment with the Bank, she applied for an Operations Analyst position advertised by a World Bank country office. She was interviewed but ultimately not selected for the position. After Peer Review Services dismissed her request for review of that nonselection decision, the applicant filed her application with the Tribunal.

In its preliminary objections, the Bank contended that the applicant, although a former member of staff, lacks standing because she was not employed with the Bank or did not have an appointment at the time of the nonselection decision, she did not allege nonobservance of her contract of employment or terms of appointment, and she did not allege that some illegality had been committed.

The Tribunal first considered whether the applicant fit the definition “member of staff” set out in Article II(3) of the Tribunal’s Statute, which is one of the requirements for standing under Article II(1) of the Statute. Based on that definition—which includes “any current or former member of the staff of the Bank Group—and the record, the Tribunal was satisfied that she met this particular requirement. Nevertheless, the Tribunal noted that meeting the requirement of “member of staff” is not enough to establish standing before the Tribunal. Article II(1) of the Statute states that a staff member must also allege “non-observance of the contract of employment or terms of appointment of such staff member.”

After reviewing the record, the Tribunal found that the applicant had not satisfied the second requirement and that it could not hear and pass judgment on her application, which it dismissed.

Judgments Address Non-Promotion and Non-Confirmation Among Other Issues

The World Bank Administrative Tribunal heard seven cases in its November 2022 session. Four cases involved preliminary objections: *FR (No. 2) v. IFC*, *Rofman (No. 2) v. IBRD*, *Marafie v. IBRD*, and *Grofsmacht, Nin, Pereyra, and Perez v. IBRD*. In *FR (No. 2)* and *Rofman (No. 2)*, each of the applicants sought revision of the Tribunal’s previous judgments pursuant to Article XIII of the Tribunal’s Statute. In both cases, the Tribunal determined that the requirements for revision under Article XIII were not met and the applications were dismissed. In *Grofsmacht, Nin, Pereyra, and Perez*, the Tribunal dismissed the consolidated amended application as the applicants had failed to timely exhaust internal remedies.

In *FH (No. 2) v. IBRD*, the Tribunal considered the applicant’s challenge to a non-promotion decision and claim of retaliation. In its judgment, the Tribunal recognized that promotion decisions are discretionary and reviewed the record to determine whether there was a reasonable and observable basis for the Bank’s decision not to promote the applicant. The Tribunal considered that other staff in the applicant’s unit who were promoted had higher performance track records than the applicant and observed that the applicant’s behavior did not model World Bank Group core values. Accordingly, the Tribunal found that the decision not to promote the applicant was not an abuse of discretion nor was it inconsistent with the Bank’s obligation of fairness. The Tribunal further determined that the facts in the record did not establish a *prima facie* case of retaliation.

In *Milton v. IFC*, the Tribunal considered the applicant’s claim that the IFC failed to follow a fair and proper process with respect to the non-confirmation of her appointment and her probationary period. Having considered the record, the Tribunal was satisfied that the applicant was separated from the IFC through the approval of her Long-Term Disability benefits and not through the non-confirmation of her appointment and further found that the IFC followed a fair and proper process with respect to the applicant’s separation. The Tribunal also considered whether the applicant’s separation from the IFC was motivated by retaliation but found that the applicant failed to establish a *prima facie* case.

The text and summaries of all the Tribunal’s judgments and orders may be found [here](#).

Judge Cohen-Branche Re-elected for Second Term as Vice President



During its November 2022 session, the judges of the World Bank Administrative Tribunal re-elected Judge Marielle Cohen-Branche for a second term as Vice President of the Tribunal, effective December 2022.

Judge Cohen-Branche was judge at the French Cour de Cassation from 2003 to 2012, until her retirement. She was a member of the Sanctions Commission (2003-2011) and is currently the ombudsman (since 2012) of the French Stock Exchange Regulator. From 1978 to 2002, Judge Cohen-Branche was a senior executive and legal manager at an international banking institution. Prior to her time in the private sector, she served as General Secretary of CEDIMOM, a non-governmental organization that assists European countries operating in developing nations. For her distinguished national service, Judge Cohen-Branche was awarded the French Legion d'honneur.

Upcoming Tribunal Session

The Tribunal's next session will begin on May 8, 2023. Decisions will be posted on the Judgments and Orders tab of the Tribunal's [website](#).

Essential Features of the Tribunal

- Judicial body established by the Board of Governors
- Composed of seven judges appointed by the Executive Directors
- Functions independently of management of the Bank Group
- Does not fall within any administrative unit of the Bank and is not part of the Internal Justice Services (IJS)
- The Executive Secretary is answerable solely to the Tribunal Judges, specifically, to the President of the Tribunal
- Tribunal judgments are final, binding, and public