



World Bank Administrative Tribunal

2016

Decision No. 533

**DI,
Applicant**

v.

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

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

**DI,
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 Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.
2. The Application was received on 20 April 2015. The Applicant was represented by Peter Hansen and J. Michael King of Law Offices of Peter C. Hansen, LLC. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 28 March 2016.
3. The Applicant contests the decision of the South Asia Region Vice President to declare her employment redundant and terminate her employment contract.

FACTUAL BACKGROUND

4. The Applicant joined the World Bank Group in September 1994 as a Young Professional in the Young Professionals Program of the International Bank for Reconstruction and Development (IBRD). In September 1995, the Applicant joined the International Finance Corporation (IFC) as an Investment Officer, and subsequently transferred to the joint IFC-IBRD Private Sector Development Department as a Senior Investment Officer Level GG2 in 2000. In June 2006, the Applicant joined the Sustainable Development Department (SASSD) of the South Asia Region (SAR) as a Senior Operations Officer mapped to the Agriculture Unit (SASDA), where she remained until her employment was terminated by reason of redundancy on 28 February 2014.

5. As the SASDA Senior Operations Officer, according to the Bank, the Applicant was responsible for providing support to teams and programs to meet SAR client demands in the areas of agribusiness. Among her primary tasks, the Applicant was expected to:

(i) undertake responsibilities for a variety of operational tasks relevant to agribusiness; (ii) analyze, review and process operational documents, coordinating across disciplines and project components with other team members related with lending preparation and implementation supervision of Bank projects; (iii) lead or participate, as needed, in missions in the areas of agribusiness and participate in discussions with the Government sector and project counterparts in an analytical, advocate and advisory role; and (iv) work independently on agribusiness and rural development related matters providing leadership on complex projects or issues.

6. The Applicant adds that her primary responsibilities, in reality, were “the South Asia regional trade and transport program and the Public Private Partnership (PPP) undertakings in the transport sector, all with [the Transport Unit (SASDT)].”

7. In 2009, Mr. X became the Sector Manager of SASDA and the Applicant’s supervisor.

8. In March 2010, SASDA management conducted a “skills gap analysis” of the unit. The ensuing Skills Mix and Mapping Working Group Draft Report – Version 2 (SASDA Report) focused on staff at the GE grade level and above. The Report noted that “[g]iven the overall budget constraint faced by SASDA, our resource options are limited. Views are expressed by many of the need for additional staff hiring. What needs to be looked at carefully is how much attention needs to be devoted to the Bank’s core competencies and related Bank operational skills, and how much to technical skills in our staff hiring going forward.”

9. From 2010, there was a steady decline in the Applicant’s work program which she attributes to an ongoing reduction of her tasks by various supervisors as early as 2007. Even though the Applicant’s work program picked up in May 2010, she asserts that by December 2011 it was “abruptly destroyed” when the regional trade and transport program was reassigned to another colleague. According to the Bank, this decline in the Applicant’s work program was the natural result of SASDA’s evolving business needs which required more highly specialized skills in

agriculture, natural resources, livestock sciences and development, irrigation engineering and economics, and agriculture and rural development policy.

10. In May 2010, the Applicant became the Task Team Leader (TTL) for the first regional transport project in SAR, the North East Sub Region Trade and Transport Facilitation Project (NESR-TTFP) under the supervision of Mr. AB, former Sector Manager, Transport Unit, SAR. As part of her duties, the Applicant was expected to work with the relevant Country Management Units (CMU) including the Country Director as well as the concerned member country governments in what was perceived as a politically difficult environment to manage the project. There was, however, insufficient support for the NESR-TTFP which constituted the majority of the Applicant's work program.

11. On 28 June 2011, the Applicant suffered a stress related incident and began working part-time until September 2011.

12. On 2 November 2011, Mr. AB asked the Applicant to prepare and present the second Project Concept Note (PCN2) for the NESR-TTFP to the members of the PCN meeting. All parties agree that the meeting which took place on 21 November 2011 identified concerns with the project. On 16 December 2011, the minutes of the PCN2 meeting were distributed by email. The minutes were mostly positive and set out further necessary tasks on the project. The minutes did not include any mention of a change to the TTL or any concern regarding the quality of the Applicant's work.

13. The Applicant asserts that between November and December 2011, she had separate conversations with the SASSD Sector Director, Mr. Y, the SASDT Sector Manager, Mr. AB, and her supervisor, Mr. X. According to the Applicant, they expressed concern with her suitability as TTL for the NESR-TTFP and Mr. Y informed her she would be placed on a Performance Improvement Plan.

14. On 29 December 2011, the Applicant sent an email to the then Director for Regional Integration in SAR and the sponsoring Director of the NESR-TTFP. The Applicant copied Mr. Y and Mr. AB to this email and informed them of the follow-up work she had undertaken based on

the minutes of the PCN2 meeting. The Applicant requested further instructions on how to move forward on NESR-TTFP but received no response from the sponsoring Director of the NESR-TTFP.

15. Between January and February 2012, the Applicant had several meetings with her supervisor, Mr. X, regarding her work program. During these meetings the Applicant requested Mr. X's assistance in strengthening her work program.

16. On 27 January 2012, the Applicant sent Mr. X an email stating: "I need your help in defining a work program where my experience and expertise could be fully utilized [...] Since you have a full picture of the SASDA portfolio could you please let me know what areas/tasks I should explore." According to the Applicant, Mr. X told her she would be working on some implementation completion reports, but that work did not materialize.

17. Between March and July 2012, the Applicant performed some tasks with the Urban Development unit (SASDU) of SAR, provided advice to a task team in the Public Private Infrastructure Advisory Facility (PPIAF) and continued work on a transport public-private partnership. During this period she continued to apply for jobs outside of SAR, and sought the assistance of a former manager to transfer to the Transport Unit.

18. Between August and October 2012, the Applicant held several meetings with Mr. X. They completed the Overall Performance Evaluation (OPE) for that year as well as discussed her work during the 2012 fiscal year. The Applicant also met with Mr. W, the Senior HR Business Partner, on 12 and 13 September 2012 to discuss her work program.

19. Between September and November 2012, Mr. X met with the Applicant and discussed her OPE and her Results Agreement for fiscal year 2013. Mr. X and the new SASDT manager, signed the Applicant's Results Agreement. According to the Applicant, her assignments were in the Transport Unit.

20. On 23 October 2012, the Applicant's supervisor, Mr. X, inserted the following comments in her 2011–2012 OPE:

Although [the Applicant] is mapped to SASDA her work program this past fiscal year has been primarily in the Transport unit and regional integration program. She also made good contribution in the urban team as well. There was good reason for [the Applicant] to engage cross sectorally. Over the past few years it has been a challenge to find a program of work that fits her skills and interests. The management team and the former Sector manager for Transport in coordination with me have agreed [to] ask her to work as TTL for the North East Sub-Region Trade and Transport Facilitation Project (NESR-TTFP), an initiative with high potential for impact in the region. [The Applicant] led several missions providing TA/policy dialogue in [...], [...] and [...]. A [Project Concept Note (PCN)] was organized for the [...] part. But unfortunately as indicated in her own feedback this work was [no longer] pursued and the PCN was dropped due to lack [of] readiness on the road part. Also [...] and [...] did not show enthusiasm for the initiative. Some of the activities on the non-lending side were useful (especially the support to PRI on transit through [...]) were clearly useful. But this work required maneuvering between the sensitivities of both the [...] CMU and the [...] authorities eroded the confidence of the [Country Director] and the Program Director for regional integration. It must be recognized though that she did put in a lot of hard work [...].

The Redundancy Decision

21. On 28 November 2012, Mr. X and the Applicant met and discussed her work program. According to the Applicant, she was informed at this meeting that she had to find another job by March 2013. Mr. X asked her to send him her Curriculum Vitae (CV) so he could distribute it to other Sector Boards. The Applicant did so on 6 December 2012.

22. On 1 February 2013, Mr. X contacted the following Sector Boards to identify suitable opportunities for the Applicant: i) Agricultural and Rural Development (ARD); ii) Finance and Private Sector Development (FPD); iii) Transport, Water, Information and Communication Technologies (ICT) and Sustainable Energy and Mining; and iv) Urban and Disaster Risk Management Department. Mr. X sent each Sector Board the same generic message:

I am writing to ask if there is a unit in [...] that might be able to use the skills of [the Applicant]. [The Applicant] worked in IFC before joining SAR few years ago. [The Applicant] has been looking forward to changing units or region over the past few months but has not been successful. Thus I am contacting you so that you can

share the information [with] your Sector Boards for possible match of her skills and experience with some opportunities that may be available. [The Applicant] joined the Bank in 1994-95 as a Young Professional and subsequently worked in IFC in the Agribusiness areas as Senior Investment Officer. She worked in IFC till 2005 before joining SAR. In SAR she has worked in various areas including PPP, water, solid waste, transport, and agribusiness to name but a few. [The Applicant] has a Master's degree in Business Administration with some engineering background. I have attached a copy of the CV of [the Applicant] for further details.

23. On 24 February 2013, the Senior Human Resources (HR) Business Partner of the Transport, Water, ICT and Sustainable Energy and Mining Departments responded to Mr. X indicating that he would share the Applicant's CV with the respective Sector Board colleagues and potential hiring managers. The Senior HR Business Partner also indicated that there were 21 positions recently posted in the Energy and Mining sectors. Mr. X informed the Applicant of these opportunities and urged her to apply for them.

24. In early April 2013, the Applicant and Mr. X had a mid-year performance discussion. During this phone discussion, Mr. X repeated to the Applicant that she needed to look for another job.

25. On 5 April 2013, Mr. X contacted the HR Business Partner of the ARD Sector, and informed her that SASDA management has proposed the abolition of a Washington, D.C. based Senior Operations Officer position and that the proposed position redundancy would impact the Applicant. He stated that they would like to seek a "No Objection" from the ARD Sector Board. The rationale for the redundancy decision was noted as:

The Rural Development Group of SASSD is abolishing one of its Sr. Operations officer positions, Level G, because the business no longer requires such a position. Based on the current and projected WPA requirements within the Agriculture and Rural Development Group of SASSD, there is a crucial need for staff with cutting-edge expertise in areas, where there is client demand or areas, which the region has identified in anticipation of future client demands. These are agricultural and livestock sciences, irrigation engineering and economics and agricultural and rural development policy analysis. The unit is trying to rebalance its staffing to meet those needs.

Many of the functions currently being handled by the Sr. Operations Officer, can now be handled by other specialists or staff at junior levels (GE and GF level staff).

In addition, there is not a full work program for an IRS Sr. Operation officer and, therefore, we would like to abolish the position in order to meet the changing demands of our clients.

The proposed position cancellation will affect [the Applicant]. Since 2010, there has been a steady decline in [her] work program because of the decentralization of operations officer type responsibilities to the field, insufficient demand for her skills, support by TTLs, as well as the consolidation of some of the unit's activities in HQ. The unit worked with [the Applicant] to develop new platforms to generate a full work program for her, including generating new programs, but these efforts have not worked out. We also circulated the CV of [the Applicant] to three Sector Boards for possible placement but these efforts did not yield a tangible proposal.

26. On 10 April 2013, the Applicant held a telephone conversation with Mr. W, the SASDA Senior HR Business Partner, who informed her that her position would be abolished. The Applicant expressed surprise and stated that Mr. X had not told her that her position would be abolished, but rather that she needed to look for another job due to a weak work program and poor performance.

27. On 15 April 2013, the ARD Sector HR Business Partner sent Mr. X an email informing him that on 5 April 2013 she sent the SASDA Redundancy Proposal to the ARD Sector Board requesting each Sector Board member to inform HR by close of business Thursday, 11 April 2013 if they had any available positions for the Applicant. The ARD Sector HR Business Partner stated that "[a]ll the Sector Board members informed HR that they did not have any available position to offer and therefore, approved the redundancy proposal to abolish the SASDA Sr. Operations Officer position. Please proceed with the redundancy."

28. On the same day, the Applicant met with Mr. X in his office. He informed her that she should look for another job because of her diminished work program.

29. On 20 May 2013, the Applicant met with Mr. W to discuss her ending employment options. Mr. W explained to the Applicant that management had decided to abolish her position.

30. On 27 May 2013, the Applicant went on short-term disability leave until 1 July 2013.

31. On 25 July 2013, the Applicant met with Mr. X for her OPE discussion for fiscal year 2013. During the meeting, Mr. X informed her that her position would be abolished.

32. On 28 August 2013, Mr. Y, the SASSD Sector Director, met with the Applicant and gave her the Notice of Redundancy. The Notice was dated 16 August 2013 with effective date 1 September 2013, and was signed on 1 July 2013 by the new SAR Vice President. The Notice stated in relevant part:

This memorandum confirms your conversation with [Mr. X] and [Mr. W] in which you were informed that, with the concurrence of the Head of HRS Corporate Operations and Chair of the Severance Review Group, I have determined that your employment has become redundant with effect September 1, 2013. This decision has been taken in accordance with Staff Rule 7.01, paragraphs 8.02 and 8.03.

33. On 10 September 2013, the Applicant wrote an email to the Lead HR Specialist, stating:

I am writing to you in relation to a Notice of Redundancy which was handed to me on August 28, 2013. I was truly surprised by this action of my management and do not understand on which basis my employment has become redundant. If possible, I would really appreciate if we could meet at your convenience regarding this matter.

34. On 12 September 2013, the Lead HR Specialist responded to the Applicant stating “[w]e would be happy to answer questions with respect to [...] payments, benefits, training/transition funds during job search etc.” He noted however that “[w]ith respect to explanations regarding the decision to make your position redundant, you will need to discuss that with your manager and with your HR Business partner. While our team has some roles when it comes to redundancies, it is the manager who owns the business case and has all information and context related to this.”

35. On 26 September 2013, the Applicant, Mr. X and Mr. W met to discuss the rationale for the redundancy decision and as her options going forward. During the meeting, the Applicant explained that she was surprised since she had never had any discussions with them in which she was specifically informed that her employment would be declared redundant.

36. On 2 October 2013, Mr. W informed the Applicant by email that he had discussed her request for a copy of the Proposed Staff Redundancy Form with the Severance Review Group which maintained that “they cannot share the formal rationale that was confidentially sent to them with [her].” Mr. W stated that the Applicant should feel free to discuss the reason for the redundancy of her employment with Mr. X.

37. On 3 October 2013, Mr. X sent the Applicant a summary of their 26 September 2013 meeting. In copy were Mr. W and Mr. Y. Mr. X addressed the Applicant’s claim that she was surprised by the redundancy decision. He stated:

I asked at the meeting that you further clarify the objective of the meeting, specifically on whether you discussed or did not discuss the redundancy issue with me. In the course of the discussions, we concurred that you have had a number of meetings with me during which I discussed your redundancy and abolition of your position based on insufficient work program and the declining demand for your time. As you mentioned yourself, you have not had a solid program with SASDA for the past 3 years. I reminded you that our discussions took place on several occasions twice in the course of the official OPE discussions. The dates during which we met formally are August 29, 2012, November 28, 2012, April 15, 2013, and July 23, 2013, excluding the informal meetings [that] we have had. I also indicated that it was on the basis of my discussions with you that I offered to circulate your CV to Sector Boards for possible job opportunities outside SAR.

I also indicated that I had a critical meeting with you on April 15, 2013 to discuss the redundancy. This meeting followed an earlier one that you have had earlier in the month of April with [Mr. W] and during which you claimed that you were not aware of your redundancy. Again on July 23, 2013 in the course of your OPE discussion, I informed you again about this and in fact reminded you we were processing the redundancy and you in fact you said: “Go ahead, go ahead, we will see.”

38. On 7 October 2013, the Applicant responded to Mr. X’s 3 October 2013 email stating:

I guess at this point we agree that we disagree on the rationale for my redundancy. Hence, during my remaining reassignment/termination notice period, I would appreciate any assistance that you can give in my ongoing search for an alternative position within the Bank. If convenient for you, it would be much appreciated if we could meet every two weeks to discuss where I stand and identify new opportunities.

39. On the same day, the Applicant also responded to Mr. W's email stating:

Please be advised that I have discussed the issue with my outside legal counsel who informed me that the "Proposed Staff Redundancy Form" is routinely made available to staff requesting PRS and/or Tribunal review of redundancy decisions. This document is not recognized as confidential by the PRS or the Tribunal and staff who make a request for it, do receive it and, therefore, can review it. This is in line with established Tribunal precedent that has held Bank managers to strict principles of fairness and transparency in the context of redundancy decisions, which, among other things allows staff to verify that proper process was followed.

[...]

In view of this, I should not be held to first make a formal request for PRS review (a right which I reserve at this time) before I benefit from the Bank's obligation to transparency. Despite my attempts, I have in fact not been able to elicit a response from my manager about the rationale behind the redundancy decision which would be detailed enough to understand the justification. Worse, my redundancy notice has not even clarified the relevant section of Staff Rule 7.01 applicable to my case (as my counsel has informed me, another procedural irregularity in my case.)

I therefore hereby reiterate my request to review the "Proposed Staff Redundancy Form." If you remain in doubt on this issue, I would kindly suggest to seek advice on the matter from [the Legal Department].

40. On 10 October 2013, the Applicant and Mr. X confirmed their telephone appointment to discuss the Applicant's job searches.

41. On 15 October 2013, Mr. W notified the Applicant by email that he had consulted with the Legal Department which referred him to Staff Rule 2.01. Mr. W stated:

I have read Staff Rule 2.01 and I understand that it establishes the instances in which documents are subject to disclosure. The Staff Rule states that material prepared by supervisors or managers for use in exercising their managerial responsibilities or prepared by Human Resources staff in the performance of their human resources management function for use in making personnel decisions, are considered Working Papers. Such Working Papers, according to Staff Rule 2.0, do not become part of Staff Records and are, therefore, not subject to disclosure pursuant to the Staff Rules.

Moreover I understand from [Mr. X], who is your current Sector Manager, that he informed you of the rationale of the redundancy decision in a clear manner at various meetings he had with you before you were formally notified of the

redundancy. The “Proposed Staff Redundancy Form” would only make you privy to relevant information that you have already received.

42. On 17 October 2013, Mr. X sent the Applicant an email following their telephone conversation in which he stated he enjoyed discussing job opportunities and options with her, and praised her proactivity in her job search. Mr. X also stated:

I was glad to hear that you interviewed for the job of Advisor to the VP for Change Management but unfortunately that did not work out. You promised to share with me the various correspondences or emails sent to the Director for Change Management [...] and I will try to get his attention to the various requests for appointment you requested from him. Please send those emails to me and give me the context and I will follow-up. Although there is no guarantee that he would respond positively given his very busy schedule, I would do the best that I can to draw his attention to it.

43. Mr. X cautioned the Applicant regarding some job searches stating: “I would like to re-stress what I said before: be realistic in targeting the jobs [where] you have a greater chance of success.”

44. On the same day, the Applicant responded thanking Mr. X for his “time and [his] constructive, and proactive support in this, for [her], difficult period.”

The Remapping Process

45. On 18 December 2013, the Applicant asked Mr. W about her status in the preliminary mapping of staff in the Global Practices (GP). Mr. W responded that she had been mapped to the Agriculture GP. The Applicant believed at the time that this preliminary mapping indicated a new assignment because the mapping was based on skills and experience of staff and on business needs in the newly formed Global Practices.

46. On 7 January 2014, the Applicant received the Terms and Conditions for Notice of Redundancy from the Lead HR Specialist.

47. On 17 January 2014, the Applicant wrote an email to the Lead HR Specialist seeking clarification on the significance of the remapping and whether it indicated an annulment of the redundancy decision.

48. On 23 January 2014, the Lead HR Specialist responded that he did not believe that “this comes down to an annulment of the redundancy,” and stated that as he understood it “the mapping exercise relates to the need to associate staff with an organizational code/unit, rather than that it signifies anything with respect to work program.” He further stated that rather than “guessing at what the remapping means for you, I think it is important to get clarity from [Mr. X] (and [Mr. W]) if that is what he (they) intended with the re-mapping.”

49. On 20 February 2014, the Applicant received an email, along with other staff in her unit, from the HR Vice President regarding the “Staff Mapping Validation Process.” The email stated that “[s]tarting today, you will have access to your proposed organizational and professional mapping via this confidential link.” Through the link the Applicant learned that her organizational and professional assignment with the “AGRIC GP” was confirmed. The Applicant then wrote to the Lead HR Specialist and Mr. W to confirm the new assignment, which she understood was a reassignment and therefore superseded the redundancy.

50. On 21 February 2014, Mr. W wrote to the Lead HR Specialist stating that the redundancy decision superseded the mapping notification, and that the Applicant’s current department and sector manager also reiterated that the original business and operational rationale for the redundancy were still in place.

51. On 24 February 2014, the Applicant sent an email message to the World Bank President in which she briefed him on her frustration and confusion with the remapping and redundancy process. She asked the President to “please [...] take a look at my case and advise how to resolve it.” The Applicant did not receive a response to that email.

52. On 28 February 2014, the Applicant’s employment with the Bank terminated.

53. On 13 June 2014, the Applicant filed a Request for Review with Peer Review Services (PRS). She alleged that in making the redundancy decision, management discriminated against her on the basis of her disability and age. She contended further that the Bank mismanaged her career.

54. On 20 November 2014, the PRS Panel issued its report and recommendation to the Managing Director and Chief Operating Officer. The Panel concluded that management provided a reasonable and observable basis for the redundancy decision and followed the applicable procedures. The Panel also concluded that there was no ill animus in making the redundancy decision and no career mismanagement. In arriving at its findings, the Panel recognized the “frustration and disappointment that [the Applicant] expressed during the hearing as a result of the decision to declare her employment redundant.” Regarding the career mismanagement claim in the context of the redundancy decision and the remapping process, the Panel observed that SASDA was undergoing a change which may have led to the Applicant’s confusion over her work program and the status of her position. The Panel also acknowledged that when Mr. AB left the Transport Unit, there were additional changes to the Applicant’s work program under the new Transport Sector Manager. Notwithstanding this acknowledgment, the Panel stated it could not find evidence of discrepancies or inconsistencies in the manner in which the Bank treated the Applicant to amount to mismanagement of her career.

55. On 20 April 2015, the Applicant submitted this Application to the Tribunal. She challenges the decision by the then SAR Vice President to declare her employment redundant on 16 August 2013, with effect 1 September 2013. The Applicant asserts that the SAR Vice President: (1) failed to declare her employment redundant for legitimate and genuine managerial reasons; (2) failed to ensure that fair and reasonable procedures were followed throughout the entire redundancy decision process; and (3) thereby abused his discretion in terms of both the substance and procedure of his decision.

56. The Applicant seeks: a) rescission of the redundancy decision; b) reinstatement to a position commensurate with her skills and experience; c) retroactive resumption of all staff benefits; d) a salary review for purposes of rehire; e) two years’ salary for moral damages, to compensate for the harm caused by the “Bank’s abuses of discretion in respect of the redundancy’s

substantive aspects, including recent career mismanagement”; f) one year’s salary for the intangible harm caused by the “Bank’s manifold and blatant procedural irregularities in the redundancy process”; g) reimbursement of all her attorney’s fees and costs in the amount of \$30,432.17; and h) all other relief the Tribunal may deem just and appropriate.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The Bank’s decision was arbitrary and improperly motivated

57. According to the Applicant, the Bank’s claims that the redundancy was a legitimate business decision is suspicious in light of the SAR Vice President’s admission that the Applicant was the only staff member out of almost 900 staff in SAR to be made redundant that fiscal year. She further states that there is no evidence the Bank conducted an in-depth analysis of her diverse competencies and work experience as was recommended in the SASDA Report for SASDA staff. According to the Applicant, if such an analysis was conducted, it was not disclosed and it “failed utterly to identify the various significant ways in which [she] could contribute meaningfully to the unit’s work.”

58. According to the Applicant, even if the Bank were to claim that she lack sufficient specialized skills, the Bank had a duty to inform her that its determination was based on a lack of skills, and to afford her the opportunity to bridge her skills gap during the approximately three years between the SASDA Report and her management’s initiation of the redundancy process. Furthermore, the Applicant contends that if performance were a factor in the decision to “treat her differently, and ultimately to declare her redundant,” the Bank had a legal obligation to say so, and to give her a reasonable opportunity to improve her performance.

The Bank's Response

The redundancy decision was justified by a proper business rationale and it served a legitimate goal

59. The Bank asserts that there is no evidence of arbitrariness, improper motivation or bias in the redundancy decision. According to the Bank, the redundancy decision was a “reasonable response to SASDA’s changing business needs and environment.” The Bank avers that the Applicant’s position was abolished due to business-related factors which included: a) her insufficient work program and a declining demand for her time in SASDA; b) her lack of prospects in SASDA given the increasing demand from SAR’s clients for highly specialized skills in particular sectors which the Applicant did not possess and could not be expected to acquire within a reasonable time frame; and c) the changing business environment in SAR which justified moving “operations officer” type work, which made up much of the Applicant’s work program, to the field offices.

60. The Bank maintains that in addition to its changing business needs and environment, SASDA was also faced with resource constraints and a budget deficit. It also states that the Applicant was not the only SASDA staff member to leave the unit due to redundancy-related reasons in recent years, noting that in 2011 at least three other SASDA staff members, all with the same title as the Applicant, had their positions declared redundant or opted to sign Mutually Agreed Separation agreements with the Bank.

The Applicant's Contention No. 2

The Bank's decision to render the Applicant's employment redundant was discriminatory on the basis of age and disability

61. The Applicant contends that the Bank’s decision to render her employment redundant was discriminatory on the basis of age and disability. Regarding her allegation of age discrimination, the Applicant argues that her manager demonstrated a clear preference for a younger, but similarly situated, colleague and that the SASDA Report “points both explicitly and impliedly to [her] age and other impermissible factors as reasons for her being ostracized by her managers.”

62. Regarding her claim of discrimination on the basis of disability, the Applicant contends that the redundancy decision was wrongfully influenced by the fact that she took short-term disability leave on two occasions between 2011 and 2013. The Applicant argues that the declaration of redundancy, coming shortly after the second period of short-term disability “cannot reasonably be dissociated from [her] disability given her managers’ overt preference for younger (and presumably healthier) staff.” The Applicant states that she cannot “be required to prove that her managers acted with overt expressions of animus against the disabled.”

The Bank’s Response

There was no discrimination based on age or disability

63. The Bank contends that there was no discrimination on the basis of either the Applicant’s age or medical disability. According to the Bank, the Applicant’s comparison with her colleague, Ms. S, is misplaced as it does not take into account contemporaneous factors such as the fact that Ms. S was in a different unit, and her performance on her projects was distinct and distinguishable from the Applicant’s. The Bank maintains that it did not hire a younger staff member to replace the Applicant. The Bank further argues that the Applicant’s claim that language in the Skills Mix Report supports her allegations is unfounded.

64. Regarding the Applicant’s claim of discrimination on the basis of medical disability the Bank argues that this allegation is misplaced. To the Bank, there is nothing in the record to suggest that her illness and personal health history triggered or influenced the redundancy decision.

The Applicant’s Contention No. 3

There were procedural irregularities in rendering the Applicant’s employment redundant

65. The Applicant contends that the Bank failed to follow the proper process in violation of the Staff Rules, Code of Conduct, fundamental principles of due process, and the obligation to act in good faith. To this end she makes the following six assertions.

66. First, the Applicant asserts that the Bank failed to provide her with the redundancy rationale in a timely manner noting that the Notice of Redundancy did not indicate the specific sub-section of Staff Rule 7.01, paragraph 8.02 under which her employment was being made redundant. The Applicant contends that her management did not explain the rationale behind the redundancy, but instead warned her on many occasions “simply that she needed to find a new job.”

67. Second, the Applicant contends that the Bank failed to adequately explain how remapping during the Bank’s reorganization process affected pending redundancies, and failed to clear up her very reasonable confusion about whether and how the ongoing Bank-wide reorganization and associated remapping process affected her concurrent redundancy.

68. Third, the Applicant argues that the Bank failed to adequately assist her with strengthening her work program, and cannot justify the redundancy on the basis of a shrunken work program. She contends that this lack of support took the form of obstruction and indifference and that her managers “skirted their duty to substantially aid – or at least not interfere with – [her] concerted efforts to build and sustain her work program.” To the Applicant, this failed duty bears heavily on the lack of a fair and transparent redundancy process.

69. Fourth, the Applicant argues that the Bank deprived her of the opportunity to improve her performance, or increase her skills. According to the Applicant, the record shows that her managers expressed recurring concerns about her allegedly inadequate performance, particularly in relation to the large “signature” projects upon which her work program was heavily reliant.

70. Fifth, the Applicant contends that the Bank failed to adequately assist her in her efforts to find another job within the Bank. According to the Applicant her manager failed to assist her in her job search and sent a total of three emails, all generically worded, on her behalf. To the Applicant such “grudging ‘help’ does not comport with the expectation set in” *Ingco*, Decision No. 331 [2005], para. 76.

71. Sixth, the Applicant maintains that there were procedural irregularities in that the Proposed Redundancy Form did not contain the two required signatures at the time the decision was

executed. She contends that the Request for Approval of Severance Payment was similarly unsigned by two required officials.

The Bank's Response

The Bank followed all applicable policies and procedures

72. The Bank responds to each of the Applicant's six claims as follows:

73. First, the Bank asserts that it provided the Applicant with a redundancy rationale. While it concedes that the Notice of Redundancy which the Applicant received on 16 August 2013 did not indicate the specific sub-section of Staff Rule 7.01, paragraph 8.02, the Bank maintains that the Applicant met with her manager on multiple occasions and she was alerted that "her specific position in SASDA may be abolished due to the declining need for the functions she had been performing in SASDA."

74. Second, the Bank contends that there was no confusion over the Applicant's redundancy and the Global Practice remapping exercise, and the responses provided were adequate.

75. Third, the Bank argues that development of a sustainable work program is a shared responsibility between a staff member and his/her manager and SASSD management made concerted efforts to identify and provide the Applicant with plausible opportunities in other sectors of the department. These efforts according to the Bank included involving the Applicant in projects in the SASSD transport and urban sectors. The Bank also contends that SASSD management discussed the possibility of the Applicant's internal deployment; however, consensus reached within SASSD management was that the Applicant would not be able to function within those units, even if she was provided with the appropriate training.

76. Fourth, the Bank maintains that the opportunity to improve the Applicant's performance or skills is irrelevant to the redundancy decision.

77. Fifth, the Bank contends that it made substantial and good faith efforts to assist the Applicant in locating another position in the Bank in accordance with Principle 7.1(b)(iii) of the Principles of Staff Employment. These efforts, the Bank asserts, included Mr. X sending the Applicant's CV to colleagues in the FPD, Transport, Water, ICT and Sustainable Energy and Mining, and Urban and Disaster Risk Management Department Sector Boards in February 2013. Furthermore, the Bank states that prior to the affirmation of the redundancy decision, Mr. X circulated the Applicant's CV to the ARD Sector Board. According to the Bank, the fact that these efforts were ultimately unsuccessful is not in and of itself wrongful.

78. Sixth, the Bank argues that the redundancy process followed the procedural requirements as the Proposed Staff Redundancy Form and the Request for Approval of Severance Payments were signed by the appropriate managers/representatives.

The Applicant's Contention No. 4

There was a conflict of interest and the Chair of the Severance Review Group (SRG) should have recused himself

79. The Applicant contends that the Chair of the SRG, who was also the Lead HR Specialist was already aware of her age and medical condition not least since he had, by coincidence, been her HR Officer when she suffered a stroke in 1995. The Lead HR Specialist had processed the Applicant's disability leave at the time and her return to work three months later. The Applicant asserts that "[h]owsoever fair [he] might actually have been in the case [of the Applicant] (and this cannot be determined objectively), he should have recused himself in this instance, but did not do so."

The Bank's Response

There was no conflict of interest

80. To the Bank, there is no basis for the argument that it was irregular for the Lead HR Specialist to have reviewed the redundancy of the Applicant's employment as Chair of the SRG. The Bank contends that it is highly speculative and far-reaching to assume that the Lead HR

Specialist would remember the exact medical condition or even age of the Applicant over a decade later.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Scope of the Tribunal's Review in Redundancy Cases

81. The Tribunal recognizes that “the decision to declare a staff member redundant is an exercise of discretion.” See *Harou*, Decision No. 273 [2002], para. 27. Nevertheless, such a decision will be reviewed to determine whether there has been “an abuse of discretion, such as where a decision is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.” *Id.*, citing *Kahenzadeh*, Decision No. 166 [1997], para. 20; and *Mahmoudi (No. 2)*, Decision No. 227 [2000], para. 24.

82. To be upheld, the redundancy decision in question must be based on a legitimate rationale, and must have been made in the interest of efficient administration. (See *e.g. Marchesini*, Decision No. 260 [2002], paras. 30 - 35.)

83. To substantiate a claim against a redundancy decision, the initial burden of proof lies upon the Applicant who must make a *prima facie* case of abuse of power (*de Raet*, Decision No. 85 [1989], para. 57). However, the Tribunal has recognized, in *DD*, Decision No. 526 [2015], para. 40, that it may be “‘exceedingly difficult’ for staff to substantiate an allegation of arbitrariness or lack of fairness amounting to an abuse of discretion.” It is thus incumbent upon the Tribunal to require, from the Bank, the strictest observance of fair and transparent procedures in implementing the Staff Rules dealing with redundancy. Otherwise,

ill-motivated managers would too often be able to pay lip service to the required standards of fairness, while disregarding the principle that their prerogatives of discretion must be exercised exclusively for legitimate and genuine managerial considerations in “the interests of efficient administration.” (*Yoon (No. 2)*, Decision No. 248 [2001], para. 28; *Husain*, Decision No. 266 [2002], para. 50.)

Relevant Provisions of the Staff Rules on Redundancy

84. The provisions of the Staff Rules on redundancy which are applicable in this case are:

Staff Rule 7.01, paragraph 8.02

Definition of Redundant Employment

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

- a. An entire organizational unit must be abolished;
- b. A specific position or set of functions performed by an individual in an organizational unit must be abolished;
- c. The responsibilities of a position no longer match the skills and experience of the incumbent and are unlikely to do so within a reasonable period of time; or
- d. types or levels of positions must be reduced in number.

Staff Rule 7.01, paragraph 8.03

Decision on Redundant Employment

A decision that a staff member's employment is redundant will be made by a vice president, or where there is no vice president, the responsible departmental director responsible for administering the position, in consultation with the appropriate Sector Board, Network, or other management group, where applicable, and with the concurrence of the Vice President, Human Resources or his/her designee. Where positions are reduced in number under paragraph 8.02(d) of this Rule, the selection of staff members whose employment is redundant will be made on the basis of managerial judgment about the skills needed by the Bank Group to carry out its work effectively, taking into account the following factors:

- a. The performance (including professional and work-place behavior) of staff members;
- b. Whether the abilities and experience of staff members can be used elsewhere in the Bank Group; and
- c. The existence of volunteers for termination who are willing to accept severance payments pursuant to paragraph 8.08 of this Rule.

Staff Rule 7.01, paragraph 8.04

Notice of Redundancy

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

Whether there was a legitimate rationale for the redundancy decision

85. It is well established that a redundancy decision must have a legal basis and serve a legitimate goal. *See e.g. Marchesini*, para. 30, and *DD*, Decision No. 526 [2015]. The Bank, however, must demonstrate that the abolition of post was “‘genuine’ in the sense that the position was not replaced by a new one with substantially the same description and duties.” *See Husain*, para. 32.

86. The record shows that there was a decline in the Applicant’s work program and she acknowledges that she had a limited work program in the unit to which she was mapped. In *Mahmoudi* (No. 2), para. 45, the Tribunal held that underemployment might justify a redundancy under paragraph 8.02(b). Furthermore, in *Harou* it was observed that with respect to redundancy decisions made pursuant to Staff Rule 7.01, paragraph 8.02(b), “paragraph (b) would be appropriate where a position is abolished because the specific functions were no longer required or because different skill requirements applied [...]” *See e.g. Harou*, para. 34.

87. That the Applicant was underemployed in her unit is not in dispute. The Redundancy Memorandum makes clear that there was a “steady decline in the [Applicant’s] work program because of the decentralization of Operations Officer-type responsibilities to the field, insufficient demand for her skills, and the consolidation of some of the unit’s activities in HQ.” The Memorandum notes specifically that:

90% of what [the Applicant] handled as Sr. Operations Officer has been decentralized to the field. The other pieces of her work program have been distributed to other staff in HQ. She is, therefore, currently not contributing to any activity in the Agriculture and Rural Development unit, SASDA. She periodically helps out in the Transport and Urban units, but these initiatives have not led to the development of a substantial work program for her.

88. The record also contains email correspondence between the Applicant and her supervisor in which, on more than one occasion, she sought his assistance identifying a work program, and completing her time sheet. As is noted in detail below, the Applicant’s OPEs also demonstrate that

due to insufficient demand for her work in SASDA, the majority of the Applicant's time was spent performing cross-support tasks in other units.

89. The Tribunal is therefore satisfied that there was a legitimate rationale for the decision to declare the Applicant's employment redundant within the SASDA unit.

Whether there was a discriminatory basis for the redundancy decision

90. Though the record contains evidence of a legitimate rationale for the redundancy decision, the Applicant contends that discrimination based on age and medical disability was the true and underlying reason for the redundancy decision. The Tribunal will now examine this contention.

91. The Applicant argues that her managers demonstrated favoritism towards a younger colleague - Ms. S. The Applicant relies on the Skills Mix and Mapping Working Group Report (the SASDA Report) to substantiate her claims that the unit favored younger staff members. According to the Applicant, this set the stage for her improper redundancy. The Applicant further avers that in addition to the alleged age discrimination, management also discriminated against her on the basis of medical disability.

92. The Applicant maintains that the redundancy decision was wrongfully influenced by the fact that on at least two occasions she fell "seriously ill due to a combination of excessive management pressure, a lack of management support, reasonable fears that she was about to be pushed out of the unit or set up for failure, and her history of cerebral strokes dating back to 1995." The Applicant worked part time from early July to September 2011. The Applicant was also on short-term disability leave from 27 May to 1 July 2013. To the Applicant, the declaration of redundancy which was formally made on 28 August 2013, came too soon after her second period of short-term disability. According to the Applicant, this decision "cannot reasonably be dissociated from [her] disability given her managers' overt preference for younger (and presumably healthier) staff."

93. The Bank maintains that the Applicant's allegations are unfounded. First, the Bank argues that the comparison with Ms. S is misplaced since it does not take into account contemporaneous factors such as that Ms. S worked in a different unit and her performance on her projects was distinguishable from the Applicant's. Second, the Bank contends that the Applicant cites the SASDA Report out of its proper context. The Bank stresses that the reference in the SASDA Report to recent recruits being individuals in the earlier stages of their career development was not indicative of any age-centered discriminatory practice, but rather a factual recounting of SASDA's staff at the relevant time. To the Bank, the Applicant's allegation that the SASDA Report admits that "[t]here are some concerns with the age cohort of ... consultants," and the "quality of their inputs" is misleading. The Bank notes that the concern referenced in the SASDA Report relates to "consultants" not to the Applicant or staff. Specifically, the concern was that some of these "consultants" were "well beyond retirement age" and could not be considered viable longer-term solution for SASDA to address the skills gap identified. The Bank maintains that none of the language in the SASDA Report refers to the Applicant personally, and there is nothing in the Report to substantiate the Applicant's allegations that there was "a systematic and prevalent practice of age discrimination in SASDA generally or that [the] Respondent had considered her age as a factor in reaching the redundancy decision."

94. Regarding the Applicant's medical disability discrimination claim, the Bank contends that there is nothing in the record to suggest her illness and personal health history triggered or influenced the redundancy decision. Rather, the Bank argues that the Applicant was already struggling with an insufficient work program.

95. The Tribunal observes that the pieces of evidence which the Applicant provides to support her allegation of age discrimination are the SASDA Report and the fact that Ms. S performed similar tasks, and was assigned tasks and projects the Applicant believed should have been assigned to her.

96. A review of the SASDA Report demonstrates that the Applicant combines extracts from the document to support her conclusions. In doing so, however, the Applicant's portrayal of the Report's findings is not an accurate representation of its contents. For instance, regarding the

references to recent recruits the Applicant claims that: “For example, the Report documents that younger staff were being favored over older staff, noting that ‘[r]ecent additions to SASDA have been focused on people in the earlier stages of their career development.’”

97. The Tribunal notes that the Report does not in fact document that “younger staff were being favored over older staff.” The text relied upon by the Applicant is extracted from a segment of the Report which depicts various changes in, and the status of, staffing in the unit. The SASDA Report provides the following:

10. Looking first at announced rotations, as well as likely rotations during the next 1–2 years (Annex 1), we see the following. We are, or will be, losing a number of key staff who have shouldered an important share of the task management functions for the unit. There will be particular impact on the livelihood program, with the rotation of both [...] and [...], and also on the water program with the rotation of [...], the prospective rotation of [...], and the prospective retirements of [...] and [...]. Further, our already existing weakness in the agriculture sciences area will be made worse with the prospective retirement of [...]. Overall, these staff losses are roughly evenly divided between field-based and Washington-based staff. Recent additions to SASDA have been focused on people in the earlier stages of their career development.

98. The Applicant also avers that the Report “admitted that ‘[t]here was some concern with the age cohort of ... consultants’ and ‘the quality of their input.’” She adds that: “The unit’s shift to ‘earlier stage’ staff impermissibly left [her] out in the cold, and set the stage for her improper redundancy.” However, the Tribunal notes that the SASDA Report makes no reference to the Applicant and the reference to consultants which the Applicant uses to substantiate her claims was taken out of its proper context. With respect to consultants, the Report states:

21. As noted above, we are already making fairly extensive use of consultants in delivering our program. Satisfaction with the quality of consultants varies, with our water program largely satisfied, while others are less so. We have used consultants to bridge our skills gaps in the areas of agriculture and livestock sciences, and fisheries. There is some concern with the age cohort of these consultants with many now well beyond retirement age. There is also some concern voiced about the quality of their input. Going forward, we will have to make more careful use of money spent on consultants, and efforts will be needed to broaden our existing pool of consultant talent, particularly in emerging areas of demand.

99. Having reviewed the record, the Tribunal finds that the Applicant's allegation of age discrimination is not substantiated. In substantiating a claim of age discrimination, the Applicant bears the burden of presenting a *prima facie* case that she was being treated differently from others on the basis of her age. The mere fact that recent recruits were those in the earlier stages of their career, or that Ms. S performed similar tasks, does not create a presumption, or a *prima facie* case, of discrimination against the Applicant, nor does it demonstrate a climate of discrimination in SASDA.

100. Turning to the Applicant's medical disability discrimination claim, the Tribunal also finds that the record is devoid of evidence which could substantiate her allegations. The proximity in time between the Applicant's return from short-term disability leave and the formal notification of redundancy is insufficient, without more, to support a claim that her medical disability influenced the redundancy decision. The record shows that the rationale for the redundancy decision predated the Applicant's disability leave. Moreover, the Applicant was informed, as early as 28 November 2012, of the need to search for alternative employment due to her insufficient work program.

Whether the redundancy decision complied with the procedural requirements

101. The Tribunal will now examine whether the applicable rules and procedures were followed in declaring the Applicant's employment redundant. It is well established that the basic elements of due process and the rule of law mandate that a staff member receives clear notification of the exact and correct Staff Rule under which his/her employment is being terminated. *See Yoon (No. 2)*, Decision No. 248 [2001], para. 37. Specifically, invocation of the proper sub-section of the Staff Rule is not a mere technicality and, in the absence of such a notification, the staff member may be placed at a great disadvantage in preparing and presenting her case to her managers and ultimately through the Bank's grievance system. *Id. See also CC*, Decision No. 482 [2013], para. 58 and *Arellano (No. 2)*, Decision No. 161 [1997], para. 31.

102. The Tribunal has stressed that "[i]t is of utmost importance for the Bank to follow established procedures closely so as to ensure transparency and avoid the appearance of unfairness." *Moussavi (No. 2)*, Decision No. 372 [2007], para. 47. Though Staff Rule 7.01 does

not provide for specific advance warning about the issuance of a redundancy notice, “a basic guarantee of due process requires that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspect of his work.” *Garcia-Mujica*, Decision No. 192 [1998], para. 19.

103. The Applicant in this case contends that the Bank failed to: a) provide her with the redundancy rationale in a timely manner; b) adequately explain how the remapping during the reorganization affected the pending redundancy; c) adequately assist her with strengthening her work program; d) provide her with the opportunity to improve her performance; e) adequately aid her in her efforts to find another job; and f) comply with the procedural requirements by submitting the Proposed Redundancy Form and the Request for Approval of Severance Payment without the requisite signatures.

a. Failure to provide the Applicant with the redundancy rationale in a timely manner

104. The Tribunal observes that the Notice of Redundancy did not include the exact sub-section applicable to the Applicant. When the Applicant sought a written explanation of the rationale for the redundancy decision she was told to speak with her manager. The Applicant also requested a copy of the Proposed Staff Redundancy Form, but was informed that the document was categorized as a “working paper,” and thus not subject to disclosure pursuant to Staff Rule 2.01. The Applicant was further told by Mr. W that “[t]he ‘Proposed Staff Redundancy Form’ would only make [her] privy to relevant information that [she has] already received.” The Applicant maintains that the first time she received this document was during the PRS proceedings.

105. As stated above, the Bank’s failure to include the exact sub-section of the applicable Staff Rule in the Notice of Redundancy is a violation of the basic requirements of due process. The Tribunal also finds that there was no basis for the refusal to provide the Applicant with the written rationale for the redundancy decision. The Bank maintains that the Applicant had been informed of the rationale verbally in various discussions with her supervisor; however, the persistent refusal to furnish the Applicant with the Proposed Staff Redundancy Form or a written rationale created a lack of transparency around the redundancy decision that was unnecessary. In light of the fact

that staff members who challenge redundancy decisions with PRS ultimately receive the Proposed Staff Redundancy Form in its entirety, as the Applicant eventually did, the Bank's refusal to provide the Applicant with the rationale for its decision in written form amounts to a failure to comply with the requirements of transparency.

106. Furthermore, the Bank's reliance on Staff Rule 2.01 to deny sharing the Proposed Staff Redundancy Form is unconvincing. Staff Rule 2.01, paragraph 1.03(g) defines working papers as "the material prepared by supervisors or managers for use in exercising their managerial responsibilities or prepared by Human Resources staff in the performance of their human resources management function for use in making personnel decisions." Even though working papers are not automatically considered staff records, Staff Rule 2.01, paragraph 3.03 provides that: "The basis for a decision resulting from information recorded in Working Papers shall either be documented and made part of the Staff Records or, alternatively, the author may make the Working Paper relied upon part of the Staff Record." There was therefore scope, within the rule relied upon, for the Applicant to receive either the Proposed Staff Redundancy Form or a detailed written explanation of the redundancy rationale as part of her Staff Records.

107. It should be noted that while the Bank failed to comply with due process in this regard, the Applicant was nevertheless given advance notice of the need to find alternative employment, and was aware of her shrunken work program, which was ultimately the basis of the redundancy decision. Therefore, the Tribunal finds that while this procedural flaw entitles the Applicant to some compensation, it does not invalidate the redundancy decision.

b. Failure to adequately explain how remapping staff during the reorganization affected the pending redundancy

108. The Applicant also contends that the Bank failed to adequately explain how the remapping during the reorganization affected the then pending redundancy. The record demonstrates that the Applicant sought and received an explanation from both the Lead HR Specialist and Mr. W.

109. The Tribunal finds the response which the Applicant received from both individuals adequate under the circumstances. Until the Applicant's final day of employment, she remained an employee of the Bank. It is therefore understandable that during a period of reorganization the Applicant would be included in the list of staff being mapped to a particular Global Practice. This mapping did not supersede the redundancy decision since it did not constitute a new appointment.

c. Failure to adequately assist her with strengthening her work program

110. The Applicant contends that her managers failed to support her efforts to strengthen her work program, and in doing so failed in their duty to allow her to take on projects for which she was arguably qualified.

111. Having reviewed the record, the Tribunal is satisfied that the Applicant's managers made the requisite efforts to assist the Applicant to strengthen her work program. Such efforts included assisting the Applicant undertake cross support work with other units and departments even though she was mapped to SASDA and had a limited work program in her unit. For instance, in the Applicant's 2012 – 2013 OPE her supervisor noted that: "[The Applicant's] program of this past Fiscal Year focused on a number of activities in the transport and urban practices demonstrating her ability to [work] cross sectorally."

112. While "staff must be given appropriate guidance, commensurate with their seniority and experience," the Tribunal has nevertheless held in *BT*, Decision No. 464 [2012], para. 22 that:

It is not the Bank's duty to expand the skills set of a staff member whose expertise is too narrow for the needs of the relevant unit. The duty of the Bank is to assist staff members in identifying and pursuing plausible opportunities. As the Tribunal put it in *Husain* [...] the Bank's obligation is to ensure that staff members are "assisted in developing an effective work program" – not to do it for them.

- d. Failure to provide her with the opportunity to improve her performance, or increase her skills

113. The Tribunal will now address the Applicant's contention that there were concerns about her performance which improperly affected the redundancy decision. The Applicant further contends that she should have been provided with an opportunity to increase her skills or improve any deficient performance.

114. Without doubt, as was held in *Harou*, para. 37, "the redundancy provisions may not be used to deal with unsatisfactory performance." The Tribunal has also "previously expressed concern about the practice of mixing redundancy issues with decisions about the performance of staff, since redundancy does not give staff an opportunity to consider allegations or respond to them." *Hussain*, para. 43.

115. However, the record does not contain any evidence that concerns about the Applicant's performance existed, or that they influenced the redundancy decision. On the contrary, the record shows that the Applicant's manager and the SASSD Management Team rated the Applicant's performance highly. The record contains the Applicant's OPE from 2009 until 2013. It shows that the Applicant received "Superior" and "Fully Successful" Ratings in those years. In 2010 she received the "Outstanding/Best Practice" rating for Client Orientation, and received the same rating in 2012 for Client Orientation, Teamwork, and for her work on a complex project. In her 2009 – 2010 OPE, her supervisor noted complimentary feedback the Applicant received. The SASSD Management Team expressed its appreciation for the Applicant's commitment and contribution to the delivery of the unit's work program.

116. In her 2010 – 2011 OPE, her supervisor commended the Applicant for moving a challenging project forward. She was praised as being a "dedicated professional, dynamic and completely dedicated to the tasks she is assigned." Once again, her commitment to and contribution to the unit's work, and the leadership role she played on the NESR-TTFP was commended by the SASSD Management Team. In her 2011 – 2012 OPE, the SASSD Management team expressed "its appreciation for the [Applicant's] commitment and contribution to the delivery

of the unit's program, especially the well acknowledged cross support she provided to the Urban team in [...] and the transport team in [...].” Finally, in her 2012 – 2013 OPE, the supervisor's comment section is full of complimentary feedback such as that the Applicant was a “complete asset,” and “went the extra mile.” She was commended for taking an active interest in other sectors' work and “always seeking opportunities to collaborate.”

117. There is no record that an Opportunity to Improve Unsatisfactory Performance was ever considered in the Applicant's case. In light of the above, the Tribunal is satisfied that any perceived deficiencies in the Applicant's performance were not a factor in the decision to declare her employment redundant. The Tribunal notes that the Proposed Redundancy Form highlights specific highly specialized skills for which there was increased demand, due to changes in the needs of SASDA's clientele. As stated in *BT* above, it is not the Bank's duty to enhance the Applicant's core skills set to meet the changing demands from the unit's clients.

e. Failure to adequately assist the Applicant to find alternative employment

118. The Applicant's fifth contention is that the Bank failed to adequately assist her in her efforts to find alternative employment at the Bank in accordance with the Staff Rules. According to the Applicant, her manager failed to assist her in her job search and sent a total of three emails, all generically worded, on her behalf.

119. Staff Rule 7.01, paragraph 8.06 provides:

Following the effective date of the notice of redundancy, the Bank Group will assist redundant staff in seeking another position within the Bank Group by providing access to MyJobWorld and to a job search specialist. Staff are responsible for applying to existing vacancies in MyJobWorld. Placement also may be offered in a vacant lower level job in accordance with Rule 5.06. “Assignment to Lower Level Positions.”

120. Staff Rule 7.01, paragraph 8.07 further provides that:

Following the effective date of the notice of redundancy, redundant staff may receive retraining, which may include on-the-job training, for an existing or known prospective vacancy where the manager agrees to accept the assignment of the staff

member after a reasonable period of retraining. The cost of such training may not exceed three months of the staff member's net salary and training must begin at least 60 calendar days prior to the staff member's termination date.

121. The Tribunal has held in *Arellano (No. 2)*, para. 42 that:

The obligation of the Respondent, in this respect, is not to reassign staff members whose employment was declared redundant under Staff Rule 7.01 but to try genuinely to find such staff members alternative positions for which they are qualified. It is an obligation to make an effort; it is not an obligation to ensure the success of such effort.

122. The record shows that in compliance with the Staff Rules, once the redundancy of the Applicant's employment was declared, the Bank made reasonable efforts to assist the Applicant in finding another position within the Bank Group. First, the Applicant was provided access to the Job Search Center as stated in the Notice of Redundancy and the Terms and Conditions for Notice of Redundancy. Second, the Applicant was informed that the Bank was prepared to finance "specific outplacement counseling and/or special training activities agreed in advance, up to a maximum of 3 months net salary." In lieu of receiving this training support, the Applicant opted to receive a lump cash payment of 1.5 months' net salary. Third, the record shows that the Applicant's manager discussed her job searches with her, offered her advice to consider applying to positions at the same grade level to increase her chances of employment, and offered to try to draw the attention of the Vice President for Change Management to the Applicant's requests for appointment.

123. On 1 February 2013, at least five months prior to the notice of the redundancy, the Applicant's manager distributed her CV to the following Sector Boards to identify suitable opportunities for the Applicant's skills: i) Agricultural and Rural Development (ARD); ii) Finance and Private Sector Development (FPD); iii) Transport, Water, Information and Communication Technologies (ICT) and Sustainable Energy and Mining; and iv) Urban and Disaster Risk Management Department. When he received a response regarding potential vacancy opportunities, the Applicant's manager passed this information to the Applicant. Therefore, even before the redundancy was formally decided, and prior to the obligations in the Staff Rule 7.01, paragraphs

8.06 and 8.07 coming into effect, the Applicant's manager solicited assistance in finding suitable alternative employment for her. *See Dussert*, Decision No. 203 [1998], para. 15.

124. The Applicant nevertheless categorizes Mr. X's assistance, before and after the declaration of redundancy, as nominal and "extremely meager." That the Applicant is dissatisfied with the amount of effort Mr. X made does not qualify his efforts as insufficient or made in bad faith. The record shows that the Applicant and Mr. X held some phone and in-person conversations during which he offered her advice on her search for employment. After one such phone conversation the Applicant thanked Mr. X for his "time and [his] constructive, and proactive support in this, for [her], difficult period."

125. The Tribunal observes that the Applicant considers she should have been appointed as the Senior Transport Specialist in the Transport Unit, since that was a unit she has sought to transfer to for several years. The Applicant contends that given "her background, skills and interests," her managers had a duty to consider her for that position, instead of Ms. S.

126. The Tribunal recognizes that the Bank has an obligation to "make an effort to place the staff member in existing or known prospective vacant positions for which he or she was qualified." *See Ezatkah*, Decision No. 185 [1998], para. 24. However, the decision of whether a staff member is qualified for reassignment to a position is discretionary, and a careful examination of the record does not indicate that the Bank abused its discretion in this regard. The Bank asserts that the Applicant and Ms. S were not in direct competition for the position of Senior Transport Specialist. The SASSD's Transport Unit conducted an independent assessment of Ms. S's abilities and there is nothing on the record to substantiate the Applicant's claim that she was more qualified for the Senior Transport Specialist position than Ms. S.

127. Finally, the Applicant asserts that the redundancy process was expedited as the ARD Sector Board was given only six days to identify available positions for her before confirming the redundancy proposal. The record contains the Declaration of Mr. W, the former SASDA Senior HR Business Partner. Mr. W asserts the following:

In my experience as a Senior HR Business Partner, the time-frame spanning from April 5, 2013 through to April 11, 2013 for the Agricultural and Rural Development (ARD) Sector Board's consideration of other job opportunities for [the Applicant] was reasonable, and is consistent with HR's business practice on such matters.

128. The Tribunal notes that those six calendar days included a weekend which effectively limited the time frame to four business days. Ordinarily, such a time frame may be perceived as insufficient for the Sector Board members to propose alternative employment solutions for the Applicant. However, in the present case, the Sector Board members had already been alerted to the Applicant's employment needs in February 2013 when Mr. X sent his email requests. Consequently, while the time frame provided to the ARD Sector Board was limited, in the circumstances of this case, the Tribunal finds that it was nevertheless satisfactory since the Sector Board had previously been alerted to the need to find the Applicant alternative employment.

f. Failure to obtain the relevant signatures on the Proposed Staff Redundancy Form and the Request for Severance Approval

129. The Applicant contends that the copies of the Proposed Staff Redundancy Form and the Request for Severance Approval which she received during the PRS proceedings did not contain the required signatures. The Tribunal observes that the record contains two copies of the Proposed Staff Redundancy Form. The first was that which the Applicant received during the PRS proceedings and which the Bank attached as an annex to its Answer. This copy contained only the signature of the SAR Vice President. The signature of the Applicant's Manager, Mr. X is missing. The second copy of this document was submitted into the record by the Bank as an annex to its Rejoinder without explanation. This copy includes the signature of the Applicant's manager, as well as that of the SAR Vice President.

130. The Tribunal also observes that the record contains two copies of the Request for Approval of Severance Payment. The first copy was also provided to the Applicant during the PRS proceedings and was an annex to the Bank's Answer. This copy has only the signature of the Manager of the HR Team, and the signature of the Lead HR Specialist is missing. The second copy of this document was introduced into the record by the Bank as an annex to its Rejoinder without

explanation. This copy includes the signature of the Lead HR Specialist, whose signature was appended three days after that of the Manager of the HR Team.

131. Pursuant to an order from the President of the Tribunal, the Bank was called upon to explain the discrepancies in the documents it provided to the Tribunal and the Applicant. With respect to the Proposed Redundancy Form, the Bank asserts that the first copy of this document was the copy Mr. X had scanned to keep for his information and reference. He produced this when requested to do so during the PRS proceedings. The Bank states that the copy of the fully signed Proposed Redundancy Form containing the signatures of both the Vice President and Mr. X was later submitted to the PRS Secretariat. The Bank maintains that the confusion over the dates that the Vice President and Manager appended their signature on the fully signed document is due in large part to the transition in leadership within the South Asia Region.

132. Regarding the Request for Approval of Severance Payment, the Bank asserts that nothing should be read into the Lead HR Specialist signing the form three days after the Manager of the HR Team signed it, or after the Notice of Redundancy was signed.

133. The Tribunal notes the Bank does not explain why it appended the copy of the Proposed Redundancy Form which did not bear the two required signatures in its Answer before the Tribunal. It was only after a challenge by the Applicant that the Bank, in its Rejoinder, provided a second copy of the Form which contained the two required signatures, without an explanation. The explanations noted above were forthcoming following an order from the President of the Tribunal.

134. However understandable the Bank's explanation of the copies of these redundancy documents may be, the Tribunal is nevertheless constrained to draw to the Bank's attention the importance of due care in the preparation of documents dealing with redundancies, as well as the production of such documents in proceedings before PRS and the Tribunal.

Whether there was a conflict of interest

135. The Tribunal now addresses the Applicant's final contention that the Chair of the Severance Review Group (SRG), who was the Applicant's HR Officer several years ago, should have recused himself from presiding over the redundancy decision. She asserts that he was already aware of her age and medical condition not least since he had, by coincidence, been her HR Officer when she suffered a stroke in 1995. According to the Applicant, the SRG Chair had other HR roles which required him to protect the Bank's interests, and "given his knowledge, which was not forthrightly disclosed and addressed in the SRG decision, but instead given no mention at all, it cannot reasonably be determined as a matter of fact that [the Applicant's] age and personal health history – which entailed complications for the Bank that a healthy young staff member (like Ms. S) would not pose – were not actually given weight in the approval of her redundancy."

136. The Tribunal finds this argument unpersuasive. The fact that the Chair was an HR Officer for several staff members, including the Applicant, and over a decade later, presided as Chair of the SRG is not, in and of itself, conduct leading to a real or apparent conflict of interest. There is also no evidence that the Chair remembered the Applicant's medical history or even that this history factored, in any way, into the decision to abolish her position. Moreover, the Applicant has not demonstrated that the fact that she took disability leave at various points in her career contributed in any way to the redundancy decision.

Conclusion

137. The Tribunal is satisfied that there was a legitimate rationale for the decision to declare the Applicant's position redundant pursuant to Staff Rule 7.01, paragraph 8.02(b). The record contains evidence that the Applicant lacked a full work program and despite efforts by both parties there was ultimately no sufficient basis for maintaining the Applicant's position. However, in executing the redundancy decision the Bank failed to notify the Applicant of the specific sub-section of the Staff Rules which applied to her, as well as provide her with a detailed rationale of the redundancy decision in a timely manner. As the Tribunal has held, this is more than a technical formality since failure to do so prejudices the Applicant's ability to defend her interests in a timely manner.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of four months' salary net of taxes.
- (2) The Bank shall pay the Applicant's attorney's fees in the amount of \$20,000.
- (3) All other claims are dismissed.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 8 April 2016