



World Bank Administrative Tribunal

2020

Decision No. 637

**FP,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**FP,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 2 June 2020. The Applicant was represented by Ryan E. Griffin of James & Hoffman, P.C. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 30 October 2020.

3. The Applicant challenges (i) the IFC's decision not to renew the Applicant's appointment beyond 28 February 2019 in contravention of "the promised two-year contract extension, relocation, and continuation of Localization Plus benefits"; and (ii) the IFC's unfair treatment of the Applicant regarding the handling of his appointment extension and relocation.

FACTUAL BACKGROUND

4. The Applicant joined the IFC in 2013 as a Result Measurement Specialist, level GF, based in the South Africa country office. Although selected through a local recruitment process, the Applicant, as a Senegalese national, was eligible for Localization Plus (LP) benefits, which by policy would expire after five years.

5. In 2016, the Applicant was selected for a level GG-1 Operations Officer position, again based in the South Africa country office, with a two-year term appointment expiring on 31 August 2018.

6. On 17 June 2017, a Senior Human Resources (HR) Business Partner emailed the Applicant's Supervisor, Head of Development Partner Relations Department (Supervisor), regarding the expiration of the Applicant's LP benefits, asking, "Appreciate if you could confirm what the plan is, i.e. assuming his contract will be renewed, will he be moving into a new assignment (has to be a new location if L+ [Localization Plus] benefits are to restart) or localizing in Johannesburg[?]" The Supervisor thereafter discussed the matter with the Applicant.

7. On 19 June 2017, the Supervisor wrote to the Applicant's Director, Development Partner Relations Department (Director) and the Applicant's Manager, Global Partnerships Department (Manager) as follows:

[The Applicant] was recruited by IFC on May 2nd, 2013 under a Localization Plus (LP) contract. As the LP is supposed to last 5 years, this means that on May 2nd, 2018 his benefits should come to an end. However, HR decided to extend to September 2018 the benefits of all staff whose LP eligibility ended/ends between January 2017 and September 2018. This measure intends to allow sufficient time for the management of transitions and new deployments, taking into account IFC's strategic business needs. Below are the options available:

1. Staff moving onto new assignments
2. Staff competing for IRS [Internationally Recruited Staff] roles
3. Staff being localized
4. Non-renewal of appointments if applicable

I talked to [the Applicant]. His preference would be to take option 1 and move to Nairobi. In that case he can keep his LP benefits. I support his request, he can easily work from Nairobi, travel is very easy to both East and West Africa. It would be good to have a team member in [another] hub in Africa.

HR is requesting to [urgently] clarify, which option are we choosing.

It is far away in 2018, but HR needs an answer now. Are you supporting [the Applicant's] request?

8. The Applicant's Supervisor, Manager, and Director, and a Budget Analyst thereafter had several email exchanges regarding the proposed appointment extension and relocation of the Applicant and the implications from a budget and delivery perspective.

9. On 29 June 2017, the Manager sent an email to the Supervisor, copying the Budget Analyst, stating, “[The Director] approved this move! Please let [the Applicant] and [HR] know.”

10. According to the Applicant, the Supervisor, as directed, informed him in June 2017 that management approved the proposal to extend his appointment for two years and relocate him to Nairobi following the end of his LP benefits.

11. On 24 August 2017, the Director sent an email to the Manager, stating, “We need to get [the Africa Regional Director’s] okay,” to which the Manager responded, “Would you like [u]s (either me or [the Supervisor]) to reach out to [the Africa Regional Director] or will you be doing this?” The Director replied, indicating that she would reach out to the Africa Regional Director and requesting that the Manager draft an email to the Africa Regional Director.

12. On 28 August 2017, the Manager replied to the Director, stating, “[The Supervisor] and I assume that [the Africa Regional Director] has been aware from the beginning.” In this email, the Manager provided the Director with the requested draft email to the Africa Regional Director, which, as drafted, did not request the Africa Regional Director’s approval, but rather informed him of the decision to extend the Applicant’s appointment and relocate him to Nairobi. The Manager also sent the Budget Analyst’s exact estimates of extending the Applicant’s appointment by two years and continuing his LP benefits. There is nothing in the record indicating that the Director thereafter sent the drafted email or otherwise contacted the Africa Regional Director.

13. The Director left the department at the end of 2017, and the Manager went on administrative leave beginning in January 2018.

14. On 3 January 2018, the Applicant received an automated email reminder from HR Operations indicating that his contract could not be renewed under its current terms; this email was copied to the Manager. The Applicant forwarded this message to the Supervisor, saying, “As [the Director] had agreed on the reassignment to another country and she is no longer our director who should we talk to to initiate the process? May be [the Manager]? It would be good if we could do it before she leaves so that we won’t be delayed by the change of structure.” In response, the

Supervisor informed the Applicant that the Manager was on administrative leave and advised the Applicant to “send an email to our HR person either in Africa or in DC and ask them how to make it official what was agreed before. You can copy me, I have the email exchange, I can forward to HR. I don’t know [who is] our manager.”

15. On 10 January 2018, the Applicant responded to the Supervisor, informing her that, according to HR, whoever was currently acting for the Manager could initiate the relocation and further stating, “On another note, I have decided to move to Dakar instead of Nairobi for family reasons. This will imply the loss of my LP benefits.”

16. On the same day, the Supervisor responded to the Applicant, indicating that they could discuss this change “when we have a manager. You know that unfortunately I [cannot] make any decisions about these HR issues. We still have time.”

17. In February 2018, the Applicant’s department appointed an Acting Manager.

18. On 3 March 2018, the Applicant received another automated email from HR Operations noting that his contract was set to expire in six months; this email copied the Acting Manager. The Applicant again forwarded this message to his Supervisor who advised him to contact the Acting Manager.

19. On 15 March 2018, in response to an email from the Applicant asking to discuss his contract, the Acting Manager stated, “Since [the Supervisor] is your supervisor, I think it’s best if we speak to you together. I will connect with [the Supervisor] to coordinate.” The Supervisor went on disability leave shortly thereafter without having met with the Applicant and the Acting Manager to discuss the Applicant’s contract. According to the Acting Manager, she then informed the Applicant that she “was only supposed to be in this acting manager position temporarily and would not be able to decide about his contract independently.”

20. On 18 April 2018, the IFC announced its Workforce Planning exercise, the purpose of which was “to carefully identify mismatches in staff count, positions, skills, grade levels across

functions versus what is optimal for delivering [the IFC's] strategy." As part of the IFC's Workforce Planning exercise, term appointment contracts expiring during the Workforce Planning period were not extended.

21. On 16 May 2018, the Applicant spoke with the Acting Manager who verbally informed him that "things were still unclear in terms of his contract extension since a new manager was supposed to be hired shortly and there would likely be upcoming changes in the [...] department."

22. On 28 June 2018, the Applicant emailed the Acting Manager inquiring about the extension of his contract and the status of his LP benefits. The following day the Acting Manager responded to the Applicant's message stating, "I was able to confirm with HR that we can extend your contract until things become clearer in terms of staffing and organizational structures."

23. On 8 August 2018, the Applicant's appointment was extended for an additional six months. According to the Acting Manager, this six-month extension served to provide the Applicant with "proper notice" of termination.

24. On 15 August 2018, the Applicant was informed that his term appointment would not be extended further.

25. On 20 September 2018, the Applicant wrote to the department's Vice President expressing his disappointment that his contract was not extended and maintaining that he was promised a contract extension and to be relocated by previous department management.

26. On 24 October 2018, the Vice President responded to the Applicant's email acknowledging that his contract and relocation were discussed by management but that, considering the

long passage of time, reassigning you to Nairobi was a mute proposal. There is also nothing in the record to suggest IFC kept this possibility alive. [...] The decision for non-extension of your contract is based on position attributes reflecting the changing structure of the Africa team. I can assure you that as part of the work force planning exercise, a number of existing positions are being re-purposed with

revised TORs [Terms of Reference] and will be open for a competitive selection process. Here, I would [encourage] you to apply to such positions.

Peer Review Services

27. On 8 October 2018, the Applicant filed a Request for Review with Peer Review Services (PRS). During the PRS proceedings, the Applicant's Manager, Supervisor, Director, and Acting Manager testified as witnesses. Relevant aspects of their testimonies, as summarized in the PRS report, are presented below.

28. Regarding the decision to extend the Applicant's contract and relocate his duty station, the Manager testified that, to her understanding,

management had approved [the Applicant's] reassignment to Nairobi and the extension of his appointment. She said that the decision was made for business reasons because the unit's travel costs had risen enormously and having [the Applicant] permanently stationed in East Africa would reduce them significantly.

She stated that when she took administrative leave in January 2018, she presumed that [the Applicant's] reassignment and extension were moving forward.

She further testified that

she considered any approval being sought from [the Africa Regional Director] as a mere "rubber-stamp" on a decision that had already been made. [...] [S]he did not follow up to find out whether or not [the Africa Regional Director's] approval was obtained because she did not consider his approval as necessary after they had approved the decision in respect of [the Applicant]. [...] [T]here was no question [the Applicant] was a valuable member of the team and a management decision had been taken to reassign him to Nairobi and extend his contract and budgetary considerations had been made.

29. The Applicant's Supervisor testified that

it had been agreed by WBG [World Bank Group] management in 2017 that [the Applicant] move to be stationed in Nairobi, and that there was an underlying assumption that his contract would be extended since the planned redeployment to Nairobi was "for a period that was beyond the period of his contract at the time." She testified that she was aware [the Director] had approved [the Applicant's]

redeployment and contract extension, and that she communicated the approval to [the Applicant] under instruction by [the Manager] that she should inform him. [...]

[A]ccording to [the Supervisor], [the Africa Regional Director's] approval for the reassignment was not required because the initial request to have a member of her team reassigned to Nairobi originated from him. She therefore considered that only departmental approvals were [required] and that those were satisfied once [the Director] and [the Manager] had given their approval.

30. The Director testified that

she [had] indeed approved the extension of [the Applicant's] appointment and his redeployment to Nairobi, but that she had indicated that her approval was subject to [the Africa Regional Director's] final approval. She said that it would not have been appropriate of [the Supervisor] or [the Manager] to inform [the Applicant] of the approval of his redeployment before [the Africa Regional Director's] approval was obtained since he was the regional director of the region where [the Applicant] was to be redeployed.

[The Director] acknowledged that if [the Supervisor] had communicated any approval to [the Applicant], it would hold weight because she was his supervisor and "*boss on the field.*"

[The Director] could not recall whether or not she took any action towards obtaining [the Africa Regional Director's] approval, and whether the said approval was ultimately granted because she had no written record of any correspondence with [the Africa Regional Director]. She said that it is possible that the approval process "*fell through the cracks*" because there [were] a lot of changes occurring within IFC at the time. (Emphasis in original.)

31. On 28 February 2019, the Applicant's appointment ended.

32. On 22 January 2020, the PRS Panel submitted its report to the Vice President. The PRS Panel found that (i) no promise had been made to the Applicant regarding his appointment; (ii) the nonrenewal decision was based on a reasonable and observable basis "in light of the larger WFP [Workforce Planning] exercise within IFC"; and (iii) management followed a proper process in making the non-extension decision. However, the PRS Panel found that management did not act fairly in making the non-extension decision and recommended an award of one month's net salary to the Applicant as compensation.

33. On 3 February 2020, the Vice President informed the Applicant that she accepted the PRS Panel's recommendation. The Vice President further decided to award an additional three months' net salary "as a good faith measure [...] to resolve this matter."

Application and Remedies Requested

34. In his Application of 2 June 2020, the Applicant requests:

Reappointment to a mutually agreeable position for a term of at least two years at grade and salary levels equal or greater to what [the Applicant] would have received (including his Localization Plus benefits) had he been relocated to Nairobi as promised, or, alternatively, two years' compensation at that salary level. [...]

[The Applicant] seeks additional compensation in an amount deemed by the Tribunal to be just and reasonable to remedy 1) the consequential damages stemming from the nonrenewal of his appointment, including the loss of the additional pension benefits and contract expiration benefits that he would have accrued had his appointment been extended for an additional two years; and 2) the damages to his career and professional reputation resulting from the nonrenewal of his contract and loss of employment with IFC.

35. Additionally, the Applicant requests reimbursement of legal fees and costs in the amount of \$20,791.59.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The IFC's decision not to renew the Applicant's appointment breaches the unambiguous promise to relocate the Applicant and extend his appointment by two years

36. The Applicant contends that (i) management unambiguously promised to relocate him and extend his appointment; (ii) management had the apparent authority to make such a promise; (iii) the parties reached a clear agreement as to the terms of the promise; and (iv) the Applicant reasonably relied on the promise to his detriment.

37. The Applicant maintains that there was an unequivocal statement amounting to a promise. To support this contention, the Applicant points to the communication from his Supervisor informing the Applicant in June 2017 that the Applicant's relocation and contract extension had been approved by the Director. To support his contention that an unequivocal promise had been made to him, the Applicant additionally points to the contemporaneous email dated 29 June 2017 from the Manager to the Supervisor in which the Manager (i) confirmed the approval for the Applicant's relocation and contract extension and (ii) specifically instructed the Supervisor to "let [the Applicant] and [HR] know" about said approval. The Applicant further points to the fact that the Supervisor confirmed during the PRS proceedings that she had in fact informed the Applicant that his relocation and appointment extension had been approved.

38. According to the Applicant, the Africa Regional Director's approval has no bearing on the binding nature of the promise communicated to the Applicant, because the Supervisor had apparent authority to make the promise and the Applicant reasonably understood her to be communicating final approval on behalf of the IFC. The Applicant contends that it was reasonable for him to believe his Supervisor had authority to make the promise, because both the Supervisor and the Manager understood the relocation and extension to be "a done deal" following the Director's approval.

39. The Applicant maintains that the terms of the promise were unambiguous to both parties and included both a two-year contract extension and LP benefits, given that the Supervisor, Manager, and Director all approved those terms after specifically considering the budgetary and business implications.

40. The Applicant contends that his later inquiry to be relocated to Dakar was merely a request for modification to the already accepted and agreed-to promise and did not constitute a counteroffer or rejection of the IFC's promise to extend his appointment and relocate him to Nairobi. The Applicant explains that he had every reason to think his proposed modification would be acceptable to the IFC in light of the basis on which the original arrangement was reached. The Applicant provides, as context, that his position entailed travel between East and West Africa, and the agreement to relocate the Applicant was based on the IFC's desire to have a staff member in

an African hub other than South Africa – not necessarily that the location needed to be Nairobi. In any event, the Applicant maintains, his request to relocate to Dakar was not a counteroffer made in the context of an ongoing negotiation, as the IFC contends, but rather a request for a modification to the existing agreement reached seven months prior. To the Applicant, his statement regarding Dakar had “no legal effect on the continued validity of the parties’ original deal – it was merely a later (unaccepted) proposal to modify those original terms.”

41. Finally, the Applicant contends that he reasonably relied on management’s promise to his detriment. To the Applicant, the “false sense of job security fostered by [the Supervisor’s] representation” prevented him from taking timely action to ensure his continued employment either by raising the matter with the Africa Regional Director before the expiration of his contract or by making alternative employment arrangements.

The IFC’s Response

No promise was made or could be inferred to relocate the Applicant or extend his appointment; but, even if the Tribunal finds a promise was made to the Applicant, he rejected it

42. The IFC contends that (i) the discussions that took place between the Applicant and his Supervisor could not be considered a promise; (ii) if there was a promise, the Applicant did not accept the terms of the alleged promise; and (iii) the Applicant did not rely on the alleged promise.

43. First, the IFC contends that, pursuant to Staff Rule 5.01, paragraphs 3.05 and 5.01, neither the Supervisor nor the Manager had the authority to approve the Applicant’s relocation. The IFC contends that, according to Staff Rule 5.01, only a “department director, or the Senior Manager responsible for the position” may reassign a staff member to a non-managerial position with the concurrence of “the department director responsible for the office” and “the IFC Executive Vice President and CEO [Chief Executive Officer].” To the IFC, the Applicant knew or should have known that, pursuant to the Staff Rules, neither the Supervisor nor the Manager had authority to approve the Applicant’s relocation. Furthermore, the IFC contends that there is nothing in the record from management to the Applicant that clearly states that he would be reassigned for two years to Nairobi. Rather, the IFC maintains, the communications in the record demonstrate that an

internal discussion pertaining to the Applicant's potential relocation took place among the Supervisor, Manager, and Director, but ultimately the discussion did not amount to a promise.

44. Next, the IFC contends that, if there was a promise made to the Applicant, the Applicant did not accept the terms of the alleged promise. To support this contention, the IFC points to two instances, in January and May of 2018, in which the Applicant proposed to be relocated to Dakar. The IFC characterizes the Applicant's proposal to be relocated to Dakar as a rejection of and counteroffer to the alleged promise to relocate him to Nairobi because the Applicant's proposal to be relocated to Dakar entailed materially different salary, benefits, and conditions. To the IFC, it is clear that the Applicant did not accept the terms of the alleged promise because, in the IFC's view, the Applicant "did not intend to move to Nairobi." To the IFC, "[t]his alone nullifies the acceptance of the alleged promise, if in fact one was ever made, which [the IFC] categorically refutes."

45. Finally, the IFC contends that the Applicant has failed to show he made any decision in reliance of the alleged promise. In this respect, the IFC points to the absence of evidence that the Applicant rejected job offers, rented a living space in Nairobi, or relocated his family to Nairobi.

The Applicant's Contention No. 2

Management treated the Applicant unfairly by handling the discussions surrounding his relocation in an opaque, unreliable, and inconsistent manner

46. The Applicant contends that the IFC's failure to act with transparency, reliability, and consistency amounted to unfair treatment.

47. First, as to transparency, the Applicant contends that management failed to explain the official approval process for relocating him to Nairobi. To the Applicant, such "basic information should have been part and parcel of any discussion on this matter." The Applicant maintains that, had this process been transparent, he could have followed up on the status of the Africa Regional Director's approval long before the Manager and Director left the department. Instead, the Applicant maintains, the decision to relocate him was represented to him as final.

48. Second, as to reliability, the Applicant contends that there was no excuse for management to fail to complete “its own basic internal approval processes” and that the Director’s explanation that the process “fell through the cracks” unacceptably cost the Applicant his contract extension and his career at the IFC. According to the Applicant, the “interim leadership [...] dragged their feet for months in addressing the status of his appointment” until which point IFC management announced broad restructuring plans.

49. Third, as to consistency, the Applicant contends that IFC management failed to maintain a “basic level of managerial continuity.” In the Applicant’s view, the Acting Manager should have either (i) been properly informed by her predecessors that they had already approved the Applicant’s relocation or (ii) ascertained the status of any discussions regarding the Applicant’s contract status “instead of simply assuming that the Department could undertake reorganization plans against a clean slate.”

The IFC’s Response

The Applicant was treated fairly because the IFC was under no obligation to renew the Applicant’s appointment, the non-renewal decision was not arbitrary, and the Applicant’s due process rights were respected

50. The IFC maintains that the Applicant was treated fairly because (i) the Applicant held a fixed-term appointment which the IFC was under no obligation to renew; (ii) the decision not to renew the Applicant’s appointment was a proper exercise of the IFC’s discretion; and (iii) the IFC followed due process.

51. In the IFC’s view, the IFC did not have any obligation to extend the Applicant’s appointment beyond the terms of the Applicant’s letter of appointment “unless agreed in writing.” The IFC points to the Applicant’s letter of appointment, which stipulates:

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 Group 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 to in writing at the time of the expiration of the appointment.

To the IFC, this language clearly advised the Applicant of his fixed-term appointment and indicates a lack of obligation on the IFC to extend the appointment. According to the IFC, because it “did not make a clear and irrefutable promise to relocate [the] Applicant to Nairobi and renew his appointment for two years, [the] Applicant could not have expected a renewal of his appointment.”

52. Next, the IFC contends that the non-extension decision was a proper exercise of its discretion, as the decision was not arbitrary, discriminatory, improperly motivated, or carried out in violation of a fair and reasonable procedure. To the IFC, the record clearly demonstrates that the non-extension decision was made in consideration of the IFC’s restructuring. The IFC maintains that most of the staff in the Applicant’s department were affected by the restructuring and “were forced to reapply for positions under the new structure.” The IFC further asserts that, according to the Acting Manager, the new structure did not include staff positions in Nairobi or Dakar. To support its position, the IFC also cites the Vice President’s explanation to the Applicant regarding the non-extension decision, namely that the decision was “based on position attributes reflecting the changing structure of the Africa team.” In the IFC’s view, the record demonstrates that management made the non-extension decision based on its determination of its business needs.

53. Finally, the IFC contends that the process followed in the Applicant’s circumstances was the same process for other staff members within the Applicant’s department. To the IFC, the Applicant’s due process rights were respected, as evidenced by the facts that (i) the Applicant was provided reasons for the non-extension of his appointment; (ii) the IFC provided the Applicant with more than six months’ notice of the non-extension decision; and (iii) the Applicant was encouraged to apply for new positions available within the IFC’s new structure.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

ALLEGED PROMISE

54. The Applicant contends that (i) management unambiguously promised to relocate him and extend his appointment by two years; (ii) management had apparent authority to make such a

promise; (iii) the terms of the promise were clear, and parties were in agreement; and (iv) he reasonably relied on the promise to his detriment.

55. In response, the IFC contends that there was no unequivocal promise made to the Applicant and, even if there was a promise, that promise cannot be binding on the IFC because the Applicant rejected the promise.

56. As the Tribunal has consistently stated, “there is no right, absent unusual circumstances, to the extension of temporary appointments.” *EG*, Decision No. 567 [2017], para. 69; *see also FK*, Decision No. 627 [2020] para. 60; *FB*, Decision No. 613 [2020], para. 111; *Leon*, Decision No. 602 [2019], para. 72; *Bhadra*, Decision No. 583 [2018], para. 65. However, “circumstances [may] warrant the inference by a staff member that the Bank has indeed made the promise to extend or renew his or her appointment either expressly or by unmistakable implication.” *CP*, Decision No. 506 [2015], para. 59, citing *Kopliku*, Decision No. 299 [2003], para. 10.

57. The Tribunal has stated that an employment relationship could be formed outside the framework of the Staff Rules if the communications between the parties show that (i) there was an intent to contract, (ii) there was agreement on all its essential terms, and (iii) “any additional steps to be taken [were] merely formalities that require[d] no further agreement.” *Justin*, Decision No. 15 [1984], para. 27; *see also DY*, Decision No. 559 [2017], para. 51.

58. The record shows the parties’ intent to contract. The Tribunal observes that on 17 June 2017 a Senior HR Business Partner wrote to the Applicant’s Supervisor requesting a decision be made on the Applicant’s contract renewal and location assignment. The Supervisor thereafter sought a decision on the matters from the Manager and Director, stating, “HR needs an answer now.” After a discussion on the business needs and budgetary implications, the Supervisor, Manager, and Director approved the Applicant’s appointment extension and relocation to Nairobi. By email dated 29 June 2017, the Manager instructed the Supervisor to inform both HR and the Applicant of the decision. The Supervisor confirmed in her testimony before PRS that she informed the Applicant of management’s decision to extend his contract and relocate him to Nairobi. Based on the record, the Tribunal finds that IFC management’s intent was not merely to

discuss the Applicant's appointment, as the IFC contends, but rather to decide the matter and communicate said decision to HR and the Applicant.

59. In examining whether there was agreement on the essential terms of the contract extension and relocation, the Tribunal finds some terms, such as grade level, entry salary, and appointment type, to be continuations of the Applicant's existing appointment. Therefore, the essential terms left to be agreed upon by IFC management and the Applicant were (i) the Applicant's appointment extension, (ii) the location of the Applicant's duty station, and (iii) the duration of the extension.

60. The email correspondence between the Supervisor, Manager, and Director confirms that they approved both the Applicant's appointment extension and relocation of the Applicant's duty station to Nairobi. Regarding the duration of the extension, the Applicant's claim before PRS was that he was verbally informed his appointment would be extended by two years. The Supervisor, Manager, and Director, as witnesses in the PRS proceedings, all confirmed their understanding that the Applicant's contract extension was approved and did not refute or invalidate the Applicant's assertion that the extension's duration was for two years. Furthermore, the budget analysis conducted in contemplation of the extension and relocation covered a two-year span.

61. The Tribunal finds that, as of June 2017, the essential terms of the contract extension were agreed upon by the Supervisor, Manager, Director, and Applicant.

62. The IFC contends that there was an additional step required, namely the approval of the Africa Regional Director, and that without this approval the Supervisor had no authority to promise the Applicant an appointment extension and relocation to Nairobi. The Applicant contends that the Africa Regional Director's written approval was a mere formality, and in any event the Supervisor had apparent authority to communicate the promise regarding the appointment extension and relocation.

63. In accordance with its jurisprudence, the Tribunal will examine whether "any additional steps to be taken [were] merely formalities that require[d] no further agreement." *Justin* [1984], para. 27.

64. Staff Rule 4.01, paragraph 6.01, sets out the approval authority for extending term appointments. It states:

Extensions

A Term Appointment may be extended for any period by the Manager responsible for the position, provided that any given extension does not exceed five years. The number of successive extensions or renewals of appointments of less than one year within the same VPU [Vice Presidential Unit] is limited to three.

65. According to the record, the alleged appointment extension would be the Applicant's first appointment extension after he was competitively recruited for the level GG-1 position in 2016. Under Staff Rule 4.01, it is clear that the Manager had authority to extend the Applicant's term appointment for two years within the same VPU. The record indicates that the Manager instructed the Supervisor, as Head of the department and the Applicant's point of contact regarding his appointment, to inform the Applicant of the decision to renew his appointment extension and relocation.

66. The IFC, however, contends that, because the Applicant was being relocated, Staff Rule 5.01 applied to the Applicant's reassignment to Nairobi and that this rule imparts an additional unmet requirement, namely the Africa Regional Director's approval. The Tribunal observes the language of various sections of Staff Rule 5.01.

67. Staff Rule 5.01, paragraph 3.04, states:

Reassignment within a Vice-Presidential Unit

A Staff Member may be reassigned within a vice-presidential unit at any time by a Senior Manager to meet the work program needs of the vice-presidential unit.

68. Based on the plain reading of the requirements set out in Staff Rule 5.01, paragraph 3.04, the Supervisor, as Head of the department; the Manager; and the Director appear to meet the requisite authority requirements for approving a reassignment within the VPU. The IFC maintains, however, that paragraph 5.01 within the Staff Rule, relating to the selection process of reassignments, must also be applied. Staff Rule 5.01, paragraph 5.01, states in relevant part:

Selection Process

[...] Concurrence of the department director responsible for the office and [...] the IFC Director, Human Resources, for IFC Staff, is required before the selection is made.

69. The Tribunal observes that the Applicant was not being reassigned through a selection process, and it is therefore ambiguous whether paragraph 5.01 applies under the present circumstances. The record does not provide – either in the email exchanges among the Supervisor, Manager, and Director, or at any other stage – any mention of the Applicant going through a selection process. A further ambiguity is which director the paragraph refers to. If, as the IFC contends, the Africa Regional Director’s concurrence was required, the record indicates that IFC management treated this requirement as a mere formality.

70. The Tribunal notes that, without first requesting the Africa Regional Director’s concurrence, IFC management informed the Applicant that his appointment would be extended and that he would be relocated to Nairobi.

71. Next, the record indicates that, approximately two months *after* the Supervisor had already informed the Applicant of the appointment extension and relocation decision, the Director informed the Manager that the Africa Regional Director’s “okay” was needed. Although the Director stated that she would contact him, the Director later could not recall whether she followed up to request the Africa Regional Director’s concurrence.

72. The Manager stated that she considered “any approval being sought from [the Africa Regional Director] as a mere ‘rubber-stamp’ on a decision that had already been made” and that “she did not consider his approval as necessary after they had approved the decision in respect of [the Applicant].”

73. The Supervisor explained:

[The Africa Regional Director’s] approval for the reassignment was not required because the initial request to have a member of her team reassigned to Nairobi originated from him. She therefore considered that only departmental approvals

were [required] and that those were satisfied once [the Director] and [the Manager] had given their approval.

74. It is evident from the record that IFC management considered the Africa Regional Director's concurrence as a mere formality.

75. In *Bigman*, Decision No. 209 [2009], para. 10, the Tribunal recognized that, even when a supervisor acts "without authority or [exceeds] his competence, this does not relieve the Bank of its responsibility vis-à-vis the [a]pplicant." *Id.*, para. 10. In this respect, the Tribunal explained:

It is a well-established principle of many legal systems, as well as of international law, that the act of an official who is acting within the scope of his or her actual or apparent authority will be attributable to the relevant entity. It follows that also the act of a Bank official who is acting within his or her apparent authority will be attributable to the institution, particularly if this act was relied upon in good faith. (*Id.*)

76. In *Bigman* [2009], the Tribunal examined whether the applicant's supervisor had apparent authority to promise the applicant an appointment conversion. In its determination that the supervisor *did* have apparent authority, the Tribunal observed that the supervisor was the applicant's point of contact for the position and "was in charge of a number of administrative aspects" related to the unit. *Id.*, para.10. The Tribunal further observed that, given the supervisor's role, the applicant had "every reason to rely on the terms discussed with [the supervisor] and no reason whatsoever to doubt [the supervisor's] authority or clearance to this effect." *Id.*

77. Similar to the supervisor discussed in *Bigman* [2009], here, the Supervisor was the Applicant's point of contact regarding his appointment and was the department Head. The record further indicates that the Supervisor was acting under the direction of the Manager who instructed the Supervisor, in writing, to inform the Applicant of the decision to extend his appointment and relocate him to Nairobi. Additionally, the Tribunal notes the Director's acknowledgment that, "if [the Supervisor] had communicated any approval to [the Applicant], it would hold weight because she was his supervisor and 'boss on the field.'" (Emphasis in original.) The record indicates that the Applicant had every reason to rely on the terms conveyed by the Supervisor and no reason to

doubt the Supervisor's authority to convey the approval of his appointment extension and relocation.

78. The IFC contends that the Applicant should have known the Supervisor had no authority to approve the appointment extension and relocation. This contention is unavailing because it mischaracterizes the authority. Here, the Applicant contends not that the Supervisor necessarily had the authority to *approve* the appointment extension and relocation, but that the Supervisor had the authority to *communicate* management's approval. The record demonstrates that, at the time the promise was made, the Supervisor and Manager believed the Supervisor had actual authority to make the promise to the Applicant, further bolstering the position that the Applicant's belief was reasonable.

79. The Tribunal finds that the IFC is not relieved of its responsibility vis-à-vis the Applicant who was promised an appointment extension and relocation by his Supervisor acting within the scope of her apparent authority, if not actual authority, to communicate such promise.

APPLICANT'S ALLEGED REJECTION

80. The IFC contends that, if there was a promise made to the Applicant, it was rejected by the Applicant when he "decided" to be relocated to Dakar instead of Nairobi. The Tribunal is not persuaded by the IFC's argument, which would imply that an offer by the IFC was open and pending for seven months until which point the Applicant rejected it.

81. The Tribunal observes that the Director, Manager, and Supervisor approved the Applicant's contract extension and relocation to Nairobi in June 2017 and that the Manager instructed the Supervisor to communicate such to the Applicant. At the time the decision was communicated to the Applicant, an agreement was reached.

82. Seven months later, in January 2018, the Applicant sent an email to his Supervisor stating that he had "decided to move to Dakar instead of Nairobi for family reasons." From this email, it cannot be inferred that the Applicant intended to quash the agreement of his appointment extension

and relocation. In a hierarchical organization, such as the IFC, staff members are not in the position to make decisions about duty stations. Rather, staff members are encouraged by HR to initiate ongoing conversations with managers and supervisors about their career interests in order to explore how these interests might align with the organization's vision and purpose.

83. It is also recognized that seven months had elapsed since the agreement was reached, and conditions had changed not only due to the Applicant's family circumstances but also within the IFC. Given the context under which the original agreement was reached, and the seven months having passed since, the Tribunal considers that the Applicant understood that a "proposal to modify" the agreement could be contemplated without the original promise being rescinded. In this respect, the Tribunal observes the contemporaneous email exchanges between the Supervisor, Manager, and Director which document the context for relocating the Applicant. The record indicates that (i) the business purpose behind the decision to relocate the Applicant's duty station was to relocate him, not necessarily to Nairobi but to a duty station that would enable "easy" travel to "both East and West Africa" and (ii) IFC management took into consideration the Applicant's location preferences to meet this business purpose.

84. Furthermore, the record does not indicate that the Supervisor construed the Applicant's email regarding Dakar as nullifying the previous agreement. The Supervisor merely indicated that the Applicant's intended change of duty station would be discussed and decided once the department had a manager. Under these circumstances, the Supervisor appears to have understood the Applicant's email to be an expression of preference or proposal.

85. The Tribunal finds that the Applicant's expressed intention to change duty station does not automatically nullify the prior agreement. In such circumstances, the Tribunal finds that the Applicant's expressed intention to change duty station, which has remained unanswered by the IFC, cannot lead to a nullification of the prior agreement.

ALLEGED UNFAIR TREATMENT

86. In the present case, the Tribunal observes the PRS Panel's recommendation, accepted by the Vice President, which states:

The Panel recommends that tagged managers be educated and reminded that they are the only ones to communicate HR decisions formally. They should also be prompted against sharing information on management communications and HR deliberations unless all the parties to a management decision have approved it.

The PRS Panel found that the Applicant had been treated unfairly by management regarding the decision to communicate "HR decisions" to the Applicant and recommended that the Applicant be compensated with one month's net salary, which was increased to four months' net salary at the Vice President's discretion. This compensation, however, does not consider the IFC's handling of the managerial transition, which unfairly resulted in the Applicant's appointment expiring on 28 February 2019, despite the IFC's promise to extend his appointment beyond this date.

87. The Director acknowledged her approval of the Applicant's appointment extension and relocation, but the record indicates she did not take the requisite actions to formalize the agreement, despite her written assurance that she would handle the matter. Had she followed through, there would have been no question by incoming management regarding the Applicant's appointment extension and relocation. Instead, the Director states the process "fell through the cracks" because there were a lot of changes occurring within the IFC at the time. This explanation does not excuse the IFC from its duty to act with fairness *at all times* in its relations with staff members and to follow a proper process.

88. The Tribunal is further concerned by the lack of continuity created by the transition of management, which resulted in the Applicant's unfair treatment. In this respect the Tribunal observes (i) the testimony of the Director in which she acknowledged that she had "indeed approved the extension of [the Applicant's] appointment and his redeployment to Nairobi"; (ii) the testimony of the Manager in which she stated that "there was no question that [...] a management decision had been taken to reassign [the Applicant] to Nairobi and extend his contract"; and (iii)

the Supervisor's testimony that she had "communicated the approval to [the Applicant] under instruction by [the Manager]."

89. Yet the record indicates that the Acting Manager was not informed of these managerial decisions regarding the Applicant's appointment. As an explanation for this, the Supervisor testified during the PRS proceedings that "she did not have the opportunity to inform [the Acting Manager] of the prior decision to extend [the Applicant's] appointment and redeploy him because she was on Short-Term Disability leave (STD) when [the Acting Manager] joined the department." The Tribunal further observes that the Director left the department and the Manager went on administrative leave without informing the Acting Manager of the Applicant's appointment extension and relocation.

90. The Acting Manager, without having been informed of the prior promise, delayed taking action on the Applicant's expiring contract, stating that she did not have the authority to make any decisions about his appointment, until eventually a Workforce Planning exercise commenced.

91. As part of the IFC's Workforce Planning exercise, term appointment contracts expiring during the Workforce Planning period were not renewed. Due to poor communication between changing management, the Applicant was left vulnerable, as he was considered to be among the staff whose employment was expiring during the Workforce Planning exercise when, in actuality, he had been promised an appointment extension.

92. The World Bank Group considers itself to be an outstanding employer, and the cardinal rules governing its relations with staff are those contained in the Principles of Staff Employment, which "establish the constitutional foundations on which the Staff Rules and other regulatory elements are based." *N*, Decision No. 356 [2006], para. 19. One such foundational Principle provides 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." Principle 2.1 of the Principles of Staff Employment. The words of a Supervisor, as Head of the department, of such an organization should matter. Once such concrete promises are made by persons of authority, the Organization must stand by them. They cannot be ignored simply because of managerial transitions. The

Tribunal cannot excuse such discontinuity, particularly when it results in the unfair treatment of a staff member who, in good faith, relied on the promise.

93. The Tribunal finds that the lack of continuity in the handoff of managerial responsibilities to the Acting Manager resulted in unfair treatment of the Applicant in contravention of Principle 2.1 of the Principles of Staff Employment.

REMEDIES

94. In his Application of 2 June 2020, the Applicant requests:

Reappointment to a mutually agreeable position for a term of at least two years at grade and salary levels equal or greater to what [the Applicant] would have received (including his Localization Plus benefits) had he been relocated to Nairobi as promised, or, alternatively, two years' compensation at that salary level. [...]

[The Applicant] seeks additional compensation in an amount deemed by the Tribunal to be just and reasonable to remedy 1) the consequential damages stemming from the nonrenewal of his appointment, including the loss of the additional pension benefits and contract expiration benefits that he would have accrued had his appointment been extended for an additional two years; and 2) the damages to his career and professional reputation resulting from the nonrenewal of his contract and loss of employment with IFC.

95. Additionally, the Applicant requests reimbursement of legal fees and costs in the amount of \$20,791.59.

96. The Tribunal has stated that, as remedy to a breach of promise, an “[a]pplicant should be placed *in the position he [or she] would have been in, had the breach not occurred.*” *Tange*, Decision No. 607 [2019], para. 150. (Emphasis added.)

97. In *Tange* [2019], the Tribunal found that the Bank promised the applicant a three-year contract based in Abidjan. The Tribunal stated that “[t]he Bank placed the [a]pplicant in a vulnerable position by promising him the Abidjan-based position but delaying the relocation until, ultimately, the [a]pplicant’s appointment was not renewed and he was never relocated.” *Id.*, para.

106. The Tribunal concluded that the Bank breached its promise to the applicant since the applicant was never relocated to Abidjan and his appointment was for two years instead of three years. To place the applicant “in the position he would have been in, had the breach not occurred,” the Tribunal awarded the applicant (i) the difference in salary between the position he held and the position he was promised, plus LP benefits of the promised duty station, and (ii) one year’s net salary for the year of employment he was promised but ultimately did not receive. The Tribunal further found, in *Tange*, that the breach of promise resulted in unfair treatment of the applicant, in violation of Principle 2.1 of the Principles of Staff Employment. For this, the Bank was ordered to pay \$20,000.00.

98. In the present case, having found that the IFC breached its promise to extend the Applicant’s appointment for two years and relocate him to Nairobi, the resulting remedy should place the Applicant in the position he would have been in had the breach not occurred.

99. Here, the consequence of the breach of promise was a shortened contract duration, i.e., a six-month appointment extension instead of two years. For this, the Applicant should therefore be compensated for the 18 months’ salary the Applicant would have received had the breach not occurred.

100. An additional consequence of the breach of promise was the Applicant’s loss of LP benefits. For this, the Applicant should also be compensated. The Tribunal notes, however, that the Applicant was not relocated by the IFC and, as a consequence, some of the LP benefits, such as the housing assistance allowance and other lump sum grants for relocation expenses, would not be appropriate to award. For this reason, the Tribunal finds only the assignment allowance, which is paid in semimonthly installments via payroll, should be awarded. Assignment allowances are calculated by the IFC as 10 percent of the level GG midpoint salary in the duty station.

101. In addition to the breach of promise, the Tribunal found in paragraph 93 of this judgment that the lack of continuity in the handoff of managerial responsibilities to the Acting Manager was unfair to the Applicant and in contravention of Principle 2.1 of the Principles of Staff Employment.

In line with the Tribunal's decision in *Tange* [2019], the Applicant here should likewise be compensated for the unfair treatment.

102. The IFC confirmed that the Applicant has already received four months' net salary as compensation for unfair treatment following the PRS proceedings. As stated in *DB*, Decision No. 524 [2015], para. 133, "the Tribunal is free to take into account any compensation already received by an applicant, and to adjust accordingly any award the Tribunal itself chooses to make." Accordingly, the Tribunal considers that the award of four months' net salary received by the Applicant will be considered in the quantum of compensation.

DECISION

- (1) The IFC shall pay the Applicant compensation for the breach of promise in the amount equivalent to 14 months' net salary based on last salary drawn;
- (2) The IFC shall pay the Applicant compensation in the amount equivalent to 10 percent of the level GG midpoint salary in Nairobi for fiscal years 2019 and 2020;
- (3) The IFC shall pay the Applicant compensation in the amount of \$20,000.00, for unfair treatment;
- (4) The IFC shall pay the Applicant's legal fees and costs in the amount of \$20,791.59; and
- (5) All other claims are dismissed.



Andrew Burgess
President



Zakir Hafez
Executive Secretary

At Washington, D.C.,* 16 November 2020

*In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.