

**APPEAL BEFORE
THE ADMINISTRATIVE TRIBUNAL OF THE
EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

[Appellant],

Appellant

v.

Case No. 2018/AT/05

**European Bank for Reconstruction
And Development,**

Respondent.

Decision by the Administrative Tribunal

7 March 2019

I. Procedural Background

1. Appellant commenced her employment with the European Bank for Reconstruction and Development (“Bank” or “Respondent”) on 20 December 2011. Following a reorganization plan and a determination of redundancy, Appellant’s employment was terminated effective 31 December 2017.
2. Appellant filed a Request for Administrative Review Decision (“RARD”) on 26 April 2018. Upon determination of admissibility by the President of the Bank, the Request was referred to the Administrative Review Committee (“ARC” or “Committee”) on 18 May 2018. Pursuant to instructions from the ARC, the Bank filed a response to the RARD on 2 July 2018 and Appellant submitted a rejoinder on 6 August 2018.
3. The ARC issued a report on 14 August 2018 in which it recommended partial relief for Appellant but denied her challenge to the Bank’s redundancy and termination decisions.
4. The Bank’s President issued his Administrative Review Decision (the “PARD”) on 13 September 2018 in which he accepted the ARC report and recommendation. That decision: (a) upheld Appellant’s termination; (b) awarded Appellant an additional severance payment and a repatriation allowance; (c) awarded 50% of Appellant’s legal costs; and (d) denied Appellant’s request for material and moral damages.
5. Appellant filed a Statement of Appeal on 4 December 2018. She accepts those parts of the President’s decision that are favorable to her, but she challenges the substance and procedures of the redundancy and termination decisions and contests the denial of damages.
6. The Bank filed a response dated 10 January 2019.

II. Factual Background

7. In undertaking a review of a PARD, this Tribunal must take full account of the ARC’s findings, unless it “determines that the Findings of Fact contain a manifest error on the face of the written materials before it (including the Findings of Fact and the transcript) or are perverse or are reached in breach of applicable law or the Tribunal grants a request of either party to present new evidence not available to that party before the Administrative Review Committee.” See Article 7.01(b), Appeals Procedures. The Tribunal is not bound, however, by the ARC’s interpretations of the facts or conclusions drawn from the facts. See *Staff Member “A” v. EBRD*, EBRDAT Case 2017/AT/05 at ¶80. The following factual background takes full account of the ARC’s findings of fact in its Report and Recommendations.
8. Respondent initially hired Appellant as a Senior Banker on the Property and Tourism Team in Moscow. On 15 April 2015, she became Associate Director, Regional Head in the Caucasus, Small and Medium Enterprise Finance and Development group

(“SMEFD”). The latter position was situated in Tbilisi, Georgia. Other regional offices in SMEFD were located in Istanbul, Turkey, Amman, Jordan and Kiev, Ukraine.

9. On 11 January 2017, all staff were notified that budgetary constraints had led the Bank to offer staff the opportunity to apply for voluntary separations. The Bank projected that it would agree to voluntary separations for 30-40 staff. The open period for applications to this program was 12 January – 9 February 2017.
10. Apart from the voluntary separation program, the SMEFD group was advised on 12 January 2017 that it was being restructured. Additional details of the restructuring were provided on 20 January 2017. Part of the restructuring included a “change in job description and transfer of 2 Associate Director roles to FRU [Fast Reaction Unit].” Appellant occupied one of the two positions that were being “reallocated” to FRU. She was informed that the Tbilisi office would be closed.
11. The two new FRU positions were situated in Istanbul, Turkey, and Appellant’s Line Manager (Managing Director of SMEFD) encouraged her to apply for one of those two positions. She subsequently did so.
12. On 6 March 2017, Appellant was informed that recruitment for the FRU Associate Director position in Istanbul had been “put on hold” because her application was being “prioritis[ed].” Appellant was also advised that her old position and the new Associate Director position had “substantively different responsibilities” and that she would be interviewed and assessed for her “suitability” for the new job “in the next few weeks.”
13. Appellant’s interview by the two-person Assessment Panel for the FRU position took place on 27 April 2017.
14. The two Bank officials who conducted the suitability assessment concluded that Appellant was not suitable “because she did not display that she possesses the core skills and the extensive experience considered essential for a senior banker to deal with distressed situations and, even with provision of tailor-made training, it would require several years for ... [Appellant] to become effective in this role.”
15. Appellant was not provided a copy of the written assessment until 7 July 2017 and was instructed to provide comments by 14 July. She responded by a brief email on 8 July that she disagreed with both the statements about her experience and the conclusions in the report. Appellant was asked to provide a more detailed statement by 19 July 2017.
16. Appellant provided a detailed response to the assessment report on 18 July 2017, but she did not include a list of her prior experience with restructuring projects. Appellant also alleged that she believed the assessment was “clearly a case of harassment.” Appellant was told to provide a list of past relevant experience by 11 August 2017. As to the allegation of harassment, Appellant was told that, if she believed the assessment panel members acted improperly, she could pursue the procedures under the Respectful

Workplace Procedures. There is no record of Appellant having filed a formal harassment complaint under these Procedures.

17. As instructed, Appellant submitted her list of past restructuring projects on 11 August 2017. On 29 September 2017, Appellant complained that she still had not received any response to her supplemental submissions and that she had lost out on other job opportunities while waiting for a response. Appellant closed with a complaint that she had suffered “stress and anxiety” as a result of the situation.
18. The Assessment Panel had, in fact, reviewed Appellant’s 11 August 2017 submission and had advised Appellant’s Line Manager that her prior experience and expertise were largely irrelevant to the FRU position and that the original determination of non-suitability would stand. This communication was not provided to Appellant.
19. On 29 September 2017, the Interim Managing Director of Human Resources (“HR”) informed Appellant that the conclusions of the suitability assessment report had been accepted and that she was being given advance notice of redundancy effective 31 December 2017. However, the Bank advised that it “will make reasonable efforts to reassign you to another available position in the Bank for which you may be suitable.”
20. On 17 October 2017, Appellant complained by email to the new Managing Director of HR that the redundancy decision had violated the Bank’s obligations under the Staff Handbook and that her Line Manager had dissuaded her from applying for a Regional Head vacancy in Kiev, Ukraine. Appellant asked to be transferred to London during the remainder of the search because that location would make it easier to locate another job. Although the HR Managing Director acknowledged receipt of Appellant’s email, the Bank did not provide a substantive response. Appellant sent a follow-up email on 21 November 2017 seeking a response.
21. On 22 November 2017, the HR Managing Director informed Appellant that her work venue would remain Tbilisi, but that Appellant could seek her Line Manager’s approval for a business trip to London for the remainder of the job search period. Appellant was further advised that the HR Business Partner (“HRBP”) for the SMEFD “is actively working to try to identify a suitable alternative role for you....” Appellant was also urged to undertake her own search for suitable positions.
22. The HRBP initiated “*ex officio* desktop reviews” of Appellant’s suitability for five different positions. Appellant was not notified of the particular openings that were being reviewed, and she was not asked to provide input into that process.
23. The HRBP followed the HR Managing Director’s email with her own communication on 23 November 2017 addressing Appellant’s concerns. She assured Appellant that she was continuing to search for suitable positions. On that same day, she sent Appellant a separate email conveying proposed terms and conditions for a mutually agreed separation. Appellant was given until 29 November 2017 to accept this offer.

24. After additional communications between Appellant and the HRBP, the Bank increased its initial offer for the end of her employment. This offer, dated 12 December 2017, was rejected by Appellant.
25. Appellant had applied for three vacant positions but was deemed not suitable for any of those positions. The desktop reviews also resulted in findings that Appellant was not suitable. Accordingly, on 27 December 2017, Appellant was formally notified by email that her appointment with the Bank was terminated effective 31 December 2017.
26. Appellant thereafter requested mediation under the Bank's grievance procedures. Settlement discussions were pursued without prejudice to Appellant's obligation to file a timely RARD. These discussions were not successful.

III. Administrative Review Process

27. Appellant's RARD claimed that she had suffered "a significant loss of chance four times over: first, by not being appointed to FRU; second, by being advised against applying for the Kiev vacancy; third, in being rejected by the Bank for several other positions; and finally, in not being trained or reassigned." RARD at ¶4.33. Appellant additionally claimed that the Bank had violated its rules governing the payment of separation and repatriation allowances. Appellant sought monetary compensation and reimbursement of reasonable legal costs.
28. The Bank opposed the entirety of Appellant's claims.
29. The ARC's Report and Recommendations, dated 14 August 2018, came to the following conclusions:
 - a. The Bank proved the existence of a redundancy.
 - b. The Assessment Panel acted in good faith and lawfully concluded that Appellant was unsuitable for the FRU position "both in their initial assessment of the Staff Member's suitability and in their reassessment having received her response. The panel was populated with independent members and the staff member has not alleged bad faith on their part." ARC Report, ¶52.
 - c. Although the assessment panel decision was not unlawful, the "management of the situation was inadequate." *Id.*
 - d. The process was poorly managed by the Bank, as evidenced by its unclear communications about the redundancy, the delays involved in its consideration of Appellant for other positions and its failure to investigate what the Line Manager said to Appellant about the Kiev position.

- e. The Bank's failure to explain to Appellant why she was not considered for the Kiev post and its failure to provide a timely response to Appellant's inquiry about that vacancy "did not meet the duty EBRD had to a person at risk of redundancy." *Id.* at ¶43.
- f. Although it "could have done considerably more to support the Staff Member," the Bank made "reasonable efforts" to locate another suitable position for Appellant. *Id.* at ¶54, 56. The Committee found "no evidence that the various different individuals involved in assessing the Staff Member's suitability for these posts did so otherwise than in good faith and that the Bank did consider not only her suitability but also the extent to which the Staff Member might be appointable if provided with training." *Id.* at ¶53.
- g. The Staff Handbook's requirement that the Bank make "reasonable efforts" to reassign redundant staff does not mean that the Bank must pursue "every" assignment as Appellant has argued and as concluded by the ILOAT in Judgment No. 3916 (2018).
- h. The Bank's decision to reorganize and abolish a post is discretionary and should be reversed only if there "was a clear abuse of management discretion, or a material failure to follow due process, which made a difference to the Staff Member." *Id.* at ¶15.
- i. "[I]n light of the redundancy situation that had arisen and in light of the evidence that the other posts that arose were not suitable for the Staff Member, the committee recommends that the decision to terminate the Staff Member's employment by reason of redundancy should be upheld." *Id.* at ¶57.
- j. In addition to receiving her severance payment, Appellant was entitled to receive an additional payment of three months' salary and allowances pursuant to Section 12.6.3 of the Staff Handbook, revised as of 2 October 2017.
- k. Appellant was entitled to receive a repatriation allowance.
- l. Appellant was entitled to reimbursement of 50% of her legal fees.

IV. President's Decision

- 30. On 13 September 2018, the President of the Bank issued his PARD, in which he accepted all of the ARC's recommendations. He concluded that the decision to terminate Appellant's employment was lawful, but that she was entitled to receive a supplementary severance, a repatriation allowance and reimbursement of 50% of her legal costs.

31. Although the ARC did not make any recommendations regarding material damages and damages allegedly arising out of Appellant's medical conditions of depression and anxiety, the President concluded such damages are not warranted in light of the conclusion that the termination was lawful and the lack of findings by the ARC that there was any wrongdoing by the Bank that caused harm to Appellant.

V. Statement of Appeal – Appellant's Position

32. Appellant's Statement of Appeal makes the following principal arguments:

- a. Appellant does not contest the findings of fact in the RARD and the ARC Report.
- b. The reorganization of SMEFD was within the Bank's discretionary authority, but Appellant's termination was tainted by substantive and procedural irregularities.
- c. The Bank's communications surrounding the creation of the FRU "created a legitimate expectation for ... the Appellant, that the restructuring was not synonymous with abolition of posts." Appeal, ¶3.4.
- d. Appellant would have applied for the voluntary separation if she had known that her position was at risk of redundancy.
- e. The Bank never considered Grievant for the Kiev post.
- f. The Bank never informed Appellant that it was considering her for other positions in a "desktop review" and did not seek her input.
- g. In light of the ARC's criticism of the Bank's handling of Appellant's redundancy and reassignment (e.g., lack of clear communications with Appellant, unjustifiable delays in deciding her suitability for the FRU position), it "does not follow that the Termination Decision and the modalities by which it was implemented were made properly and lawfully." *Id.* at ¶3.15.
- h. The Bank was required to make "every" effort to locate alternative assignments for Appellant pursuant to ILOAT Judgment No. 3916 (2018). By contradicting ILOAT jurisprudence, the ARC exceeded its jurisdiction.
- i. The Bank did not make reasonable efforts to reassign Appellant to another position.
- j. The ARC's conclusion that Appellant's termination was lawful is inconsistent with its own findings.

- k. Appellant should be awarded material and moral damages suffered as a direct consequence of the Bank's actions. The damages flow from the unlawful termination and from procedural irregularities. As a result, Appellant has been unemployed and has been prescribed anti-depression medication.
- l. Appellant should receive "[m]aterial damages equivalent to six months' salary ... for the procedural irregularities, breaches of contract, the loss of career opportunity, the unfair and delayed handling and overall discriminatory and injurious treatment of the Appellant's termination, which have caused material physical and psychological damage to her." *Id.* at ¶5.1(1)
- m. Appellant should additionally receive "[d]amages in the amount that the Administrative Tribunal deems appropriate for the medical condition of depression and anxiety caused by the Bank's conduct." *Id.* at ¶5.2(2).
- n. Appellant should be reimbursed her reasonable legal costs.
- o. Appellant should be allowed to present witness testimony at an oral hearing before the Tribunal.

VI. Bank's Response to Appeal – Respondent's Position

33. The Bank's opposition makes the following principal arguments:

- a. The Bank has discretionary authority to undertake a reorganization, reduce staff, abolish positions and reclassify positions. Under the Bank's internal law and international jurisprudence, the Tribunal's review of such decisions is limited to determining if the decisions were arbitrary, discriminatory or in violation of applicable procedures. Determinations of a staff member's suitability for particular positions and terminations for reason of redundancy are subject to the same limited review.
- b. The SMEFD reorganization and the resulting redundancy of Appellant's position were conducted in a fair and reasonable manner that was not arbitrary, discriminatory or in violation of applicable procedures.
- c. The Bank complied with its duty to make reasonable efforts to reassign Appellant to other suitable positions. Contrary to the decision in ILOAT Judgment No. 3916, the Bank's law does not require it to consider "every" possible new assignment for employees facing redundancy. It need only make reasonable efforts. Nor is the Bank required to ensure the success of those efforts.
- d. The Bank was not obligated to provide training to Appellant for a new position. The rules give the Bank discretion whether to offer training as part

of a reassignment. In any event, the Bank did consider whether appropriate training would facilitate Appellant's selection for a vacant position.

- e. The Suitability Assessment was not tainted by bias or any substantive or material procedural errors.”
- f. The Bank's *ex officio* desktop reviews of Appellant's suitability for other positions were undertaken by HR in good faith and with full knowledge of Appellant's skills and qualifications. All of the non-suitability decisions were based on reasonable and observable bases.
- g. The Bank was not obligated to keep Appellant informed of every step taken in the reassignment process. There was no breach of procedural requirements because “the Bank's internal law does not prescribe any reassignment procedures to be followed in a case of redundancy.” Response, ¶142.
- h. The Bank cannot be held responsible for Appellant's failure to apply for the Kiev position. To the extent Appellant relies on ARC findings that the Bank discouraged her from applying for the Kiev position, those findings are “perverse.”
- i. Alleged procedural irregularities must have a material impact on the ultimate decision to justify a remedy. In this case, any alleged procedural irregularities were not material because they did not alter and were not likely to alter the outcome of the challenged decisions. “Appellant further fails to appreciate the difference between an ‘*inadequate*’ process and an ‘*unlawful*’ process and that procedural flaws can be of both a material and an immaterial nature.” *Id.* at ¶64.
- j. Delays in the administrative process do not automatically equate to a denial of due process. Such delays only give rise to a pecuniary award if they adversely affected the staff member's rights.
- k. Some of the delays in this case were caused by Appellant herself. Other delays by the Bank were not “unreasonably excessive” in light of the work required to effectuate the reorganization. Moreover, Appellant benefited from the delays because it resulted in increased pension benefits and allowances.
- l. The Bank did not make an express promise to Appellant or mislead her regarding reassignment. She did not have a legitimate expectation that she would be guaranteed reassignment and did not have a legitimate basis for not applying to the Kiev position or to the voluntary separation program.

- m. The ARC's findings regarding the redundancy, the Assessment Panel and the reasonableness of efforts to reassign Appellant support the Bank's position. Although the Bank does not agree with every one of the ARC's findings, Appellant offers no reasons why the Tribunal should disregard these findings and conclusions.
- n. Appellant has not met her burden of proving a right to damages. She has not identified faulty decision-making that resulted in stress, anxiety or other injury.
- o. There is no need for an oral hearing, especially since Appellant's main allegations focus on procedural flaws in the redundancy/reassignment process.

VII. Oral Hearing

- 34. Appellant has requested an oral hearing to present witness testimony. However, the rules governing appeals clearly favor fact-finding by the ARC. The Tribunal has the inherent authority to request additional evidence and testimony to ensure that due process interests are served, but such action should be a last resort after other options have been exhausted. Moreover, Article 7.01(b) of the Appeals Procedures states that the Tribunal may grant a party's request to present "new evidence not available to that party before the Administrative Review Committee." Appellant has stated that she does not contest the ARC's findings of fact (see Statement of Appeal, ¶3.1) and has made no proffer that any witness testimony was unavailable at the time of the ARC hearing. Indeed, this record does not show that Appellant requested any witnesses to be called to testify at the ARC.
- 35. Under Article 7.02(a) of the Appeals Procedures, oral hearings before the Tribunal are limited to "exceptional" cases.
- 36. The parties have filed exhaustive briefs that thoroughly cover the facts of the case. The Tribunal concludes that there is no reason to hold a hearing in this case for either oral argument by counsel or for the presentation of additional evidence. See EBRDAT Case 2018/AT/06.

VIII. The Tribunal's Conclusions

- 37. Management decisions regarding restructuring and the abolishment of positions are discretionary and therefore subject to limited review by the Tribunal, as provided by Article 3.03 of the Appeals Procedures (Staff Handbook Annex 14.2): "When the administrative Decision complained of is a decision of a discretionary nature, the Tribunal shall uphold the Appeal only if it finds that the decision was arbitrary, or discriminated in an improper manner against the Appellant or the class of Appellants to which he belongs, or was carried out in violation of the applicable procedure...."

38. Decisions regarding a staff member's suitability for a particular position are also discretionary and subject to the same standard of review.

39. Section 12.2.5(1)(b) of the Staff Handbook in effect at the time of Appellant's termination governed the Bank's and Appellant's rights and responsibilities:

12.2.5 Termination at the initiative of the Bank

(1) Grounds for termination: The Bank may unilaterally terminate the appointment of an employee at any time, on any of the following grounds:

(b) Redundancy: Termination of a staff member's appointment on account of redundancy may occur, inter alia, in circumstances where:

(i) as a result of reorganisation of duties and responsibilities in the employee's team or department, or because a line manager wishes to assign new tasks to the position occupied by the employee and s/he does not have the qualifications or skills needed to carry them out effectively ("change in job requirements");

(ii) the number of positions of certain types or at certain levels must be reduced ("reduction in force"); or

(iii) a specific position must be abolished because a function or set of functions performed by the incumbent is being eliminated ("abolition of position").

In the event of a change in job requirements, reduction in force or abolition of position, the Bank will make reasonable efforts to reassign the staff member to another available position in the Bank for which s/he may be suitable, normally in the same office (i.e., Headquarters or the relevant Resident Office, as the case may be) where the redundancy arose. The Bank may provide the staff member with appropriate training if such training will facilitate his/her selection for an existing or known prospective vacant position. If efforts to reassign the staff member are not successful, his/her appointment shall be terminated.

40. Appellant initially asserts that, under Section 12.2.5, "reasonable efforts" were not made to reassign her because the Bank did not make "every" effort, as required under ILOAT Judgment No. 3916 (2018). That ILOAT decision involved a WHO regulation very similar to the one here. The ILOAT stated that "administrative bodies have a duty to explore all existing reassignment options with the person in question" (¶6) and that under the WHO regulation, "it was therefore incumbent on the Organization to make every effort to reassign the complainant..." (¶11) (emphasis added). Appellant insists that the ARC exceeded its jurisdiction by not adhering to the ILOAT standard

41. Neither the ARC nor the Bank's President was bound by ILOAT precedent. Nor is this Tribunal. Nevertheless, ILOAT precedent can be instructive and may inform this Tribunal's interpretation of EBRD rules. In this case, however, the Tribunal need not reach the question posed by Appellant because it finds, for the reasons explained below, that the Bank did not satisfy the "reasonable efforts" standard as written in Section 12.2.5.
42. The ARC concluded that the process for consideration of Appellant for the FRU/Istanbul position was undertaken in good faith and was reasonable. Although the Tribunal defers to ARC findings of fact unless they are manifestly erroneous, perverse or in breach of applicable law, "good faith" and "reasonableness" are conclusions or interpretations of fact as to which the Tribunal makes its own independent judgment.
43. Based on the facts presented, the Tribunal concludes that the reorganization in SMEFD and the abolishment of Appellant's position as part of the reorganization were undertaken in good faith and for legitimate business reasons. Those management actions were not a pretext for removing Appellant from her position outside of the normal performance review processes.
44. With respect to the FRU position in Istanbul, the Tribunal concludes that the Assessment Panel's determination that Appellant was not suitable was reasonable. The determination was not undertaken arbitrarily, discriminatorily or in violation of Bank law and therefore did not violate any of the Bank's obligations under Article 3.03 of the Appeals Procedures. Similarly, the Assessment Panel reasonably concluded that additional training would not have made Appellant suitable for the FRU/Istanbul post within a reasonable amount of time. There is no evidence that the Panel failed to make a fully reasoned decision based on appropriate factors in reaching this decision.
45. Although the ultimate determination with respect to the FRU/Istanbul position was proper, the process utilized to reach that decision was so prolonged as to be unreasonable. The following is the relevant chronology:

11 January	--	Voluntary separation program announced.
12 January	--	Restructuring of SMEFD announced.
20 January	--	Staff given details of restructuring and redundancies.
6 March	--	Appellant first notified that she would be required to reapply for the restructured position in Istanbul.
27 April	--	Appellant's Assessment Panel interview.
7 July	--	Appellant is given a copy of the Panel's assessment.

- 11 August -- Appellant submits her response to the Assessment Report.
- 29 September -- Appellant is informed of the final Assessment Panel Decision, and is notified of her termination effective 31 December.

46. The ARC made several findings critical of the Bank's delays in processing the FRU/Istanbul application:

"The poor management of [Appellant's] situation was greatly compounded by the delay in interviewing her (the delay between 6 March 2017 and 27 April 2017) and the inordinate delay between 27 April 2017 and 7 July 2017 in providing the Staff Member with the outcome of the assessment." ¶50.

"The delays continued partly as a consequence of the behaviour of the Staff Member but predominantly the Bank, with no final outcome being given until again the Staff Member chased the Bank on 29 September 2017. For a member of staff to have been advised that their application was being "prioritised" on 6 March 2017 only for them to be told on 29 September 2017 that their application was unsuccessful was extremely poor management of the situation." ¶51.

47. The Bank advised Appellant on 6 March 2017 that her suitability interview for the FRU/Istanbul post would be conducted in a few weeks, but the Assessment Panel did not meet with her until 27 April 2017. The Assessment Panel then took 2-1/2 months to write its four-page report. Even considering Appellant's own delay in submitting her response to the initial Assessment Panel decision, there is no good explanation why the Bank was unable to give Appellant a final decision regarding FRU/Istanbul until 29 September 2017 – over nine months after Appellant was first notified that her position in Tbilisi was being abolished in the reorganization. The Bank contends that it was busy with the reorganization implementation, but that is an unacceptable excuse. The reorganization of the SMEFD was not such a massive undertaking as to justify delay in the Bank's obligation to focus on the one person affected by the reorganization who had the potential of losing her career at the Bank and whose application was supposed to be prioritized.
48. When Section 12.2.5 requires that "reasonable efforts" be made to reassign staff affected by a redundancy, it must mean that reasonably prompt efforts are made to try to forestall a staff member from losing her/his job. Appellant was purportedly given priority in her FRU/Istanbul application, but the slowness with which the Bank acted did not evidence a commitment to prioritizing her status. To this extent, the Bank's efforts vis-à-vis Appellant were not reasonable within the meaning of Section 12.2.5. The delay impaired her ability to seek other employment.
49. The Bank's delays in resolving Appellant's application for the FRU/Istanbul position had concrete and material consequences. It is undoubtedly correct that Appellant herself bears some blame for delay. She should have commenced her search for other positions as

soon as she received the 6 March 2017 notice; it appears from this record that she did not commence her search until May. On the other hand, the Bank waited much longer and did not undertake any desktop reviews for Appellant until after the final FRU/Istanbul rejection. There is no evidence that such reviews were conducted prior to 29 September 2017, even though there had been a preliminary rejection on 7 July 2017. During the six months after the 6 March notice the Bank made no effort to reassign Appellant through the desktop review process. Even after the 7 July preliminary rejection, the Bank waited two months before undertaking its desktop reviews.

50. The unreasonable delays were compounded by other deviations from the requirements of Section 12.2.5. For example, the ARC appropriately found that “[t]he consequences of the restructure were poorly communicated to the Staff Member,” (ARC Report, ¶49) and that her Line Manager “did discourage the Staff Member from applying for the [Kiev] post and that he did say that she was better suited to the FRU position....” (ARC Report, ¶32). Appellant notified HR well before her termination that her Line Manager had discouraged her from applying for the Kiev position. Yet, HR undertook no investigation and the Bank presented no evidence (testimonial or documentary) to the ARC or the Tribunal to refute this assertion. As the ARC found, “No explanation was given by HR for the failure to have allowed her to apply for the Regional Head Kiev post. ARC Report, ¶42. There is no evidence Appellant was ever considered for that job. The Tribunal concludes that the Bank’s failure to consider her for the Kiev job did not meet the “reasonable efforts” standard.
51. The Bank argues that the ARC’s findings with respect to the Kiev job were “perverse,” although it has not formally requested reversal of these findings. Having reviewed the record, the Tribunal disagrees with the Bank’s characterization. The record shows that Appellant was discouraged from applying for the Kiev post, that she did not in fact apply and that the Bank did not consider her for that position. The Bank did not call the Line Manager or any HR witnesses to dispute Appellant’s assertions. The Tribunal accordingly acknowledges the Bank’s challenge to these factual findings but, considering that the Bank did not offer new evidence or argument to contradict them, finds that the ARC’s findings in this respect were supported by the record.
52. The Tribunal also rejects the Bank’s argument that nothing prevented Appellant from applying for the Kiev position. Once a staff member is advised that his/her position is being eliminated and that a replacement position has materially different responsibilities, the staff member would normally be expected to begin an immediate search for other positions within the Bank. However, Appellant was given unclear and sometimes contradictory advice by management and HR in early 2017. The initial January notices did not make clear that Appellant would need to apply for her own job once it moved to Istanbul. The need to apply was not communicated to her until 6 March 2017. At that time, she was told that her application for Istanbul was being prioritized and that other applications were being put on hold. Her Line Manager told her not to apply for the Kiev job because the Istanbul position was a more likely prospect. Given these considerations, the Tribunal cannot fault Appellant for following her Line Manager’s advice and withholding an application for the Kiev job in early 2017. Appellant may well have been

unsuitable for the Kiev job, but such a determination should have been made by appropriate officials after Appellant was given a fair opportunity to compete for the position.

53. There is a similar infirmity in the way in which the Bank handled the desktop reviews. The Bank did not give Appellant notice of her consideration for the five positions and did not invite her to submit materials in support of applications for these jobs.
54. The Bank was not obligated to involve Appellant in every step of the desktop review process. For example, she was deemed not suitable for the Warsaw position in part because she did not have Polish language skills; it was appropriate to conclude that training would not be sufficient for this purpose and that Appellant should be rejected based on her CV alone. Further communication with her in this circumstance was unnecessary.
55. Appellant was rejected for other positions, however, (such as in Lebanon and Moldova) based on lack of other experience that might have been clarified if the Bank had engaged in a dialogue with Appellant over her perceived shortcomings. The Bank did not give Appellant notice of her consideration for these positions and did not invite her to submit materials in support of applications for these jobs. Communication between Appellant and the Bank with regard to these positions would not have been onerous or time-consuming.
56. Although Appellant was able to participate in the reassignment search through her applications for three positions (plus the FRU/Istanbul post), she was excluded from the reassignment search with respect to the desktop reviews. This failure to engage Appellant during the review process did not satisfy the “reasonable efforts” standard. Appellant was entitled to the protection of Section 12.2.5 because she was facing the termination of her career at the Bank. The Bank’s failure to solicit comments or materials from Appellant showing her suitability for the positions under desktop review violated its obligation under that Section. Moreover, the Bank’s failure to solicit Appellant’s input was *per se* material because it interfered in the ability of decision-makers to base their decisions on all relevant information.
57. The Tribunal considers the Bank not to have met its obligations with respect to the desktop reviews. This conclusion is consistent with the ILOAT’s recent decision in Judgment No. 3916 (2018):

With regard to the allegation that the complainant received no information during the reassignment process, the file shows that while WHO established a reassignment committee – namely, the Global Reassignment Committee – with a view to reassigning the staff members whose posts had been abolished, there is no evidence that the Committee met with the complainant.... In this case, the complainant had no opportunity to participate in the reassignment process. The Tribunal therefore considers that the Organization breached its obligations.
[Considerations, ¶6.]

58. The fact that the Bank acted reasonably in finding Appellant unsuitable for the FRU/Istanbul job did not immunize it from its continuing obligation to make reasonable efforts to reassign Appellant to other available positions. The effort, not the outcome, was important under the rules. Staff members in Appellant's position must be given a reasonable opportunity to find another position and the Bank must assist those staff members.
59. In contrast to the FRU/Istanbul job, Appellant was precluded from submitting comments in support of her suitability for the five positions under desktop review. Whether her input would have definitively altered the decisions is unknowable, since the decision-makers were deprived of any input from Appellant. For this reason, the Bank's efforts with respect to the desktop reviews were not reasonable. Also, the failure to solicit Appellant's input was *per se* material because it interfered in the ability of decision-makers to base their decisions on all relevant information.

VIII. Remedy

60. Appellant seeks recompense for various financial losses as a result of the Bank's actions. These included "the loss of career opportunity, the loss of retail value on her car due to relocation, [and] the unfair and delayed handling and overall discriminatory treatment of the Applicant's termination..." RARD Annex 19. In addition to compensation for economic losses, she requests damages for the infliction of psychological trauma.
61. Although the ARC found inexcusable delays by the Bank and although the Bank did not contest Appellant's evidence of psychological harm (in the form of a physician's note), the ARC's report did not address monetary relief. It may be that the ARC was silent on damages because it had ultimately concluded that the Bank's efforts were reasonable and in good faith. However, the ARC made numerous findings (some of which are quoted above) that were critical of the Bank's procedural handling of Appellant's reassignment process. The Tribunal agrees with these criticisms but additionally concludes that the Bank's failure to make reasonable efforts to reassign Appellant violated its obligations under Section 12.2.5. The posture of Appellant's damage request has now changed in light of our conclusions.
62. Appellant has made a showing to the Tribunal's satisfaction that the Bank did not make reasonable efforts to reassign her in three respects: (a) the delays in processing Appellant's application for the FRU/Istanbul job; (b) discouraging Appellant from applying for the Kiev position and not considering her for that position; and (c) not giving Appellant an opportunity to submit comments or materials to show her suitability for the positions under desktop review. These errors in the process of trying to reassign Appellant, when viewed collectively, were all material. Together, they impaired Appellant's ability to find a new job, either inside or outside the Bank, and had an adverse impact on her emotional health.

63. The Tribunal concludes that Appellant is entitled to receive three months' salary for her economic and non-economic losses.
64. The Tribunal further concludes that Appellant has partially prevailed in her claims and that she is therefore entitled to partial reimbursement of her counsel fees and expenses. The Tribunal directs Appellant's counsel to submit a final accounting to the Bank and directs the Bank to reimburse 1/3 of that amount. If the parties cannot come to agreement on the appropriate amount, either party may return the issue to the Tribunal for a supplemental decision.

For the Administrative Tribunal

A handwritten signature in black ink that reads "Michael Wolf". The signature is written in a cursive, flowing style.

Michael Wolf