

**IN APPEAL BEFORE THE
EBRD ADMINISTRATIVE TRIBUNAL**

**MS FLORIANA BAJRAMI
STAFF MEMBER**

Appellant

-v-

**THE EUROPEAN BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

Respondent or the Bank

DECISION BY THE ADMINISTRATIVE TRIBUNAL

3 October 2016

INTRODUCTION

1. On 13 January 2015, Ms. Floriana Bajrami (the ‘Staff Member’ or the Appellant) was informed of the classification of her position (Exhibit A1)¹ following the European Bank for Reconstruction and Development’s (‘EBRD’ or the Bank or the Respondent) President’s 12 December 2014 approval of the allocation of job descriptions to individual staff members and the classification of roles within the People Management Framework (‘PMF’) structure (the 12 December 2014 Administrative Decision, announced on 17 December 2014, the ‘Administrative Decision’) (Exhibit A2).
2. On Friday 1 April 2015, the Staff Member lodged her Request for an Administrative Review Decision (‘RARD’) (Exhibit A3) against the Administrative Decision.
3. In its 27-page 24 May 2016 Report and Recommendations, the Grievance Committee (‘GC’) unanimously found that the Staff Member had been discriminated against by the Administrative Decision as it applied to her. The GC also found that compensation to remedy the effects of the discriminatory treatment would be appropriate (Exhibit A4).
4. On 15 June 2016, in his Decision (‘the President’s Administrative Review Decision’, or ‘**PARD**’), the Bank’s President rejected the majority of the GC’s 24 May 2016 Report and Recommendations (Exhibit A5). The President “requested that a review be carried out by the Department Human Resources of the generic job descriptions of the roles of the Office Manager [OM] [...] and Senior Administrative Officer [SAO] [...], in order to arrive at a result that is based on objective, rational business considerations that are applied fairly across all Resident Offices and in line with principles of international administrative law. This review will be completed on or before 31 July 2016” (see paragraph 3 of Exhibit A5), but in fact it was completed on 18 August 2016 and was communicated to the Staff Member on the very date of filing of the Statement of Appeal on 19 August 2016.
5. On 19 August 2016 the Appellant filed her Statement of Appeal before the EBRD Administrative Tribunal (the ‘**Statement of Appeal**’) seeking provision of various remedies listed below in para. 14.

¹References to Exhibits A1 to A5 relate to exhibits attached to the Staff Member’s Statement of Appeal, references to Exhibits R1 to R5 relate to exhibits attached to the Bank’s Response.

6. The Bank replied to the Statement of Appeal in the form of Response to the Statement of Appeal 19 September 2016, submitted by Ms. Holscher, Vice-President responsible for Human Resources (the '**Bank's Response**').
7. The Bank submitted that the Administrative Decision appealed by the Staff Member was in fact rectified to necessary extent by the Job Description Review memorandum of 18 August 2019 (the 'Job Description Review', Exhibit R2), and that no rights of the Appellant were violated in the opinion of the Respondent and thus no remedies sought by the Staff Member were to be awarded.
8. The Bank's Response also argued that no violation of applicable law took place by virtue of adoption of the Administrative Decision, neither by fact of the President's Administrative Review Decision disagreement with the GC's 24 May 2016 Report and Recommendations, or otherwise. The Respondent submitted that no discriminatory treatment ever took place with regard to the Appellant, and all decisions of the Bank were lawful and reasonable as a matter of both applicable law and circumstances of the Respondent's business.

THE APPELLANT'S ARGUMENTS

9. The Appellant's Statement of Appeal affirms that the GC recommendations were mostly ignored by the Bank's President, specifically mentioning the following advice of the GC:

“(1) The Bank should recognise that:

(a) the Administrative Decision, as applied to the Staff Member, involved unfair treatment, thereby breaching the terms and conditions of her employment and unevenly applying the internal law of the Bank;

(b) the Bank discriminated against her in an improper manner;

(c) the Administrative Decision, as applied to the Staff Member, was arbitrary.

(2) The Bank should review the generic job descriptions of the roles of Office Manager [‘OM’] and of Senior Administrative Officer [‘SAO’], in order to arrive at a result that is based on objective, rational business considerations that are applied fairly across all resident offices and in line with principles of international administrative law.

(3) The Bank should, as from the date of the president's decision and as long as any staff member remains in the role of [OM] (or its equivalent if the title is changed) in a resident office with fewer than 18 months, consider the Staff Member as an [OM] in Band 5, to be remunerated as such, and to have access to mobility within that Band.

(4) The Bank should compensate the Staff Member for the difference in earnings between what she would have earned as an OM and what she received as an SAO during the period between 14 December 2014 (the date of the announcement of the Administrative Decision) and the date of the President's decision in this matter. This compensation should include compound interest at the rate used by the Bank each year to set the level for pay rises and should include adjustments to any relevant benefits” (see pages 24 and 25 of Exhibit A4).

10. The Appellant's Statement of Appeal refers to the following facts established by the GC (para. 2.3 of Statement of Appeal):

1. As of 27 May 2015, twelve resident offices had OMs. Six of these had over 20 staff and another office had over 18 staff. Five resident offices had OMs without fulfilling the criteria of over 18 or 20 staff;

2. At the relevant time, the Pristina resident office had 13 staff and an SAO (the Staff Member). The other resident offices with SAOs rather than OMs ranged in staff size from 8 to 24;

3. In terms of budget in 2014, the resident offices with OMs ranged in amount from 425,000 to 2,667m. Resident offices in which SAO was responsible for the administration of the office, costs in 2014 varied from 194,000 to 1.1m;
4. The 2014 budget of the Pristina resident office was 421,000; it was 232,000 for the first half of 2015;
5. The generic job descriptions for the roles of OM and SAO are quite similar and often identical in many significant respect;
6. The Administrative Decision applying the PMF to the Staff Member resulted in confirmation of her role as SAO in the Pristina resident office; and
7. The Staff Member has been disadvantaged by remaining an SAO within Band 4, as compared to career possibilities open to an OM within Band 5.

11. The Appellant submits that by rejecting the substantial GC findings and recommendations, the EBRD President erred in his 15 June 2016 PARD. The GC, having examined the Staff Member's case in detail, and having had the benefit of hearing live evidence from six witnesses in total (including the Staff Member, Fabio Serri by video conference, and Anton Kobakov by telephone conference), made a number of findings, some of which, at the very least, have been established beyond reasonable doubt, and the remainder are, indeed, agreed facts. The Appellant points out that despite these findings, and despite the GC's expertise in international administrative law matters, the President has rejected its substantial findings and recommendations without even giving reasons (para. 2.1 of Statement of Appeal).
12. The Appellant insists that for all the reasons expressed by the GC in its Report and Recommendations, the President's original 12 December 2014 Administrative Decision is unlawful, and his PARD, confirming his original Administrative Decision by rejecting the GC's recommendations, is, in turn, also unlawful for the same reasons. The Appellant submits that the unlawful nature of the PARD goes even further and betrays two elements of substantial irregularity: the President took his 15 June 2016 Decision, in contrast to the findings of the GC, in ignorance of the facts and in ignorance of the law; and he also failed to give reasons, amounting to a further breach of the Staff Member's terms and conditions of employment, namely that the Bank must, at all times, act with fairness and impartiality in its relations with staff members (Section 3 of the Staff Regulations). (para. 2.2. of Statement of Appeal).

13. The Appellant refers to the GC's reasoning and notice that the GC asked itself three questions:
- (a) Was the Administrative Decision in breach of the Staff Member's Terms and Conditions of Employment in force at the time the Decision was taken?
 - (b) Did the Administrative Decision discriminate in an improper manner against the Staff Member or the category of Staff Members to which she belongs?
 - (c) Was the Administrative Decision arbitrary?
- and answered all of them in affirmative (para. 2.7 of Statement of Appeal).
14. The Staff Member seeks the following remedies pursuant to Articles 8.04, 8.05 and 8.06 of the Appeals Procedures:
- (a) The recognition by the Bank that (a) the Administrative Decision involved unfair treatment, thereby breaching the terms and conditions of her employment and unevenly applying the internal law of the Bank; (b) the Bank discriminated against her in an improper manner; and (c) the Administrative Decision, as applied to the Staff Member, was arbitrary [this was the first recommendation of the GC which the President ignored in his Decision];
 - (b) That the Bank, as from the date of the President's Administrative Decision and as long as any staff member remains in the role of OM (or its equivalent if the title is changed) in a resident officer with fewer than 18 staff, consider the Staff Member as an OM in Band 5, to be remunerated as such, and to have access to mobility within that Band [this was the third recommendation of the GC which the President rejected in his Decision];
 - (c) Compensation for the difference in earnings between what the Staff Member would have earned as an OM and what she received as an SAO during the period between 14 December 2014 (the date of the announcement of the Administrative Decision) and the date of the President's decision in this matter. This compensation should include compound interest at the rate used by the Bank each year to set the level for pay rises and should include adjustments to any relevant benefits [this was the fourth recommendation of the GC which the President rejected in his Decision];
 - (d) Moral damages in the sum of £10,000 for having to continue with her grievance despite having won before the GC, because the President rejected its substantive recommendations; and
 - (e) Reasonable legal costs incurred in the Appeal (since the Staff Member did not instruct a legal representative during the GC proceedings, so legal costs are limited

to all instructions surrounding the preparation and submission of the Statement of Appeal and beyond).

THE BANK'S RESPONSE TO STATEMENT OF APPEAL

15. The Respondent submits that the decision of the PARD was neither erroneous, nor unlawful, and in fact it resulted in subsequent amendment of the original Administrative Decision in a manner which was not materially adverse to the Appellant. The Respondent also insists that under the factual circumstances of this case the PARD provided clear and cogent reasoning.
16. The Respondent explains that in accordance with Sections 1.03 and 8.01(a) of the Grievance Procedures, GC's recommendations are not at all mandatory for the Bank's President, he is authorized to decide the matters advised by the GC at his discretion, and his disagreement with such recommendations does not result in unlawfulness or erroneousness of the corresponding decisions taken by the Bank's President (paras. 4.6, 5.1 to 5.4, 5.10 of the Bank's Response). The Bank relies on two cases of the IBRD submitted in Exhibits R4 and R5 as a proof of lawful degree of the managerial discretion.
17. The Bank submits that the Administrative Decision was in fact partly revised as a result of the PARD's instruction to the HR department to carry out the Job Description Review (Exhibit R2), and that in the opinion of the Respondent that instruction should be treated as a manifestation that "the President effectively puts aside the Original [Administrative] Decision" (paras. 5.5 to 5.6 of the Bank's Response). The Bank also emphasizes that the Job Description Review affected all staff members occupying positions similar to the Appellant (para. 5.6 of the Bank's Response, also proven by the Job Description Review memorandum of 18 August 2016 provided in Exhibit R3). It also explains that the PARD's initial instruction to carry out the Job Description Review by 31 July 2016 was fulfilled by a later date for the reason of medical absence of certain officers of the Bank, which delay was explained to the Appellant in a letter of Director of the HR Department of 29 July 2016 (Exhibit R1, para. 3.2 of the Bank's Response²).
18. In the Bank's opinion, the PARD's instruction to initiate a Job Description Review and to apply the corresponding amendments to job titles, descriptions and banding retroactively reinstated the original status of the Appellant existing prior to the Administrative Decision (para. 5.12 of the Bank's Response), and hence she did not suffer any harm.

² Para. 3.2 of the Bank's Response submits that the letter to the Appellant explaining delay in fulfillment of the PARD's instruction to carry out the Job Description Review by 31 July 2016 was communicated on 29 July 2019, but the Tribunal believes the correct date to be 29 July 2016.

19. The Bank also asserts that the Respondent's People Management Framework (the PMF) was not "a salary setting tool". However, in connection with a benchmarking exercise which had effect as of 1 April 2016, the PMF could have an impact on salary setting. The Bank refers to the circumstance that the PARD stated that, to extent the Appellant has incurred any losses as a consequences of the benchmarking exercise, as of 1 April 2016 the Appellant should be compensated (para. 5.13). In para. 6.10 of the Bank's Response it is explained that in the Respondent's opinion it was ascertained that the Appellant did not suffer any adverse financial impact caused by the Administrative Decision, and thus no compensation is due to her.
20. The Respondent also argues that the Appellant did not suffer any disadvantages due to being treated as an employee of Band 4 in comparison to employee of Band 5, to which latter band she belonged prior to passing of the Administrative Decision, or, alternatively, that to extent such disadvantages occurred, they were rectified by the PARD (paras. 6.11 to 6.14 of the Bank's Response).
21. The Bank concludes that the PARD is a "reasonable exercise of managerial discretion, taken in accordance with the applicable procedure and is in no way in breach" of the Appellant's rights, it is neither arbitrary, nor discriminatory, nor improper (para. 8.1 of the Bank's Response) and for that reasons the Statement of Appeal should be rejected in full and without award of any legal costs.

THE TRIBUNAL'S EVALUATION OF THE PARTIES POSITIONS

22. The Statement of Appeal is based on the idea that the PARD constituted a mistake for the reason that it ignored the GC's recommendations. The Tribunal agrees with the Respondent that this idea is wrong. The Tribunal accepts the Bank's argumentation that in accordance with Sections 1.03 and 8.01(a) of the Grievance Procedures, GC's recommendations are not mandatory for the Bank's President.

23. That being said, the administrative decisions of the President (including the Administrative Decision of 12 December 2014 and the PARD) affecting status and earning of employees must comply with Section 3 of the Staff Regulations requiring that the Bank at all times must act with fairness and impartiality in its relations with its staff members (see para. 2.2 of Statement of Appeal). The Tribunal found that the Appellant was downgraded in her position, which prior to the Administrative Decision belonged to Band 5, and then was moved to Band 4, and that after the Job Description Review memorandum she was returned to Band 5 (the Respondent admitted at para. 5.5 of its Response that following the Administrative Decision the Appellant's position could have been allocated either to Band 4 or to Band 5). In the opinion of the Tribunal, the Bank did not provide any persuasive explanations for that change, and this downgrading constituted an materially adverse alteration, prompting the Staff Member to file a corresponding appeal (Section 2.01(b) of the Appeals Procedures mentioned in para. 4.1 of the Bank's Response). In the PARD, the Bank implicitly recognized that the Administrative Decision was arbitrary, and instructed to carry out the Job Description Review in order to arrive at a result that is based on objective, rational business considerations that are applied fairly across all Resident Offices and in line with principles of International Administrative Law.

24. The Tribunal understands the Bank to imply that the PARD set aside the Administrative Decision and that, as a consequence, the downgrading that resulted from the Administrative Decision was withdrawn. The Tribunal finds it quite unclear that this was the effect of the PARD. The Tribunal observes that, in any case, until the time of the PARD at the earliest, the status of the Appellant was unreasonably downgraded as a consequence of the Administrative Decision, and thus her corresponding rights were violated. Even the date, when the Administrative Decision was amended, remains unclear: it could have been either result of the PARD, or result of the Job Description Review memorandum of 18 August 2016.

25. The Tribunal disagrees with the Respondent's position that the President's instruction to undertake a job description review should be treated as if "the President effectively put aside the Original [Administrative] Decision" (paras. 5.5 to 5.6 of the Bank's Response). If it were true, the corresponding decision to return the Appellant to Band 5 and renaming of her position would have been provided in the very PARD of 15 June 2016, not in the Job Description Review memorandum communicated to the Appellant on 19 August 2016 and entering into effect as of 1 September 2016. In any case, Section 3 of the Staff Regulations requires the Bank to clarify to its staff members the reasons for administrative decisions to be taken and to react without delay to the employees' complaints. This case was lasting for more than 1.5 year, which in the opinion of the Tribunal was not commensurate to its nature and complexity.
26. The Tribunal accepts the Bank's argumentation that the Job Description Review affected all staff members occupying positions similar to the Appellant (para. 5.6 of the Bank's Response, proven by the Job Description Review memorandum of 18 August 2016 provided in Exhibit R3), who were subjected to the same treatment as the Appellant as the result of the Administrative Decision, and thus that PARD was not involved with unfair or discriminatory treatment with regard to the Appellant.
27. For that reason, the Tribunal, in accordance with Section 8.04 of the Appeals Procedure decides that the Administrative Decision, as applied to the Staff Member, *was late and arbitrary*. Declarations of the Administrative Decision as being involved with unfair and discriminatory treatment (paras. 4.1.1 (a) to (b) of the Statement of Appeal) are dismissed for the lack of proof.
28. The Tribunal agrees with the Bank's argumentation that "the PMF was [not] a salary setting tool" (para. 5.13 of the Bank's Response), at least the Statement of Appeal relying primarily on GC's findings, did not demonstrate that. Accordingly, the Tribunal dismisses the plea for *the monetary remedies* provided in paras. 4.1.2 to 4.1.3 of the Statement of Appeal. However, the Tribunal wishes to recommend the Bank for the future to explain to its staff members more explicitly, what are the general reasons for amendment of their salaries, and what are the specific grounds for each affected staff member's salary to be changed.

29. Considering the award of moral damages (para. 4.1.4 of the Statement of Appeal), the Tribunal observes that such damages may be awarded in case of non-pecuniary losses, such as distress or damage to reputation. The Tribunal observes that arbitrary downgrading in position lasting for some 20 months inevitably caused serious moral suffering to the Staff Member, particularly in connection with both her own and her co-workers' perception of her professional performance and prospects. The administrative matter was under consideration for more than 1.5 year, and despite Appellant's best efforts the Job Description Review memorandum was communicated to her only on the date when she filed her Statement of Appeal with this Tribunal. For that reason the requested relief in the form of moral damages should be awarded *in the amount of five thousand GBP (£5,000)*.
30. Assuming that two of the four remedies sought in the Statement of Appeal were awarded, the Tribunal concludes that the Appellant is eligible for *50 % of the legal costs* incurred in the Appeal in accordance with Section 8.06(a) of the Appeals Procedure.

ORDER

For these reasons, the Administrative Tribunal, acting by a panel of Judges, Stanisław Sołtysiński, Giuditta Cordero-Moss and Boris Karabelnikov (Chair), hereby:

- a) decides that the Administrative Decision of 12 December 2014, as applied to Ms. Floriana Bajrami, was arbitrary;
 - b) awards Ms. Floriana Bajrami moral damages in the amount of £5,000 (GBP five thousand);
- and
- c) awards Ms. Floriana Bajrami 50 % (fifty per cent) of the legal costs incurred in the this appeal in accordance with Section 8.06(a) of the Appeals Procedure.

All other remedies sought are hereby dismissed.

For the Administrative Tribunal



Boris Karabelnikov

3 October 2016