

**ADMINISTRATIVE TRIBUNAL
OF THE AFRICAN DEVELOPMENT BANK**

QUORUM:	Professor Maurice GLELE AHANHANZO	President
	Justice Lombe CHIBESAKUNDA	Vice-President
	Professor Christian TOMUSCHAT	Member
	Professor Yadh BEN ACHOUR	Member

APPLICATION 2004/09

Mr. K. S., Applicant
African Development Bank, Respondent

Judgment of the Tribunal delivered on 1 December 2005

I THE RELEVANT FACTS

1. Mr. K. S., the Applicant, a national of Algeria, entered the service of the African Development Bank on 14 July 1997, as Head of the Communications Unit, on grade MS-5, step 8 of the Respondent's salary and positions grid at the time. During the general classification of Bank positions, the Applicant's position was classified as Grade PL-1, in accordance with the new scale. At the time of the contested decision, he held the same position. The Applicant was recruited on a fixed-term contract for a period of two (2) years, subject to a probationary period of twelve (12) months. In 1999, the Bank renewed his contract for a further period of three (03) years, from 14 July 1999 to 13 July 2002.
2. At a meeting on 2 December 2001 with his supervisor, the Vice-President for Corporate Management (CMVP) at the time and the former Director of the Human Resources Management Department (CHRM), he was informed of the non-renewal of his contract. Subsequently, by correspondence dated 28 December 2001, the President of the Bank notified the Applicant that his contract, which was expiring on 13 July 2002, would not be renewed and that from 1 January 2002, he would cease to be a Bank staff member. In the same correspondence, the President stated as follows:

"In the interest of the Bank and in recognition of your service, it has been decided to pay you the following separation benefits, in accordance with the terms of Resolution B/BD/97/15 and the Staff Regulations and Rules:

- i. Payment of your salary up to 13 July 2002 (the date of expiry of your contract);*
- ii. Encashment of accumulated leave;*
- iii. Payment of education allowance for eligible children up to the end of the current academic year;*

- iv. *Payment of dependency allowance up to 13 July 2002;*
- v. *Payment of other benefits accrued up to 31 December 2001."*

3. On 28 June 2002, the Applicant requested administrative review of the decision not to renew his contract. On 9 July 2002, the Vice-President for Corporate Management (CMVP) denied the Applicant's request for review. The Applicant thus referred his complaint to the Appeals Committee on 8 August 2002.
4. The Appeals Committee issued its conclusions and recommendations on 14 April 2004 and transmitted them to the President. These conclusions and recommendations required the Bank to:
 - 1) Pay the Appellant the termination benefits, as provided by Staff Regulation 6.12.4;
 - 2) Pay the Appellant 12 months' salary for moral and material injury;
 - 3) Remind the Respondent of the importance of ensuring in future that its dismissals for poor performance are compliant with the procedures set forth in the Bank's internal rules and regulations;
 - 4) Dismiss all the Appellant's other requests.
5. The Respondent's President rejected all but the last recommendation. The decision was notified to the Applicant by a letter dated 8 July 2004, received on 14 July 2004. Subsequently, the Applicant filed an application to the Tribunal on 1 October 2004. This Application was filed for and on behalf of Mr. K. S. by an ADB staff member, Mr. Tah ASONGWED, an Interpreter in the Language Services Unit.

II. ARGUMENTS OF THE PARTIES

The Applicant

6. The Applicant contests the decision and its legality for the following reasons:
 - Détournement de pouvoir (abuse of authority);
 - Lack of legal grounds ;
 - Contradictions and erroneous conclusions from the facts;
 - Dereliction of duty to inform;
 - Absence of mentoring, coaching and guidance;
 - Violation of the principle of legitimate expectancy;
 - Lack of consideration.

The Applicant seeks to demonstrate that the Respondent's decision is vitiated by "serious flaws with regard to form and substance" and an absence of due process and should, in consequence, be nullified.

Détournement de pouvoir (Abuse of Authority)

7. The Respondent's letter notifying the non-renewal of the Applicant's contract was dated 28 December 2001 and the decision took effect on 1 January 2002. The Applicant deems that, had the Respondent allowed his contract to run its full course, that is authorizing the Applicant to continue working at the Bank up to 13 July 2002, date of expiry of his contract as specified in his letter of appointment, the decision would have been rightly considered as one of non-renewal. However, since the Respondent gave the Applicant barely one day's notice, the decision cannot be considered as a non-renewal but rather as termination.
8. Indeed, the Appellant maintains that the notice of non-renewal of a contract on its expiry is clearly not the same as notice to terminate an appointment before expiry. Non-renewal and termination are two different concepts and are dealt with distinctly in the Staff Rules. The fact that the Staff Regulations make a distinction between separation from service (Regulation 6.10) and termination (Regulation 6.11) means that the two decisions are not the same. Treating them as the same decision amounts to a misapplication of procedure.
9. The organization uses an inappropriate procedure for taking a decision, whereas another procedure is applicable in law, with the result that the Applicant is deprived of his rights, which the legally applicable procedure would have safeguarded. The grounds are thus unlawful and there has been an abuse of purpose, which is impeachable in law. Amerasinghe, affirms that

“Where the organization has recourse to one procedure for taking a decision in a situation where another procedure is in law applicable, with the result that the Applicant is deprived of safeguards afforded by the other procedure...the motive is unlawful and there is an abuse of purpose. There is then a misapplication of procedure and this is impeachable in law. (C.F. Amerasinghe, the Law of International Civil Service, vol. 1994, p.281)”.

The Applicant further submits that, by merging the two concepts, the Respondent deprived the Applicant of the rights accorded by the Staff Rules and Regulations governing separation from the Bank on the basis of termination of contract. By the same logic, and quoting the same source, the Applicant holds that termination of a fixed-term contract prior to its expiry is a termination of appointment and not a non-renewal:

“The special features of the law relating to fixed-term contracts which has developed relate entirely to the problem of non-renewal of such contracts or their non-conversion into permanent appointments. Termination of a fixed-term contract is on a different footing. It is properly treated as a termination of appointment, since the termination occurs before the expiry at the end of its term of the contract” (C.F. Amerasinghe, op cit., 1994, volume 2, page 93.)

The Applicant concludes that the Respondent should have applied Rule 612.4 concerning the period of notice and termination benefits.

Absence of Legal Grounds

10. The Applicant asserts that the decision taken by the Respondent has no legal basis. Staff Regulation 6.12.1 concerning the period of notice and the termination benefits provides that:

“The termination of an appointment by the President pursuant to Regulation 6.11 shall be notified to the staff member concerned in writing with an indication of the grounds for such termination and shall be subject, excepting termination under Regulation 6.11, iii or 6.11, (iv) and Article 6.11, to a period of notice and to a payment of termination benefit as determined in these Regulations or as prescribed in the Staff Rules”.

According to the Applicant, the President was required to notify him in writing “with an indication of the grounds for such termination”. This was not the case with his letter of 28 December 2001.

11. In support of his argument, the Applicant cites various judgments delivered by the Administrative Tribunal of the International Labor Organization (ILOAT): *the Gery-Pochon, Perez del Castillo, Bordeaux, Fernandez-Caballero and Tebourbi cases*. All these decisions show that grounds must be given for non-renewal of a contract, even if the texts of the organization are silent on that aspect.
12. The Applicant observes that nowhere in the letter of termination of the Applicant’s appointment does the Respondent state the reasons for the decision; nor did he in any subsequent communication with the Applicant notify him of the reasons for the decision until the Applicant filed with the Appeals Committee. The Respondent besides admits as much when it states that, while it did not give the reasons for non-renewal in the letter, the different evaluations of the Applicant’s performance, rated "D" since 1998, are more than a clear indication of the Respondent’s assessment of the Appellant’s capacities in the position to which he had been assigned.

Contradictions and Erroneous Conclusions from the Facts

13. In its answer to the Applicant’s submission before the Appeals Committee, the Respondent stated that the Applicant’s appointment was terminated on the basis of unsatisfactory performance, as attested by his performance evaluations for 1998 and 2000. Yet, the combined provisions of Staff Regulation 6.11.1 and Staff Rule 611.02 specify the requirement: *“if it is established that the services of the staff member have proved unsatisfactory.”* and that this should be based on the evaluation system. However, for his 1998 and 2000 evaluations, the Applicant’s performance was rated “Acceptable” and not “unsatisfactory.” Indeed, the Applicant received a letter from the Respondent dated 20 March 2001, stating that Management was pleased to inform him that his performance for 2000 had been adjudged “Acceptable”, entitling him to a 3.5% merit increase.

14. In the same letter, Management expressed its appreciation of the Applicant's efforts towards achievement of his department's objectives and the mission of the Bank. Accordingly, he was urged to strive to achieve a higher level of performance. The Applicant concludes therefrom that there is nothing either in his 1998 or 2000 evaluations that would warrant non-renewal of his contract for unsatisfactory performance. Neither the Staff Regulations nor Rules, and even less the Staff Performance Guide can justify the Respondent drawing such a conclusion from the circumstances.
15. Therefore, the Respondent's claim that the Applicant's appointment was terminated for unsatisfactory performance is ill founded. The Respondent contradicted itself and drew wrong conclusions from the facts. The Applicant's contract was renewed in 1999, based on a "D" or "acceptable" rating in 1998. The contract could not be terminated on the basis of a similar evaluation in 2000. The Applicant's performance was not evaluated in 1999.

Dereliction of Duty to Inform and Absence of Warning

16. The Applicant notes that the Respondent failed to discharge the duty of informing him of the decision envisaged, whereas that decision would affect his interests. The Respondent should have put the Applicant on notice that if he did not improve his performance, his contract of employment would be terminated. Several judgments of the International Labor Organization Administrative Tribunal (ILOAT) support this position. The Applicant stresses that there is no evidence that the Respondent gave the Applicant any indication that his contract might be terminated for whatever reason.
17. The Applicant further affirms that he was never served any warning, either verbal or written, and the termination of his appointment for unsatisfactory performance thus came as a great shock to him. A decision under such circumstances is flawed and gives enough grounds for the Tribunal to quash it.

Absence of Mentoring, Coaching and Guidance

18. According to the principles set forth in the Performance Management Guide, staff members' supervisors should accept coaching as part of their normal responsibility. Mid-term evaluation seeks to ensure that staff members are not without the feedback that lays the basis for evaluation of their first six months of a given year. Any decline in performance is noted at this time; the staff member is warned and advised with a view to improving output. During 2001, no such exercise was conducted by the Applicant's line manager.

Absence of Due Process

19. The applicant deems that he did not have the benefit of a fair process that would enable him defend himself appropriately. Indeed, the Respondent did not comply with Article 6.11.3 of the Staff Regulations, which stipulates that:

"The President shall establish an administrative machinery for termination under Regulation 6.11.1".

Article 6.11.1 (ii) states:

The President may terminate the appointment of a staff member if it is established that the services of the staff member have proved unsatisfactory or that the staff member has failed to carry out his duties and obligations satisfactorily."

The Respondent should have set up an administrative mechanism whereby the Applicant's case could be examined. This was not done.

20. Moreover, at the level of the Appeals Committee as well for the present submission, the Applicant and his representative were either unable to have access to certain documents in his personal file or had great difficulty doing so. *They were denied access to certain documents in his records on the grounds that they were confidential, whereas, as the Applicant points out, the ADB Tribunal has already stated its position with regard to free access to documents required.* (Judgment in ADBAT, O., K., N. cases [Applications 1999/04-05-06] para. 22.)

Violation of the Principle of Legitimate Expectancy

21. The Applicant deems that he was entitled to expect repeated renewals of his contract. Indeed even if, like the other international organizations, the Respondent no longer gives permanent contracts, the idea of never renewing fixed-term contracts would imply a massive turnover of staff of these organizations every few years; they would soon deplete their core staff. Amerasinghe and certain decisions by the United Nations Tribunal, UNAT, as well as that of the International Labor organization, ILOAT, hold that the employee can in certain circumstances, have legitimate expectancy of renewal of his/her contract on its expiry if the organization has no particular reason warranting non-renewal.
22. The Applicant joined the Bank in 1997, at the age of 50 years, with the legitimate expectation of pursuing his career until retirement. The termination of his appointment without a proven legitimate cause has shattered his hopes and thus caused him tremendous material injury, moral and financial anguish.

Lack of Consideration

23. The Applicant considers that the Respondent owed him consideration. The circumstances of his dismissal were greatly humiliating for him as a manager (denial of access to his office, badge disabled, internal and external lines, as well as internet and email connections cut).
24. In reply to the Respondent's Answer dated 18 January 2005, the Applicant requests the Tribunal to note that the Respondent has not produced valid arguments in respect of the

different points raised in his Application. It focused only on two of the points: the absence of grounds or reasons, and the violation of the principle of legitimate expectancy.

25. The Applicant requests the Tribunal to note that the Respondent has once again shifted the grounds for justification for its decision. The non-renewal letter did not make mention of any grounds or reason. At the Appeals Committee hearing, the Respondent affirmed that the non-renewal of the contract was due to the Applicant's unsatisfactory performance. However, in reply to the Application before the Tribunal, the Respondent now asserts that the non-renewal was justified by the new organizational structure put in place by the Bank.
26. The Respondent never informed the Applicant either during the meeting of 21 December 2001 with the Vice-President CMVP and the Director, CHRM, or in the termination letter or any verbal or written communication prior to that answer, that the Applicant's contract had been cancelled owing to the restructuring.
27. All along, the Respondent had constantly invoked its discretionary powers whereby it could decide not to renew the Applicant's contract, which was expiring on 13 July 2002. At no time did it refer either to the Appellant's "alleged poor performance" or the "so-called reorganization" as informing the decision. The Applicant maintains that the Respondent was duty-bound to state its grounds for not renewing a fixed-term contract or terminating an appointment.
28. If it is the justification regarding reorganization that is taken into account, then Applicant requests the Tribunal to note that the Respondent has not complied with the rules governing termination on grounds of redundancy and abolition of positions. These rules are clearly set forth in Staff Rule 611.06 1. The Respondent's President never made proposals to the Applicant concerning reassignment; neither did he give the Applicant the opportunity to make any. The jurisprudence of the Administrative Tribunals of the World Bank (WBAT) and the International Labor Organization (ILO) is patent in that matter: "the implementation of the Staff Rules dealing with redundancy must be effected with strict observance of fair and transparent procedures ..." (the Monica Fidel case, WBAT, Decision No. 302, 12 December 2003, paragraph 24).
29. The Applicant cites other jurisprudence to show why the Tribunal should not entertain the adduced non-renewal owing to restructuring:
 - It has not been proven that the functions of the unit that replaced COMU have changed;
 - No job description for the new Manager of the Communications Division has been produced, to establish that the Applicant did not meet the conditions;
 - The Respondent's needs and priorities in the new structure have not been specified, with a view to proving that the Applicant did not meet them.

30. The Applicant also points out the Respondent's inaccurate assertions:

“The Applicant did not raise any objection to the proposed non-renewal nor proffer any other option.”

This is an untruth. The Applicant objected to the “non-renewal” and sought the reasons. The Respondent itself has stated that the Applicant was not placed in a position to discuss the decision taken. Indeed concerning the meeting of 21 December 2001 (between the Vice-President, CMVP, the Director CHRM and the Applicant), the Respondent states: *“The meeting was held on December 21, 2004, and the Applicant was informed of the following:...”* This statement shows that the aim of the meeting was to inform the Applicant of the decision the Respondent had already reached.

31. The Applicant further refutes the Respondent's arguments concerning: (i) *the non-renewal of a fixed-term contract*; ii) *the difference between the termination and non-renewal*; (iii) *legitimate expectancy*. In support of its argument, the Applicant cites *Vincent CARTER, WBAT, decision N° 175 and the advisory opinion of the International Court of Justice in this matter (ICJ Reports. 1956, p. 92)*. He also refers to the Bank's Rules and regulations: Articles 6.10.2; 6.11; 6.14.1 of the Staff Regulations and Staff Rule 611.06 (c). The Applicant reiterates the argument set out in his Application.

32. In conclusion, the Applicant urges the Tribunal to consider his Application and his Reply and to redress the different injuries caused by the decision, as enumerated in his Application

The Respondent

33. Following a review of the facts, the Respondent clarified its position in the case, as presented in its Answer dated 18 January 2005, as well as in its Rejoinder, submitted on 04 April 2005. It contested the Applicant's interpretation of the facts and the administrative rules as well as the principles of international administrative law.

34. Regarding the facts, the Respondent recalled that the Applicant had been informed on 21 December 2001 of the non-renewal of his contract. At that time, the Applicant had neither objected to the proposed non-renewal nor proposed alternative solutions. The Respondent had thus addressed a letter dated 28 December 2001 to the Applicant, notifying him of the non-renewal of his contract. This contained relevant details on the different conditions applicable and the benefits he would receive.

35. The Applicant contests the Respondent's decision on non-renewal of his contract for the following reasons:

- Détournement de pouvoir (abuse of authority);
- Lack of grounds and reasons;
- Contradictions and mistaken conclusions from the facts;

- Dereliction of duty to inform;
- Lack of warning
- Absence of mentoring, coaching and guidance;
- Absence of due process
- Violation of the principle of legitimate expectancy;
- Lack of consideration.

36. The Respondent's position in regard to the issues raised by the Applicant is basically that the right to renew a fixed-term contract or otherwise is one vested with the Respondent, both under its internal law and in accordance with the rules of international administrative law. The Applicant has besides acknowledged that he could not contest the Respondent's discretionary power with regard to non-renewal of his contract. The Respondent stresses that it has scrupulously applied the relevant texts to the case of the Applicant, who was recruited on the basis of a fixed-term contract

Legal Requirements for Renewal of Fixed-term Contract

37. The Respondent recalls that Article V of the Administrative Tribunal Statutes provides:

"In deciding on an application, the Tribunal shall apply the internal rules and regulations of the Bank, and generally recognized principle of international administrative law concerning the resolution of employment disputes of staff in international organizations "

The Respondent affirms that the case under examination hinges on the Respondent's discretionary right not to renew a fixed-term contract upon its expiry. In this regard, the internal rules of the Respondent, as contained in Staff Regulation 6.4. provide the three (3) following situations:

- Permanent appointments
- Temporary appointments, also referred to as fixed-term appointments
- Short-term appointments.

38. Regulation 64.01 (b) and (c) stipulate:

"b) Without prejudice to Rule 61.00 and the Rules relating to separation from the Bank's service, all temporary appointments shall be only for the period specified in the letter of appointment and shall carry no expectancy of renewal

(c)- At the expiry of the period of temporary appointment on a regular position, the Bank may, in its sole discretion and depending on the exigencies of the service, offer the staff member another temporary appointment on terms and conditions mutually agreed upon by the Bank and the staff member."

The Respondent states that the internal rules unequivocally provide that fixed-term contracts:

- carry no expectancy of renewal;
- shall be for the period specified in the appointment letter;
- shall be renewed at the sole discretion of the Respondent.

39. The Respondent further posits that the Applicant knew the terms of this contract and had accepted them. He was aware that in accordance with Articles 6.10.2 and 6.10.3 of the Staff Regulations, without a permanent contract, his appointment would expire on the date specified in the appointment letter. The letter of non-renewal stated clearly that the Respondent's decision has been taken in accordance with the relevant provisions of Article 6.10.3 of the Staff Rules, whose only condition, concerning a three(03)-month period of notice, was also respected, even beyond the requirements, since the Applicant received seven (07) months' notice.
40. The Respondent refers to several decisions by other Administrative Tribunals that cover legal conditions relating to valid non-renewal of a fixed –term contract, and unanimously indicate that it is the employee that decides whether or not to renew a fixed-term contract. Moreover, the employer is not required to state the reasons for the non-renewal. This is notably the view held by *Amerasinghe*.
41. The Respondent holds that, in affirming that the tribunals require employers to give reasons for deciding non-renewal of fixed-term contracts, the Applicant has based its arguments only on the jurisprudence of the ILO Administrative Tribunal.

However, according to the Respondent, a close examination of the ILOAT cases shows factors that differ from the Applicant's case.

Non-existence of Legitimate Expectancy of Renewal

42. According to *Amerasinghe*,

"Expectancy is a state of mind which has been created by positive action taken by the holder of a contract coupled with specific behavior on the part of the administrative authority. The concept of legitimate expectancy has been created in spite of the fact that in general the written law of organizations explicitly excludes any expectancy of continued employment for holder of fixed-term contract. Hence as a result of the creation of the concept of expectancy, the written laws prevail only in the absence of any countervailing circumstances, surrounding facts or behavior on the part of the authority, which could have created in the mind of the holder of the contract an expectancy of continue employment. Where the required expectancy can be shown to exist, the holder of the contract has certain rights in respect of the renewal or conversion of his contract resulting from such expectancy per se."

43. The Respondent deems that the Applicant has failed to articulate any basis for the legitimate expectancy. Such an expectation can only arise from a commitment or a

promise carrying legal force, binding commitment or at the very least the existence of specific circumstances.

Mistaken Statements and inapplicability of the other legal arguments raised by the Applicant

44. The Respondent submits that the other legal bases advanced by the Applicant to contest the non-renewal decision have no bearing on the case at hand:
- The Applicant has confused the expiration of a contract or its non-renewal with termination pursuant to the Respondent's administrative rules.
 - The Applicant has wrongly applied the principles concerning abolition of positions and reorganization.
45. Within the exercise of the Respondent's discretionary powers, the Respondent could determine whether it was administratively advisable to retain a staff member in a management position at a time when the two signatory parties as well as other staff members knew that the contract of that staff member would not be renewed upon its expiry seven (07) months later. In the Respondent's view it was important to note that maintaining the head of an organizational responsible for Communication immediately following the transfer of that function to a new organizational unit --though it was known that the Applicant's contract would not be renewed-- would have dampened the morale of the Respondent's Communication team. These serious considerations, in keeping with the Respondent's business rationale, were taken into account in the decision to enable the Applicant to terminate duties on January 2002, rather than in July 2002.

Factual Misrepresentation and Abuse of Process

46. The Respondent notes that the Applicant, in his bid to prove damages he claims to have suffered, states that he has been separated from his family since June 2003 and suggests that the separation was a result of the non-renewal of his contract with the Respondent. The Respondent stresses that, since 2000, the Applicant's family has relocated to the United States, on the Applicant's own initiative. It was in that regard that the Respondent exceptionally consented to reimburse relocation costs at the time of the Applicant's separation from the Respondent. The Applicant cannot therefore say that he would wish to return to the Respondent's service in order to be reunited with his family, when he was separated from them from 2000. He has, before he joined the Respondent's service and since leaving the Bank's services (having resumed activities that initially separated him from his family), been in a post-conflict area (Croatia before his recruitment by the Respondent and Democratic Republic of Congo, after the end of his service in 2002).
47. The Respondent draws the Tribunal's attention to the tone of the Application and the Reply submitted by the Applicant. The Respondent considers that using the Administrative Tribunal to malign the integrity of a highly respectable institution and that

of its employees, as the Applicant or his representative tend to do, constitutes an abuse of the Tribunal process. The Respondent quoted extracts from the Applicant's Reply as examples of such abuse.

48. Lastly, the Respondent states, concerning the lack of mentoring, coaching and guidance that there is no relevance to the case. The Respondent however insists that the Applicant had various meetings with his supervisor during the course of his employment, to discuss issues related to his work, objectives and competencies. During his fixed-term contract, the Applicant was sent on training in the areas of:

- Theory of organizations,
- Human behavior in organizations;
- Principles of Management;
- Leadership, Communications and Executive Functions
- Client Orientation;
- Performance Management.

Statement at the Appeals Committee that the Applicant's Performance was terminated for Unsatisfactory Performance

49. The Respondent notes that the record of proceedings before the Appeals Committee show that a staff member representing the Applicant indicated that the Applicant's contract was not renewed owing to unsatisfactory performance. According to the Respondent, this statement is not borne out by the facts of the case: a "D" rating for performance evaluation translates into "acceptable" performance, for which the Applicant received a salary raise. The Respondent notes that, given the content of his files as well as the salary increase he received, his appointment could not have been terminated for unsatisfactory performance

50. The Respondent concludes that the Applicant has been incapable of articulating a basis for the relief sought in his Application. The Respondent reaffirms that the present case solely involves non-renewal of a temporary appointment on its expiration. Furthermore, the Respondent paid the Applicant all of his entitlements and even paid him advances against his entitlements to facilitate his relocation expenses, if any.

III. REQUESTS OF THE PARTIES

The Applicant

51. The Applicant requests the Tribunal to:

- i. Quash the decision of the Respondent to terminate Applicant's contract upon expiry on 13 July 2002.
- ii. Order reinstatement or, in its absence, payment to Applicant of three years salary he would have earned had his contract been renewed.

- iii. If reinstatement is not possible, order payment to Applicant of six months of salary as notice of termination.
- iv. If reinstatement is not possible, order payment to Applicant of the appropriate benefits and entitlements. The calculations of the various benefits and entitlements he received were based on benefits and entitlements paid in the case of separation for non-renewal of contract (and not on the basis of termination of appointment [one month's salary for each year of service]).
- v. Order payment of twelve months salary as moral relief. *In re* WALTER, Judgment 1935, para. 7, the ILOAT awarded damages for moral injury to the complainant.

The Applicant is in the same situation as the complainant in the ILOAT case. Applicant was the manager of the Corporate Communications Unit and was barred from gaining access to his office with immediate effect from the time he was served the notice of termination. It was a tragic humiliation for him, and will take a long time to heal. Moreover, his phone, email, and internet lines were disabled. The Applicant's professional career in the Bank was also disabled.

- vi. Order that the decision to terminate Applicant's appointment be expunged from all his records in the Bank.
- vii. Award costs.

52. **The Respondent**

The Respondent requests the Tribunal to reject the Application and claim for damages. It believes the Applicant has suffered no prejudice, since he was paid his benefits and the decision for non-renewal of his contract cannot be cancelled, since it was taken in accordance with the texts in force.

The Respondent further requests the Tribunal to require the Applicant to provide evidence for the statements that have cast slur on its integrity and that of members of staff, or else to withdraw those statements.

IV. **PROCEDURE**

- 53. The written procedure involved the exchange of four submissions as prescribed by the Rules of Procedure. The oral procedure was conducted on 22 November 2005.

V. THE LAW

54. The Applicant contests the non-renewal of this temporary contract, which he considers to actually be a dismissal. The Tribunal notes that, in principle, the Bank has broad discretionary powers in deciding whether a contract should be renewed, converted into a permanent contract or terminated with three (3) months' notice.
55. Instead of giving the required three (3) months' notice, the Respondent informed the Applicant, at a meeting held on 21 December 2001, with his supervisor, the then Vice President in charge of Corporate Management (CMVP), and the former Director, CHRM, that his contract would not be renewed upon its expiry on 13 July 2002. This information was confirmed by a letter from the President of the Bank dated 28 September 2001. Relieving him of his duties with effect from 1 January 2002, the Bank paid his salary for seven (07) months' notice, even when he was no longer working at the Bank
56. According to the relevant provisions of the Staff Regulations (see in particular Article 6.10.3 of the Statutes,) the temporary appointment of a staff member automatically ends at the contract expiry date specified in his/her contract, subject to the stipulated period of notice. As already explained, this condition was fulfilled in this particular case.
57. The Tribunal sought to determine whether there were circumstances that limited the effect of Staff Regulation 6.10.3. The non-renewal decision should be clear of any element of abuse with regard to the substance and/or form and also of any arbitrary elements.
58. The Applicant has failed to prove in his submissions and during the Tribunal hearing that the Bank had promised to renew his contract or that certain elements of fact had given him legitimate confidence in that regard. In itself, the duration of his service with the Bank does not justify any such expectation. During the first five (5) years of a temporary contract, the links with the Bank are not yet solid enough to be considered as a bridge to permanent employment. Moreover, Staff Rule 64.01 (b) clarifies the legal position situation when it states that temporary contracts "*shall carry no expectancy of renewal*".
59. Neither the Staff Regulations nor the Staff Rules prescribe that the Bank must state its grounds for not renewing a fixed-term contract. In the jurisprudence of Administrative Tribunals, there is a certain divide between the Administrative Tribunal of the International Labour Organization (ILO), which has in a number of cases based its opinion on an obligation to state reasons, and the World Bank Administrative Tribunal, which denies such an obligation
60. Concerning the circumstances of this case, three points are noted. During the meeting of 21 December 2001, the Applicant was not informed of the reasons for the Bank's decision not to renew his contract, neither did the letter of notice dated 28 December 2001 contain any reasons for it. It only stated that the Applicant's contract would expire on 13 July 2002. The Respondent did not contest the Applicant's version of the facts. On the other hand, it has not been established that the Applicant requested that the

justification for the Bank's decision be clearly communicated to him. At the 21 December 2001 meeting, he could have insisted in the presence of his supervisors that this be done.

61. At the Appeals Committee hearing, the representative of the Respondent indicated that it was due to the Applicant's unsatisfactory performance that the contract had not been renewed. During the Tribunal audience, the Respondent affirmed that that statement had mistakenly been made by a representative of the Bank who was not sufficiently familiar with the case. It said the real reason for the non renewal was the need to restructure the communication section and the unit headed by the Applicant had to be integrated into another organizational complex
62. These are precisely the concrete facts of the case that lead the Tribunal to side with the ILO Administrative Tribunal. The Applicant remained unaware of the underlying reasons for the Bank's decision. It was thus very difficult for him to organize his defense as required. A staff member whose contract is not renewed should be enabled to determine whether there would be some chance of winning a case s/he has initiated through the internal Bank appellate bodies and subsequently before the Tribunal. It is only on the basis of explicit grounds that staff members in such circumstances can be enabled to assess their position.
63. The ambiguous manner in which the Bank proceeded allowed for the Applicant's impression that the non-renewal decision was guided by considerations that were not in keeping with the principles governing the conditions of employment in the Bank
64. Clear and unambiguous reasons appear to have become even more important as, since 1996, Bank staff members are no longer on permanent contracts. If the Bank were not required to provide explanations each time it decides not to renew a contract, the staff members would be very insecure. They would have no job security and it would amount to suspending the guarantees provided under the Staff Rules (Article 6.11) and the relevant Staff Regulations.
65. The Respondent's contradictions--which involved its refraining from any explanation in the initial stages and then alleging unsatisfactory performance before the Appeals Committee, only to withdraw that argument during the hearing, explaining that it was an error and that the real reason was the Communication unit restructuring,-- could have been entirely avoided if right from the start of the non-renewal notification process, some light had been shed on the considerations that had led to the Bank's action.
66. The Tribunal thus considers that the Bank did not demonstrate the appropriate circumspection when it came to taking vital decisions concerning one of its staff members. On the other hand, the Tribunal considers that the Bank's failure to state its grounds were not to abusive ends, given the Bank's objectives. The Bank is required to ensure optimal functioning of its units. However, in recruiting its staff, it should try to attract a qualified corps, capable of handling all their responsibilities in a competent and

effective manner. Further, the Applicant does not question the fact that the Bank carried out a major restructuring of the Communications sector.

67. Under the circumstances, the Tribunal considers that the decision not to renew the Applicant's contract is vitiated in its form, because it did not state reasons.
68. The Tribunal wishes to remind the Bank that it is important that the dignity of staff members leaving its service be preserved.
69. In conclusion, the Tribunal deems that the Applicant is entitled to some financial compensation for moral injury. In addition, the Applicant should have the legal expenses incurred refunded to him.

VI. **THE DECISION**

66. In view of the foregoing, the Tribunal decides that:
 1. As relief in respect of moral injury, the Bank should pay the Applicant one month's salary;
 2. The Bank should refund to the Applicant the expenses he incurred for his defense before the Tribunal;
 3. The Applicant's other requests are dismissed.

Professor Maurice GLELE AHANHANZO

- President

Albertine LIPOU-MASSALA

- Executive Secretary

COUNSEL OF THE APPLICANT

- Mr. Tah ASONGWED

COUNSEL OF THE RESPONDENT

- Mr. Dotse TSIKATA