ADMINISTRATIVE TRIBUNAL OF THE AFRICAN DEVELOPMENT BANK

QUORUM:  
Justice Salihu Modibbo Alfa BELGORE  
President  
Justice Leona Valerie THERON  
Vice-President  
Professor Yadh BEN ACHOUR  
Member  
Justice Anne L. MACTAVISH  
Member  
Justice Benjamin Joses ODKI  
Member  

APPLICATION No. 2017/02  
S. A., Applicant,  
African Development Bank, Respondent  

Judgment No. 104 of the Administrative Tribunal rendered on 26 January 2018

I. THE FACTS

1. By this application, the Applicant challenges the decision of the President of the African Development Bank to release him from service at the Bank, effective February 1, 2016. The Applicant further seeks a review of the President’s refusal to accept the recommendation of the Staff Appeals Committee that he be paid compensation for emotional distress, as well as moral and reputational damages. At the same time, the Applicant asserts that these recommendations fall short of the relief to which he was entitled by reason of the discontinuance of his employment with the Bank. The Applicant says that he should, in addition, be entitled to additional salary and benefits, including salary in lieu of notice, as well as damages for delay and out of pocket expenses, including legal costs, an a positive letter of reference.

2. After a competitive process, the Applicant joined the African Development Bank as its Vice-President of Infrastructure, Private Sector and Regional Integration on November 23, 2014. In line with the practice of the Bank, he was hired pursuant to a contract for a term of three years which would ordinarily have expired on November 22, 2017.

3. On January 11, 2016, the Applicant was asked to meet with the newly-appointed President of the Bank. During this meeting, the President informed the Applicant that he wished to put his own senior management team in place, and that there was no longer a place for the Applicant at the Bank.

4. The parties agree that there were never any problems with the Applicant’s job performance while he was employed by the Bank. The Bank has not disputed the Applicant’s claim that he had at all times performed his duties in an exemplary manner. Indeed, this was recognized by the Bank after the termination of the Applicant’s employment, when the Applicant was awarded a “Certificate of Merit” by the President of the Bank, which Certificate acknowledged the Applicant’s “leadership and invaluable contribution to the achievement of the Bank’s mandate”.

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5. On January 14, 2016, the Applicant received an email from the Acting Vice-President, Corporate Services (CSVP) asking for the opportunity to meet with him in order to discuss the terms of his separation from the Bank. The following day, the Bank’s President sent an email to the staff of the Bank announcing the termination of the employment of the Applicant and that of four other senior managers, effective February 1, 2016.

6. On January 18, 2016, the Applicant chaired a seminar that he had put together for the Bank’s Board of Directors. The Applicant states that many Board members present at this event expressed regret for the way he had been treated, and thanked him for his service to the Bank. The Applicant further states that certain Board members told him that they had not been consulted with respect to the decision to terminate his employment, and that they had advised him that if they had been consulted, they would not have agreed to it.

7. The Applicant received a further email from the Acting Vice-President CSVP on January 19, 2016, which stated that the Bank was “glad to offer him a mutually agreed separation effective 1st February”. The email also set out the proposed terms of the Applicant’s separation, which were subsequently confirmed in a letter January 25, 2016.

The terms offered to the Applicant were:

- Payment of six months’ salary in lieu of notice;
- Payment of an additional allowance of sixteen months’ salary and benefits;
- Payment of cash for unused leave days up to a maximum of sixty working days;
- Repatriation entitlement to the Applicant’s home country for himself and eligible dependents in line with the provisions of the Staff Rules;
- Entitlements under the Staff Retirement Plan;
- Payment of school fees in line with the Bank’s rules for recognised dependents until the end of the 2016/2017 school year.

8. The Applicant emailed the Acting Vice-President, CSVP on January 27, 2016, stating that, in his view, the terms that had been offered to him fell short of his contractual entitlements and what he would be willing to accept in satisfaction of his claims against the Bank. On January 29, 2016 - the Applicant’s last day of work at the Bank - the Acting Vice-President, CSVP responded that she did not understand which terms of his contract would not be fulfilled by the Bank’s offer. The Applicant and the Acting Vice-President, CSVP met later that day to discuss the terms of his separation. The Applicant expressed his view that paying him 16 months rather than the 22 months remaining on his contract was unfair. He stated that he was also seeking payment of an additional amount as compensation for the damage and distress that he had suffered as a result of the unfair manner in which he had been treated. The meeting concluded with a commitment by the Acting Vice-President, CSVP to advise the President of the Bank of the Applicant’s position.
9. On January 28, 2016, the Applicant emailed several senior Bank employees with suggestions regarding the proposed wording of a statement to be published on the Bank’s website with respect to the termination of his employment, as well as that of the four other senior managers whose employment was being terminated at the same time. The Applicant suggested including language in the statement that demonstrated some warmth and gratitude towards the departing Vice Presidents. Ultimately these edits were not included in the statement that was published on the Bank’s website.

10. The Applicant was invited to the annual staff reception on February 3, 2016, where he was to be presented with a “Certificate of Merit” by the Bank’s President acknowledging his service to the Bank, as well as his contribution to the achievement of the Bank’s mission and objectives. The Applicant declined the invitation as he was not planning to be in Abidjan on that day.

11. On February 10, 2016, the Applicant received an email from the Acting Vice-President, CSVP advising that the terms of separation set out in the letter of January 25, 2016 would be maintained.

12. The Applicant’s legal counsel wrote to the Acting Vice-President CSVP on March 15, 2016, requesting a review of the President’s decision to terminate the Applicant’s employment. The letter asserted that there was no justification for the termination, and that there had been various procedural deficiencies in the way that the separation had been carried out, including the failure of the President to consult with the Bank’s Board of Directors prior to terminating the Applicant’s employment. In addition to his other claims, the letter asserted that the Applicant had a legitimate expectation that his contract of employment would be renewed for an additional three year term, seeking compensation accordingly. The Applicant also sought compensation for damage to his reputation, and for the distress caused to his wife and family by the unlawful termination of his employment. In the event that the Bank was not prepared to accept the Applicant’s settlement proposal, counsel for the Applicant further asked the Bank to agree to have the Applicant’s appeal bypass the Staff Appeals Committee process and proceed directly to the Administrative Tribunal for determination, given that the decision at issue had been made personally by the Bank’s President.

13. The Acting Vice-President CSVP responded to counsel’s letter on April 1, 2016, advising that if the Applicant wished to contest the terms of his separation from the Bank, he should follow the internal recourse procedures provided for in the Staff Rules.

14. On 21 April 2016, the Applicant commenced an appeal before the Staff Appeals Committee in which he sought the following remedies:

- Payment of all salary and benefits to which he would have been entitled, had he worked to the end of his contract;
- Payment of six months' salary in lieu of notice;
• Additional compensation of three years’ salary and benefits to reflect the Applicant’s legitimate expectation that his contract would have been renewed at the end of the three-year period;
• Damages to reflect the damage to the Applicant’s reputation;
• Damages to reflect the Applicant’s suffering and moral distress;
• Reimbursement of all wasted costs in connection with the property the Applicant had rented in Abidjan (six months’ rent, storage, removal and shipping costs);
• Provision of an appropriate official exit letter thanking the Applicant for his service, including a clear statement that his separation was in no way a sign of any breach on his part; and
• Compensation for legal costs.

15. In his Statement of Appeal, the Applicant again argued that his appeal should be referred directly to the Administrative Tribunal. In support of this assertion, he submitted that the Committee’s Recommendations were unlikely to alter the President’s decision, and that unnecessary delay and cost would be incurred by requiring him to proceed first to the Staff Appeals Committee before accessing the Tribunal process.

16. The Staff Appeals Committee did not accept the Applicant’s request that the matter be referred directly to the Tribunal. The Applicant’s appeal was then heard on December 7, 2016, and a decision was rendered on January 27, 2017. The Staff Appeals Committee recommended that the Bank:

1. Grant the Applicant the sum of six months’ salary for moral and reputational damages;
2. Grant the Applicant the sum of six months’ salary for emotional distress due to the short notice of termination that was provided to him;
3. Issue a formal letter to the Applicant indicating that he was not released for any adverse reasons including improper conduct or poor performance;
4. Award the Applicant the sum of £15,000 for legal costs; and
5. Reject the Applicant’s plea of legitimate expectation and all other forms of relief sought by the Applicant.

17. On April 5, 2017, the Applicant received the Staff Appeals Committee’s Recommendations together with a letter from the Bank’s Human Resources Management Department advising that the President had decided not to accept the Staff Appeals Committee recommendations. On May 29, 2016, the Applicant commenced this application with the Tribunal.

II. RELIEF SOUGHT

18. The Applicant asks the Tribunal to declare that:

1. The separation terms offered by the Bank were unacceptable, and that there is a generally accepted practice that if the breach of contract is caused by the employer, it must pay the employee the entirety of the salary and benefits to which the
employee concerned would have been entitled, had he or she worked until the end of the current contract;
2. That for there to be an agreed separation, the terms of separation must be acceptable to both parties and not unilaterally imposed by the Bank;
3. That the Applicant is entitled to compensation for damage to his reputation and the distress that was caused by the manner in which the decision to terminate his employment was taken and made public; and
4. That the Applicant had a legitimate expectation of continuing to serve the Bank after his first three-year contractual period.

19. The Applicant further asks the Tribunal to order the Bank to:
   1. Pay the salary and benefits to which he would have been entitled, had he worked to the end of his contract;
   2. Pay six months’ salary in lieu of notice;
   3. Pay an additional allowance of three years’ salary and benefits to reflect the Applicant’s legitimate expectation that his contract would have been renewed at the end of the first three-year period;
   4. Pay damages to reflect the damage his reputation has suffered;
   5. Pay damages and interest for suffering and moral distress;
   6. Reimburse all expenses related to the rental of a residence in Abidjan (six months’ rent, storage, pick-up and shipping costs);
   7. Pay damages for the unnecessary delay in the referral to the Administrative Tribunal;
   8. Provide him with an appropriate official letter of separation congratulating him and thanking him for his good and loyal service, indicating very clearly that his departure was in no way the result of improper conduct attributable to him;
   9. Pay further compensation for the Applicant’s legal costs and travel expenses with respect to his trip to London to participate by video-conference in the Staff Appeals Committee hearing, and for his expenses and those of his lawyer to attend the session of the Administrative Tribunal in Abidjan; and
   10. Pay interest on the amounts granted as compensation, for having unnecessarily delayed the payment.

20. The Bank asks that the Applicant’s Application be dismissed.

III. THE ISSUES

21. Although the parties frame the issues somewhat differently, the Applicant’s application raises the following issues:

   1. Are certain documents relied upon by the Applicant admissible?
   2. Should this case have been referred directly to the Tribunal by the Staff Appeals Committee?
   3. Does the fact that the Board was not consulted render the Applicant’s separation unlawful?
   4. Did the Applicant have a legitimate expectation of contract renewal?
   5. What, if any, remedies should be awarded to Applicant?
IV. THE LAW

1) The Preliminary Evidentiary Issue

22. The Applicant seeks to rely on two documents in support of his application: a 2002 Legal Note and a January 18, 2016 email to the President of the Bank from a member of the Bank’s Board of Directors. The Bank initially objected to the admission of both documents.

23. Insofar as the 2002 Legal Note was concerned, the Bank noted that the document contained legal advice that had been provided to the Bank’s Board of Directors by the Bank’s counsel, with the result that the document was clearly subject to solicitor and client privilege. That said, counsel for the Bank stated that the Bank was prepared to waive the privilege attaching to the Legal Note in this case, on an exceptional basis, without prejudice to its right to continue to assert solicitor and client privilege over this and other similar documents in the future. Given that the Bank was no longer asserting solicitor and client privilege over the 2002 Legal Note, the document was admitted into evidence on this basis.

24. With respect to the January 18 email to the President of the Bank from the member of the Bank’s Board of Directors, the Bank asserted that this document should be excluded from the record on the basis that it constituted a confidential communication between Board members. According to the Bank, the fact that a member of the Board chose to breach the Code of Conduct governing Board members by disclosing the document does not constitute a basis for its admission before the Tribunal.

25. The Tribunal did not accept this argument. Any confidentiality that may have attached to the document in question was waived by one of the parties to the communication when the document was disclosed to the Applicant. Whether the disclosure of the document raises a potential breach of the Code of Conduct governing members of the Bank’s Board of Directors is a matter for the Board to decide. It is not, however, a matter for the Tribunal.

26. Before concluding that the January 18, 2016 email should be admitted into evidence, the Tribunal also had regard to Article IX of the Statute of the Administrative Tribunal. This provision allows the President of the Bank to refuse to disclose evidence if he or she were to determine that “… the introduction of such evidence might hinder the operation of the Bank because of the secret or confidential nature of the document”. The Tribunal noted that no such assertion had been made by the President of the Bank in relation to the January 18 email in this case.

27. Consequently, both documents were admitted into evidence by the Tribunal.

2) The Refusal of the Bank to Consent to Having the Applicant’s Appeal Referred Directly to the Tribunal

28. The first substantive issue raised by the Applicant relates to the refusal of the Bank to consent to having this matter bypass the Staff Appeals Committee process and be referred directly to the Tribunal for determination. In requesting the Bank’s consent in this regard,
the Applicant submitted that it was unreasonable to expect that as subordinates of the Bank’s President, members of the Staff Appeals Committee would be able to afford the Applicant with a fair and impartial hearing, and that unnecessary costs and delay would be incurred by the Applicant by forcing him to go through the Staff Appeals Committee process.

29. In support of this claim, the Applicant points out that the Staff Appeals Committee process had added almost a year of unnecessary delay to the process. During this time the Applicant received no income or any portion of a settlement from the Bank, causing him to suffer immense financial hardship. In addition, the Applicant contends that it would have been in the interests of natural justice to refer the matter directly to the Administrative Tribunal, given that the appeal challenged a decision of the President himself.

30. While we can understand the Applicant’s frustration with the Bank’s position, the Tribunal cannot accept his submission in this regard. First of all, Rule 103.01(b) of the Staff Rules only contemplates the possibility of bypassing of the Staff Appeals Committee process in cases “where only issues of law are in controversy”. That was not the situation here, where significant issues of fact were in dispute.

31. Unlike the Tribunal, in examining the cases coming before it, the Staff Appeals Committee routinely convenes oral hearings, listens to the testimony of witnesses and makes findings of fact. Through this process, the Staff Appeals Committee assembles a evidentiary record in relation to each case. In contrast, the Tribunal only occasionally hears limited oral evidence. In exercising its jurisdiction in cases such as this, the Tribunal largely relies on the evidentiary record that has been compiled by the Staff Appeals Committee.

32. Moreover, nothing in either the Statute of the Administrative Tribunal or the Staff Rules suggests that natural justice requires that cases be referred directly to the Tribunal where a decision of the Bank’s President is under review. Indeed, Article 37 of the Agreement Establishing the African Development Bank makes clear that the President holds the ultimate responsibility for appointing and releasing all staff and officers of the Bank. It would be illogical for the Staff Appeals Committee to be charged with reviewing the Bank’s employment decisions and yet not be appropriate to review decisions made by the President.

33. Many of the issues raised by the Applicant’s application were squarely within the competence the Staff Appeals Committee, such as the sufficiency of the notice period offered to him, the question of whether he had a legitimate expectation of contract renewal, and whether he should receive damages for injury to his reputation. The issue of the President’s failure to consult the Board was not clearly outside the Committee’s competence, and subsection 103.01(d) of the Staff Rules empowers the Staff Appeals Committee to “decide its own competence in cases of doubt”. While the Committee ultimately determined that the question of whether the President had complied with the requirement to consult with the Board prior to terminating the Applicant’s employment was indeed beyond its competence, it nevertheless made significant recommendations with respect to other issues raised by the application. It cannot thus be said that requiring the Applicant to go through the Staff Appeals Committee process was futile.
34. The Applicant also argues that it was unlikely that the Staff Appeals Committee’s recommendations would change the President’s decision, and that the Bank should thus have agreed to refer his appeal directly to the Tribunal. It is true that the Tribunal and the Committee processes differ in that the Committee can simply issue recommendations, whereas the Tribunal can make decisions and order remedies that are binding on the Bank. However, although the Applicant’s concerns were subsequently borne out when the President rejected the Staff Appeals Committee’s recommendations, it cannot be said that the result of the Staff Appeals Committee’s process was pre-ordained.

35. Finally, the Tribunal’s jurisprudence has consistently upheld the importance of the principle that Applicants must exhaust their internal administrative remedies, such as pursuing the Staff Appeals Committee process, before appealing to the Tribunal. The Applicant has not established that it was unreasonable for the Bank to require that the usual process be followed in this case, and it should thus not be penalized for declining to agree to refer the matter directly to the Tribunal.

3) Did the President of the Bank Consult with the Bank’s Board of Directors Prior to Terminating the Applicant’s Employment with the Bank?

36. Article 37(2) of the Agreement Establishing the African Development Bank provides that the President of the Bank is responsible for the hiring and release of the Bank’s Vice Presidents “… in accordance with the rules and regulations adopted by the Bank, provided he shall act in consultation with the Board of Directors in the exercise of his powers of appointment and release of Vice Presidents” [emphasis added].

37. The Applicant submits that the termination of his employment was unlawful, as the President did not consult with the Bank’s Board of Directors prior to terminating his employment. While the Bank asserts that consultation with the Board did take place, it acknowledges that it has adduced no evidence to support this contention. It is, moreover, evident from the evidence that is before the Tribunal that no such consultation took place in advance of the termination of the Applicant’s employment.

38. In support of his argument with respect to the lack of Board consultation, the Applicant relies on the January 18, 2016 email that was sent to the Bank’s President by a member of the Bank’s Board of Directors. The Board member in question states in this email that he had not been consulted prior to the decision having been taken to terminate the employment of the Applicant and other Vice Presidents of the Bank. The Applicant further states that several other members of the Board had verbally advised him that they had also not been consulted with respect to the termination of his employment, and that they did not agree with the President’s decision in this regard.
39. The Bank submits that the statements attributed to these unnamed Board members were inadmissible hearsay, and that the January 18 email was from just one Board member. The Bank notes that Board members are sometimes absent from Board meetings, and that all this email indicates is that this one Board member may not have been present at the time of the consultations.

40. The statements attributed to the unnamed Board members are clearly hearsay in nature thus have little probative value. That said, for the reasons set out below, the Tribunal is nevertheless satisfied that the Board was not consulted with respect to the termination of the Applicant’s employment prior to a decision having been taken in this regard by the Bank’s President.

41. The January 18, 2016 email from the Board member clearly establishes that at least one Board member was not consulted with respect to the decision to terminate the employment of several of the Bank’s Vice Presidents, including the Applicant. What is more important for the purposes of the Tribunal’s analysis, however, is what the President himself had to say on the subject.

42. The Board member’s January 18, 2016 email was written in response to a January 15, 2016 email that was sent to members of the Board of Directors by the Bank’s President. In this email, which was entitled “Staff Changes”, the President stated “As part of my drive for much needed reforms of the Bank … I would like to inform you that I have made the decision to renew the leadership team at the Bank …” [emphasis added]. The President goes on to inform the members of the Board’s Board of Directors that the employment of five senior members of the Bank was being terminated, effective February 1, 2016. The President’s email then thanks the affected employees for “their loyal and dedicated service and contributions to the work of the Bank”.

43. There is nothing in the language used by the President in this email that suggests that his decision to terminate the employment of the Applicant was the result of, or followed on any prior discussions or consultations with the Board. Indeed, the language used by the President makes it clear that his decision was already a fait accompli, and that he was writing merely to inform the Board of the decision that he had already made.

44. There was, moreover, no realistic possibility that any consultation with the Board could have occurred after the President sent his January 15, 2016 email. This email was sent at 13:31, and the Staff of the Bank was advised of the termination of the Applicant’s employment (and that of the other senior officers of the Bank) just two hours later.

45. The Applicant contends that the failure of the President to consult with the Bank’s Board of Directors was unlawful, rendering the decision to terminate his employment null and void. In contrast, the Bank submits that even if the Tribunal were to conclude that the President failed to consult with the Bank’s Board of Directors prior to terminating the Applicant’s employment, this would simply constitute an irregularity that did not vitiate the legality of the President’s action. It would be for the Bank’s Board of Directors, and not the
Tribunal, to determine what, if any, action is appropriate to deal with the failure of the Bank’s President to follow the requirements of Article 37(2) of the Agreement Establishing the African Development Bank.

46. The Tribunal does not have to resolve this question for the purposes of this case. If the decision to terminate the Applicant’s employment was a found to be a nullity, it would logically follow that the Applicant would then have to be reinstated into his position. The Applicant is not, however, seeking reinstatement: he is instead seeking damages for the breach of the terms of his contract of employment. The Tribunal understands the Bank to be conceding that the early termination of the Applicant’s contract of employment constituted a breach of his contract, and the Tribunal is satisfied that the damages that flow from that breach can be fairly assessed without making a specific finding as to the legal consequences that flow from the failure of the President to properly consult with the Bank’s Board of Directors.

47. That said, the Tribunal would like to emphasize the need for all of the officers and employees of the Bank to follow the rules of the Bank. Indeed, it is incumbent on the President, as the Chief Executive Officer of the Bank, to lead by example in this regard.

4) Did the Applicant have a Legitimate Expectation that his Contract of Employment would be Renewed at the End of his Initial Three-year Term?

48. The Applicant submits that in addition to the damages that flow from the breach of his 2014 contract of employment, he should also be entitled to a further three years of salary as he had a legitimate expectation that his contract would be renewed at the conclusion of its initial three-year term. The Applicant states that although the Staff Rules make it clear that temporary appointments are valid only for the period specified in the recruitment letter and do not give rise to any right to renewal, the reality is that the constant and consistent practice of the Bank has been to renew the contracts of Vice-Presidents as long as there has been acceptable performance. The Applicant contends, moreover, that the Bank is obliged to renew the contracts of its senior staff in order to ensure continuity within the institution, and to provide security to staff members and their families, most of whom are expatriates.

49. The Applicant notes that the test established by this Tribunal in J.B. v African Development Bank, Judgment No. 85 of November 12, 2013, Application No. 2012/03, is that particular promises have to be made in order for a claim of legitimate expectation to be made out, or there must be a practice of the institution that is so constant and consistent as to give rise to a general rule or practice. The evidence on this point must, moreover, be clear and compelling so as to leave no doubt that the practice exists and is observed.

50. The Applicant states that at the time that he was hired in 2014, the Bank’s former President told him that if he performed well, his contract of employment would be renewed. The Applicant further states that after that he was told that his employment with the Bank was being terminated, he was advised by the Bank’s former General Counsel that, with one exception, the General Counsel could not recall any case over the more than 20 years that he had spent at the Bank where the employment contract of a Vice-President was not
renewed unless there had been a performance problem. According to the Applicant, this demonstrates that there was an established and consistent practice in force at the Bank in this regard, giving rise to a legitimate expectation on his part that his contract would be renewed for an additional three years.

51. The Tribunal cannot accept the Applicant’s assertion.

52. A contract for a fixed term of employment is just that: a contract for a specified period of time. An employee hired under a fixed term contract is thus on notice from the outset of his or her employment that he or she is not guaranteed indefinite employment with the institution in issue, regardless of how well the individual performs in his or her job. This is made clear by Staff Rule 64.01(b), the relevant portion of which provides that “... all temporary appointments shall be only for the period specified in the letter of appointment and shall carry no expectancy of renewal”.

53. The employment relationship will thus ordinarily cease to exist at the end of the term specified in the employment contract, whereupon it will be up to the employer and the individual to agree to any further contracts of employment.

54. The jurisprudence has recognized there to be a limited exception to this principle. At paragraph 43 of J.B. v. African Development Bank, the Tribunal cited with approval comments on legitimate expectations from The Law of International Civil Service, Vol. II, 1994, page 93, C.F. 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 a 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 continued employment. Where the required expectancy can be shown to exist, the hold of the contract has certain rights in respect of the renewal or conversion of his contract resulting from such expectancy.

See also Re: del Valle Franco Fernandez, ILOAT Tribunal, Judgment 1610.

55. There can thus be situations where a legitimate expectation of continued employment is created in the mind of an employee by the conduct of the employer, either through a consistent past practice on the part or the institution and/or through specific representations that have been made to the employee. Such situations will, however, be exceptional, given that such an expectation would be contrary to the express wording of the employment contract. The evidence supporting the creation of such an expectation must therefore be compelling. Moreover, where reliance is placed on the past practice of the institution as giving rise to a legitimate expectation of renewal, the evidence must demonstrate a practice that is so constant and consistent as to reflect a general rule,
leaving no doubt that the practice exists and is observed: see *J.B.*, cited above at para. 51. That is not the case here.

56. Insofar as the statements allegedly made to the Applicant by representatives of the Bank are concerned, this case is readily distinguishable from *J.B.*, where the Tribunal found that two senior employees of the Bank had expressly informed the Applicant in the weeks leading up to the expiry of the term of his initial employment contract that his contract would be renewed, or that it had in fact already been renewed. While the Bank did not deny that these representations were made to J.B., it argued that the statements were hearsay, and that the individuals making the statements did not have the authority to make them on the Bank’s behalf. On the specific facts of the *J.B.* case, the Tribunal found that the representations by two senior employees of the Bank were sufficient to give rise to a legitimate expectation on the part of the Applicant: *J.B. v. African Development Bank* at para 53.

57. In this case, the statement attributed to the Bank’s former President was made at the outset of the Applicant’s employment with the Bank, and was more of a general assurance than a specific warranty. Moreover, as the Tribunal has previously observed, statements made early in the employee’s tenure are less likely to give rise to a legitimate expectation as “the links with the Bank are not yet solid enough to be considered as a bridge to permanent employment”: *K.S. v. African Development Bank*, Application No. 2004/09 at para. 58.

58. The statement in issue was also qualified by the President himself, who noted that he would be leaving the Bank in the near future. An individual of the Applicant’s evident experience and sophistication would undoubtedly have been aware that one President could not bind his successor.

59. Insofar as the statement attributed to the Bank’s former General Counsel is concerned, this statement was allegedly made after the Applicant had been informed that his employment with the Bank was being terminated. The statement could not thus have reasonably given rise to a legitimate expectation on the part of the Applicant that his employment contract would be renewed.

60. The statement attributed to the Bank’s former General Counsel also falls short of establishing a consistent general practice on the part of the Bank in relation to the continued employment of its Vice Presidents. As noted by the Bank, the pool of past Vice Presidents is very small, and the Bank’s former General Counsel is alleged to have noted that there had been at least one situation where the employment of a Vice President was not continued, despite the fact that there had been no performance issues with respect to that individual. The evidence adduced by the Applicant is thus insufficient to establish a constant or consistent past practice on the part of the Bank with respect to the renewal of the contracts of employment of its Vice Presidents.
61. The facts on which the Applicant relies to support his claim to have a legitimate expectation of continued employment are thus significantly different than the facts that were before the Tribunal in J.B. On the facts of this case, the Tribunal is satisfied that the Staff Appeals Committee was correct in determining that the Applicant could not reasonably have had a legitimate expectation that his contract would be renewed at the end of his initial three-year term, and he is thus not entitled to compensation for the value of an additional three-year contract with the Bank.

5) The Assessment of the Applicant’s Damages

62. The Tribunal acknowledges that the President of the Bank needs to have confidence in his senior advisors, and it is not for the Tribunal to second-guess the wisdom of his decision to terminate the employment of the Applicant or that of the other senior officers of the Bank. That said, having elected to terminate the Applicant’s employment early, the President of the Bank was required to do so in a humane manner, in conformity with the rules governing the employees of the Bank. As will be explained below the Tribunal is not persuaded that this occurred in this case, and that the Applicant is entitled to damages as a result.

a) Salary in lieu of Notice

63. The Applicant’s contract of employment provided that it could be terminated upon the provision by the Bank of one month’s notice, or the payment of the equivalent amount of salary. As noted earlier, the Applicant was told in mid-January 2016 that his employment with the Bank would be terminated in just two weeks. The Bank therefore failed to comply with the notice requirement of the Applicant’s employment contract insofar as the provision of actual notice was concerned.

64. The Bank subsequently offered the Applicant the equivalent of six months’ salary in lieu of actual notice. Counsel for the Bank suggested at the hearing that this amount may have been offered because the Bank was aware that it had initially failed to comply with the notice requirement of the Applicant’s employment contract. The Tribunal is satisfied that the payment of six months’ salary in lieu of actual notice being provided to the Applicant was reasonable in the circumstances. Interest shall be paid on this amount, calculated from February 1, 2016 (being the date on which the Applicant’s employment was terminated) until the date of payment.

b) Payment of the Value of the Remainder of the Applicant’s Employment Contract

65. The Bank acknowledges that having elected to terminate the Applicant’s employment contract early, it was required to pay the Applicant the value of the salary and benefits that he would have earned had he remained working at the Bank for the remainder of the term of his contract. Notwithstanding the Bank’s concession on this point, this did not happen in this case.
66. The January 19, 2016 email from the Acting Vice-President CSVP advised the Applicant that the Bank would pay him the equivalent of 16 months’ salary and benefits. The Applicant has consistently taken the position that this amount was insufficient, and that he was entitled to be paid the 22 months remaining on his contract.

67. The Bank attempted to argue before the Tribunal that when the six months’ salary in lieu of actual notice being provided to the Applicant was added to the 16 months’ salary being offered for the breach of his contract of employment, the total value of the Bank’s offer was indeed the equivalent of 22 months’ salary.

68. There are three problems with this submission. The first is that it ignores the difference between salary being paid in lieu of actual notice of termination having been provided to a Bank employee, and the liquidated damages that flow from the breach of the employee’s contract of employment. The second problem with the Bank’s argument is that even on the Bank’s own estimate, its offer was less than the equivalent of 22 months’ salary and benefits plus one months’ salary in lieu of notice to which the Applicant was otherwise entitled. The third problem is that the Applicant was entitled to the equivalent of 22 months’ salary and benefits. The uncontradicted evidence of the Applicant is that no payment was contemplated by the Bank for the value of his employment benefits in relation to the six months’ salary offered to him in lieu of actual notice.

69. Having elected to terminate the Applicant’s contract of employment early, the Bank was obliged to pay him the value of 22 months’ salary and benefits, together with interest thereon calculated from February 1, 2016.

c) Moral Damages and Damage to Reputation

70. In accordance with the provisions of the Applicant’s employment contract, the Bank was obliged to provide the Applicant with a minimum of one month’s notice that his employment was being terminated. Instead, he was told that his employment was being summarily terminated and would end in just two weeks. This is not the humane treatment that one would expect of an institution such as the African Development Bank.

71. By all accounts, the Applicant had no advance warning whatsoever that his employment was in any jeopardy, and the termination of his employment came as a bolt out of the blue. The Applicant was undoubtedly extremely shocked and distressed after being told that he was losing his job, and would undoubtedly have required some time to process this devastating news.

72. It was, moreover, patently unreasonable to expect that an employee at the level of the Applicant would be able to attend to his job functions and prepare for an orderly transition of his duties in a responsible manner in just two weeks, particularly considering the fact that he was scheduled to be outside of Abidjan for part of that period.

73. Even more troubling are the consequences that flowed from the fact that the Applicant was not an Ivoirian citizen. The Applicant and his family had immigrated to Côte d’Ivoire for him to take up his position with the Bank. With the termination of his employment at the
end of January, 2016, the Applicant and his family were required to leave the country. It was completely unrealistic to think that in addition to performing the tasks necessary to wrap up his job at the Bank in an orderly fashion, the Applicant and his wife could make decisions about their future, find a new place to live, pack up their home and attend to moving their family in just two weeks.

74. It would have been one thing if there had been problems with the Applicant’s performance that could potentially have put the work of the Bank in jeopardy, had he been given more notice that his job was ending, but that was not the case here. As was noted earlier, there is nothing in the record before the Tribunal that would suggest that the Applicant’s performance at the Bank was ever anything but exemplary. There was thus no reason why he could not have been given a reasonable period to adjust to the news of the loss of his job, break the news to his family, figure out where to go next, find a new place to live and pack up and move his family.

75. The summary way in which the termination of the Applicant’s employment was carried out (including the very short period of notice offered to him) also affected his future employability. The uncontradicted evidence of the Applicant was that after news of the termination of his employment broke within and outside the Bank, he received numerous emails from officers of other international institutions around the world, asking him what was going on. The Applicant says that these questions were prompted by the summary nature of his termination, as terminating a senior Bank employee on just two week’s notice suggested that there was something seriously amiss with the employee in question.

76. The Applicant’s concern in this regard was subsequently confirmed, when a head hunter in South Africa told him that a company that was considering hiring him had made it clear that it had concerns with respect to the Applicant as “no one gets fired from a DFI (development financial institution)”, so there must have been something wrong with him.

77. In all of these circumstances, the Tribunal is satisfied that a substantial award of moral and reputational damages is appropriate, and accordingly, the Tribunal awards the Applicant the equivalent of three months’ salary as damages in this regard, together with interest calculated thereon from February 1, 2016.

d) Rental, Storage and Moving Costs

78. The Applicant says that shortly before he was told that his employment was being terminated, he paid his landlord the equivalent of six months’ advance rent on his accommodation. After being told of the termination of his employment, the Applicant was initially unsure where he and his family would be living. As a consequence, he had to put the family’s belongings into storage until such time as they could digest the news of his firing and determine where they would be going to live. He subsequently had to pay to move his family. He claims reimbursement for these categories of expenditure.

79. The Tribunal is satisfied that these expenses are directly attributable to the summary way in which the Applicant’s employment was terminated. The Tribunal therefore determines the Bank shall reimburse the Applicant for these costs upon the Applicant providing the
Bank with satisfactory proof that the payments were made and the amounts thereof. The Applicant is further entitled to interest calculated from the date on which the expenses were paid.

e) **The Provision of an “Exit Letter” for the Applicant**

80. The Applicant also asks that he be provided with an appropriate “exit letter” thanking him for his service and making it very clear that his leaving the Bank was not the result of any negative conduct on his part.

81. The Tribunal is not prepared to make this order, which it deems to be unnecessary. The Applicant was thanked for his service by the President, both in the email sent to the Bank’s staff on January 15, 2016, and again in the Certificate of Merit that was awarded to him by the President after the Applicant had left the service of the Bank.

82. The Tribunal has, moreover, endeavoured to make it clear in this decision that the termination of the Applicant’s employment was not the result of any performance problems or misconduct on his part, and that that he had, at all times, conducted himself in an exemplary manner. It is open to the Applicant to make such use of this decision in the future as he deems appropriate.

f) **Legal Costs**

83. The Staff Appeals Committee awarded the Applicant the sum of £15,000 in relation to the proceedings before it. This amount has not been paid, as the President of the Bank declined to accept the recommendation of the Staff Appeals Committee in this regard.

84. The Bank notes that the case before the Staff Appeals Committee was a different proceeding from the one now before the Tribunal, suggesting that no award should be made to the Applicant by the Tribunal in this regard as a result.

85. The Tribunal does not agree. It was the conduct of the Bank in summarily terminating his employment that caused the Applicant to have to incur the expenses associated with pursuing his claim before the Staff Appeals Committee. The cost award made by the Staff Appeals Committee was reasonable in all of the circumstances. The Tribunal therefore orders that £15,000 be paid to the Applicant for the costs of the Staff Appeals Committee process, together with interest accruing from January 27, 2017, that being the date of the Staff Appeals Committee’s recommendation.

86. Considering the Bill of Costs submitted by the Applicant, the Tribunal further orders that the Applicant receive a further sum of £25,000 as a contribution towards his costs of this proceeding. This amount shall bear interest from the date of this decision.

87. All awards of interest made in this decision shall be at the rate of 5% per annum.
V. **THE DECISION**

88. For the foregoing reasons, the Tribunal declares that the termination of the Applicant’s employment was unlawful. The Application is therefore granted, and the Bank shall pay the Applicant:

i) Six months’ salary *in lieu* of actual notice being provided to the Applicant together with interest thereon from February 1, 2016 until the date of payment;

ii) The equivalent of 22 months’ salary and benefits, together with interest calculated from February 1, 2016 until the date of payment;

iii) The equivalent of three months’ salary for moral damages and damage to the Applicant’s reputation, together with interest thereon calculated from February 1, 2016;

iv) The cost of six months’ rent, as well as the cost of storing and then moving the household effects of the Applicant and his family, together with interest calculated from the date on which these expenses were paid until the date of payment by the Bank upon the Applicant providing the Bank with satisfactory proof that the payments were made, and the amounts thereof;

v) Legal costs in the amount of £15,000 in relation to the proceedings before the Staff Appeals Committee together with interest thereon from January 27, 2017 until the date of payment;

vi) Legal costs in the amount of £25,000 as a contribution towards the Applicant’s costs of this proceeding. This amount shall bear interest from the date of this decision; and

vii) All awards of interest shall be at the rate of 5%.

Salihu Modibbo Alfa BELGORE President

Abdoulkader DILEITA Executive Secretary

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