I. INTRODUCTION

1. The applicant brings this application to challenge an administrative decision by the African Development Bank (respondent) to separate him from the Bank’s service following a restructuring of the Bank and the abolition of the post that he had held. In the main, the Tribunal is called upon to determine whether there was a rational basis for the abolition of the applicant’s post and whether, in terminating his employment, the Bank violated the procedural guidelines, timelines and safeguards relating to the implementation of the Bank’s Development and Business Delivery Model (Business Model). The Tribunal must also decide whether the Bank violated Staff Rule 611.06(b) and Staff Regulation 6.3 in that it failed to put in place the necessary mechanisms to assist staff members, in particular the applicant, in finding a new assignment. Finally, the Tribunal must consider whether the recommendations made by the Staff Appeals Committee (Committee) provided the applicant with adequate redress.

II. FACTS

2. The applicant joined the Bank in July 2011 as Principal Legal Counsel and Staff Relations Officer at grade PL-4 in the Corporate Human Resources Department (Human Resources).

3. In November 2012, the applicant’s post was realigned following an internal reorganization in Human Resources and he was transferred from CHRM.3 to CHRM.4. In March 2016, the applicant’s post was again realigned and he was transferred from CHRM.4 to the Front Office of the Director of Corporate Human Resources (CHRM.0). In April 2016, his contract was renewed for three years from July 2016 to July 2019.

4. On 22 April 2016, the Bank’s Board of Directors approved Senior Management’s proposal for the restructuring of the Bank. This restructuring was to take place in terms of the Business Model. In the course of the restructuring process, a Bank-wide review and re-alignment of staff posts was carried out. Consequently, some positions in the Bank’s service were changed, re-graded or abolished. In addition, new posts were created in accordance with the requirements of the Business Model.

5. In terms of a letter dated 15 February 2017, the applicant was advised that, as a result of the restructuring process, the position of Principal Legal Counsel and Staff Relations Officer at grade PL-4, which he held, was abolished and that his position was not mapped into the Bank’s new organizational structure. In the same letter, he was advised to apply and participate in a competitive process for new

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internal vacancies that matched his profile. He was also advised that, if he was unsuccessful in securing a new position in the Bank’s service, he would be separated from the Bank in accordance with the Bank’s applicable rules and procedures.

6. On 29 December 2017, the applicant received notification of termination on the basis of abolition of post. He was informed that if he was not successful in securing a new position by 31 January 2018, he would be separated from service with effect from 1 February 2018.

7. On 4 January 2018, the applicant requested reassignment to a vacant post that matched his profile. During the restructuring process the applicant applied for ten advertised vacant posts, but was not successful in any of these applications.

8. By letter dated 5 February 2018, the Director of Human Resources informed the applicant that his date of separation from the Bank had been extended from 31 January 2018 to 28 February 2018. On 1 March 2018, the applicant was separated from the Bank.

9. On 28th July 2018, the applicant filed an appeal with the Staff Appeals Committee (Committee) requesting that the respondent’s administrative decision to separate him from the Bank be reviewed.

10. The Committee found that the respondent’s termination of the applicant’s employment on the basis of abolition of post resulted from a staff reconfiguration for purposes of operational needs, as necessitated by a lawful restructuring process. They found that there was a rational basis for the abolition of the post that the applicant had occupied. The Committee further found that the respondent was under an obligation to inform staff about relevant developments specified in the Frequently Asked Questions Guide. Since the respondent did not send timely, or any, feedback to the applicant on the outcome of the applications he had submitted for the ten advertised posts, the respondent had failed to comply with the said procedures and guidelines. As a result of this failure, the Committee found that the applicant had been prejudiced and treated unfairly. The Committee recommended the applicant be paid six (6) months’ net salary as compensatory damages for the respondent’s non-compliance with the Business Model policies and restructuring guidelines and reimbursement of legal costs in the sum of GBP 6000. All other claims were rejected. These recommendations were accepted by the President on 24 March 2019.

11. On 27 June 2019, the applicant filed this application before the Tribunal.

III. RELIEF SOUGHT

12. The applicant requests that the Tribunal rescind the decision to terminate his position for abolition of post. He further requests the payment of all salary and benefits he would have been entitled to had he worked to the end of his contract, compensatory damages, moral damages, legal costs and interest. The respondent requests that the applicant’s requests for relief be dismissed in their entirety as unfounded and lacking in merit.

IV. LAW

13. The issues for determination are the following:

   (i) Whether there was a legal basis for the respondent to abolish the position held by the applicant, namely, Principal Legal Counsel and Staff Relations Officer.
(ii) Whether the respondent complied with the applicable regulatory framework, Staff Regulation 6.3 and Staff Rule 611.06(b) in the implementation of Business Model.

(iii) Whether the remedy recommended by the Committee was adequate.

14. The law applicable for the determination of this application is to be found in Staff Regulation 6.11.1(vii), Staff Rule 611.06 and Staff Regulation 6.3.

15. Staff Regulation 6.11.1(vii) states:

“The President may terminate the appointment of a staff member:
(vii) if the Bank decides that the needs of the service require abolition of the staff member’s post or reduction in the number of staff or of specific posts.”

16. Staff Rule 611.06 provides:

“(a) The President may terminate a temporary or permanent appointment of a staff member if the Bank decides that the needs of the Bank’s service require abolition of that staff member’s post or a reduction in the number of posts, including that occupied by the staff member, or a reorganization of the Bank’s service.

(b) Before an appointment is terminated under this Rule, the President shall, however, endeavour to reassign the affected staff member to a vacant position in the Bank for which he/she possesses the necessary qualifications and competence.”

17. The scope of the Tribunal’s review power in decisions relating to abolition of post is well established. The grounds for interfering in these decisions are limited to instances where there has been an abuse of discretion, the decision is arbitrary, discriminatory, improperly motivated, carried out in violation of due process, or an error of fact or law.¹

18. This principle was applied by the Tribunal in *E.G.M v the African Development Bank*, Application No. 2000/04 (Judgment No. 14 of 25 July 2001). Even though the case involved job evaluation, it is apposite to refer to it. At paragraph 31 of the judgment it is recorded:

“The review to which a judicial body can submit such an evaluation is limited to a minimum review of the exercise of his discretion by the head of the relevant institution and is designed to determine whether the classification of a given post has been marred by a serious irregularity. This means that a judicial body must clarify whether the discretionary power was exercised in an abusive or arbitrary manner or was vitiated by serious errors or by serious procedural or substantive mistakes.”

19. Accordingly, the Bank’s decision concerning its reorganization and restructuring processes, including abolition of posts, is taken at the discretion of its management. The decision to abolish the applicant’s post is subject only to limited review for the purposes of establishing conformity with relevant rules on competence, procedure and due process.

¹ *DV v IFC*, Decision No. 551 of the World Bank Administrative Tribunal (WBAT), at paragraph 50; and *R (No.2) v WHO*, Judgment No. 4099 of the International Labour Organisation Administrative Tribunal (ILOAT), consideration 3.
Was there a legal basis for the respondent to abolish the position of Principal Legal Counsel and Staff Relations Officer, CHRM.0?

20. In order to determine whether there was a legal basis for the respondent to abolish the position, the Tribunal will consider whether the abolition serves a legitimate purpose, and whether the abolition of post was genuine.

21. The Bank bears the burden of establishing that the abolition of post was “genuine” in the sense that the position was not replaced by a new one with substantially the same description and duties.

22. The legal basis for abolition of post is found under Staff Regulation 6.11.1 (vii) and Staff Rule 611.06 (a) and (b). In terms of these provisions, the Bank can justify termination for abolition if it can demonstrate that its service requires the abolition of the post concerned, a reduction in the number of staff, or a reorganization.

23. The respondent has submitted a number of reasons why the abolition of the applicant’s post has a legitimate basis. It says that the restructuring of its services, including Human Resources, was based on the requirements of the “Proposal to re-design the Bank’s Development and Business Model”. This proposal stated that the restructuring was “aimed at improving proximity to clients, becoming more cost efficient, increasing revenue and accelerating development impact on the ground”. The proposal also informed all staff that the implementation of the Business Model would be Bank-wide and would, amongst other things, impact on sector reorganization and restructuring, HQ streamlining and staff levels.

24. The final paragraph of the Executive Summary of the proposal states:

“The Board is invited to consider and approve the proposals in this report to change the organizational structure of the Bank, it has benefitted from extensive informal discussions with Executive Directors. The redesign of the operating model is aimed at improving proximity to clients, becoming more cost efficient, increasing revenue and accelerating developmental impact on the ground.”

25. The Business Model was thus designed to cover the respondent’s services in an inclusive manner. At a general level, this included Human Resources.

26. Section 3.4 of paragraph 24 of the Business Model, in relevant part, states:

“Human Resources Management (CHRM) and the IT Services (CIMM) will be internally reconfigured resulting in two less divisions. The occupational, health and safety functions in the Staff Welfare Division (CHRM.4) is to be embedded within the medical services and a unit created to report to CSVP. CHRM will then operate with three Divisions compared to four previously. CIMM.4 (Date Centre and Field Offices) functions is to be assigned to two existing divisions in the department.”

27. This extract from the Business Model demonstrates that there was, according to the Bank, a need for internal reorganization in Human Resources. As a result of this need, some of the positions in Human

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2 DI v IBRD, Decision No. 533 of WBAT at paragraph 85; Marchesini v IBRD, Decision No. 260 at paragraph 30; and DD v IBRD, Decision No. 526 of WBAT.

3 See Husain v IBRD, Decision No. 266 of WBAT at paragraph 32, which was referred to in DV v IFC, Decision No. 551 of WBAT at paragraphs 58-59.
Resources were reduced, abolished or regraded. The position of Principal Legal Counsel and Staff Relations Officer was not mapped and, therefore, abolished.

28. On the evidence, the consolidation of positions, including the one held by the applicant, was justified by organizational needs. The staffing requirements included a need to reconfigure Human Resources for the purpose of efficient and effective operations. The respondent has, in the view of the Tribunal, demonstrated that there was a legitimate rationale for the abolition of the post held by the applicant.

29. Was there a genuine abolition of post? In resolving this legal issue, there must be an enquiry as to whether the abolition of post was “genuine” in the sense that the abolished post was not replaced by a new post with “substantially the same description and duties”. The World Bank Tribunal has clarified that the test is whether there are material differences between the pre- and post-reorganization positions. Following this reasoning, the Bank must establish that there is a “clear material difference between the new position and the position that was made redundant”.

30. In In re Spaans, the International Labour Organisation Administrative Tribunal (ILOAT) held:

“One of the tests which the Tribunal has developed over the years to determine whether or not a post has truly been abolished is to ask whether or not the “abolition” has resulted in a reduction of the number of staffs in the affected department (See, for example, Judgment 139, in re Chuinard). If it has not, the presumption is that all that has taken place is a redistribution of functions among existing posts, a normal incident of good management, and not the abolition of one or more posts, a much more serious matter which will usually result in the loss of employment for one or more staff members.”

31. The applicant states that an HR Legal Consultant—Short Term and Principal Legal Counsel, PL4, were hired following his termination. He claims that there were stark similarities between the abolished post of Principal Legal Counsel and Staff Relations Officer and three newly-created positions (Principal Legal Counsel – Administrative Affairs, HR Legal Consultant – Short term and HR Legal Consultant).

32. The respondent contends that the consolidation of posts necessitated the expansion of the scope of the positions of Principal Legal Counsel and Staff Relations Officer to include additional duties such as the coordination of the Bank’s staff survey and cultural, budget and audit activities. It says that in order to meet Human Resources’ new operational requirements it became rational and necessary to consolidate the abolished position and two pre-existing positions (namely, Senior Employee Relations Officer and Senior Compliance and Budget Officer) into a newly created position of Principal Compliance Officer. This consolidation resulted in a reduction in the number of positions in Human Resources.

33. A critical comparison of the job descriptions of the abolished post and the position of Principal Legal Counsel–Administrative Affairs reveals material differences. The focus of the abolished post was on providing advice on the interpretation of the Staff Regulations and Rules, while the responsibility of the post of Principal Legal Counsel – Administrative Affairs was broadened to include advice on the Staff Regulations, as well as the Agreement establishing the African Development Bank. In addition, the legal representation responsibility of the abolished post was limited to the Committee, while the post of

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4 DV v IBRD, Decision No. 551 of WBAT at paragraphs 58-59. The Tribunal in that judgment referred with approval to Husain, cited above.
5 Ibid, at paragraph 59.
6 Brannigan v IBRD, Decision No. 165of WBAT at paragraph 23.
7 Judgment No. 2092 of ILOAT.
Principal legal Counsel – Administrative Affairs has broader legal representation responsibilities, including arbitration, the Committee and this Tribunal.

34. According to Presidential Directive No. 02/2012, paragraph 2.1(d), a “consultant” includes any expert external agent (whether an individual consultant or a consulting firm) that the Bank engages, by contract, for a defined period to perform a specific intellectual or advisory service. A “staff member” under Staff Regulation 1.2 means an officer or other regular employee of the Bank appointed by the President under the Staff Regulations, and does not include a consultant, or expert, unless otherwise provided in the terms and conditions of his employment. Staff Regulation 2.2 limits the scope of the Staff Regulations to staff members, excluding consultants or other employees appointed by special arrangement. The Organizational Chart in the Business Model focused on staff members’ positions, not that of consultants.

35. HR Legal Consultant and HR Legal Consultant – Short-Term are not positions reflected on the Organizational Chart, but rather experts, whose existence is need-based for a defined period. Staff members’ positions are the ones that form part of the organizational structure. In DV v IBRD, the Tribunal stated that “abolition is deemed genuine if the new positions are in fact different from the abolished ones and not essentially the same”.

36. Consultants should not be hired to fulfil the normal activities performed by its regular staff. It is therefore the view of the Tribunal that a comparison of the two categories is not relevant in this case, since the applicant has failed to persuade the Tribunal that the respondent misused this consultant’s services. It is also the Tribunal’s view that a comparison between the abolished post and the position of Principal Legal Counsel – Administrative Affairs shows that the abolition of the post was genuine.

37. The evidence demonstrates that the abolished position was intrinsically and substantively different from the newly-created position. The un-mapping of the position of Principal Legal Counsel and Staff Relations Officer, the post held by the applicant at the time, was a consequence of the systematic evaluation of posts in Human Resources and its streamlining in accordance with the Business Model. In conclusion, in light of the foregoing reasons, it is the view of the Tribunal that there was a legitimate ground on which to abolish the position and that the reasons for doing so were genuine. Thus, there was a legal basis to abolish the post.

38. The applicant alleges that the respondent failed to comply with the procedural guidelines, timelines and safeguards stipulated in the Development and Business Delivery Model. He also alleges that the respondent failed to comply with the regulatory framework and instruments it issued for the implementation of the Business Model. In particular, he asserts that there was non-compliance with the New Organization Structures Implementation Framework dated 14 October 2016.

39. According to the applicant, the details of the non-compliance relate to the failure of the Bank to produce and share with staff members a legal framework for implementing the Business Model prior to commencing the restructuring process. He asserts that the Bank’s management instead chose to produce random publications on the intranet between June 2016 and September 2017 in the form of Frequently Asked Questions (FAQs) to provide all staff members with relevant information regarding the

8 Decision No. 551 of WBAT at paragraphs 58-59.
implementation of the Business Model. He says that the FAQs were unreliable and presented ad hoc deadlines and misinformation regarding the overall non-transparent recruitment process. The applicant further alleges that the respondent failed to comply with the systematic guidelines provided for under the respondent’s FAQs.

40. The applicant claims that the most glaring and humiliating violation of his procedural due process rights was the failure by the respondent to disclose any information to him concerning the status of his ten job applications, which demonstrated a complete disregard for the FAQs. He states that the respondent failed to provide him with any qualitative information regarding the outcome of his job applications submitted during the Business Model restructuring exercise and prior to his termination, or any feedback from Human Resources, or any search firm explaining why he had not been longlisted or shortlisted for the positions.

41. The respondent, on the other hand, claims that it undertook various activities during its Bank-wide consultations and engagement processes, in which the applicant, like all other staff members, was always invited to participate. These included: circulation of the Proposal setting out the restructuring process; town hall meetings held in 2016 and 2017 to exchange views on the Business Model and the reorganization; exchange of information with staff members through a series of FAQs in November/December 2016, March 2017 and September 2017 on various human resource management issues and how the implementation of the Business Model would impact on the contracts and careers of staff members; involvement of all stakeholders i.e. the Senior Management Coordination Committee (SMCC), the Transformation Management Team (TMT), the Delivery Accountability and Process Efficiency Committee (DAPEC), Human Resources, members of staff (including their organizations) and the Staff Council (for purposes of maintaining dialogue between Management and staff members about organizational restructuring); and regularly updating and informing staff of developments.

42. What was factually established by the Committee is that the applicant applied for ten vacant positions and that, apart from his participation in one interview, he was not informed of the outcome of those applications prior to his termination.

43. The Committee found in favour of the applicant on the issue of non-compliance with the Business Model. In this regard the Committee noted:

“that the DBDM was like a moving target and its mutation would entail hitches. This is especially true about FAQs and the lack of effective and timely communication, which affected virtually all staff before the outcome of mapping as a period characterized by uncertainty for most staff of the Bank, in particular FAQ No.33 on feedback which was part of the enumerated benchmarks including shortlisting.”

44. The Committee further concluded that the evidence demonstrated non-compliance with the implementation of the Business Model with regard to the FAQ’s on the timeline for the entire recruitment process, and in particular, the 30 June 2017 deadline for the completion of recruitment, how long could an employee stay unmapped, and how long it took to obtain feedback. All this, it concluded, pointed to cumulative violations of a number of assurances given by the Bank in the FAQ’s which merited compensation.

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9 These are meetings of the entire staff body of the Bank including staff based at Regional Offices, usually addressed by the President.
45. The assurance given in the Inter-Office Memorandum from the Vice President, CSVP to SMCC entitled "The New Organization Structures Implementation Framework" reads:

"The recruitment agency/search firm will provide feedback to unsuccessful candidates including their competency gaps and development need within a maximum of two weeks from the interview date."

46. The Committee found that the Bank had failed to specifically rebut the averment that it had failed to provide the necessary feedback to the applicant on the vacant positions he had applied for. The Committee was satisfied that the applicant was not treated fairly in respect of his right to feedback for the ten applications he had submitted during the period.

47. The Committee concluded that, although the abolition of post had a rational basis, it was tainted by non-compliance with the Business Model procedures, guidelines and timelines, and with the subsequently introduced regulatory framework.

48. It is clear from the evidence that the applicant was not provided with any information regarding the outcome of the ten job applications he had made to the Bank. It must be noted that the letters sent by the respondent, dated 15 February 2017, 29 December 2017 and 9 January 2018 cannot be regarded as proof that he was not successful for nine of the job applications he made. The applicant only received feedback regarding the position of Principal Legal Counsel – Administrative Tribunal, for which he was interviewed. In addition, it is clear that the Bank breached the timelines for the provision of feedback stipulated in the FAQs.

49. These actions demonstrate a total disregard for the content of the FAQs when implementing the Business Model. The respondent’s argument, that these constituted only a “few” irregularities, cannot be sustained.

50. The reasoning of the Committee is sound and cannot be faulted. Its analysis of the evidence was correct and so were the conclusions it reached based on that evidence. Accordingly, this Tribunal confirms the finding of the Committee that the respondent, in implementing the restructuring process, failed to comply with the regulatory framework.

Vacancies opened up for external competition

51. The applicant further claims that the respondent breached Staff Regulation 6.3, in that it failed to have regard to persons already in its employ when filling vacancies. Staff Regulation 6.3 reads:

“Subject to the provisions of Regulation 6.1, in filling vacancies full regard shall be paid to persons already in the Bank service who possess the requisite qualifications and experience and then to external candidates with similar qualifications and experience.”

52. The applicant also alleged that the respondent had failed to comply with the safeguards stipulated in its Memorandum dated 14 October 2016, which amongst others stated:

“All positions to be competed will first be opened to internal regular staff members across the Bank; where no internal candidates are found suitable, such positions will then be opened to external competition.
Where a staff member is not mapped in the new structure, and as per Staff Regulations, the Bank will seek to redeploy them in a suitable position elsewhere in the Bank.
Staff members who are impacted /have not landed into any roles in the new structure will be given priority over those already mapped with respect to advertised roles."

53. The respondent says it was bound to adhere to the Bank’s principles and procedures of recruitment as provided in the Recruitment Manual. It says it was also bound by its default basis for staff recruitment was a competitive process as required by Staff Regulation 6.2 which provides, in pertinent part:

“6.2.1 Without derogation from the provisions of Regulation 6.1, the selection of staff members shall be made on a competitive basis without distinction on the basis of race, regional grouping, gender, or linguistic, cultural or religious affiliation”.

54. In the view of the Tribunal, the policy introduced by the Bank to implement the New Organization Implementation Framework did not replace or supersede its existing Rules and Regulations. The policy, in terms of which positions are to be opened to internal staff prior to being opened for external competition, is in fact a restatement of Staff Regulation 6.3.

55. It is apparent from the evidence that, for unexplained reasons, the respondent did not pay any heed to Staff Regulation 6.3. Instead, the respondent established a competitive recruitment process with equal treatment of all candidates, both internal and external. The Tribunal recognises that the dictates of Staff Regulation 6.3 are not absolute. While it was open to the respondent to adopt a competitive selection process as envisaged by Staff Regulation 6.2, it was under a duty, at the very least, to explain why it did not, or why it was not able to comply with Staff Regulation 6.3. It has not provided any explanation for such failure. It would thus appear that Staff Regulation 6.3 was not considered in respect of the ten positions that the applicant applied for.

56. The respondent was bound to act in accordance with the provisions of Staff Regulation 6.3. It failed to do so, or to provide an explanation for this failure.

Did the respondent “endeavour to reassign” the applicant?

57. The applicant submits that the respondent breached the duty of care it owed to the applicant in that it failed to endeavour to reassign the applicant to a vacant position for which he possessed the necessary qualifications and competence. He alleges that this was not in compliance with Staff Rule 611.06(a) and (b). Staff Rule 611.06(b) provides that, before an appointment is terminated, the President shall endeavour to reassign the affected staff member to a vacant position in the Bank for which that staff member possesses the necessary qualifications and competence.

58. The applicant asserts that, in the case of abolition of post, Staff Rule 611.06(b) requires that the organization make a good faith effort to reassign the staff member whose position has been abolished. He further asserts that Staff Rule 611.06(b) places a positive obligation on the respondent to endeavour to reassign the staff member.

59. The applicant submits that this does not mean allowing him to participate in a competitive recruitment process in order to secure a vacant position for which he possesses the necessary qualifications and competence. He states that it was a deviation from the intended purpose of Staff Rule 611.06(b) when the respondent provided precisely the same recruitment opportunities to internal staff members experiencing abolition of post, and to internal and external candidates seeking mobility and gainful employment. He therefore claims that there was no endeavour on the part of the respondent, because there was no separate mechanism in place for staff members, like himself, adversely affected by the restructuring exercise due to abolition of their posts.
60. The applicant further submits that the Committee erred in law when it concluded in its report that the respondent made a sufficient effort to reassign him, by allowing him to apply to ten vacant positions. He submits that this conclusion is flawed. No permission is required for a staff member to apply for vacant positions which have been announced.

61. The applicant states that, in his case, the respondent failed to provide him with any advice, guidance, and assistance on any job vacancies. He further states that he had necessary qualifications and competence suitable for reassignment to vacant positions, yet there was no evidence of any overt act by the respondent to endeavour to reassign him.

62. The respondent submits that an attempt to pursue an objective does not necessarily and always end in the success of the effort. It submits that international administrative law does not oblige the respondent to do more than employ its best efforts to reassign the applicant to a post for which he possessed the relevant skills, qualifications and competence. It avers that, following the notification to the applicant that his post would be abolished, the applicant, as was the case with other similarly affected staff members, was provided with every opportunity to apply for such posts as he deemed suitable for. It claims that the applicant’s employment was terminated after its diligent efforts to secure alternative employment for him became impracticable.

63. This Tribunal has had occasion to consider the nature of the obligation imposed on the Bank in terms of Staff Rule 611.06(b). In BM v the African Development Bank, Application No. 2004/07 (Judgment No. 47 of 11 May 2006 at paragraph 26), this Tribunal explained the obligation on the Bank in the following terms:

“the obligation stated therein is an obligation of means, that is to say an obligation on the employer to do its best. It is not an obligation to perform, that is to say an obligation on the part of the employer to provide another position to the applicant.”

64. In Arrah Bate v the African Development Bank, Application No. 2015/02 & 2015/06 (Judgment No. 97 of 14 August 2017), this Tribunal was called upon to consider whether the respondent had endeavoured to reassign the applicant to any vacant post for which she possessed the necessary qualifications and competence. In this regard, the Tribunal opined:

“The Tribunal underscores the need for an international organization to endeavor to reassign a staff member whose post had been abolished to a suitable post commensurate with his or her qualifications and experience, before terminating his or her appointment. Although it is not stated how far the organization is required to endeavor to reassign such a staff member, the Tribunal is of the opinion that the organization itself must put in place necessary mechanisms to assist the staff member concerned in finding a new assignment.”

65. The Tribunal went on to note that this principle is established by international administrative tribunals. In that matter, the Tribunal was satisfied that:

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10 At paragraph 159.
11 At paragraph 164.
“sufficient efforts were made by the respondent to reassign the applicant to a vacant post commensurate with her qualifications and competence. The respondent advised the applicant to apply for two positions which she did, but her applications were unsuccessful. The applicant could not be assigned to other vacant posts because she lacked the necessary qualifications and competence. The respondent also extended the deadline for reassigning the applicant to a vacant position for two months, but still the respondent was unable to find a suitable post for the applicant, resulting on her separation from the Bank.”

66. A comparative analysis with other international organizations (the World Bank and the World Health Organization (WHO)) show that these organizations have put in place various mechanisms that must be complied with when reassigning staff members.

67. The staff rules of the World Bank provide that, in a situation of redundancy, the Bank is required to assist redundant staff in seeking another position within the Bank Group by providing access to the internal recruitment platform and to a job search specialist. Staff may also be placed in vacant lower level positions. The staff rules also provide for retraining of redundant staff members, which may include on-the-job training for an existing or prospective vacancy.

68. The decision in DI v IRBD illustrates that the World Bank has established mechanisms that must be complied with when reassigning staff members whose posts have been abolished.13 There, the Tribunal stated:

“The Tribunal has held in Arellano (No. 2), para. 42 that

The obligation of the respondent, in this respect, is not to reassign staff members whose employment was declared redundant . . . but to try genuinely to find such staff members alternative positions for which they are qualified. It is an obligation to make an effort; it is not an obligation to ensure the success of such effort.

122. The record shows that..., the Bank made reasonable efforts to assist the applicant in finding another position within the Bank Group. First, the applicant was provided access to the Job Search Center as stated in the Notice of Redundancy and the Terms and Conditions for Notice of Redundancy. Second, the applicant was informed that the Bank was prepared to finance “specific outplacement counseling and/or special training activities agreed in advance, up to a maximum of 3 months net salary.” In lieu of receiving this training support, the applicant opted to receive a lump cash payment of 1.5 months’ net salary. Third, the record shows that the applicant’s manager discussed her job searches with her, offered her advice to consider applying to positions at the same grade level to increase her chances of employment, and offered to try to draw the attention of the Vice President for Change Management to the applicant’s requests for appointment.”

69. Similarly, the WHO has put mechanisms in place to govern situations of redundancy. Under consideration 26 in P.M (No.2) v WHO,14 the Tribunal relied on staff regulations to determine if reasonable efforts were made to reassign the staff member whose position had been abolished. The relevant regulations provide that, in the event of redundancy, reasonable efforts shall be made to reassign the staff member occupying an abolished post and establish a specific reassignment policy.

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13 Decision No. 533 of WBAT, at paragraphs 118-122.
14 Judgment No. 3688 of ILOAT. See also Judgment No. 4097 of ILOAT, consideration 10.
70. **Arrah Bate** highlights the fact that the Bank has not put in place mechanisms or steps that must be complied with when reassigning a staff member whose post has been abolished. In examining the duty on the part of the Bank to reassign the affected staff, the test that must be applied by the Tribunal is one of fact, based on the evidence available. In this Tribunal, a duty to reassign is a question of fact. In order to determine if the duty was met, the Tribunal must review each case based on the available evidence. There is no strict test to be applied.

71. This Tribunal, like other international administrative tribunals, such as the ILOAT, has recognized a general principle in terms of which an organization may not terminate the appointment of a staff member whose post has been abolished, at least if he holds an appointment of indeterminate duration, “without first taking suitable steps to find him alternate employment.” This principle was later expanded upon and clarified. The ILOAT explained that the principle does not mean that must actually find a job for the staff whose post has become redundant, “but that it must at least do its best, and in good time, to place someone” whose post is to be abolished.

72. The final ILOAT judgment of relevance on this issue is T. v. **FAO**, where it was held:

“In view of the particular circumstances of the case, it is perfectly legitimate to conclude that it was in the Organization's interest to terminate the complainant's assignment in Nairobi in order to maintain an untroubled working atmosphere in the service and to preserve its good relations with the host country. However, in accordance with the Tribunal's case law (see, in particular, Judgments 269 and 1231), the defendant could not terminate the complainant's appointment solely on that basis, without having taken appropriate steps to find him a new assignment. The defendant asserts that it made efforts to find the complainant a suitable posting but that nothing came of them. Nevertheless, having examined the evidence on file, the Tribunal concludes that the Organization has not established satisfactorily that it took all necessary steps to reassign the complainant, as was also pointed out by the Appeals Committee.”

73. It emerges clearly from the jurisprudence of international administrative tribunals that international organizations must make genuine, serious, and pro-active efforts to reassign staff members whose positions have been abolished. The institution does not have an obligation to ensure the success of such efforts.

74. The chronology of events based on the evidence available demonstrates that the respondent encouraged the applicant to participate in the competitive process for the internal vacancies which were advertised. Management informed the staff members through various channels that it would be opening up a competitive recruitment process and that all staff members would have the opportunity to compete for vacancies in the selection process. In addition, the respondent exchanged information with staff members, through a series of FAQs, on various human resource management issues and on how the implementation of the Business Model would impact on their contracts and careers.

75. It should also be stressed that the steps taken by the respondent were global measures, applicable to all staff members, irrespective of whether or not they were mapped in the new structure. The restructuring

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15 Judgment No. 97 of 14 August 2017, **Arrah Bate v the African Development Bank**, at paragraph 164.
16 **Gracia de Muñiz v. FAO**, Judgment 269 of ILOAT (1976), consideration 2
18 Judgment 2207 of ILOAT, consideration 9.
of the Bank was presented as an opportunity for all to compete for any advertised position. The only measure taken by the Bank, specific to the applicant, was that it extended the applicant’s notice of termination from 31 January 2018 to 28 February 2018.

76. The approach of the Committee is not invulnerable to criticism. In its report, it concludes that the Bank had fulfilled its obligation to “endeavour” to reassign the applicant, in that it had allowed him to apply for ten vacant positions. This is not appropriate. The “endeavour to reassign” a staff member to a vacant position cannot be equated to a staff member’s independent initiative in applying for vacant positions. The Committee appears to consider that the necessary mechanism put in place by the respondent was the creation of an opportunity for the applicant to apply for vacant positions through a globally competitive recruitment process. Staff Rule 611.06(b) imposes more than this on the Bank.

77. The Tribunal concludes that an international organization is required to do more than what the respondent has done in this instance. The evidence does not demonstrate that the Bank made genuine, serious, and pro-active efforts to reassign the applicant.

78. In Arrah Bate, in interpreting the phrase “endeavour to assist” under Staff Rule 611.06 (b), this Tribunal recommended that the Bank put in place the necessary mechanisms to assist staff members in finding a new assignment. The Bank would do well to consider whether it needs to amend its Staff Rules in order to cater for these mechanisms as has been done by the World Bank and the WHO.

79. It would be appropriate to mention, in conclusion, that the applicant went so far as to propose that he should be transferred to a post that matches his profile, background and experience. In this application, the applicant contends that the Director of Human Resources, should have authorized the applicant’s lateral transfer to the vacant position of Principal Legal Counsel in the General Counsel’s Administrative Affairs Division (PGCL.4), where his qualifications, competence and skills would have been of maximum service in the new organizational structure. The respondent was not prepared to consider a transfer of the applicant. It claims that a lateral transfer would have provided the applicant with an undue advantage that would appear discriminatory vis-à-vis other similarly situated staff members in the light of the objectives of the restructuring process. This response is indicative of the attitude of the respondent. It is also entirely inappropriate, considering that the respondent was obliged to employ its best efforts to reassign the applicant. This response was certainly not indicative of a desire to redeploy or reassign the applicant and supports the finding already made that it failed to “endeavour to reassign” the applicant.

Was the remedy recommended by the Appeals Committee adequate?

80. The applicant contends that the Committee’s recommendations endorsed by the President failed to provide adequate remedies for his wrongful termination.

81. It is well established that the President has a discretion to accept or reject recommendations made by the Committee. The exercise of that discretion by the President is subject to limited review. This Tribunal has consistently held that a decision to accept or reject a recommendation may be quashed by reason of a breach of a rule of form or of procedure, a mistake of fact or law, the failure to take essential facts into account, misuse of authority, or a mistaken conclusion drawn from the facts.

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20 Judgment No. 97 of 14th August 2017, Arrah Bate v the African Development Bank.
21 Judgment No. 22 of 9th November 2001, A.C v the African Development Bank, paragraph 27.
22 Ibid. See also Pinto 26 May 1988, Judgment No. 56 p. 11 and Gale Judgment 474 of ILOAT, p.3.
82. In the circumstances, the Tribunal’s review of the President’s decision to accept the recommendations made by the Committee, is a limited review. Such a decision can thus only be quashed on the bases listed in the preceding paragraph.

83. Paragraph 4 of the Committee’s report concedes factually to the respondent’s failure to comply with its own rules and procedures. It states:

“Between AfDB’s Board approval of the DBDM in April 2016 and compulsory separation of the Appellant at the end of February 2018, the AfDB failed to comply with its own internal regulations, rules procedures, guidelines and generally accepted principles of international administrative law governing abolition of post.”

84. The applicant contends that the Committee acknowledged that the respondent violated its own procedural guidelines, timelines and safeguards - referring to them as “hitches”. He submits that despite the adverse findings in the Committee’s report, the recommendations endorsed by the President fall far short of compensating him for the egregious psychological, physical, mental, emotional, professional and financial harm caused by the respondent’s wrongful termination of his employment.

85. The applicant was the holder of a fixed-term appointment. The Tribunal accepts that, as contended by the respondent, it was established in S.A v. the African Development Bank, Application No. 2017/02 (Judgment No. 104 of 26th January 2018) that remedial relief for failure to fulfil a legitimate expectation can only arise if, through the conduct of an employer, a staff member aggrieved by an act of termination of employment proves that she was genuinely led into expecting continued or further employment. The situation here is distinguishable from that in S.A. Here, the applicant alleges that he had a legitimate expectation to be employed for the period of his contract. He claims that he had a legitimate expectation that, subject to him complying the terms of his employment, he would have been employed until 9 July 2019, when his fixed-term contract was due to end.

86. To counter this argument, the respondent argues that the applicant could not have harboured the expectation that his employment would have continued until 9 July 2019, since the Staff Regulations and Staff Rules envisaged termination of appointment upon, among other grounds, abolition of post. In support of this argument, it relies on the decision of In re: DA,23 where the Tribunal ruled that an appointment that has still time to run does not preclude abolition under the Staff Regulations.

87. This argument of the respondent must fail. Where there has been a legitimate abolition of post, as is the case here, a person in the position of the applicant can rely on the security provided in Staff Rule 611.06 (b) that the respondent will “endeavour to reassign” him, which it has failed to do in this instance.

88. The applicant’s claim for damages for non-compliance with Staff Rule 611.06(b) and Staff Regulation 6.3 must succeed, as the respondent, in carrying out its organizational restructuring, failed to comply with these internal laws. This is a claim for financial losses suffered by the applicant as a consequence of “wrongful termination of his employment”. And this loss is attributable to the Bank for its failure to comply with its own rules. The evidence reveals that the respondent, in carrying out its organizational restructuring, did not comply with Staff Rule 611.06 (b). The applicant’s claim that he should have been paid all salary, allowances and benefits he would have been entitled to, had he worked to the end of his contract should be upheld. In this regard the applicant is entitled to be compensated for out of pocket medical and educational expenses incurred during the period from 1 March 2018 to 9 July 2019. These expenses would have to be specifically proved.

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23 Judgment No. 873 of ILOAT.
89. The claim for emotional, psychological and physical distress can succeed only if the applicant proves that he suffered distress as a result of a willful act, negligence or a procedural irregularity on the part of the respondent. The applicant has failed to adduce adequate and cogent evidence establishing a causal link between the alleged harm and the conduct of the respondent in its organizational restructuring. This claim must be rejected.

90. The applicant has requested damages for the Bank’s non-compliance with Staff Rule 611.06(b) and Staff Regulation 6.3. He has alleged that he suffered prejudice as a consequence of such non-compliance. The applicant has alleged that the losses he suffered as a result of his wrongful termination were far-reaching. He says that he was denied the opportunity of completing his career within the organisation. He was required to repay the balance of his salary advance in full by the date of his termination, which placed him in a precarious financial situation. Following his return to the United States he discovered that since he had spent almost eight years in the Bank’s service and outside of the United States, he was not eligible to receive unemployment related benefits.

91. Following his separation from the Bank, the applicant was compelled to make out-of-pocket payments (consisting of both his and the Bank’s contributions) in order to maintain family health care coverage. In addition, the Bank refused to pay the educational grant for the 2019/2020 year in respect of his son, resulting in further financial hardship for the applicant.

92. The Tribunal is of the view that the relationship between the Bank as an international organization and its staff members must be governed by good faith and a duty of care. The evidence shows that on the abolition of post, the respondent did not treat the applicant with the dignity and fairness owed to staff members. Therefore, in light of these irregularities and having regard to the circumstances of the case, the Tribunal considers it appropriate to award the applicant for damages suffered.

93. The applicant has demonstrated the prejudice he suffered as a result of the Bank’s failure to comply with its internal laws. In the exercise of its discretion, the Tribunal is of the view that an amount of GBP 15 000 would be an appropriate award in respect of damages.

94. In respect of the claim for compensatory damages to reflect damage to reputation, the jurisprudence established by international administrative tribunals indicates that, if the termination of the appointment of a staff member on grounds of abolition of post arises out of an organization’s policy, damages for injury to reputation cannot arise, nor are they justifiable. In In re: Fernandez-Caballero,24 the Tribunal ruled that:

   “Since the organization was applying a policy of staff retrenchment required by financial constraints, the non-renewal cannot be deemed to have harmed the complainant’s professional reputation.”

95. The applicant’s claim for compensatory damages to reflect damage to reputation must be rejected, because there was a valid basis for the abolition of his post.

96. The President awarded the applicant six (6) months’ net salary as compensation for the respondent’s non-compliance with Business Model policies and restructuring guidelines and GBP 6000 in respect of legal costs at the Committee. The Tribunal is of the view that both these awards are adequate.

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24 Judgment No. 946 of ILOAT.
V. DECISION

97. The Tribunal makes the following order:

(i) The recommendation by the Staff Appeals Committee of compensatory damages in the form of six (6) months’ salary and legal costs in the amount of GBP 6000 is confirmed.

(ii) The Bank shall pay the applicant his salary, allowances and benefits for the period 1 March 2018 until 9 July 2019, less income earned during this period.

(iii) The Bank shall reimburse the applicant for any medical and educational expenses incurred during the period 1 March 2018 until 9 July 2019 subject to providing proof thereof.

(iv) The Bank shall pay the applicant compensation in the amount of GBP 15 000 for damages suffered.

(v) The Bank shall pay the applicant an amount of GBP 15 000 in respect of legal costs.

(vi) All other claims are rejected.

Leona Valerie THERON

President

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