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About the Government Accountability Project

The Government Accountability Project (GAP) is a U.S. nonprofit public interest organization that protects the free speech rights of employees who report unethical conduct in the workplace. GAP promotes accountability by advocating occupational free speech, litigating whistleblower cases, publicizing whistleblower concerns, and developing legislation and policies that protect whistleblowers.

GAP's International Program promotes free speech in intergovernmental organizations (IGOs). In these institutions, GAP concentrates on promoting policies that protect all employees from retaliation when reporting misconduct, corruption and fraud. Because these organizations enjoy sovereign immunity and operate beyond the reach of national laws and courts, GAP also works to improve their internal justice systems. In addition, GAP provides guidance to whistleblowers from international institutions and helps promote the changes that their revelations show are needed.

In the past 31 years, GAP has worked with several whistleblowers who exposed racial discrimination issues. For example:

- In the late 1980s and the 1990s GAP represented minority groups and citizens at three separate hazardous waste incinerators in South Carolina, Arkansas and Ohio. After years of litigation, operations at two of those plants were stopped.
- In 2000 we represented an African American Customs inspector who exposed the routine racial profiling of African Americans returning to the United States. She accurately reported that white Americans were far less likely to be searched and detained for hours or days at borders despite the fact that they were far more likely to be transporting drugs. Her charges drew national attention and led directly to major policy changes.
- In 2002 we represented a border guard who exposed racial profiling at the Detroit airport and was retaliated against for violating a clearly unconstitutional gag order.

GAP is committed to providing equal opportunity in all personnel actions, including recruitment, hiring, assignment, training, compensation, benefits, promotions, transfers, terminations, and hours of work.

ANNEX II

Methodology of the WBAT Case Review

Annex III contains an analysis of World Bank Administrative Tribunal (WBAT) cases from 1996 through July 2008 that involved a racial discrimination complaint. This Annex will explain the methodology that was used to compile those cases.

The WBAT issued 242 judgments and 40 orders from January 1996 through July 2008. Due to the extensive length and complexity of each Tribunal decision, GAP researchers used the search function on the WBAT's website (www.worldbank.org/tribunal) to identify relevant cases. Searches were conducted for the following terms:

Search Term	Number of Results
Discrimination	118
Racial and Discrimination	14
Race and Discrimination	9
Racial	16
Race	13
Diversity	11
Bias	60
African	26
Caribbean	27
Black	7
White	4
Sub-Saharan	7
Nationality	25

The search yielded all relevant cases, regardless of time period, and pre-1996 cases were eliminated from consideration. We reviewed the remaining cases to determine how the issue of racial discrimination was involved, if at all. In reviewing these cases, we scanned for precedents mentioned and noted them. We then reviewed these precedents in order to ascertain whether or not they might influence rulings in disputes regarding allegations of racial discrimination.

Annex III represents a roster of the racial discrimination cases identified by GAP for purposes of this review. In preparing this Annex, we tried to record the race of all Tribunal applicants included, although, in some cases, this was not possible.¹ However, numerous cases included the applicant's nationality. If the applicant was from an African nation – such as Kenya (318) or Ghana (Order case) – and claimed racial discrimination, it was assumed that the applicant was black. Similarly, if the applicant was described as “African” (377, 150) and claimed racial

¹ Many cases included claims of “racial discrimination” but did not provide information that identified the race of the applicant. In many cases, the applicants' identities were concealed, and therefore they could not be contacted. Only one case (367) actually stated that the applicant was “black”. Another case (344) described the applicant as an “African American” and another (294) as of “African descent.” This was the closest that the Tribunal came to identifying the race of an applicant.

discrimination, it was assumed that the applicant was black. One applicant was described as “East Asian” (248) and was classified as such. Another applicant was described as “Iranian” (236/227) and was classified as Middle Eastern.

The remaining racial discrimination cases did not include nationality or race information. In these cases, a web search was done to see if an image could be obtained of the applicant. If a verifiable image could be found, the applicant was classified accordingly. In some cases, a web search was done to determine if the family name was common to a specific region or ethnic group. In such cases, the applicants were classified as “most likely” from that area. The remaining cases are listed in the chart below as “unable to distinguish.”

The chart below summarizes how GAP classified each discrimination case:

Race	Number of Cases	Case Numbers
Black	8	377, 367, 344, 318, 294, Order, 276, 150
East Asian	1	248
Middle Eastern ²	2	236/227
Questionable:		
Most likely South Asian	3	303, 215, 193
Most likely African	1	199
Most likely Hispanic	1	147
Most likely Middle Eastern	1	360
Unable to distinguish	4	313, 274, 255,175
Total	21	

In total, there were 21 cases during this time period in which the applicant alleged some form of racial discrimination. However, one set of cases involved the same applicant: Mahmoudi v. IBRD (cases 236 and 227).³

² These two cases involved the same applicant, as one Iranian applicant brought two cases related to discrimination.

³ In addition to these cases, there were two cases involving racial discrimination that were brought by an alleged retaliator, and one case of ‘reverse’ discrimination, in which the applicant claimed that white men were discriminated against. There was also one case (369) in which the Applicant was terminated following an investigation of alleged sexual harassment, retaliation and abuse of authority, as well as charges of conflict of interest. This case mentioned race in passing (“The Tribunal does not believe that the Applicant is justified in raising conspiracy theories, such as being singled out for reasons of race, nationality, gender or other prohibited grounds. There is no evidence of any such conspiracy,”) but it was not the crux of the case or the basis for the appeal. GAP therefore decided not to include this case in our review.

CASES AT THE WORLD BANK ADMINISTRATIVE TRIBUNAL THAT INVOLVE RACIAL DISCRIMINATION 1996 – July 2008

CASE	ISSUES	OUT- COME	REASONING
<p>1. Prudencio v. IBRD No. 377 December 14, 2007</p>	<p>The Applicant, who is a francophone African staff member, challenged the FY05 Overall Performance Evaluation (OPE) and his placement on a Performance Improvement Plan (PIP), alleging that he had been the victim of retaliation, discrimination and various other forms of unfair treatment.</p> <p>The Applicant, who worked for the AFTR2 unit within the Africa Environmentally and Socially Sustainable Development (ESSD) Technical Department of the Africa Region, claims that his supervisor “progressively spoil[ed]” his OPEs by underrating his performance, “not holding appropriate meetings with him, and by reducing his training program.”</p> <p>Additional information that is relevant to racial discrimination: “In December 2002, the Applicant began to write a series of personal opinion papers about the Bank’s operations in Africa that he entitled ‘Food for Thought’ and disseminated to colleagues.” Subsequently, his supervisor asked him to stop circulating the paper within the Bank and proposed a three month “monitored performance” period.</p> <p>“On 8 December 2005, the Applicant sent to the Director of the Diversity Program and to the Vice</p>	<p>Dismissed</p>	<p>“As for retaliation, it is first of all to be observed that the Staff Rules forbid it. (<i>See Prakas</i>, Decision No. 357 [2007], para. 34, and <i>O</i>, Decision No. 337 [2005], para. 46.) Still, the ‘burden lies with the Applicant to establish facts which would bring his claim within the Staff Rules’ definition of retaliation.’ (<i>F</i>, Decision No. 313 [2004], para. 50.) Here the Applicant has alleged that his managers retaliated against him and singled him out for dismissal on the bases of his ‘Food for Thought’ paper, his general exercise of a professional right to free speech, and his self-expression as a Sub-Saharan, francophone African.”</p> <p>“The Tribunal has seen no evidence of racial animus or individualized discrimination against the Applicant. The charge of retaliation in respect of the Applicant’s ‘Food for Thought’ paper and other broadly disseminated communications must also fail because: (i) the Applicant’s behavioral and other perceived failings were evident to his managers well before, and separately from, the ‘Food for Thought’ paper of 29 November 2004; (ii) the Applicant appears to have consciously vexed his relationship with his managers by issuing inflammatory broadcasts and statements after performance-enhancing processes were instituted; and (iii) the Tribunal does not in any event require managers to ‘disabuse themselves of their existing perceptions of the relative strengths and weaknesses of the Applicant’ in making decisions concerning the staff member... Moreover, the Tribunal can hardly fault the Bank, and particularly the Office of Ethics and Business Conduct, which had no operational dealings with the Applicant, for being sharply critical, without even approaching the threshold of impermissible restrictions on free expression, of what may fairly be described,</p>

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	<p>President of Human Resources a document entitled ‘NOTE to HR/Diversity Programs – Patterns of Racial Discrimination in AFTS2 and in the Africa-ESSD Department of the World Bank.’ In this document, the Applicant alleged that ‘white staff with blonde hair’ were favored in his Unit. The Applicant provided tables of staff members listed by time period of service, race (i.e. Asian, Black or White), hair color and current Bank employment status.”</p>		<p>given its context and manner of dissemination, as an unprofessional diatribe likely to have a deleterious effect on the working environment of other staff.”</p> <p>Additional information that is relevant to racial discrimination: “On 17 October 2006, a hearing before the Appeals Committee was held in the Applicant’s case. Seven witnesses either denied having discriminated against the Applicant, or stated that they had not observed Ms. Brooks or other members of the management team treating the Applicant differently from his colleagues. A retired co-worker of the Applicant testified that discrimination in the Unit against Sub-Saharan Africans, including himself, had made it difficult to obtain work in the Unit, but that Ms. Brooks [the supervisor] had not discriminated against him personally even though she was ‘part of’ the Unit’s discriminatory structure.”</p>
<p>2. Yourougou v. IBRD No. 367 May 24, 2007</p>	<p>The Applicant’s unit’s budget was cut and required immediate dismissal of “redundant” employees. The Applicant’s job was deemed redundant and there were no available alternative positions for him. The Applicant was given 6 months to find a new position before his employment at the Bank was terminated.</p> <p>The applicant, who worked for the Banking and Debt Management Division (BCFBD) of the Treasury Vice Presidency (TRE) is “54, a Canadian citizen of African heritage, with a PHD in Finance and Banking from New York University.” He filed a discrimination charge against the Bank a few days before his termination, in which he “indicated that he had requested that TRE Management arrange for a suitable position for [him] at any level. [He had] asked to participate in the Staff Exchange Program with the Development Bank of South Africa. [He had] also requested funding for on-the-job training to increase the odds of finding a job in operation, which is normal practice to facilitate the transition to operations. All these requests were denied.”</p>	<p>Dismissed</p>	<p>The Bank’s Argument: “As to the contentions relating to the under-representation of Africans, the Bank insists that its commitment to diversity cannot protect any individual person from actions that are rationally taken to meet legitimate business needs and implement budgetary reduction. Whereas Principle 4(a) of the Bank’s Principles of Staff Employment requires managers to consider race in the hiring process, the Bank’s redundancy rules prohibit such considerations.”</p> <p>“As the Tribunal has stated many times, most recently in <i>Prakas</i>, Decision No. 357 [2007], para. 33: [i]t recognizes the discretionary nature of redundancy decisions and that such decisions are subject to only limited review. The Tribunal will invalidate a redundancy decision only in cases of abuse of discretion or where the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (<i>Mahmoudi</i> (No. 2), Decision No. 227 [2000]; <i>Yoon</i> (No. 2) Decision No. 248 [2001]).”</p> <p>The Tribunal’s Decision: “The Applicant’s claims of abuse of discretion because the Bank discriminated against him based on his racial origins and age have not been established. The Applicant’s claim of discrimination on the basis of race is in essence that people from sub-Saharan Africa are under-represented in the Bank, that TRE declared a disproportionate number of Africans redundant</p>

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	<p>“He also points to the fact that one white staff member was promoted, and another was hired, at the time that his position was declared redundant, although it was well known at the time that Africans were underrepresented throughout the Bank. He contends that the Bank had improperly and erroneously assumed that he was suitable only for work in Africa and points to the fact that management only looked for alternative employment in the Bank’s Africa Region when assisting him to find alternative employment and described him to other potential employers as “a Canadian citizen <i>of African heritage</i>.”</p>		<p>between 2003 and 2005, and that despite this, a ‘white’ staff member was promoted and another was hired at the same time he was declared redundant. Furthermore, during the six-month job search, when Bank management was ostensibly assisting him to secure alternative employment, his managers focused only on the Africa region as a likely source. This effectively pigeon-holed him as a Black African rather than as an individual with relevant attributes. The Applicant claims support for this contention in Mr. Wheeler’s reference to his racial origins.”</p> <p>“The Tribunal observes that, while ‘discrimination takes place where staff who are in basically similar situations are treated differently,’ <i>Crevier</i>, Decision No. 205 [1999], para. 25, ‘it is necessary for an applicant to introduce facts supporting a claim of individualized wrongdoing which amount to a violation of his or her own terms of employment.’” <i>Njovens</i>, Decision No. 294 [2003], para. 17. Discrimination must be linked to a specific decision or course of conduct that is made on the basis of a prohibited ground.”</p> <p>“Furthermore, the Applicant does not challenge the Bank’s contention that whereas the Principles of Staff Employment require managers to consider geographic diversity, which may include race, in the hiring process, that consideration is not permitted in making redundancy decisions. The Tribunal is not convinced that the selection of the Applicant for redundancy was affected by the fact that his origins are African, or that the reference to his origins during the course of his job search had any, let alone material and adverse, impact on the Applicant’s candidacy for any position in the Bank or elsewhere.”</p>
<p>3. Moussavi v. IBRD No. 360 March 28, 2007</p> <p>(Note: This is one of three cases involving Moussavi; the others are 354 and 372)</p>	<p>The Applicant, who worked as a Senior Information Officer in the Operations Solutions team of the Information Solutions Group (ISG), “challenges his managers’ decision in 2005 not to increase his salary, as well as the salary reviews on which this decision was based. Specifically, the Applicant challenges as ‘arbitrary, discriminatory, an abuse of discretion and contrary to Staff Principles 2.1 and 6.1’ his substantially lower compensation compared to that of his peers, his</p>	<p>Dismissed</p>	<p>The Tribunal concludes that that methodology was reasonable and well within the discretion of the Bank.</p> <p>“The question remains, however, whether that methodology was derived from what the Applicant refers to as ‘established standards and procedures’ or was rather declared and implemented in an unpredictable and <i>ad hoc</i> fashion. Were it the latter, there could well be support for a claim of an abuse of discretion. It does appear that there were differences in the methodologies employed by Mr. Arroyo and Mr. Hanton, but both considered essentially the same</p>

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	<p>managers’ refusal to take corrective action upon realizing that his salary was substantially lower than that of his peers, the latest salary review, and his managers’ acceptance of that salary review.”</p> <p>Note: The decision does not state what the Applicant’s race is. His name suggests that he is of Middle Eastern descent.</p>		<p>factors, and reached the same conclusions with respect to the impact of the Applicant’s SRIs upon his low current salary. The Tribunal cannot find that the Applicant has in any material way been prejudiced by the differences in methodology... However, in the interest of avoiding inconsistencies in methodologies that may lead to possible inequities in salary reviews of staff members in the future, the Tribunal suggests – as did the Appeals Committee – that the Bank consider establishing a more transparent and consistent approach to such salary reviews...”</p> <p>“The Applicant’s contention that the comparator group should have been drawn not from all Level G staff members throughout the Bank but only from those in his ISG department is altogether unconvincing. The Applicant asserts that this group, working in the same department under the same managers, would better reveal the extent to which discrimination and bias contributed to the setting of salaries. He makes some vaporous assertions about gender, race and age discrimination...”</p> <p>“There is not the slightest evidence in the record to support these most serious accusations that the Applicant is a victim of illicit bias. Absent some such credible evidence, and absent a timely challenge to his salary awards through the years, the claim of discrimination must fail.”</p>
<p>4. Hitch v. IBRD No. 344 November 04, 2005</p>	<p>The Applicant is an African American woman who worked for the Bank from 1984 until June 30, 2004. During her employment she served as an agency temporary, then a CTAP and finally on term assignments. Despite positive performance evaluations and awards, the Applicant was never offered a permanent position with the Bank in the nearly 20 years that she worked there She applied for three separate positions in 2003-2004 and was denied all of them. She alleges racial, gender and age discrimination during the whole hiring process, but the case only discusses the merits of the final position (for the position of Program Assistant in the Bank’s Energy and Water Department) because the two previous occasions</p>	<p>Awarded one year net salary, including costs</p>	<p><u>The Tribunal was “troubled” by comments regarding race and age, but held that the discrimination did not affect the final hiring decision. Damages are based on procedural irregularities.</u></p> <p>The Tribunal said it was “troubled by the statements made in the above-mentioned e-mails of Ms. K and Mr. D. The Tribunal first finds entirely unacceptable the impersonal references to the Applicant as ‘African American’ and to Mr. P as ‘Indian.’... The Tribunal notes that it is the unfortunate stereotyping of this kind that gives rise to claims of racial and age discrimination. Especially undesirable, when comparing candidates during a selection process, are references made to age and race in a manner which results in singling out or setting apart one person; there, the impression is created that extraneous factors are being taken into account when making important employment recommendations or decisions. This</p>

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<p>were settled by an MOU.</p> <p>There were several controversial emails sent by Human Resources personnel that the Applicant presented as evidence of discrimination in the hiring process. These emails included the following language: “I would like to take the Indian Part II male, young, energetic, willing to do whatever it takes to get the job done. The other candidate is an American, 20 years with the Bank in various jobs, but always on term contract.”</p> <p>Also, “I thought I should let you know the background of the African American only for your benefit when you finally get to make the hiring decision. She is about 57 years old and has been in the Bank about 20 years. For 18 years, she has been a temp.... I also believe that in the department, we need young, dynamic staff who are quick starts and have the urge to go an extra mile. However, we have to be fair to the African American....”</p> <p>“My only concern with [Mr. T’s] approach is that it is based on inadequate information about the staff member. There seem to be rumors going around about her lack of teamwork skills and lack of this and that, none of which will pass the test if she ever happens to challenge the decision.”</p> <p>In response to these emails, the hiring manager wrote: “Many thanks for your clarification. I just told [Ms. K] and had her tell the panel not to corner me with one candidate but to give me – I would like them to come with two names.” The Selection Panel, which had been favoring Ms. Hitch, had not yet made their final recommendations when this email was sent.</p>	<p>is all the more so in a multinational organization like the World Bank which, under its Principles of Staff Employment, has as its mandate the hiring of high-caliber employees and the fostering of their equal treatment by disallowing unjustifiable differentiation on the basis of age, culture and gender while, at the same time, respecting the need for diversity.”</p> <p>“In this case, even though the reasonable inference is that age did play a role in Ms. K’s and Mr. D’s preferences for recommending or selecting a successful candidate, their preferences were never conveyed to the Selection Panel and thus never influenced the recommendation of that Panel. Their comments were sent only to the Director, who responded immediately to Ms. K, with a copy to Mr. D, that ‘diversity as per our compact will play a role here.’ Indeed, the Director’s efforts to assure a strong diversity program within his department were established before the Appeals Committee through his own testimony and that of the Director of the Bank’s Diversity Program. Therefore, despite Ms. K’s and Mr. D’s preferences as expressed in their e-mails, there is no evidence that extraneous factors such as age and race were taken into account by the Director in the final selection decision. On the contrary, it has been established that his decision was based on the applicants’ respective qualifications and legitimate diversity considerations.”</p> <p>Thus, even though the Tribunal found that language and references used in communications to the hiring director regarding personal attributes of race and age while comparing the two candidates for the position were unacceptable, they still held that “there is no evidence that extraneous factors such as age and race were taken into account by the Director in the final selection decision...”</p> <p>However, “the Tribunal finds that the Bank failed to follow proper procedures in the Applicant’s case in the following respects: (i) clear guidelines and selection criteria were not given to the Selection Panel at the beginning of the interview process; (ii) HR representatives were not significantly involved until a late stage of the interview process; (iii) the Selection Panel members had no clear understanding as to whether they had a duty to recommend two candidates or to select</p>
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	<p>The Applicant also claims that her subsequent interview with the hiring manager was inappropriately short and that he:</p> <p>“showed no interest in the interview procedure at all. His demeanor indicated to me that the other candidate had already been selected, and he was just going through the formality. His attitude toward me was very demoralizing.”</p>		<p>only one; and (iv) the hiring manager received information on others’ preferences regarding the interviewed candidates before receiving the Selection Panel’s report and before interviewing the candidates himself.”</p> <p>WBAT did not rescind the decision to hire the other individual and hire the applicant because she had left Bank under the MOU.</p> <p>Additional information that is relevant to racial discrimination: The decision mentions the 2003 report on diversity and the jurisprudence of establishing a discrimination case at the WBAT: “At the outset, and because a report on ‘Racial Equality in the Bank Group’ is part of the record, the Tribunal would like to emphasize that according to its jurisprudence ‘it is necessary for an applicant to introduce facts supporting a claim of individualized wrongdoing which amount to a violation of his or her own terms of employment.’ (<i>Njovens</i>, Decision No. 294 [2003], para. 17, citing <i>Nunberg</i>, Decision No. 245 [2001], paras. 43-44). Furthermore, the Tribunal re-affirms its jurisprudence that ‘discrimination takes place where staff who are in basically similar situations are treated differently.’”</p>
<p>5. Mwake v. IBRD No. 318 June 18, 2004</p>	<p>“The Applicant’s claim include many allegations and requests for relief which pertain primarily to the Joint Japan/World Bank Graduate Scholarship Program (the “Joint Scholarship Program”), which he entered in 1993. The claim also deals with a request for redress and damages with regard to his academic arrangements with the University of Pennsylvania and the Massachusetts Institute of Technology (MIT). The applicant requests unquantified damages and alleges that he is being deprived of academic access to these institutions. As part of his claim, the Applicant is seeking compensation for ‘limited access’ flags placed in his personnel record with respect to the Bank’s premises. The Applicant’s complaints stem principally from his academic pursuits and quest for funding by the Joint Scholarship Program,</p>	<p>Dismissed</p>	<p>The Tribunal dismissed the case because of untimeliness.</p> <p>“The Applicant believes racism has negatively affected him throughout his quests for academic accomplishment and justice. Such claims, however, even were they timely, are instantly belied upon a review of the evidence. The Applicant lost his scholarship because he was withdrawn from the University of Pennsylvania’s program, apparently for failure to fulfill that outside body’s academic requirements. The Applicant was discharged by the Bank because he failed to turn in work on time. The responses of the Joint Scholarship Program and the Bank appear to have been rational responses to the situations which presented themselves.”</p>

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	<p>rather than from the terms of his employment contract as a Short-Term Consultant.”</p> <p>The Applicant, who is from Kenya, alleged that he was expelled from the program because of racism.</p>		
<p>6. F. v. IBRD No. 313 June 18, 2004</p>	<p>The Applicant was part of the accounting staff of the Treasury Accounting Division (TREAC). He submits that “after he complained about alleged misrepresentations by his Division Chief in reports to higher management, the Bank retaliated against him by giving him poor evaluations, threatening him with termination, exposing him to a hostile work environment and denying him promotion. The Applicant contests his non-promotion and asks that his unfavorable Overall Performance Evaluations (OPEs) be removed from his file, that he be promoted to Grade G retroactive to July 2000, and that he be awarded the educational costs of pursuing a Master’s degree, together with compensation and costs.”</p> <p>The applicant did not claim racial discrimination per se, but did seek help, in June 2000, from the “Special Advisor on Racial Equality, who contacted the TREAC Human Resources Officer by e-mail on June 9 pointing out that the Applicant’s request for administrative review had been pending for nine months. The Advisor wrote: ‘I think this case should be resolved fast and justice restored. If this goes to appeal, we all will lose. How in the world would a request for administrative review take 9 months: Is this not a violation of the Staff Rule and due process? I would like to request that you bring the Vice President into the picture and facilitate resolution as soon as possible.’”</p> <p>Note: The decision does not state what the</p>	<p>Awarded \$5,000 net taxes and \$3,000 in costs</p>	<p><u>The Tribunal did not find discrimination, but assessed damages based on procedural irregularities.</u></p> <p>“The Applicant has failed to establish most of his complaints. The allegation of retaliation is not proven. Nor has he established that there was any abuse of discretion in the assessments of his work performance and behavior. He has not established that he was unfairly denied promotion.”</p> <p>“The Bank did not, however, live up to its obligation to respond to his request for administrative review in the time then specified by the Staff Rules. For this irregularity, the Bank should be ordered to make a modest payment. Although the application was fundamentally misconceived, the Tribunal is mindful that the Bank’s indecisiveness contributed to the Applicant’s litigious attitude. On that basis, the Tribunal deems that the Bank should be ordered to pay a similarly modest amount as a contribution to costs.”</p>

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	Applicant’s race is.		
<p>7. Bhatia v. IBRD No. 303 December 12, 2003</p>	<p>The Applicant challenges the decision “(i) to declare his position redundant on June 22, 2000 in terms of Staff Rule 7.01, on the basis of the abolition of his position; and (ii) to award him on August 9, 2000 a low merit award which led to his being awarded a 2% increase in salary.”</p> <p>The Applicant, who worked for the Energy Sector Unit, South East Asia Division, also alleges that his Manager was racist.</p> <p>Note: The decision does not state what the Applicant’s race is. His name suggests that he may be of South Asian descent.</p>	Dismissed	<p>The Tribunal did not find any facts showing racism and said that decisions about where to rank a staff member are discretionary and will only be overturned with proof of abuse of discretion.</p> <p>Additional information that is relevant to racial discrimination: “On March 22, 2001, the Applicant wrote to a Managing Director of the Bank (with copies sent to several other senior Bank staff) to complain that his Division Manager had lied about the Applicant’s record with the Bank and that the Division Manager had been motivated by improper racist attitudes towards the Applicant and other persons. On April 16, 2001, and again on July 20, 2001, the Applicant wrote to the President of the Bank and repeated these allegations. As these letters contained serious allegations against the Division Manager, the Respondent requested its Office of Business Ethics and Integrity, Department of Institutional Integrity (INT), to investigate them. ..In January 2002, the report of the investigation found that the Division Manager had not been guilty of racist conduct towards the Applicant or anyone else ...”</p> <p>“The Tribunal allowed for the admission of the INT investigation report and its accompanying testimonies into these proceedings based solely on their relationship to the redundancy decision at issue... The object of admitting the report into these proceedings was of course not to review the Applicant’s claims of discrimination on the part of his Manager in and of themselves but only in so far as they related to the Division Manager’s decision to declare the Applicant redundant. From an analysis of the INT report, the Tribunal considers that it discloses no basis for finding that the Bank’s decision to declare the Applicant’s position redundant was improperly motivated by racial prejudice on the part of the Division Manager.”</p>

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<p>8. Njovens v. IBRD No. 294 May 20, 2003</p>	<p>The Applicant lost his job as a Program Coordinator in the Ethics Office (BEI) in 2001 when the Ethics Office rolled into the INT and job functions were separated out.</p> <p>“The Applicant claims that the decision on redundancy under Staff Rule 7.01, paragraph 8.02(b), was a pretext to terminate his employment and was therefore arbitrary and improperly motivated. The Applicant further argues that this decision [redundancy] was based on the fact that he was the only senior-level staff of African descent in the Ethics Office, and that the decision was inspired by the intention to discriminate against him.”</p> <p>The Applicant claims senior management tried on two prior occasions to terminate his employment and lower his performance evaluations, which eventually led management to declare his position redundant through reorganization.</p>	<p>Awarded 6 months net salary plus \$10,000 in costs</p>	<p><u>The Tribunal did not find discrimination. Damages were assessed based on procedural irregularities.</u></p> <p>The Tribunal awarded damages based on the Bank’s failure to adequately address the Applicant’s performance at the end of his two-year probationary period with a note specifying expectations about the Applicant’s performance, a specific timetable or the standards to be met.</p> <p>Additional information that is relevant to racial discrimination: “The Applicant brought to the attention of the Tribunal a report prepared in 1997 by the law firm of Dewey Ballantine to substantiate his claim of discrimination based on race. That report does indeed conclude that there has been a measure of systemic discrimination among classes of staff members within the Bank. But it is necessary for an applicant to introduce facts supporting a claim of individualized wrongdoing which amount to a violation of his or her own terms of employment. (<i>Nunberg</i>, Decision No. 245 [2001], paras. 43-44.) The Tribunal’s careful review of the record does not disclose any evidence that the decisions affecting the Applicant were in any way tainted by illicit motivation. The allegation is accordingly dismissed.”</p>
<p>9. Opore v. IBRD Order May 20, 2003</p>	<p>“The Applicant, a Ghanaian national, alleges in his application that he was the victim of racial discrimination during his work at the Bank as a Consultant/Bank Temporary between 1991 and 1994. Although the Applicant claims that this discrimination prevented him from obtaining a Regular appointment and forced him to leave the Bank in April 1994, he took no steps to obtain redress either at the time of his departure or during his service with the Bank.”</p> <p>“The Applicant claims that he became aware of racial discrimination in the Bank two years after his departure from the Bank, when he spoke in 1996 with Myles Lynk, an investigating attorney from the firm Dewey Ballantine, which had been</p>	<p>Dismissed</p>	<p>“The Applicant’s extraordinary delays in formally seeking relief clearly bring the application outside the relevant time limits set forth in the Staff Rules. Instead of filing within the required 90 days, the Applicant took more than eight years to formally seek relief...The Tribunal for these reasons finds the application to be clearly irreceivable, pursuant to Rule 7, para. 11, of the Rules of the Tribunal.”</p>

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	<p>hired by the Bank to examine allegations of racial discrimination against Sub-Saharan African nationals in the Bank...the Applicant asserts that, at least at that time, he believed that ‘telling Mr. Lynk about the discrimination [which he allegedly suffered] was the same as filing a complaint.’”</p>		
<p>10. Nyambal v. IBRD No. 276 September 30, 2002</p>	<p>“This case involves claims by the Applicant regarding alleged mismanagement of his career, non-selection to an Open-Ended position, and damage to his reputation...”</p> <p>“The Applicant held a series of Long-Term Consultant (LTC) appointments in the Africa Region (AFR), Africa Technical Families Private Sector (AFTPS) from October 1995 through August 2000. At various times in his career at the Bank, the Applicant was a team leader and/or task manager for Benin, Togo, Niger, Cameroon, Senegal, Rwanda and Burundi.”</p> <p>The Applicant challenges “three actions of the Bank: (i) not to select him for the post of PSD Specialist in AFTPS; (ii) to issue the September 12, 2000 e-mail; and (iii) to harass him systematically in his work program and professional duties, as well as to discriminate against him in promotion, salary and all career advancement opportunities.”</p> <p>Note: Although the decision does not mention the Applicant’s race or nationality, an Internet search suggests that he is a black African from Cameroon.</p>	<p>Dismissed</p>	<p>“The Tribunal finds that only two of the Applicant’s complaints were submitted to the Appeals Committee within the time prescribed by the Statute. Those that were not timely submitted cannot now be considered by the Tribunal. The two remaining elements of the Applicant’s complaints are thus his non-selection to the PSD Specialist position and the September 12, 2000 e-mail.”</p> <p>“The Tribunal concludes that the non-selection of the Applicant to an Open-Ended position was taken for valid business considerations. The Applicant has not substantiated his allegation that his non-selection was the culmination of a premeditated plan to ruin his career with the Bank.”</p> <p>“On September 12, 2000, the Applicant’s Team Assistant sent an e-mail to AFR staff members announcing the Applicant’s departure from the Bank. The next day, the Applicant objected to that communication in an e-mail to his AFR colleagues, questioning whether this was an attempt to tarnish his professional reputation...”</p> <p>“The Tribunal agrees with the Applicant that the e-mail informing other Bank employees of the Applicant’s departure and the termination of his employment was improperly communicated within the Bank. The Applicant also alleges that this announcement was circulated among members of the African Development Bank. He does not, however, substantiate this allegation by submitting any relevant documents. For its part, the Respondent admits the impropriety of the e-mail and apologizes for what it describes as an honest mistake...Although the Bank’s conduct in this respect is susceptible to criticism, it neither caused the Applicant any perceptible harm, nor prevented him from securing a position with</p>

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			<p>the International Monetary Fund.”</p> <p>Additional information that is relevant to racial discrimination: “On September 15, 1999, the Applicant requested that the AFR Vice Presidents conduct an administrative review of his work and performance. The Applicant claimed that he had suffered from discrimination and an abuse of power, especially regarding: (a) his career status and prospects; (b) his work program; and (c) salary issues. ...The AFR Vice Presidents found that the Applicant had been given a series of short-term assignments, even though he had been performing satisfactorily and had delivered on the ‘work understandings’ described in their note of November 18, 1998. They also noted that there were inconsistencies in the Bank’s follow-through for previous agreements and a lack of clarity with regard to management’s staffing intentions and constraints for AFTPS. They found, however, that there had been stability in the Applicant’s work program and that the Applicant’s salary had been adjusted according to a reclassification undertaken in April 1998.”</p>
<p>11. Isaac v IBRD No. 274 September 30, 2002</p>	<p>The issue before the Tribunal is “whether the Respondent, having agreed to accept all of the recommendations of the Appeals Committee, failed to implement them and thereby violated the Applicant’s conditions of employment...”</p> <p>The applicant worked for the Operational Quality & Knowledge, Africa Technical Families (AFTQK) unit. In the summer of 2000, the managers of the Africa Region declared her position redundant; she appealed this decision.</p> <p>“In its August 6, 2001 report, the Appeals Committee determined <i>inter alia</i> that: (1) the Applicant had been improperly and arbitrarily declared redundant under Staff Rule 7.01, para. 8.02(b), as there did not appear to be a ‘true abolition’ of her position given that another staff member had been hired thereafter to perform several of her tasks as Team Assistant; (2) the</p>	<p>Awarded \$5,000 for “intangible injury” and \$2,500 in costs</p>	<p><u>The Tribunal did not find discrimination. Damages were assessed based on procedural irregularities.</u></p> <p>“The Tribunal concludes that the Bank has in all major respects honored those promises but that it did abuse its discretion in minor respects beginning with September 13, 2001. Even if by inadvertence, the letter of the Vice President, HR, to the Applicant appears from the record not to have included a copy of the Appeals Committee report, and it was not until October 19, 2001 that the Applicant received a copy. Although the Respondent argues that there was no proof of harm to the Applicant resulting from the delay, it is clearly the case that – without the complete and sympathetic reasoning of the Appeals Committee before her – the Applicant could not be expected fully to appreciate the extent of her rights to reinstatement and compensation. The Respondent added to the Applicant’s confusion by proffering to her the Memorandum of Agreement with much more elaborate and restrictive language than that of the Appeals Committee and the Vice President. This disadvantage to the Applicant was compounded by the confusion later created by the Bank in insisting that the Applicant’s</p>

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<p>Applicant’s redundancy was not in retaliation for the Applicant’s <i>earlier pursuit of a race-discrimination claim</i>; and (3) Human Resources had failed to follow through with their obligation to assist the Applicant in seeking other positions within the Bank.” The Committee recommended the rescission of the redundancy decision, her reinstatement for 36 months at the same level she had prior to the redundancy (with retroactive pay and benefits), assistance by HR in this transition and in seeking a permanent position, \$10,000 in compensation and legal fees.</p> <p>On Feb. 12, the Applicant filed an application with the Tribunal, asserting that the Bank “had not fulfilled the promises made by the Vice President, HR, through her September 13, 2001 acceptance of the recommendations of the Appeals Committee, so that there had been a breach of her employment contract. The Applicant’s principal complaint was directed against the Respondent’s alleged decision to ‘convert’ her appointment from Regular to Fixed-Term, and she claimed entitlement to a position comparable to the one she had previously held, most significantly in its status as a ‘regular’ position without any fixed duration.”</p> <p>“On August 30, 2002, after the case was listed, the Tribunal received a letter from the Respondent stating that the Applicant ‘has been offered and has accepted an open-ended position with the Bank’ ... the Applicant acknowledged that she had been ‘placed in a suitable regular staff position,’ and that she ‘agrees that her primary request for relief, e.g. that the Tribunal enforce Respondent’s decision to rescind her redundancy, is now a moot issue.’ However, she asserted that she is still entitled to ‘moral damages,’ a Tribunal decision with respect to the ‘procedural irregularities’ in her</p>	<p>reinstatement was to a 36-month position while at the same time inserting in the revised Memorandum that “[y]our appointment type will remain as regular...”</p> <p>“The Tribunal finds, finally, that the Applicant’s pursuit of her case before the Tribunal provided some additional impetus to the Bank in conscientiously searching for a permanent position, so that awarding some proportion of the requested attorney’s fees is appropriate.”</p>
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	<p>case, and legal costs.”</p> <p>Note: The decision does not state what the Applicant’s race is.</p>		
<p>12. Riddell v. IBRD No. 255 December 4, 2001</p>	<p>The Applicant, who worked in the Loan Department (LOA), “claims that the decision not to include her on the shortlist for four Disbursement Analyst Positions for which she had applied and the decision to award her a below average merit increase in 1999 were a result of retaliation against her and constituted an abuse of discretion.”</p> <p>“In September 1997, the Applicant spoke out during a Bank forum about the under-representation of African and African-American employees in higher-level positions in LOA. The Applicant claims that, despite completing her accounting degree and receiving excellent annual performance and salary merit ratings from 1994 to 1997, she was denied the post of Disbursement Analyst which she considered to be a retaliation for having spoken out at the September 1997 Bank forum. The Applicant mentioned several examples of past retaliation which she never challenged in the past nor is she now challenging before the Tribunal.”</p> <p>The Applicant also challenged a lower merit rating in 1999, which she attributed to “retaliation on the part of her supervisor. She asserts that her supervisor retaliated against her for having sent a memorandum of June 17, 1999 to the Vice President and Controller, CTR, requesting an inquiry into unfair selection practices in LOA.”</p> <p>The Applicant also had other claims, including that the Bank failed in its obligation to train her and</p>	<p>Dismissed</p>	<p>“The decision to select an applicant for a particular position, or to include him or her in a list of candidates, is discretionary and the Tribunal will not overturn such a decision unless it finds that it is tainted by bias or abuse of discretion.” The Tribunal did not find bias or abuse of discretion and therefore did not overturn the decision.</p> <p>The Tribunal did not find any clear evidence to support the Applicant’s claim that her supervisor retaliated against her. The Tribunal also found the Applicant’s argument that the Bank failed in its obligation to train her to be without merit, “as it was the Bank that funded the Applicant’s studies which led to her Bachelor’s degree in Accounting. The Applicant’s allegation that her 2000 salary increase was a product of retaliation is not properly for review before the Tribunal as the Applicant has not timely exhausted the internal remedies with regard to her manager’s decision on her 2000 merit increase. The same holds with respect to the Applicant’s claims that she was, as a result of retaliation, denied developmental assignments and promotions, inundated with work, undermined in her work, and treated unfairly by the new Director of LOA.”</p> <p>Additional information that is relevant to racial discrimination: “The Applicant repeatedly refers in her pleadings, as she did at the hearing before the Appeals Committee, to unfair employment practices in LOA over a long period of time. The new Director of LOA acknowledged in her testimony before the Appeals Committee that there were problems in the hiring practices in LOA during the time of the Applicant’s employment there and that efforts had been made to change such practices. The Tribunal finds this acknowledgment disturbing. Although the Tribunal did not find evidence of abuse of discretion or retaliation in the two complaints contested by the Applicant, the possibility that unfair hiring practices could have affected the careers of staff members in the department is a cause for concern which ought to be investigated.</p>

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	<p>advance her career.</p> <p>Note: The decision does not state what the Applicant’s race is.</p>		<p>The Appeals Committee recommended that an investigation into such practices be made, that wrongdoers be held accountable and that corrective action be taken to redress harms inflicted upon former and current staff members, including the Applicant. It is not evident from the record, whether such an investigation ever took place.”</p>
<p>13. Yoon (No. 2) v. IBRD No. 248 July 23, 2001</p> <p>(Note: This is one of six cases involving Yoon; the others are 332, 329, 317, 267 and 221)</p>	<p>The Applicant, a South Korean national who worked as an economist in the Population and Human Resources Division of the Eastern Africa Department (AF2PH), “challenges the Bank’s decision of September 29, 1998 declaring her position redundant under Staff Rule 7.01, paragraphs 8.02(c) and 8.03. She maintains that the decision was arbitrary, improperly motivated and in violation of Staff Rule 7.01, as well as the Principles of Staff Employment. She alleges that she was targeted for redundancy and that the rationale given for the decision was pretextual. The Applicant also accuses the Bank management of interfering manipulatively and willfully in her internal job search.”</p> <p>“The Applicant also contends that her redundancy was vitiated by discrimination against an East Asian woman from a country lacking influence within the Bank.”</p>	<p>Ordered the rescission of redundancy and reinstatement to a comparable position. Alternatively, the Bank can award her two years’ net salary. Also awarded costs of \$16,000.</p>	<p><u>The Tribunal did not find discrimination. However, it ordered reinstatement based on procedural irregularities.</u></p> <p>The Tribunal “did not find any evidence substantiating discrimination...” However, “the Tribunal finds that the Respondent did not abide by the terms and conditions stipulated by Staff Rule 7.01, paragraph 8.02(c), when it declared the Applicant’s position redundant on the basis of the Applicant’s underemployment. Such decision of redundancy must therefore be rescinded.”</p> <p>“The Tribunal also finds that the Applicant has been in several respects treated unfairly, which impacted negatively on her ability to develop many of the required skills conducive to obtaining new assignments and which would have avoided her underemployment, eventually invoked as the basis for the redundancy decision:</p> <ol style="list-style-type: none"> 1. She was never adequately made aware of any professional shortcomings or lack of skills until she was given negative feedback from her new managers soon after the reorganization under the Africa Region Renewal Program. 2. In spite of her recognized success in managing the Kenya vocational training program, the program was transferred to another division soon after setting up the Africa Region Renewal Program. 3. She was transferred without prior consultation to a division where most of the work was in French, in spite of the fact that her managers were aware that she did not speak French. 4. She was not assisted by the Bank to receive any sort of training to improve her communication skills. 5. There was no formal redesign of her position and the description of the new job appearing on the form submitted to the SRG was very carefully prepared after the fact to justify the redundancy decision.

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			<p>6. She was declared redundant without even seeing a job description of the new profile that the sector was seeking.”</p>
<p>14. Mahmoudi v. IBRD (No. 3) No. 236 Nov. 10, 2000</p> <p>(Note: This is one of four cases involving Mahmoudi; the others are 259, 227 and 219. Case 227 is also included in this chart, as it involved discrimination).</p>	<p>The Applicant, who is Iranian, “was one of several staff members who in July 1998 made written allegations of systematic discrimination against staff from developing countries within AFTH3. As a result, the Managing Director of the Bank (hereinafter “the Managing Director”) initiated an investigation through the Office of Professional Ethics (now renamed the Office of Business Ethics and Integrity). The investigation was conducted by an independent lawyer, who prepared a 130-page confidential report (hereinafter “the Lynk Report”) concluding that the complainants had not demonstrated discrimination on the grounds of race or nationality. The Applicant (along with the other complainants) received a copy of the Lynk Report on July 12, 1999.”</p> <p>“By a memorandum to the President of the Bank dated July 14, 1999, the Applicant and the other complainants requested an ‘administrative review of the outcome of the AFTH3 discrimination investigation conducted through [the Managing Director] ... and the Office of Professional Ethics...’In the request, the Managing Director’s role in the investigation process was criticized, as were the findings of the investigation and the ‘practices’ of the investigator.”</p> <p>“The present Application challenges a determination by the Appeals Committee that it was without jurisdiction to entertain a claim by Mr. Mahmoudi that he had suffered unlawful discrimination in the Africa Technical Families, Human Development 3 Division (AFTH3), and that the handling of a complaint he lodged jointly with three other staff members was wrongful. The</p>	<p>Inadmissible</p>	<p>The Tribunal has noted the Applicant’s argument to the effect that “the subject matter of this Application is of great importance to the Institution and requires a Hearing by the Tribunal.” The Tribunal has also taken cognizance of a letter written to its President, dated July 26, 2000, by the three other persons who had also sought to challenge the Lynk Report to the effect that ‘this case must be reviewed by the Tribunal’ in order to establish and sanction that ‘biased and deceitful’ investigation as conducted through the Office of Business Ethics and Integrity. It must be understood, however, that the Tribunal is not in a position to assert jurisdiction unless the requirements of the Statute are observed. As any decision-making institution, the Tribunal must ensure that it acts within the scope of its authority. Applicants who have failed to take the action necessary to open or preserve access to the Tribunal cannot hope that it will disregard its statutory limitations only because they are eager to be heard...For the above reasons, the Tribunal unanimously decides that the application is inadmissible.”</p> <p>Additional information that is relevant to racial discrimination: An editorial in <i>The Wall Street Journal</i> (http://www.opinionjournal.com/columnists/bstephens/?id=110010046) states that Mr. Mahmoudi had raised questions about possible wrongdoing in the Niger Health Sector Development Program prior to his termination and that “Mr. Mahmoudi made himself even more of a nuisance at the bank in 1998, when he raised a flag with Messrs. Madavo and Sarbib over the dismissal, ostensibly on budgetary grounds, of a dozen employees, mostly from developing countries, and their subsequent replacement with a dozen mostly European ones. In July 1999, an independent investigation by the law firm Dewey Ballantine concluded this was not, as Mr. Mahmoudi believed, a case of racial discrimination, although it did cite ‘significant management problems.’”</p>

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	<p>basis for the Appeals Committee’s decision was that the Appeal was untimely...</p> <p>On May 3, 2000, the Applicant submitted this third Application to the Tribunal. In it, he lists the “[d]ecisions contested ... and whose rescission is requested” as the following: (i) “[n]o response from Respondent to the request for Administrative Review dated August 12, 1999 ... in violation of the Bank’s rules”; (ii) “[d]eliberate deception of Third World staff by protracting a biased investigation ...”; (iii) “[i]llegal Administrative Review of July 30, 1999 by the same manager [the Managing Director] whose decision had adversely affected staff in violation of the Bank’s rules”; and (iv) “Appeals Committee refusal of March 17, 2000 to conduct a review of Applicant’s Appeal on the wrongful ground that the Appeal was sent out of time.</p>		
<p>15. Mahmoudi v. IBRD (No.2) No. 227 May 18, 2000</p> <p>(Note: This is one of four cases involving Mahmoudi; the others include 259, 236 and 219. Case 236 is also included in this chart, as it involved discrimination).</p>	<p>The Applicant, who is Iranian, “challenges a decision by the Bank to declare his position redundant, which in the Applicant’s view was arbitrary and improperly motivated.”</p> <p>The applicant worked for the Africa Technical Families, Human Development 3 (AFTH3) unit. In January 1998 he was given a notice of redundancy. In April 1998, the Applicant requested administrative review of the decision; his review was unsuccessful and he was placed on administrative leave in February and separated from the Bank in Sept. 1998.</p> <p>“The Applicant has variously accused the Bank of ‘sabotaging’ his FY97-98 work programs, of repeatedly ‘misrepresenting’ his employment record as well as significant events in his career with the Bank, of ‘libeling’ him as suicidal, of</p>	<p>Ordered the rescission of redundancy and reinstatement to a comparable position. Alternatively, the Bank can award him eighteen months’ pay.</p>	<p><u>The Tribunal did not find discrimination. However, it ordered reinstatement based on procedural irregularities.</u></p> <p>“It is difficult to understand the Applicant’s complaint about this incident, and impossible to accept that it involved any form of discrimination...”</p> <p>However, “the Tribunal has not found sufficient evidence of substantive – let alone ‘dramatic’ – changes in the ‘working conditions and standards applicable to the Applicant’ to sustain a redundancy decision based on paragraph 8.02(c). Even more importantly, the Tribunal observes that the Bank, in its explanations, has elided the requirement that the incumbent’s position must have been <i>redesigned</i>. That requirement has not been satisfied in this case, and the Bank has not satisfied the Tribunal that the circumstances justified the exercise of discretion under paragraph 8.02(c)... In light of the above, the redundancy decision lacked a normative basis, and must be rescinded as an abuse of</p>

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	<p>conspiracy to achieve his termination by any means, and of harassment, discrimination and humiliation.”</p>		<p>discretion.”</p> <p>“The significant relief accorded to the Applicant is granted notwithstanding the regrettably strident and confusing way in which the Applicant has pursued his claim. The Applicant’s presentation of the issues has been contradictory. His citations to the evidentiary record have been misleading. His accusations of harassment, conspiracy, libel, and falsification of documents have been ill-conceived...”</p> <p>“The judgment in this case was compelled by the plain facts of the record and by the inability of the Bank to justify its action. It was not assisted by the arguments of the Applicant, whose submissions often missed central points and dwelled upon numerous irrelevancies which unduly complicated the proceedings.”</p>
<p>16. Madhusudan v. IBRD No. 215 October 1, 1999</p>	<p>“The case raises issues related to the entitlements of persons having served as Long-Term Consultants. Such persons received the same benefits as Long-Term Temporary appointees (hereinafter ‘Temporaries’), and were collectively categorized with the latter as ‘non-regular staff’ (hereinafter ‘NRS’). .. The applicant, who has resigned, is requesting pension credits and claims ‘entitlement to benefits under Section 2.1(b)(iii) of the SRP on the basis that it included Consultants as participants. He claimed that he had performed equivalent functions and duties, under equivalent conditions of work, as Regular staff, and that he was therefore entitled to the same pension benefits as Regular staff under Principles 2.1 and 6.1 of the Principles of Staff Employment.”</p> <p>He also suggests that NRS of Indian nationality were the object of discrimination.</p> <p>Note: The decision does not state what the Applicant’s race is. However, his name and the subject matter of the case suggest that he is of</p>	<p>Dismissed with \$4,000 in costs</p>	<p>“To determine whether individual applicants have a legitimate grievance, then, the circumstances of their particular cases must be examined. They may prevail not because the rules which governed their activity had <i>generally</i> deleterious effects, but only if they have suffered a <i>détournement de procédure</i> and <i>détournement de pouvoir</i> in the particular instance of application. This has not been demonstrated...The record in this case does not reflect a pattern of abuse amounting to a <i>détournement de procédure</i> in its dealings with the Applicant.”</p> <p>Additional information that is relevant to racial discrimination: “The Respondent additionally points out that the Applicant could at any time after March 1992 have requested to be converted prospectively under Staff Rule 4.01, Section 7, and then requested administrative review if his request had been denied. (Certainly this ought to have been his emphatic approach if he believed that NRS of Indian nationality were the object of discrimination, as he now unpersuasively suggests.)”</p>

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	<p>South Asian descent.</p>		
<p>17. Tagbo-Ogbuagu v. IBRD No. 199 October 19, 1998</p>	<p>The Applicant, who worked as an Administrative Secretary in the Infrastructure Development Division of Country Department V of the Asia Region (AS5IN), “claims that the decision of the Bank to terminate her employment was an abuse of discretion in that it was tainted with bias and discrimination arising out of unfair assessments of her in the 1993-1994 and 1994 Performance Review Records (PRRs).” She claims that the Division Chief was prejudiced against her.</p> <p>Note: The decision does not state what the Applicant’s ethnicity is. Her name suggests that she may be of African descent.</p>	<p>Dismissed</p>	<p>“The Tribunal is satisfied on the evidence that the Applicant’s allegations of discrimination, bias and harassment are not borne out by the record. There is no evidence that Division Chief X discriminated against her on ethnic grounds as alleged. The evaluation of the Applicant’s performance was not conducted by Division Chief X alone but included assessments by the Applicant’s supervisors. Their conclusions were substantially the same, namely, that there were various areas in the Applicant’s performance that needed improvement. Indeed, there was a history of weak performance by the Applicant in certain areas of her work and there is no basis for the allegation that negative evaluations of her performance constituted evidence of hostility and discrimination against her on ethnic grounds.”</p> <p>“The Tribunal further finds that there was no breach of due process in the administrative steps taken to monitor the performance of the Applicant leading to her dismissal on the ground of unsatisfactory performance as the procedures for such termination were complied</p>

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			with.”
<p>18. Chhabra (No. 2) v. IBRD No. 193 May 15, 1998</p> <p>(Note: This is one of three cases involving Chhabra; the others include 200 and 139).</p>	<p>“This is an application contesting the decision of the Workers’ Compensation Administrative Review Panel (‘the Review Panel’) dismissing the Applicant’s claim for, inter alia, reimbursement of her medical expenses for illnesses allegedly suffered by her in the course of her employment with the Respondent.”</p> <p>The applicant, who was an economist in the Country Operations Division of the Asia Region, Country Department II (AS2CO), had previously contested the Bank’s evaluation of her performance and her termination. In case 139 she claimed that Staff Rules on termination were improperly applied and that “there was ample evidence of prejudice and discrimination against the Applicant on the part of her manager while she was in AS2CO Division.” She won that case on procedural irregularities; discrimination was not substantiated.</p> <p>Note: The decision does not state what the Applicant’s race is. Her name suggests that she is of South Asian descent.</p>	Dismissed	<p>“It appears undisputed that at least the principal ailment, rheumatoid arthritis, originated not with the Applicant’s employment but rather with the birth of her child in 1981. Most of the medical reports given by the Applicant’s physicians do indeed point out a connection between the ongoing stress in the Applicant’s work and the aggravation of her illnesses, but express considerable doubt as to the precise causal relationship ... her claim must fail because -- by the application of the objective standard that governs in the District of Columbia and in the Bank -- the Tribunal considers that there is no reasonable ground for rejecting the Review Panel’s conclusion that her actual working conditions would not have caused a similar illness in an average staff member.”</p> <p>“The Tribunal has actually determined, in an earlier decision in which Ms. Chhabra had sought, among other things, rectification of her below norm merit awards, that her allegations of harassment and prejudice on the part of her supervisor were without evidentiary support ...It may be noted in this connection that one of the physicians consulted by the Applicant, although generally inclined to find some linkage between her ailments and the stresses of her job, observed: ‘The question has been raised whether ethnic and cultural differences between Mrs. Chhabra and her supervisors could have contributed to her stress. This is a highly subjective matter, and it is difficult to answer.’”</p>
<p>19. Carter v. IBRD No. 175 November 18, 1997</p>	<p>Mr. Carter – who worked as a consultant to the Facilities Planning and Design Division in the Administrative Services Department – “contests, and requests rescission of, the Bank’s decision of June 22, 1995 not to renew his consultant fixed-term contract after its expiration date. This decision, he maintains, was made ‘on the basis of racial discrimination.’ The Applicant also contests, and requests rescission of, the Report of the Appeals Committee of May 7, 1996 which, he</p>	Inadmissible	<p>The application is inadmissible. For example, the Applicant’s appeal related to the VP’s decision “does not comply with the requirement of exhaustion of internal remedies and is inadmissible under Article II(2) of the Statute of the Tribunal.”</p> <p>Additional information that is relevant to racial discrimination: “Even when the circumstances of the case do not warrant any right to a renewal of a fixed-term contract, the Bank’s decision not to renew the contract at the expiration of its predetermined term, however discretionary, is not absolute and may not be exercised in</p>

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	<p>complains, failed ‘to recommend awarding of relief.’ The Applicant finally contests, and requests rescission of, the decision of May 9, 1996 by which the Vice President, Human Resources, decided to accept the Appeals Committee’s recommendation; this decision, the Applicant maintains, failed to ‘fully consider the section titled REASONS in the Report ... which clearly indicated an abuse of discretion, improper practices, and evidence of racial discrimination on the part of the respondent.’</p> <p>Note: The decision does not state what the Applicant’s race is.</p>		<p>an arbitrary manner. According to the principle laid down in de Merode, “[d]iscretionary power is not absolute power.”</p> <p>“The Bank would abuse its discretion, for instance, if it were to base its decision not to renew a fixed-term contract at its expiration, discretionary as such a decision may be, on considerations unrelated to the functioning of the institution, such as racial discrimination.”</p>
<p>20. Nkojo v. IBRD No. 150 May 14, 1996</p> <p>(Note: This is one of two cases involving Nkojo; the other is 170).</p>	<p>The applicant, who worked for the Asia Technical Department (AST) in the Industry, Trade and Finance Division (ASTIF), contests her termination on numerous grounds, including prejudice.</p>	<p>Dismissed</p>	<p>The Bank’s Argument: The Bank contends that “one of the Applicant’s supervisors alleged to have been prejudiced was not motivated by prejudice in describing her performance as less than satisfactory but had sufficient evidence on which to base such a conclusion; nor was there discrimination against her as an African.”</p> <p>Tribunal Decision: “The Applicant’s reference to a report prepared in the Bank on the exercise of prejudice against Africans cannot by itself lend any support to the accusation by the Applicant that one of her supervisors who was critical of her work was motivated by prejudice against Africans. The Applicant’s allegation of prejudice is supported by no evidence at all.”</p> <p>“The Tribunal concludes that the decision to terminate the employment of the Applicant subsequent to her failure to improve her performance during the probationary period was a proper exercise of a managerial discretion provided for in Staff Rule 7.01, para. 11.02.”</p>
<p>21. Lopez v. IBRD No. 147 May 14, 1996</p>	<p>The Applicant was a Senior Personnel Officer (PO) on the Personnel Team for Latin America and the Caribbean Region (LAC) of the Personnel Management Department (PMD). His main contentions are that his due process rights were</p>	<p>Awarded \$20,000 in damages, but no costs</p>	<p><u>The Tribunal did not find discrimination. However, it awarded damages based on procedural irregularities.</u></p> <p>The Tribunal rules that there “was undue delay in the administrative review requested on September 17, 1993; there were infringements</p>

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	<p>violated in the conduct of his 1993 PPR as regards the supplemental review and the management review. Also, that there was no adequate basis for placing him on probation and that this decision was retaliatory and a violation of his due process rights.</p> <p>The Applicant also alleges that the final evaluation of his performance was tainted with irregularities and not made in good faith. He believes that his managers had an improper motive to harass him. The Applicant also claims that the administrative review process was tainted, his right of privacy was violated, and that the Bank made defamatory statements about him.</p> <p>Note: The decision does not state what the Applicant’s race is. His name suggests the he is of Hispanic descent.</p>		<p>of the Applicant’s right to confidentiality; and excessive and unjustified security measures were taken.”</p> <p>“The Applicant has also made allegations of harassment and prejudice which, in his view, affected the outcome of the process as a whole, and in particular, resulted in an adverse evaluation in his PPRs and of his probationary period. Moreover, the Applicant contends that he was discriminated against on racial grounds. There is no evidence at all that this was a case and certainly no racial discrimination has been proved.”</p>
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CASE BROUGHT BY THE ALLEGED RETALIATOR:

CASE	ISSUES	OUT-COME	REASONING
<p>1. Conthe v. IBRD No. 271 September 30, 2002</p>	<p>“The dispute is... unusual in terms of the hierarchical level at which it has arisen; the Applicant was a Vice President and reported directly to a Managing Director. Moreover, his allegations are grave: in his own summary phrase, they constitute ‘a knowing violation of the Bank’s Rules by the Bank’s Senior Management.’ He goes so far as to state that Bank officials in their actions in relation to him exhibited a degree of dereliction of duty which in some countries would expose them to criminal sanctions. At any rate, the object</p>	<p>Awarded \$20,000 costs</p>	<p>“The record of the events leading to the Applicant’s reassignment and non-confirmation is quite sufficient to sustain the Bank’s contention that there was no abuse of discretion...”</p> <p>“The Tribunal is concerned only with determining whether he has proved unfair treatment or harassment... The only matter which gives rise to legitimate criticism is that of the improper March 2000 Update... this impropriety does not come close to supporting a finding of unfairness, harassment or retaliation...”</p> <p>Regarding the March 2002 update, “no tangible prejudice was caused to the Applicant. Nevertheless, the Bank’s conduct in regard</p>

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	<p>of the application is quite precise; it challenges decisions taken on June 12, 2001, to the effect that the Applicant was:</p> <ul style="list-style-type: none"> - terminated as Financial Sector Vice President; - reassigned as Special Advisor to the Bank’s Chief Financial Officer; and - not confirmed as Regular staff. <p>The Applicant also complains that he was denied just compensation from 1999 to 2001, and that he was given ‘disparate treatment.’”</p>	<p>to the Update was improper, and it may certainly be said that the Update contributed to the Applicant’s malaise... A difficulty arises at this point due to the fact that the March 2000 Update neither embodies nor builds upon a decision challenged by this application. In and of itself, the March 2000 Update has become a nullity: the Bank put it to the side; the Applicant himself agreed in April 2000 that it was a closed chapter; and the Tribunal has not relied on it in reaching its decisions on the merits of the application. It may seem illogical to sanction the Bank for an incident which has become of no moment, and which in and of itself is not an object of the application. With this in mind, the Tribunal considers that the appropriate sanction of the Bank’s improper actions in respect of the March 2000 Update should be in connection with the Applicant’s costs, because, as said above, this was conduct likely to lead to frustration and litigation.”</p> <p>Additional information that is relevant to racial discrimination: During a meeting between the Applicant and Mr. Wolfensohn, the Bank President, Wolfensohn listed complaints that he had received about the Applicant. In an April 27 email to the President, the Applicant wrote, “I am determined to follow your advice and change my behaviour. Key objectives will include ...To be more aware of the risks of misperception of what I say and how I behave (including body language!), what others perceive being often very different from what I really meant (that was, by the way, the case with my remarks during Corporate Day on the discrimination of Subsaharan nationals!)...”</p> <p>“The Applicant, in his personal comments dated September 4, 2002, presents what must be said is an extraordinary explanation to the ultimate effect that ‘[t]he Resolutions reflect exclusively Mr. Wolfensohn’s subjective perception of Applicant, and are totally unrelated to Applicant’s relations with his own staff.’ ...In other words, it appears that the Applicant is now saying that ... he did not actually agree with them but merely listed ‘criticisms’ flowing from Mr. Wolfensohn’s ‘subjective perception’” and that this was “not a sincere commitment to address shortcomings accepted as such. For the Applicant to put such a gloss on a message to the President which begins with a promise to ‘change my behaviour’ is</p>
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<p>2. Sengamalay v. IBRD No. 254 December 04, 2001</p>	<p>“After serving as Division Chief in three Divisions within the Controller’s unit, the Applicant in 1999 and 2000 was the object of three decisions by his departmental Vice President: he was reassigned to a nonsupervisory position, he was then declared redundant, and then the redundancy decision was withdrawn and the reassignment decision was reimplemented. The Applicant contests these decisions, claiming that they were a product of retaliation and abuse of process...”</p> <p>“The Applicant contends, among other things, that the VP-CTR was biased against him and ‘harassed’ him throughout 1998 and 1999 by constantly pressuring him to leave his managerial post, and by relying upon unfounded, unverified and anonymous staff complaints.” The Applicant was repeatedly accused of discrimination by several staff members and “was said to be the target of an unusually high number of complaints by persons of African origin. These complaints, summarized at length in the addendum, did not allege racial discrimination but rather other managerial deficiencies on the Applicant’s part, including (in the words of the author of the DB addendum) ‘abusive, discriminatory or otherwise unfair or unprofessional treatment by this manager,’ and in particular favoritism and preferential treatment.”</p> <p>“The Applicant contends, inter alia, that the DB investigation in 1996-97 had ‘targeted’ him, and that the DB addendum of May 21, 1997 – which was based on allegedly improperly gathered information and was</p>	<p>Awarded 18-months net salary plus \$20,000 costs</p>	<p>profoundly troubling.”</p> <p>“The decision to reassign the Applicant to the non-managerial position of Principal Financial Management Specialist was based upon a series of actions on the part of the Respondent that in their totality constituted a failure of due process and thus a violation of the Applicant’s terms of appointment and conditions of employment.”</p> <p>“The DB addendum was only one part of a larger pattern of troubling actions taken by the Respondent that raise serious issues of due process in connection with the decision to reassign the Applicant... The circumstances surrounding the declaration of redundancy also, in the Tribunal’s judgment, contribute to a troubling pattern that, in its totality, amounts to a denial of due process...”</p> <p>Additional information that is relevant to racial discrimination: “In late 1996, as a result of what were perceived by African staff members to be discriminatory remarks made at a general meeting by a senior CTR manager (apparently other than the Applicant), a committee was appointed by the Human Resources Vice Presidential Unit (HRS) to initiate a review. That committee, in turn, retained the law firm of Dewey Ballantine (DB) to look into possible discrimination against African staff members in hiring, compensation, career development, and promotion trends within CTR... DB was asked to provide separate confidential addenda directly to the VP-CTR... and to the then-Vice President of HRS, identifying particular situations in which CTR staff may have received disparate treatment.”</p> <p>“In one such addendum, dated May 21, 1997, the Applicant was said to be the target of an unusually high number of complaints by persons of African origin... The Applicant, who saw these accusations for the first time during the course of the pleadings before the Tribunal, points out that they are anonymous and unsubstantiated. The Respondent acknowledges that the Applicant was not informed at the time of these allegations against him, assertedly so that they would not become a part of his personnel record and so that he could ‘have another chance.’ Although the DB</p>
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	<p>never shared with the Applicant – planted the seed for biased motivation against him on the part of the VP-CTR...”</p> <p>“In a letter dated July 22, 1999, the VP-CTR informed the Applicant that he would be transferred ... Four days later the Applicant was declared redundant “in light of business changes in CTR.”</p> <p>Appeal Committee Decision: “The Appeals Committee filed its report on July 14, 2000. It concluded that the decision of the VP-CTR to rescind the redundancy and to reimpose the reassignment was ‘retaliatory on its face,’ as the motivation and timing of the decision had the effect of penalizing the Applicant for having brought his appeal. The Committee also found a violation of proper process in the failure by the VP-CTR to respond promptly to the Applicant’s July 19, 1999 memorandum... ...When the Applicant expressed his desire to retire with both the redundancy-based severance package and an unreduced pension...objection from the Respondent and an adverse interpretive ruling from the Appeals Committee ultimately led to the Applicant’s filing of this application with the Tribunal on January 29, 2001. (In the meantime, the Applicant retired from the Bank on September 30, 2000...”</p>	<p>investigator discussed the staff complaints with the then-current LOA Director and his predecessor, both were unwilling to criticize the Applicant without specific, signed statements from his accusers, and they noted that he was highly regarded by the Africa Region staff for whom his Division provided support services.”</p> <p>“The DB investigator wrote that although the Applicant ‘has serious management problems which undermine his ability to effectively lead a racially diverse staff. ... I cannot conclude that this manager has acted in a racially discriminatory manner against any African or other black employee.’ The DB investigator also concluded that, while it would be inappropriate to ‘sanction’ or ‘discipline’ the Applicant on the basis of the information received, he should be transferred to a non-managerial position.”</p> <p>After the report was released, the Bank initiated sensitivity training for all staff. A facilitator at this training alleged that during this training, numerous criticisms emerged about the Applicant “including favoritism, abuse and discrimination. The Applicant challenges the accuracy of the facilitator’s version of events; among other things, he asserts that any criticism by staff members were directed not at him but rather at the Disbursement Officers (DOs) whom he supervised and for whom the critical staff members directly worked.”</p> <p>“The Tribunal concludes... that there is insufficient support in the record for the Applicant’s contention that he was so targeted by the DB investigation. The precipitating incident for the DB study was an allegedly discriminatory remark by another manager at a general meeting, and the terms of reference were to explore discrimination against African staff members in hiring, compensation, career development, and promotion trends within CTR. The criticisms that emerged concerning the Applicant’s style of management were incidental. There is also doubt that the Applicant was significantly and directly injured by the addendum. As the Respondent has noted in explaining why the addendum was not shared with the Applicant at the time, it was not made a part of his personnel record so that he could ‘have another chance.’ Perhaps most significantly, the DB addendum was given to the VP-CTR and to the then-Vice President</p>
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		<p>of Human Resources in May of 1997, while the adverse actions taken by the former, and challenged here, did not begin until July 1999 – more than two years later. Had the VP-CTR been significantly influenced by the DB addendum in a campaign to reassign or terminate the employment of the Applicant, he would surely have acted well before the summer of 1999.”</p> <p>“But the DB addendum should not for that reason be altogether ignored by the Tribunal. It bears noting that the author of the addendum was clearly roaming beyond the terms of reference when he relied upon and attached to the addendum a long list prepared by the Ombudsman of criticisms of the Applicant’s management skills, while expressly concluding that the Applicant was not responsible for any anti-African discrimination. Moreover, the criticisms listed were reported to the two Vice Presidents anonymously, making it difficult or impossible for them to assess how seriously to take them.”</p>
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REVERSE DISCRIMINATION:

CASE	ISSUES	OUT-COME	REASONING
<p>1. Perea v. IFC No. 326 November 12, 2004</p>	<p>“The Applicant contests the decision to declare him redundant and the allegedly unfair denial to him of further employment. He seeks rescission of the redundancy, compensation and costs.”</p> <p>It appears that the Applicant, who worked for the Financial Markets Division of the Latin America and Caribbean Department, maintained that white men were discriminated against, as the decision states that the Appeals Committee found that “there was no evidence that management had discriminated against white males from the United States in filling</p>	<p>Awarded two years net compensation and \$12,500 costs</p>	<p>“The Tribunal is unable to determine how comparisons were made to select candidates on a competitive basis for reassignment, whether and, if so, how performance assessments were considered, or how the Respondent met the guidelines it had established for the process. In this regard, the Tribunal considers that there was a lack of coherence and transparency in regard to the selection process, a process which led directly to the Applicant’s redundancy. The Respondent failed to provide a fair procedure.”</p> <p>“The Tribunal considers that the Respondent failed to follow appropriate procedures in regard to the Applicant’s reassignment in the restructuring process and in the redundancy decision, and also that the selection process for the position in the Micro-Finance Unit involved an abuse of discretion. While the Tribunal does not</p>

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	any of the positions at issue.”		consider that the decisions should be set aside, the Applicant is entitled to compensation for the lack of due process and the abuse of discretion which resulted in injury to him.”
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