

# ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 83  
(25 January 2008)**

**Shirley B. Agliam  
v.  
Asian Development Bank**

**Arnold M. Zack, Vice President  
Claude Wantiez  
Yuji Iwasawa**

1. The Applicant alleges that the Bank violated her contract of employment and her right to due process by summarily transferring her to the Human Resources Division (BPHR) senior administrative assistants' pool on 10 April 2006. The Applicant asks for compensatory, moral, and exemplary damages, all to be determined by the Tribunal, and litigation costs in the amount of US\$2,000.

## **I. THE FACTS**

### **Background**

2. The Applicant joined the Bank as a contractual clerk in 1988 and was appointed to a regular position as a Level 4 Secretary in the former Infrastructure Education Division (IFED) in 1990. The Applicant accepted the Bank's offer of regular appointment dated 31 May 1990 which included the provision that "You will be assigned to Infrastructure Department.

However, the Bank may assign you to any other Department/Office as it may see fit, including mission assignments outside the headquarters seat.”

3. In 1994, the Applicant successfully applied for a lateral transfer to a Level 4 position as an Executive Assistant in the Office of the United States Executive Director (U.S.E.D.). The Job Description of Executive Assistants to Executive Directors provides that they report to the “Executive Director, Alternate Executive Director and/or designated professional staff.” When the Applicant transferred to the Office, the then U.S. Alternate Executive Director, Ms. Cinnamon Dornsife, ran the office in such a way that the positions of the Executive Assistants were equal, while in other Executive Directors’ offices there may be a difference between the responsibilities of the assistants to the Executive Director and those of assistants to the Alternate Executive Director.

4. In her initial years in the U.S.E.D.’s Office, the Applicant received satisfactory performance evaluations, including positive comments about her teamwork. In 1996, Ms. Dornsife recommended the Applicant for a two level promotion to Level 6 for her “outstanding performance and qualifications,” indicating that “all of us at the USED’s office agree that [the Applicant] has performed up to the highest standards.” Consequently, the Applicant was promoted to Level 6 in April 1996. In the Performance Evaluation Report (PER) for 1997, Ms. Dornsife wrote that the Applicant had the potential to be promoted to other non-secretarial positions outside of the U.S.E.D.’s Office such as that of a Technical Assistant, knowing that most positions from Level 6 to 9B are technical assistant positions. In the same Report, Ms. Dornsife indicated that “[the Applicant] is a team player, thinking of the needs of others.”

### **Emerging Tensions within the U.S.E.D.'s Office**

5. In September 2002, Mr. Paul W. Speltz assumed the position of U.S.E.D. Mr. Speltz initially relied primarily on the Applicant for administrative support as the Executive Assistant to the former U.S.E.D. had transferred to a position outside of the office. However, several months later, a new secretary, Ms. Marites Perfecto, joined the Office as an Executive Assistant. According to the Respondent, the Applicant was uncomfortable about Mr. Speltz assigning work to Ms. Perfecto as she viewed herself as the more senior Executive Assistant. In subsequent years, the Applicant often kept information to herself and was reminded by her supervisors that she should share information with the other Executive Assistants. Moreover, according to the Respondent, while Mr. Speltz was used to instant obedience to his instructions, the Applicant would sometimes challenge his instructions. Thus, the relations between the Applicant on one hand and the other Executive Assistants and Mr. Speltz on the other became strained, and tension increased within the Office.

6. The Applicant told her supervisors in the Office that she wanted to move on to new opportunities, either elsewhere in ADB, in the private sector, or in the United States. Mr. Speltz alleged that the Applicant had implored her supervisors to keep her written ratings high to assist her in transferring, which the Applicant denied. In the PER for the period between September and December 2002, which was Mr. Speltz' first evaluation of the Applicant, he wrote under Teamwork: "Good! - It is tough for all in a high pressure office" and indicated his wish "to help her move upward into a higher position in the Bank." In the PER, the Applicant wrote in her own comments that she "acknowledged [her supervisors'] expression of support for

[her] to move up to another job stream.” In April 2005, Mr. Speltz strongly recommended that the Applicant be promoted from Level 6 to Level 7 under the Present-Incumbent-Only promotion exercise to help her transfer laterally to a Level 7 technical analyst position. Based on his recommendation, the Director, BPHR, promoted the Applicant to Level 7.

7. On 28 January 2005, management approved the new performance management system (Performance and Development Plan), but after delays in its implementation, it wasn't until 28 June 2005 that Director General, Budget Personnel, and Management Systems Department, (DG, BPMSD) advised the members of the Board of Directors that they would be consulted by BPHR on implementation aspects relevant for their assistants. On 29 July 2005, the Applicant's work plan was prepared for the period between August and December 2005, for which her performance was to be evaluated.

8. The Annual PDP Review for 2005 (2005 PDP) indicates that Mr. Speltz and Ms. Barbara Holloway, the Director's Advisor, had discussions on performance issues with the Applicant on 23 November 2005, and again on 24 and 25 January 2006. The final overall rating of the Applicant's performance in 2005 was "Fully satisfactory" (the second highest rating). The Applicant's performance was assessed as "Fully Competent" in the categories of "Reception and Communication," "Client Orientation," "Achieving Results," and "Learning and Knowledge Sharing;" "Excellent" in "Other General Office Administration" and "Application of Technical Knowledge and Skills;" but only "Partly Competent" in "Coordination," "Financial Management," and "Working Together." Mr. Speltz wrote that "She [the Applicant] is always courteous with customers. Unfortunately there have been misunderstandings within the

Office,” and “[a]lthough [the Applicant] had some problems with communication and teamwork within the Office (which she has to improve on), her overall skills are fully satisfactory.” The Applicant wrote that “I do not fully agree” with the evaluation/assessment in the areas of “Coordination,” “Financial Management” and “Working Together,” and that “[h]owever, to complete the PDP process, I am affixing my signature with reservation.”

9. In November 2005, Mr. Speltz assigned the Applicant to assist an incoming Director’s Advisor named Mr. Atticus Weller. Directors’ advisors are the most junior supervisors in an Executive Director’s Office. On 17 January 2006, Mr. Speltz and Mr. Weller met with the Applicant to inform her that she was being assigned to act as the Executive Assistant to incoming Alternate Executive Director, Mr. Paul Curry. Mr. Speltz and Ms. Holloway met the Applicant again on 19 January 2006. In an email dated 19 January 2006, the Applicant wrote: “My official duty in the U.S. Director’s Office is Executive Assistant to the U.S. Executive Director. However, after our meeting on January 17 and 19, and in deference and out of respect to your personal decision and request, I will now assist Mr. Paul Curry, the new U.S. Alternate Executive Director, as a temporary arrangement. I am looking forward to resuming my official duties as Executive Assistant to the U.S. Executive Director in due course.” Immediately after receiving this email, Mr. Speltz asked the Applicant to explain why she had stated that she was “looking forward to resuming [her] official duties as Executive Assistant to the U.S. Executive Director.” The Applicant replied that her assisting Mr. Curry was conditional upon her right to work for the Executive Director who would replace Mr. Speltz. Mr. Speltz made clear that any such decision would be made in the future by the new Executive Director and not by him as he would be leaving. Mr. Speltz then immediately set up a joint

meeting with the Director, BPHR. In the meeting with Mr. Speltz, the Director, BPHR, Ms. Holloway and others held on the same day (19 January 2006), the Applicant was asked to withdraw her statement, but she refused.

### **Transfer of the Applicant to the BPHR Administrative Assistants' Pool**

10. The above event prompted Mr. Speltz to seek transfer of the Applicant from his Office to another position in ADB. On 23 January 2006, the Director, BPHR, wrote to the Applicant:

Mr. Speltz has recommended to me your transfer from his Office to another position in ADB. It is in my view that in the present circumstances, it would be in the interest of good administration of ADB for me to take steps to facilitate such a transfer. For the next two months, you will continue to work for Mr. Speltz, for the new Alternate Director, Mr. Paul Curry, and for any other persons designated by Mr. Speltz. It is expected that during this period you will contribute to the harmonious and efficient operation of Mr. Speltz's Office.

In the meantime I will assist you to search for an administrative assistant position elsewhere in ADB. If you are unsuccessful in finding such a position, I will arrange for your transfer to the BPHR pool of administrative assistants.

Please take note that if during the next two months Mr. Speltz is dissatisfied with your performance, and recommends to me your immediate transfer from his Office, I will arrange for your transfer at that time to the BPHR pool. You can then continue to look for a regular position while working in the BPHR pool.

11. The Applicant identified positions of interest to her but they were only at Level 6 and, after applying for some of these, she was advised that due to Administrative Order ("A.O.")

2.03 para. 5.7, if she were selected for a Level 6 position, her level would be reduced from Level 7 to Level 6. For this reason, the Applicant emailed the Director, BPHR, on 21 February 2006 and asked for her options. The Head of the Central and Administrative Support Unit in BPHR responded that BPHR had agreed to waive A.O. 2.03, para. 5.7 in the event that she was selected to fill a Level 6 vacancy.

12. Mr. Speltz allowed the Applicant to stay in his Office beyond the two months prescribed in the memorandum of the Director, BPHR, to allow her more time to find another position. However, according to Mr. Speltz, after the two months had passed, the Applicant told him that she could no longer work with the other administrative assistants in the Office. Under the circumstances, the Director, BPHR, wrote to the Applicant on 20 March 2006: “As previously discussed, the time limit for finding an alternative position will expire on 27 March 2006, and under the terms of agreement BPMSD now is expected to transfer you to the administrative assistants’ pool.” The Director, BPHR, gave the Applicant information on available positions and advised her to “consider all your options so that we can resolve your transfer, as agreed with Executive Director Speltz.”

13. Since the Applicant had not found an alternative position, on 10 April 2006 the Director, BPHR, transferred her on a temporary holding basis to the BPHR senior administrative assistants’ pool until she could find another position. On transfer, the Applicant retained her personal Level 7 and her salary and all related benefits. BPHR also continued to give her the right to apply for and be appointed to a Level 6 position without any lowering of her Level 7

salary and benefits. According to the Respondent, the Director, BPHR, assigned challenging work to the Applicant within BPHR appropriate for her level.

### **Administrative Review**

14. On 20 April 2006, the Applicant commenced the administrative review process by requesting the DG, BPMSD, to review the decision by the Director, BPHR, to transfer her to the BPHR senior administrative assistants' pool. In her request, she claimed that: "[i]t has never been made clear to me the reason(s) for my transfer in spite of my repeated requests. This action violates my contract of employment because it is an abuse of discretion; constitutes procedural unfairness and violates due process."

15. The DG, BPMSD, reviewed the Applicant's request for administrative review, but on 26 May 2006, finding no merit in her claims, dismissed her complaint. DG, BPMSD, wrote: "As you are aware, ADB's Directors have a broad discretion to decide on the staffing of their offices. . . . [T]he U.S. Executive Director decided that your teamwork was not as good as he would have liked and that this was having a detrimental effect on the efficiency of his Office. In the interests of ADB, you were informed that you would continue to work with the U.S. Executive Director's Office while BPHR assisted your search for an administrative assistant position for a two-month period . . . . I note that the decision on your transfer was made in the interest of ADB and that it constituted neither an abuse of discretion nor a violation of due process. I have not found any record of 'repeated requests' for explanations of your transfer as you have alleged."



## Appeals Committee

16. The Applicant then appealed to the Appeals Committee, claiming again that the decision to transfer her violated her contract of employment, constituted procedural unfairness and violated due process. In her counterstatement, the Applicant alleged that “[s]uddenly and without warning, she was pulled out of her official assignment and designation until she found herself transferred to the BPHR pool.” The Respondent DG, BPMSD, explained that “[t]he concerns regarding the Appellant’s lack of teamwork . . . were part of the feedback that was provided by the Appellant during the PDP Discussions.”

17. On 11 October, the Appeals Committee recommended to the President that the Applicant’s appeal be rejected as without merit. The President approved the recommendation on 4 December 2006. The Appeals Committee noted in its Report: “It was found that as per A.O. 2.03 (para. 3.1) the transfer was not unjustified, and that it was fully within the jurisdiction of the BPMSD, for the good administration of ADB . . . . [T]here are no provisions in the AO or other administrative documents which suggest that the transfer was a violation of: (i) the Appellant’s contract of employment; (ii) good discretion and procedural fairness; and (iii) overall due process. The Committee also finds that due process was followed with regard to communicating the Appellant’s performance. Further, despite the overall fully satisfactory rating, specific problems were clearly identified in the appellant’s PDP.”

## **Application to the Administrative Tribunal**

18. On 2 April 2007, the Applicant submitted to the Administrative Tribunal an Application contesting the decision of the Bank to transfer her out of the U.S.E.D.'s Office. The Applicant seeks redress, appropriate compensation, corrective measures and other measures deemed appropriate by the Tribunal for the violations of the contract of employment, her right to due process and for her unjustified and summary transfer to the BPHR administrative pool.

19. The Applicant asks for the following relief:

- a. compensatory and moral damages in the amount to be determined by the Tribunal as appropriate, fair and reasonable, on account of the pain and anguish of having to go through the ordeal that Applicant was made to undergo, the embarrassment and humiliation from her colleagues, the anxiety from the sudden uncertainty that now hounds her constantly;
- b. exemplary damages in the amount the Tribunal finds reasonable and appropriate, in order to serve as a deterrent for the Respondent to commit the same acts to other staff members;
- c. US\$2,000 for legal costs.

20. The Applicant also requests the following provisional measures:

- a. a full panel be constituted to hear and decide this Application;
- b. the Tribunal subpoena all emails, official or otherwise between Applicant and the US Executive Director and all other emails pertaining to her or copied to her within the Department.

21. The Bank requests that the application be dismissed on the grounds that there is no evidence whatsoever that Director, BPHR's decision to transfer the Applicant was made in a manner that was arbitrary, or that there was any abuse of discretion.

## II. FINDINGS

### Provisional Measures

#### *Full Panel*

22. The Applicant requests that a full panel be constituted to hear this Application. She maintains that "her case [should] be heard and ventilated as widely as possible to preclude any doubt in her mind that her case will be decided with the object of discovering the truth and ensuring that truth and justice shall prevail."

23. Article V of the Statute of the Tribunal provides as follows:

5. The Tribunal shall form a panel consisting of all of its members when dealing with (1) certain cases which, in the determination of the Tribunal, warrant a hearing by such a panel; and (2) any cases where any party to such a case makes a written request and gives reasons for the request that the case be heard by such a panel, and where such request is agreed to by the Tribunal.

24. The burden is on the Applicant to demonstrate the need for an *en banc* proceeding. As in *Abat* and *Toivanen*, the Tribunal is of the opinion that "there are no circumstances of sufficient novelty, complexity or difficulty to make it necessary or desirable

that this case be considered by a panel consisting of all its Members.” (See *Abat*, Decision No. 78 [7 March 2007] and *Toivanen*, Decision No. 51 [2000], V ADBAT Reports 69. See also *Ahmad*, Decision No. 80 (17 August 2007)). Accordingly, the Tribunal denies the Applicant’s request for a full panel.

*Subpoena of Emails*

25. The Applicant requests that the Tribunal subpoena all emails, official or otherwise between the Applicant and the U.S. Executive Director and all other emails pertaining to her or copied to her within the Department “to prove beyond shadow of a doubt that there was never any issue with regard to her performance that will support the personnel action that was brought upon against her.” The Respondent requests the Tribunal to reject the Applicant’s request, maintaining that it has included all relevant documents in its possession including any relevant written communications between the Applicant and the U.S. Executive Director. The Respondent makes the point that it would expect as party to the communications that the Applicant would already have copies of the requested documents.

26. In her Reply, the Applicant produced one email Mr. Speltz had sent and had copied to the Applicant. In his response, Mr. Speltz suggested that there were “confidentiality agreements” between the Applicant and the office of the U.S. Government office of the U.S.E.D. not to “keep[] copies – hard or soft – of all [his] communication that [he] copied on-or otherwise” and that the Applicant had breached the agreements. If there were such agreements and the Applicant had abided by them, there would indeed be difficulty in her producing emails as evidence. However, the above email produced by the Applicant as evidence shows that she

was in fact in possession of the relevant emails. The Applicant has the burden of specifying a document to be subpoenaed without merely asking the Tribunal to subpoena all emails pertaining to her.

27. Furthermore, as explained below, based on the evidence provided by the Respondent, the Tribunal is satisfied that the Applicant's teamwork problem within the U.S.E.D.'s Office was definitely an issue at the latest by early January 2006, and that it was one of the factors that prompted the transfer of the Applicant to another position in ADB. Under the circumstances, the Tribunal finds it unnecessary to subpoena all emails between the Applicant and the U.S.E.D. and all other emails pertaining to her or copied to her within the Department "to prove . . . that there was never any issue with regard to her performance that will support the personnel action." Accordingly, the Tribunal rejects the Applicant's request that it subpoena emails.

### **Transfer**

28. The President of ADB, who is responsible for the satisfactory working of the Bank, has wide discretion in deciding upon a transfer in the interests of the Bank. Section 1 of ADB's Staff Regulations reads: "Staff members of the Bank are subject to the authority of the President and to assignment by him to any of the activities or offices of the Bank." In accordance with the Staff Regulations, the letter the Bank issued to the Applicant offering her a regular position as a secretary in IFED in 1990, contained the condition that "the Bank may assign you to any other Department/Office as it may see fit," to which she agreed. That the head of an international organization has discretion to transfer its staff is established in

international administrative law. (See *In re Hardy (No. 4)*, ILOAT Judgment No. 1757 (9 July 1998) and *Saaf*, UNAT Judgment No. 954 (28 July 2000)). The ILO Administrative Tribunal considered it even “the duty of any international organization to take whatever measures can reduce tensions among his staff, bring about good working relations and improve efficiency.” (*In re Saunders (No. 4)*, ILOAT Judgment No. 1018, (26 June 1990)).

29. It is equally established in international administrative law that the President’s discretion to transfer must not be abused. The United Nations Administrative Tribunal stated: “[T]he established law is that, while the Administration has a discretion to transfer . . . , the discretion must not be abused. The discretion to transfer may have been abused, inter alia, if an appropriate procedure was not followed, or the decision was implemented in an arbitrary manner which resulted, for example, in injury to the good name and dignity of the staff member, or undue harm and injury was caused to the staff member.” (*Saaf*, UNAT Judgment No. 954 (28 July 2000)). While the Tribunal will be wary of interfering with an exercise of the President’s discretion, it is incumbent upon the Tribunal to do so if the discretion is abused. It is the burden of the Applicant to prove that the discretion was abused. If a transfer is used as a hidden disciplinary sanction, in addition to general rules against abuse of discretion, the transfer must also comply with specific rules protecting staff members in the case of disciplinary sanctions. (See ILOAT Judgment No. 2229 (16 July 2003)).

30. In an email dated 19 January 2006, the Applicant declared that “My official duty in the U.S. Director’s Office is Executive Assistant to the U.S. Executive Director,” and agreed to assist the incoming U.S. Alternate Executive Director, on condition that she will “resum[e]

[her] official duties as Executive Assistant to the U.S. Executive Director in due course.” However, the Job Description of the Executive Assistants indicated that they reported to “Executive Director, Alternate Executive Director and/or designated professional staff.”

31. It is natural for staff members to have preferences in respect of their work. However, “staff members will have their preferences considered but cannot always expect to have them honored. When Bank interests dictate reassignment elsewhere, those interests will prevail.” (*Eindhoven v IBRD*, WBAT Decision No. 23 (22 March 1985)). The Applicant had no entitlement to work for the Executive Director only and it was inaccurate for her to describe her “official duty” as the Executive Assistant to the Executive Director. It is in the interest of an international organization to transfer staff members when necessary to reduce tensions among the staff. Such organizational interest prevails over personal preferences of the staff members concerned. Besides, prior to 2006, the Applicant expressed her wish to move up to another job stream, and Mr. Speltz supported her wish in strong words in the Performance Evaluation Reports. Also, in the memorandum dated 23 January 2006, while notifying the Applicant of the Bank’s plan to transfer her to another position, the Director, BPHR, offered to assist her to search for an administrative assistant position elsewhere in ADB. In this manner, the Bank made reasonable efforts to find her a position of her liking.

### **Grounds for the Transfer**

32. The Applicant argues that there is no evidence supporting the allegation that a problem in teamwork actually existed. However, the above email of the Applicant dated 19

January 2006 and the joint meeting between Mr. Speltz, the Director BPHR, Ms. Holloway and others on one hand and the Applicant on the other -- which Mr. Speltz convened immediately after he received the email -- show that the Applicant had teamwork problems in the U.S.E.D.'s Office. In addition, the problem of the Applicant was not only indicated in the 2005 PDP but also illustrated in detail in the responses written by Mr. Speltz and submitted by the Respondent as evidence in these proceedings. The story of Mr. Speltz was corroborated by other people who worked in the Office at the time -- Ms. Barbara Holloway (Director's Advisor), Mr. Troy Wray (Alternate Executive Director from October 2002 to November 2005), and Ms. Marites Perfecto (Executive Assistant). In an email written by Mr. Wray and submitted by the Respondent as evidence, he stated that "Shirley's difficulty in working well with others in the office was apparent shortly after I started in the office in October 2002." Thus, the Tribunal finds it reasonable to conclude that teamwork problems and tension did exist within the U.S.E.D.'s Office already in 2002 and at the very latest by January 2006.

33. Under the circumstances, it was understandable for Mr. Speltz to have believed it necessary to initiate a move to transfer her out of his office. Indeed, it is the duty of an international organization, on becoming aware of tensions within the organization, to take measures to reduce such tensions and bring about good working relations among the staff. The decision of the Bank to transfer her out of the U.S.E.D.'s Office was thus well-grounded, and not arbitrary or abusive.



## **Due Process**

34. The Applicant contends that if there were concerns about her teamwork, she was not informed of them promptly to improve her performance. She argued that “it has never been made clear to me the reason(s) for my transfer in spite of my repeated requests.” The Applicant argues that it was only on 24 January 2006 that Mr. Speltz first expressed his view that the Applicant’s lack of teamwork was having a detrimental effect on the efficiency of his office. She argues that the concern about her teamwork was raised neither on 17 or 19 January 2006, nor on 23 November 2005 when Mr. Speltz and Ms. Holloway had discussions with the Applicant about her performance within the framework of the 2005 PDP exercise. Mr. Speltz and Ms. Holloway, on the other hand, maintain that they had discussed the Applicant’s teamwork problems with her on “many occasions” over a long period of time and had shared these concerns with the Human Resources Division on numerous occasions.

35. The Applicant “categorically denies” that she discussed the “Behavioral Assessment” on her PDP Form on 23 November 2005, claiming that only the “Results Assessment” was discussed. However, her signature at the bottom of the Form indicates that she discussed the “Behavioral Assessment,” including the category “Working Together,” on 23 November 2005. The Tribunal finds it reasonable to conclude that the concern about the Applicant’s teamwork problems was raised during the discussion that Mr. Speltz and Ms. Holloway had with the Applicant on 23 November 2005, well before 24 January 2006.

36. The Applicant admits that on 24 January 2006 Mr. Speltz expressed his view that the Applicant's lack of teamwork was having a detrimental effect on the efficiency of his office. However, she argues that when she received the memorandum from the Director, BPHR, dated 23 January 2006 at an early hour of 24 January 2006, she had not been informed of the issue of teamwork. The Tribunal notes that Mr. Speltz articulated the reason for the transfer shortly after she received the memorandum from the Director, BPHR. Moreover, in the memorandum the Director, BPHR, himself suggested that there were concerns about the Applicant's teamwork, stating that "Mr. Speltz has recommended to me your transfer from his Office to another position in ADB," and that "in my view it would be in the interest of good administration of ADB" to take steps to facilitate such a transfer, and that, for the next two months, during which time the Applicant was instructed to search for an administrative assistant position elsewhere in ADB, "[i]t is expected that . . . you will contribute to the harmonious and efficient operation of Mr. Speltz's Office," and finally that "if during the next two months Mr. Speltz is dissatisfied with your performance and recommends to me your immediate transfer from his Office, I will arrange for your transfer at that time to the BPHR pool." Thus, the reason for the transfer was indicated reasonably clearly in the memorandum itself.

37. Furthermore, the Director did not transfer her immediately to the BPHR senior administrative assistants' pool, but allowed her to work in the U.S.E.D.'s Office for two months. He offered to assist her to search for an administrative assistant position elsewhere in ADB during that period. In addition, Mr. Speltz allowed the Applicant to stay in his Office beyond the two months to allow her more time to find another position that she wanted, but, according to Mr. Speltz, after the two months had passed the Applicant expressed her wish to leave the Office.

It was only then that she was transferred to the BPHR senior administrative assistants' pool -- on 10 April 2006. Overall, she stayed in the U.S.E.D.'s Office for more than two and a half months from the date she was given the memorandum from the Director, BPHR, dated 23 January 2006. The ILO Administrative Tribunal found a period of approximately two and a half months from the date of the notice of transfer and the date at which it took effect "was long enough to let [the person] make arrangements." (*In re Hardy (No. 4)*, ILOAT Judgment No. 1757 (9 July 1998)).

38. The Applicant argues that the 2005 PDP exercise was fatally flawed and hence the process vitiated and so any measure resulting therefrom must likewise be vitiated. She argues that the Performance Management Implementing Guidelines were not followed in the Applicant's case. According to the Guidelines, supervisors communicate the annual work plan to the staff within the first 60 days of the performance management cycle and review takes place in early July covering the period 1 January to 30 June. Nevertheless, the Applicant's work plan was prepared only on 29 July 2005, approved on the same day and reviewed 3 days later. The Performance and Development Plan introduced in 2005 was much different from the previous performance evaluation system. Under the new system, work plans were required for administrative assistants. Delays occurred in implementing the new PDP system, and as a result, the Applicant's work plan was prepared only on 29 July 2005. The Bank gave her sufficient notification of the reasons for her transfer, and the claim of tardiness in the preparation of her work plan is irrelevant to our consideration of the propriety of the transfer.

39. The Applicant alleges that the email in which Mr. Speltz signed his name as “Paul the terminator” was a manifestation of a threat against her that would be acted on if she did not accept her new assignment. However, the Applicant was not the addressee of this email but only a cc recipient. Moreover, “Paul the terminator” was an internal nickname that Mr. Speltz had received from within the U.S. Treasury Department and had been using some time previous to the decision to transfer the Applicant. The Applicant has failed to prove that it was intended as a threat to her.

40. Accordingly, the Tribunal finds that the procedure the Bank followed in transferring the Applicant to the BPHR senior administrative assistants’ pool was not unfair or unreasonable and that the Applicant’s right to due process was not breached.

### **Dignity of the Staff Concerned**

41. A transfer should not injure the dignity of the person. The ILO Administrative Tribunal stated that “The Director-General has discretion in exercising his authority [to assign staff to different posts], but he must always abide by the Staff Regulations and the terms of the contract between the organisation and staff member. The executive head may not of his own accord alter the staff member’s grade, reduce his salary or injure his dignity.” (*In re Tarrab* (No. 9), ILOAT, Judgment No. 534, (18 November 1982)). The same Tribunal stated in ILOAT Judgment No. 2229 (16 July 2003) that “[A transfer of a non-disciplinary nature] must show due regard, in both form and substance, for the dignity of the official concerned,

particularly by providing him with work of the same level as that which he performed in his previous post and matching his qualifications.”

42. In the present case, the transfer of the Applicant occurred only after she had failed to secure another position in ADB. Her transfer to the BPHR senior administrative assistants’ pool was intended to be temporary; she was free to apply for other positions of her liking. Moreover, the transfer was lateral in nature; she retained her personal level of Level 7, as well as her salary and all related benefits; her salary in fact was even increased because of the salary increase following her “Fully satisfactory” rating in the 2005 PDP. On receiving the memorandum from the Director, BPHR, dated 23 January 2006, the Applicant identified positions of interest to her but they were only at Level 6. After applying for some of these, she was advised that due to A.O. 2.03 para. 5.7, if she were selected for a Level 6 position, her personal level would be reduced from Level 7 to Level 6. In response to an email from the Applicant, the BPHR agreed that in the event that she was selected to a Level 6 vacancy, the requirement under A.O. 2.03, para. 5.7 would be waived. Furthermore, the Director, BPHR, assigned challenging work to the Applicant within BPHR appropriate for her level, mindful not to draw attention to her transfer out of the U.S.E.D.’s Office. Under the circumstances, the Tribunal finds that the transfer of the Applicant was not of a disciplinary nature and that there was no ground for the claim that it injured the dignity of the Applicant.

**No Abuse of Discretion**

43. Accordingly, the Tribunal concludes that the Bank did not abuse its discretion in transferring the Applicant to BPHR senior administrative assistants' pool on 10 April 2006.

**DECISION**

For these reasons, the Tribunal unanimously dismisses the Application.