



World Bank Administrative Tribunal

2010

No. 434

**BG,
Applicant**

v.

**International Finance Corporation,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**BG,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson (Acting Vice President of the Tribunal) as President, and Judges Florentino P. Feliciano and Ahmed El-Kosheri.

2. The Application was received on 25 August 2009. The Applicant was represented by Veronika Nippe-Johnson, Schott Law Associates, LLP. The Respondent was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 14 May 2010.

3. The Applicant challenges his 2007 Performance Evaluation and Planning ("PEP"), 2007 salary review increase ("SRI"), the Respondent's decision to place him on a Performance Improvement Plan ("PIP"), and its decision to remove him from the lead responsibility on a project known as the "PBH Project."

FACTUAL BACKGROUND

4. The Applicant joined the International Finance Corporation ("IFC") in 2001 as a Senior Investment Officer, level G2. He held a Regular appointment.

5. From 2001 to 2004, Mr. A was the Applicant's manager and primary supervisor. The Applicant says he enjoyed a "good professional working relationship" with Mr. A, who favorably appraised the Applicant's performance. In the Applicant's PEP of 2002-

2004, Mr. A recognized the Applicant as a “solid team player” and commended his ability to communicate clearly, work in a very detailed manner, and provide strong analysis.

6. More particularly, in the Applicant’s 2004 PEP, Mr. A noted the following as the Applicant’s strengths: “solid analytical skills in all aspects of project appraisal,” “results oriented,” and “good client management skills.” In that PEP, Mr. A recognized the Applicant’s role as a program leader in the Environmental Opportunities Facility (“EOF”) project in a positive manner but noted that the Applicant “did a fine job of getting the EOF up and running during its first 2 years, but he has increasingly chafed at the administrative and coordination aspects of the program leader job.” Mr. A noted in the PEP that “we’ve decided to rotate the role of program leader for the EOF to someone else. ... So, [the Applicant] will concentrate going forward on projects and on the Austrian initiative for SE Europe.” As the Applicant was more interested in transactional work and less in administrative work, Mr. A, according to the Applicant, promised him a career path in a mainstream investment department.

7. In August 2004 Mr. A transferred the program leadership of the EOF to Ms. B. Like the Applicant, she is a level G2 Senior Investment Officer at IFC.

8. In October 2004 Mr. A left IFC and a new management structure was implemented in the Applicant’s unit. Under the new structure, Ms. B became the Applicant’s primary supervisor having oversight of the Applicant’s day-to-day work program and activities. Ms. C, who replaced Mr. A, became the Applicant’s manager and secondary supervisor.

9. According to the Applicant, things did not go very well under the new management. The Applicant states that Ms. B (“the primary supervisor”), “while not an H-level Manager *per se*, was required to supervise and manage senior level staff, including

[the Applicant], a level G2 staff himself, which she never previously had done before.” He states that his relationship with the primary supervisor was “tense.” He adds that although Ms. C was his manager and secondary supervisor (“the secondary supervisor”), she had little day-to-day interaction with him.

10. The Applicant states that by 2006, for the first time in his career, he was receiving lukewarm and less favorable reviews of his performance from his supervisors. In the Applicant’s 2006 PEP, both the primary supervisor and the secondary supervisor recognized the Applicant’s strong client focus and teamwork. However, the primary supervisor noted areas for improvement including the need to develop solutions to overcome impasses, develop clear and concise memoranda, debate differences of opinion “fully with superiors and acting on agreed solutions,” develop acceptable risk-reward packages for IFC, and demonstrate good judgment. The secondary supervisor noted that the Applicant had not been very happy in his position and that, as a result, his performance during the 2006 review period had “not lived up to expectations.” The primary supervisor commented that the Applicant should seek management feedback and coaching, and that “initially this will be on a monthly basis.” Both supervisors stated that they would try to diversify the Applicant’s work program to give him experience in other practice areas.

11. The supervisors signed the 2006 PEP on 2 August 2006. The Applicant did not agree with the PEP and did not sign it. He states that rather than file an adversarial appeal, he sought to resolve issues relating to his performance less formally and approached the World Bank Staff Association and the Ombudsman to that end.

12. In the Applicant’s 2007 PEP (covering the period 1 April 2006 to 30 June 2007), which is the subject-matter of the current Application, the Applicant’s supervisors again

commented positively on the Applicant's teamwork and client relationships. At the same time, they criticized the Applicant in a number of respects. The primary supervisor stated in the 2007 PEP as follows:

[The Applicant] is not operating at the standard expected for a G2 level IO in the following respects. These issues have been a recurring theme in PEPs over the last two years and last year [the Applicant] was challenged to focus on improving his performance specifically in these areas.

...

Over the last year [the Applicant] has displayed commitment to his work and to helping team mates. He is pleasant, personable and helpful to the extent of [his] ability. Whilst this is appreciated by all his colleagues, the above mentioned issues indicate underperformance at grade G2 to a degree that makes a Performance Improvement Plan the appropriate next step.

13. The secondary supervisor observed in the 2007 PEP that: "There really does seem to be a fit issue for [the Applicant] in this group. ... I have in the past suggested that he might find a better fit elsewhere, and I reiterate it again."

14. The Applicant received a 2.2 SRI rating for this review period resulting in a zero percent salary increase. Both supervisors signed the 2007 PEP on 28 September 2007. The Applicant did not sign it.

15. In September 2007 Ms. D joined the Applicant's unit as the manager, replacing Ms. C. In October 2007 the Applicant discussed with her his PIP as stated in his 2007 PEP. Ms. D suggested that instead of embarking on a PIP the Applicant should consider separation from IFC.

16. In November 2007 Ms. D decided to transfer the leadership responsibility of the PBH Project from the Applicant to the Applicant's primary supervisor, Ms. B. According to the Applicant, he had been working on the PBH Project since March 2007 and the project was scheduled for "financial closing" by 10 December 2007. The Applicant states

that this was an act of continuing harassment and favoritism allowing the primary supervisor to receive credit for bringing his project to closing, without having done “any of the leg work.”

17. On 10 December 2007 the Applicant filed an Appeal with the Appeals Committee challenging: (i) his 2007 PEP; (ii) the decision to place him on a PIP; (iii) the SRI rating of 2.2; and (iv) his removal from the lead responsibility for the PBH Project.

18. About a year later, on 30 November 2008, the Applicant resigned from IFC. The Applicant states that he did so at the “recommendation of his physician and counselor” and because he was “no longer able to endure the workplace hostilities and indignity.”

19. On 13 January 2009 the Appeals Committee issued its report finding for the Applicant in the following respects: (i) the Applicant’s 2007 PEP was arbitrary; (ii) the Respondent lacked a reasonable and observable basis to place the Applicant on a PIP; and (iii) the SRI rating of 2.2 was also arbitrary. With respect to the PBH issue, the Appeals Committee did not find any arbitrariness.

20. The Appeals Committee recommended that the Respondent take the following measures:

- (i) rescind the Applicant’s 2007 PEP;
- (ii) rescind the Applicant’s SRI rating of 2.2 and delete any references to it in his personnel file;
- (iii) compensate the Applicant \$10,000 net of taxes for his claimed damages with respect to his salary and pension;
- (iv) compensate the Applicant, in the amount of six months’ salary for the intangible harm he suffered as a result of the Respondent’s actions; and

(v) pay the Applicant attorney's fees in the amount of \$5,000.

21. On 9 April 2009 the Vice President of Human Resources ("HRSVP") informed the Applicant that he had accepted "the Appeals Committee's recommendations in their entirety."

22. Finding the above internal remedies insufficient, on 25 August 2009, the Applicant filed his Application with the Tribunal challenging the same four decisions of the Respondent that he had challenged before the Appeals Committee. As remedies, the Applicant requests the following: first, a formal written apology from the Respondent to the Applicant; second, a letter of reference, in form and substance acceptable to the Applicant, to replace the 2007 PEP; third, attorney's fees for representation before the Tribunal; and fourth, adequate compensation, which takes into account (i) unreimbursed legal fees incurred for exhausting internal remedies, (ii) moral injury and personal stress, and harm to professional and personal life, (iii) medical expenses, (iv) loss of mobility premium benefit, (v) loss of pension and related benefits, (vi) out of pocket job search expenses, and (vii) salary difference between IFC and the Applicant's new job in another organization.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

2007 PEP

23. The Applicant claims that the 2007 PEP was arbitrary and unfair because it (i) was not balanced, contained errors of fact, omitted or downplayed important positive information and feedback, gave undue weight to negative feedback, (ii) was procedurally flawed, and (iii) was improperly motivated and contributed to the mismanagement of the Applicant's career.

24. The Respondent answers that the 2007 PEP was balanced and fair. In evaluating the Applicant, his primary supervisor took into account feedback from multi-raters and from the Applicant's colleagues. In the 2007 PEP, the supervisor underscored two central issues – a lack of thoroughness in written submissions and lack of independent business judgment. The record indicates that the supervisor had a proper basis for these observations. The appraisals took account of the Applicant's achievements and shortcomings. The spot award given to the Applicant is an example of the recognition of his "extraordinary efforts," though the Applicant, according to the Respondent, "(wrongly) perceived and argued that the award is an indication of his overall performance." In sum, the 2007 PEP was fair and balanced.

25. The Tribunal in *Desthuis-Francis*, Decision No. 315 [2004], para. 23, stated that the Respondent must be

able to adduce ... a reasonable and objective basis for ... adverse judgment on a staff member's performance. ... The Tribunal considers that failure on the part of the Respondent to submit a reasonable basis for adverse evaluation and performance ratings is evidence of arbitrariness in the making of such an evaluation and rating. Lack of a demonstrable basis commonly means that the discretionary act was done capriciously and arbitrarily. Thus, the basic issue so far as concerns the [supervisor's] adverse comments in the Applicant's PEP is whether or not there was adequate or reasonable basis for those comments.

26. The Tribunal notes that the Applicant's primary supervisor determined that the Applicant's overall performance during the 2007 PEP period was "unsuccessful, unsatisfactory." The primary supervisor concluded in the 2007 PEP that the Applicant was "not operating at the standard expected for a G2 level IO" and his underperformance was "to a degree that makes a Performance Improvement Plan the appropriate next step." The question is whether the primary supervisor had an adequate and reasonable basis for such a negative assessment.

27. IFC in its staff performance evaluation system uses a “multi-rater process.” IFC Human Resources (“HR”) explains the process as follows:

[The] supervisor, after a discussion with [a staff member], will select 5 colleagues who can provide feedback on [a staff member’s] performance. ... The feedback they submit will be available only to the Supervisor, Co-Supervisor, and Reviewing Official. ... The feedback will be anonymous and will be available without attribution. This is to encourage open and honest feedback. The staff member will not be able to view the feedback. The feedback is available as extra input to the Supervisors’ assessment of the staff member.

28. In order to determine whether the primary supervisor had a reasonable basis for the Applicant’s 2007 PEP, the feedback from the multi-raters is certainly relevant. The multi-raters are staff members who have worked directly with the Applicant on projects. They were selected by the primary supervisor. Their feedback was anonymous and inaccessible to the staff member in question, so as to encourage “open and honest feedback.”

29. The Tribunal finds that the expected “open and honest feedback” from the multi-raters does not support the primary supervisor’s appraisal of the Applicant’s 2007 PEP. The different feedback from the five multi-raters as quoted in the 2007 PEP is reproduced below. Under the heading “client focus” the multi-raters provided the following feedback:

[The Applicant] demonstrated a sense of urgency in responding to client needs frequently. Very responsive to various stakeholders and team members. [The Applicant] comes across as quite serious sometimes, and this makes nurturing relationships more challenging for him.

Very focused on client and highly organized in his approach.

Has a penchant for objective reasoning, which is very useful in risk analysis.

In my interactions with [the Applicant], I found him to be responsive to client needs, both in terms of being timely as well as on substantive matters. He kept the transaction on track, even when doing so meant participating in long conference calls while on vacation. He asked questions of the client to understand the reasons for its positions on certain points and was able to negotiate compromise positions that met the client’s needs as well as IFC’s.

[The Applicant] is a model of diplomatic and courteous behavior when it comes to dealing with internal as well as external clients. He took over a project with a difficult client which he quickly ‘won over,’ and has since proceeded to complete the project. He responded urgently to the client’s need and worked with other staff to deliver on time.

Under the heading “teamwork & communications” the multi-raters’ feedback is as follows:

[The Applicant] is very close in all his activities. He shares well information and his information and messages are well-thought. He kept good discipline in the team.

[The Applicant] delivered what could be delivered. Shared and synthesized info for different audiences. Good ideas and suggestions.

Good team player, worked well with ... me on EFCC despite many delays.

[The Applicant] always kept me and other members of the team in the loop. He consulted on issues where my input was appropriate and seemed to do the same with other team members. Although the transaction we worked on presented a number of difficult challenges, he maintained a professional, constructive demeanor in negotiations and worked behind the scenes with his team members and his supervisors to seek acceptable resolutions.

[The Applicant] continuously keeps other team members up to date, and ensures all are on the same page when it comes to making decisions. He is direct, and has a clear understanding of what is needed to get the job done.

Under the heading “strengths” the multi-raters noted the following:

Analytical skills, well-thought and well-shared information, keeps good discipline in the team and follows and forces also other to follow time-lines.

Continue to seek solutions acceptable to all.

Analytical mind, experience with energy and project finance in Brazil are plusses.

[The Applicant] understands commercial issues and is able to engage effectively with clients on those matters. At the same time, he understands and is committed to IFC’s developmental mandate. He works to ensure that the IFC and donor funds used to finance projects are used effectively to further the mission of the various CES-administered facilities. As a teammate, I value [the Applicant’s] ability to grasp issues quickly and to work to a satisfactory resolution. He is invariably courteous and appreciative in his interactions with me, and I observed the same in his communications with clients as well as junior IFC staff.

Good overview of projects. Willingness to debate while being open to suggestions.

Under the heading “areas of improvement” the multi-raters commented as follows:

Relax a bit. No need to gather info that is no longer relevant. Step back and take stock of big picture once in a while – before continuing on path ... may need a detour or different approach.

Ability to say “no” when over-burdened.

It seems like this year [the Applicant] was spread a little too thin over multiple areas. May be better if could concentrate his work in a couple of programs within CES.

30. The above feedback from the different multi-raters selected by the primary supervisor herself does not lend support to such a negative assessment by the supervisor of the Applicant’s performance during the 2007 review period. The supervisor mentioned two weaknesses in the Applicant’s performance: lack of thoroughness in written submissions and lack of independent business judgment. But the feedback from the multi-raters does not support the supervisor’s view. None of the multi-raters stated that the Applicant had problems in these respects. Quite to the contrary, some feedback suggests that the Applicant had good communication skills and good business judgment. Moreover, based on the multi-raters’ feedback, one cannot conclude that the supervisor had a reasonable basis to determine that the Applicant’s performance was “unsuccessful, unsatisfactory,” and that he was “not operating at the standard expected for a G2 level.”

31. In *Desthuis-Francis* the Tribunal stated that it would examine the testimony before the Appeals Committee to see whether a supervisor had a reasonable basis for his or her appraisal of a staff member’s performance. In this case the Appeals Committee conducted a hearing at which four staff members who worked with the Applicant on different projects gave their testimony. These four staff members were not the multi-raters who had

previously provided feedback on the Applicant's performance during the 2007 PEP period. Thus their testimony was not simply a repetition of the views of the multi-raters. All four staff members who worked with the Applicant expressed favorable views regarding the Applicant's performance.

32. One staff member (Mr. E) testified that in his interactions with the Applicant he "found [the Applicant] to be quite pleasant and workable. [He] worked well, and he was professional." Another staff member (Mr. F) testified that he had "always found [the Applicant] ... to be a very straightforward, honest, hardworking individual." Another staff member (Ms. G) testified that she found him to be "quite strong in structuring investments. Technically, he knows exactly what he talks about. He's very structured in his thinking, very clear, and he's methodic in his presentation." Another staff member (Mr. H) testified that he found the Applicant "professional ... good ... he was on the top of the project."

33. The testimony of the four staff members who worked with the Applicant does not support the primary supervisor's assessment of the Applicant's performance. None of them gave any testimony indicating weaknesses in the Applicant's written communication skills or business judgment. Only two individuals from the management team provided testimony supporting the primary supervisor's assessment: the manager, who was also the Applicant's secondary supervisor; and the Reviewing Manager. However, both of them acknowledged that they had very limited interactions with the Applicant and formed their opinion about the Applicant's performance mostly based on their conversations with the primary supervisor. IFC HR Guidelines, however, instruct managers that: "Assess only those results, competencies and behaviors that you have had an opportunity to observe. Do not rely on another person's observations."

34. The Tribunal cannot give more weight to the testimony of the two managers and disregard the testimony of the four staff members and the multi-raters who had worked with the Applicant directly. These staff members had first-hand knowledge of the Applicant's work, which the two managers lacked. In *Oraro*, Decision No. 341 [2005], para. 68, the Tribunal upheld the supervisor's negative evaluation of the staff member because the supervisor's "view was supported by the views of several colleagues who had worked with the [staff member]." In any event, the testimony of the primary supervisor and the other two managers before the Appeals Committee does not provide a reasonable basis for the primary supervisor's conclusion that the Applicant's performance during the 2007 PEP was unsatisfactory.

35. Moreover, in *Lysy*, Decision No. 211 [1999], para. 68, the Tribunal emphasized that:

A performance evaluation should deal with all relevant and significant facts, and should balance positive and negative factors in a manner which is fair to the person concerned. Positive aspects need to be given weight, and the weight given to factors must not be arbitrary or manifestly unreasonable.

36. The Tribunal finds that the primary supervisor's appraisal of the Applicant's performance was not consistent with the requirements stated in *Lysy*. The record shows that in assessing the Applicant's performance as unsatisfactory, the primary supervisor failed to consider the totality of the Applicant's work program and achievements for the review period. The Tribunal agrees with the following factual findings of the Appeals Committee:

[D]espite all ... accomplishments during the review period, the Panel observed, the main focus of the criticism of the [Applicant's] performance was his work on PBH, which comprised approximately only three months of the 15 months review period (April 2006 through June 2007). ...

Thus, although the Panel acknowledges that the PBH project was to be the [Applicant's] "tour de force" (as [the supervisors] noted), the Panel found that his supervisors failed to properly consider and weigh the [Applicant's] accomplishments for the remaining 12 months of the review period in arriving at their assessment of unsatisfactory performance.

37. In view of the above, the Tribunal finds that the Respondent failed to provide an objective and reasonable basis for its conclusion that the Applicant's performance during the 2007 PEP was unsatisfactory.

38. The Applicant also complains that the Respondent violated his due process rights. The Applicant adds that the Respondent failed to give him notice of perceived performance deficiencies and meaningful and consistent feedback throughout the 2007 review period (1 April 2006 to 30 June 2007). The Applicant adds that the Respondent deprived him of the opportunity to improve.

39. The Respondent answers that, in addition to providing informal feedback during the 2007 PEP period, the primary supervisor also provided formal feedback in September 2006 and in March 2007. Moreover, the Respondent adds that during this review period, the secondary supervisor met with the Applicant on specific work-related issues on at least four occasions, in addition to more informal contacts in the course of everyday business. Furthermore, she met with him on three occasions to discuss performance and give him feedback.

40. The Tribunal has articulated a number of due process rights in the context of performance evaluation, as set out below:

The Tribunal has discussed the guarantees of due process in earlier cases. These guarantees refer precisely to adequate warning about criticism of performance or any deficiencies that "might result in an adverse decision being ultimately reached," and the corresponding opportunity for the staff member to defend himself. *B*, Decision No. 247 [2001], para. 21.

Lapses in performance should be identified when they occur and should be addressed expressly and promptly. They should not be held in reserve only to be disclosed at the end of a review period. *O*, Decision No. 337 [2005], para. 54.

[D]iscussion of performance does not replace the need for ongoing feedback throughout the year in question, which should be provided so that the staff member “should be able to anticipate the nature of this year-end discussion and resultant ratings on the OPE.” *Prasad*, Decision No. 338 [2005], para. 25.

[T]he obligation [is on] the Respondent to fully respect due process rights and conduct a fair and reasonable process of performance evaluation and accordingly to provide an opportunity to correct the mistakes that any staff member has made *Prasad*, Decision No. 338 [2005], para. 30.

41. The Tribunal finds that the Respondent violated the Applicant’s due process rights in three respects.

42. First, the Respondent failed to give the Applicant prompt and adequate warning about deficiencies in his performance during the 2007 PEP period. The record shows that the Applicant had only two formal feedback meetings with his primary supervisor during the 2007 review period. The first meeting occurred on 15 September 2006. What transpired in that meeting was not memorialized in writing. But the primary supervisor testified before the Appeals Committee that her feedback during that meeting was “positive,” stating “I think the September [2006] ones were positive. ... What I found was, in September [2006] he’d made really strong improvement on kind of turning things around, and focus. And I wanted to give him that positive feedback, and I did.” Given this testimony, it is incontestable that the feedback provided in September 2006 by the primary supervisor cannot be considered as “adequate warning about criticism of performance or any deficiencies that ‘might result in an adverse decision being ultimately reached.’”

43. The second feedback meeting took place in March 2007. On 29 March the primary supervisor provided her written feedback by e-mail stating: “I have noticed a clear

improvement in your commitment to your work, your attitude and your productivity since FY06. In the next three months you have a great opportunity to demonstrate the ability to close a commercially robust transaction with a strong sponsor group – the PBH transaction.” The supervisor then suggested a number of focus points to the Applicant with respect to the PBH Project. The e-mail message ended with the following note: “I hope by focusing your attention on these points above and by continued hard work you will demonstrate the performance we expect and hope ... from you. On my side I will seek to give you continued opportunities to prove yourself.”

44. The Tribunal finds that the feedback provided by the primary supervisor in September 2006 and March 2007 did not adequately put the Applicant on notice that he was performing unsatisfactorily, warranting a PIP. The Respondent claims that the secondary supervisor met with the Applicant on several occasions. But the record contains no evidence that during these meetings the secondary supervisor provided specific feedback on the Applicant’s performance or warned him about the likelihood that he would be placed on a PIP. The record shows that the secondary supervisor only provided specific written feedback on just one of the seventeen projects on which the Applicant was working. The secondary supervisor in fact acknowledged that during the 2007 PEP period she did not tell the Applicant in clear terms that he had continuous performance problems and, if he did not improve, placement on a PIP would be an option. The Tribunal finds that the Respondent failed to comply with the Applicant’s due process rights as articulated in *O* – “Lapses in performance should be identified when they occur and should be addressed expressly and promptly.”

45. Second, both in *O* and *Prasad* the Tribunal emphasized that a supervisor should provide ongoing feedback throughout the review period particularly when there are performance issues and “[t]hey should not be held in reserve only to be disclosed at the end of a review period.” Ongoing feedback is necessary so as to avoid any surprises at the end of the review period. Ongoing feedback should be clear and specific so that the staff member can “anticipate the nature of this year-end discussion and resultant ratings on the OPE.” IFC HR guidelines state that: “Adopt a ‘no surprises’ approach, performance problems should have been identified and dealt with at the time they occurred.”

46. The Applicant claims that “after hearing that he had shown clear improvement in March 2007, and never having received any other formal notice of serious underperformance, [he] was surprised, even shocked to learn in September 2007 (about six months later) that he would be rated so poorly and be placed on a PIP.” The record supports the Applicant’s claim. As stated before, in September 2006, the primary supervisor gave him positive feedback and in March 2007 the supervisor told him: “I have noticed a clear improvement in your commitment to your work, your attitude and your productivity since FY06.” Only in September 2007, after the end of the 2007 PEP period, which in fact ended in June 2007, the supervisor told him that his performance was unsatisfactory and he would be placed on a PIP. The Tribunal finds that this was an unacceptable surprise to the Applicant that violated his due process rights as articulated in *O* (“Lapses in performance ... should not be held in reserve only to be disclosed at the end of a review period.”)

47. Third, IFC HR guidelines emphasize that: “Throughout [the PEP] process, the manager should provide ongoing coaching and feedback, to ensure that the staff member is

kept on track to achieving the agreed upon performance.” This is important because under the Tribunal’s jurisprudence managers should “provide an opportunity to correct the mistakes that any staff member has made.” *Prasad*, Decision No. 338 [2005], para. 30. In this case, management violated the Applicant’s due process rights by failing to provide him with meaningful notice of the perceived decline in his performance during the 2007 PEP period. On the contrary, management sent confusing signals to the Applicant by telling him in September 2006 and March 2007 that his performance had improved. Management in fact waited until September 2007 (many months after the end of the 2007 PEP period) to tell him that his performance was unsatisfactory and he needed to be placed on a PIP. The Tribunal agrees with the Appeals Committee’s finding that: “By failing to give [the Applicant] notice of his performance deficiencies and meaningful feedback throughout the review period, management deprived him of the opportunity to react effectively to improve his performance.”

48. The Tribunal concludes that the Respondent’s performance evaluation of the Applicant during the 2007 PEP period was arbitrary. The Respondent’s actions in this regard also violated the Applicant’s due process rights.

PIP

49. The Applicant claims that: the Respondent’s decision to place him on a PIP was arbitrary; the PIP was procedurally flawed; the Respondent did not meet regularly with the Applicant to provide him with clear feedback that his performance was so unsatisfactory that, if it did not improve, he would be placed on a PIP; the Respondent also failed to give him a proper PIP notice with a work plan; the Respondent failed to implement the PIP; therefore, the Respondent violated Staff Rule 5.03. The Applicant adds that the

“Respondent included the claimed perceived need for a PIP in the FY07 PEP and violated Staff Rule 2.01 because PIPs are confidential information not to be accessible for selecting officials that have access to PEPs.” Finally, the Applicant claims that the PIP was improperly motivated because the Respondent never intended to implement it, never did implement it and threatened it only in an attempt to force separation, and in clear violations of the Principles 2.1 and 9.1 of the Principles of Staff Employment.

50. The Respondent answers that, because of the Applicant’s unsatisfactory performance, it was imperative that he be placed on a PIP. The Respondent adds that the PIP was never implemented because the Applicant was reassigned to another work group, and that mere mention of information about a PIP in a PEP document is not proscribed by the Staff Rules or HR policy; the purpose of mentioning the PIP in a PEP is to document a performance problem and to put the staff member on notice that a PIP is imminent for unsatisfactory performance.

51. The Tribunal notes that Staff Rule 5.03, paragraph 3.02, states that:

If a staff member’s performance is not satisfactory, the Manager or Designated Supervisor shall provide the staff member a period to improve performance in the staff member’s position. If there are good prospects for satisfactory performance in another position, the Manager or Designated Supervisor may consider, in consultation with the Reviewing Manager, reassignment to another position under Rule 5.01 or assignment to a lower level position under Rule 5.06.

52. Under Staff Rule 5.03 management can place a staff member on a PIP if it finds that the staff member’s performance is not satisfactory. Here management decided to place the Applicant on a PIP in September or October of 2007 based on its performance evaluation of the Applicant during the 2007 PEP period. The Tribunal has found that the 2007 PEP was arbitrary. Accordingly, the Tribunal must conclude that the decision to place the Applicant on a PIP was also arbitrary.

53. Moreover, as discussed earlier, a staff member with performance problems has certain due process rights. Management must give prompt and adequate notice to the staff member that he or she has performance problems. As discussed earlier, during the 2007 PEP review period, management never told the Applicant that he was not performing satisfactorily and that a PIP would be an option. Management should not surprise a staff member by deciding to place him on a PIP without giving adequate warning. The Applicant states that although he was reassigned to another group from November 2007, he was not sure whether he was also under a PIP. The Tribunal finds that management should have communicated to the Applicant in clear terms whether he was on a PIP, for example by a formal memorandum setting out the terms and conditions of the PIP and whether they intend to proceed with the PIP.

54. Finally, with respect to the alleged violation of Staff Rule 2.01, the Tribunal does not find that by mentioning the PIP option in the Applicant's 2007 PEP the Respondent violated Staff Rule 2.01. Neither the language of Staff Rule 2.01 nor any HR policy prohibits it.

2007 SRI

55. The Applicant claims that assigning him a 2.2 SRI rating and giving him a zero percent salary increase as a consequence was unfair. The SRI decision has no reasonable and observable basis.

56. The Respondent responds that, given the Applicant's performance problems and considering his performance compared to that of the other staff members in the unit, management reasonably exercised its discretion by giving him the rating of 2.2.

57. The Tribunal notes that IFC HR explains that: “In practical terms, individuals who receive high results on the PEP should generally receive high SRI ratings. And conversely, those that receive low results on the PEP should generally receive lower SRI ratings than their peers.” There is obviously a link between a PEP and an SRI. In fact the Applicant’s managers explained that the rating of 2.2 was based, *inter alia*, on their evaluation of the Applicant’s performance during the 2007 PEP period. As the Tribunal has found the 2007 PEP to be arbitrary, it must also conclude that the SRI rating was arbitrary.

The PBH Project

58. The Applicant claims that the decision to remove the Applicant from the PBH Project was arbitrary. The Applicant explains that he was leading the PBH Project from March 2007 and was expected to make “financial closing” of the project on 10 December 2007. But on 29 November 2007 the Respondent removed the Applicant from the lead responsibility and transferred it to the Applicant’s primary supervisor. The Applicant claims that this action was arbitrary and improperly motivated.

59. The Respondent answers that PBH was a high priority project and, considering the Applicant’s inability to move the transaction forward, management decided to ask the Applicant’s primary supervisor to take a leading role in the final stages of the Project. Moreover, it was made clear to the Applicant that he would not be taken off the transaction and that his ongoing collaboration was needed and valued.

60. In *Sweeney*, Decision No. 239 [2001], para. 59, the Tribunal stated that: “Work assignments are a matter for the employer.” The Tribunal considers that the distribution of work program among the staff members and decisions such as who should lead a particular

work program are typical prerogatives of management. The Tribunal must give wide discretion to management in such matters. In this case, management provided legitimate business reasons for its decision. The new manager of the Applicant (Ms. D), who joined the Applicant's unit in September 2007, provided a reasonable basis for her decision to remove the Applicant from lead responsibility. She testified that when she joined in September 2007, she was briefed by management about the Applicant's performance problems, yet she decided to keep the Project under the Applicant so that she could judge for herself his performance on the Project. She testified that by November the time pressure on delivering became tighter and the Applicant appeared to be under a lot of personal pressure, which resulted in communication problems. Based on these factors and considering that the PBH Project was "fairly high level," she decided in November 2007 to transfer the responsibility of the PBH Project to the Applicant's primary supervisor. Moreover, before making the decision, the new manager discussed the situation with the Applicant and assured him in writing that "the decision will not negatively impact in any way you receiving credit for what you have done, including for what you contributed towards the closing of the project. You will get credit for your contributions towards closing the deal, from the beginning through the closing of the project."

61. In view of the above, the Tribunal is not convinced that the decision relating to the PBH Project was arbitrary or improperly motivated.

Overall conclusion and remedies

62. The Tribunal finds that the Respondent failed to provide an objective and reasonable basis for its conclusion that the Applicant's performance during the 2007 PEP period was unsatisfactory. Accordingly, it finds that the 2007 PEP was arbitrary. The

Tribunal also finds that, in the context of the 2007 PEP and the decision to place him on a PIP, the Respondent violated the Applicant's due process rights in a number of respects. Since the 2007 PEP was arbitrary, the Tribunal finds that the SRI rating of 2.2 was also arbitrary.

63. The Tribunal notes the Applicant has already received some relief following the Appeals Committee proceedings. Yet management must take decisions relating to performance evaluation and PIPs seriously and must give them thorough consideration because decisions relating to them have implications for a staff member's career in the World Bank Group. In this case management's arbitrary decisions led to the Applicant's ultimate departure from IFC. The managers' conduct suggests that they had simply decided in their own minds that the Applicant had to go, and that from that moment on, they went through the motions of following the rules, without any sincere commitment to the process. The Staff Rules are obviously intended to be respected in good faith, not perfunctorily.

64. The Tribunal considers that the compensation given to the Applicant when the Respondent accepted the Appeals Committee's recommendation should be increased and the Respondent shall also pay the Applicant's costs.

DECISION

The Tribunal decides that:

- (i) the Respondent shall pay compensation to the Applicant in the amount of six months' salary, net of taxes, based on the last salary drawn by the Applicant;

- (ii) the Respondent shall pay the Applicant's costs in the amount of \$20,000;
and
- (iii) all other pleas are dismissed.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Paris, France, 29 October 2010