



World Bank Administrative Tribunal

2018

Decision No. 587

**BI (Nos. 6 and 7),
Applicant**

v.

**International Finance Corporation,
Respondent**

(Merits)

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

**BI (Nos. 6 and 7),
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 Judges Andrew Burgess (Vice-President), Abdul G. Koroma, and Marielle Cohen-Branche.
2. The Applications were received on 11 and 17 January 2017. The Applicant represented herself. The International Finance Corporation (IFC) was represented by Ingo Burghardt, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the IFC's decisions to (i) terminate her employment for unsatisfactory performance; (ii) place her on administrative leave; and (iii) impose restrictions on her access to Bank Group premises.

FACTUAL BACKGROUND

4. The Applicant commenced her employment with the World Bank Group in 1999 as Program Assistant, Level GC. In October 2010, she began working as Program Assistant, Level GC, with the IFC. In November 2012, as a result of a reorganization of her unit, she started processing Systems, Applications and Products in Data Processing (SAP) transactions as part of her regular duties.
5. From 2012 onward, the Applicant had a strained relationship with her manager and colleagues. This stemmed, at least partially, from the Applicant's refusal to process SAP transactions that she did not deem compliant with applicable guidelines.

6. On 4 March 2013, the Applicant's manager requested a Fitness for Duty Assessment (FFD Assessment) because of a medical condition the Applicant had brought to his attention. This assessment recommended that the Applicant should not be assigned to "SAP transactions processing" and that she continue ongoing treatment for her condition. The assessment found her to be otherwise fit for duty.
7. The Applicant's management removed SAP transactions processing from her list of duties.
8. Despite removing SAP transactions processing from her list of duties, the Applicant's performance remained deficient and management informed her of the need to improve her teamwork and communications skills several times between February 2014 and April 2014.
9. On 12 December 2014, noting the Applicant's insufficient improvement as documented on her annual performance review, management notified the Applicant that she would be placed on an Opportunity to Improve plan (OTI). On 14 December 2014, the Applicant's OTI process began.
10. On or around 13 February 2015, management requested another FFD Assessment for the Applicant. The OTI was then suspended.
11. On 20 March 2015, management received the results of this FFD Assessment. It recommended that the Applicant be granted sick leave of "at least 1-2 hours on a weekly basis" temporarily in order to enhance her productivity. The assessment also recommended that the Applicant receive coaching and mentorship to address her inadequate communication and teamwork skills. With these recommendations, the FFD Assessment concluded that the Applicant was fit for duty.
12. On 17 April 2015, after the determination that the Applicant was fit for duty, the Applicant was placed on the OTI. On 20 April, the Applicant took annual leave because of a family emergency. The OTI was suspended while she was away.

13. The Applicant returned on 18 June 2015. Upon her return, the Applicant was informed that the OTI would begin effective 18 June and it would last for a period of six months, with the Applicant receiving feedback every two weeks.

14. On 15 September 2015, the Applicant received an email from her manager, which was explicitly intended “to document the discussion during the OTI feedback session” that took place on 28 August 2015. The email stated in relevant part:

[The Applicant] has generally completed most of the tasks that were requested of her [...]. However, [the Applicant] has continued to create an atmosphere leading many of her colleagues and peers to: i) either refrain from asking her to perform any task due to her combativeness in debating whether it was part of her purview, or ii) to fear approaching her to avoid potential aggression or retaliation. Several staff continue to report being afraid or uncomfortable approaching [the Applicant]. [...]

In addition, [the Applicant] seems to take extended absences during the day (in some cases justified and documented in advance for medical purposes, in other instances not documented), and also is reported to take time during the work day to discuss personal matters at length on the telephone. She has been challenging management on the correct duration of the work day and of the allowed lunch break [...] taking valuable time of management to respond to these matters. [...]

In general, [the Applicant’s] behavior does not conform to what is expected of a fully performing staff member with ACS responsibilities, and in particular does not address some of the OTI recommendations such as “refusing to perform tasks,” “questioning the reason why she is requested to complete tasks,” or “attending team meetings or other activities.”

15. On 22 September 2015, the Applicant responded to the above email stating: “Your documentation is purely self-serving and it’s as if you had total knowledge of the circumstances.” She also requested that the manager “provide the examples of [his] accusations.”

16. On 3 December 2015, the Applicant sent an email to a Staff Association representative. The email included “talking points” for a scheduled meeting with the Applicant’s managers on 7 December. The Applicant included as one of her “talking points,” the following statement: “Threatened employ might result to negative actions – I don’t know what but idea of mass shootings is rampant nowadays.”

17. On 7 December 2015, management confirmed with Bank Group security that the Applicant was to be denied access to Bank Group premises beginning that day. On that same day, she was also placed on paid administrative leave.

18. On 23 December 2015, the Applicant's manager provided the Applicant with a memorandum detailing an assessment of the Applicant's performance during the OTI period and recommended the termination of the Applicant's employment. The memorandum concluded that "management's recommendation is to close the OTI cycle with an unsuccessful rating and to recommend termination of employment."

19. On 11 February 2016, the Applicant received a formal memorandum notifying her that her employment would be terminated effective 12 April 2016.

20. The Applicant filed her Applications on 11 and 17 January 2017. Her request for relief includes the following: (i) "compensation and benefits for nearly 3 years"; (ii) "reinstatement to service via Short Term/Long Term STD"; (iii) "maximum pension under the Net Plan as service years [were] shortened by approximately 3 years before mandatory age of 62"; (iv) "employer's subsidy for medical insurance premiums"; and (v) "overall reputational damage for being unjustly terminated."

21. The IFC filed a preliminary objection on 24 March 2017.

22. In its judgment on the preliminary objection, the Tribunal concluded: "The Applicant's claims regarding: (i) the implementation of her OTI; (ii) the decision to terminate her employment; (iii) her placement on administrative leave; and (iv) the restriction on her access to Bank Group premises are admissible." *BI (Nos. 6 and 7) (Preliminary Objection)*, Decision No. 574 [2017].

SUMMARY OF THE CONTENTIONS OF THE PARTIES

*The Applicant's Contention No. 1**The IFC improperly placed her on an OTI and wrongfully terminated her employment*

23. The Applicant challenges the propriety of placing her on an OTI and the decision to terminate her employment. She argues that some of the tasks assigned to her during her employment were outside the purview of her job description. She maintains that management manipulated the reviews and feedback that led up to her termination, stating that, “[h]ad management truly evaluated [her] performance objectively,” she would not have received low performance ratings. The Applicant contends that management considered only some of her accomplishments when reviewing her performance and overly relied on negative comments submitted by her colleagues.

24. The Applicant claims that her “2.0 SRI [Salary Review Increase] rating” – issued during two consecutive annual reviews – was not low enough to warrant termination at the end of her OTI period. She appears to allege that her managers would not provide her with specific examples of “unprofessional behaviors and uncooperative actions” that led to her OTI and that she was placed on an OTI on the basis of “utterly unfair” evaluations that resulted from a “manipulated workload,” designed to diminish or negate her accomplishments.

25. The Applicant also argues that she was eventually “wrongfully terminated for retaliatory reasons” because of her previous applications to this Tribunal, failing to socialize with her colleagues, refusing to take on her supervisor’s personal matters as part of her work, giving negative feedback on one of her supervisors, and challenging the fairness of her performance reviews. As relief, the Applicant seeks monetary damages and an order for her former managers to complete several courses on ethics administered by the Office of Ethics and Business Conduct.

26. The Applicant maintains that her managers “malign[ed her] using their expansive influence over [her] supervisors” to bring about the termination of her employment. Throughout her responses to the IFC’s submissions, the Applicant appears to argue that the termination of her employment was excessive and unjustified.

The IFC's Response

The IFC acted fairly, reasonably, and consistently with applicable Staff Rules

27. The IFC notes that management conducted the Applicant's OTI and FFD Assessments in accordance with the applicable Staff Rules. It argues that this discretionary decision by management should not be interfered with since the decision was not "arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure." The IFC further notes that deficiencies in the Applicant's performance had been well-documented for several preceding years, highlighting that upon closing of the Applicant's OTI, despite bi-weekly mentoring and written notice of areas for needed improvement, management terminated the Applicant's employment after undergoing a "fair and reasonable procedure." The IFC argues that there were "no procedural irregularities" in the process leading to the termination of the Applicant's employment.

28. Although the Applicant repeatedly stated that management's actions and the termination were retaliatory, the IFC argues that the "Applicant has not provided any evidence, or even indications, of retaliation or discrimination, and thus failed to make out a *prima facie* case."

The Applicant's Contention No. 2

The IFC's decisions to restrict her from its premises and place her on administrative leave were inappropriate

29. The Applicant also challenges her restriction from Bank Group premises and placement on administrative leave as decided by management after she made reference to mass shootings. Regarding her restriction from Bank Group premises after pairing her disgruntled attitude with current news about mass shootings, the Applicant appears to suggest that her meaning was misconstrued or should not have been an issue after she "agreed not to speak about a threat." She notes that her reference to a mass shooting was only an "empty threat" and that her reference was only "a talking point." She notes that she does not own a gun, calls her words an "honest mistake," and asks that the decision to bar her from Bank Group premises be rescinded.

30. The Applicant alternatively argues that barring her from Bank Group premises was unjustified:

I strongly felt that HR management and Security staff had overacted since alleged threat was merely a talking point as explained to them before. Although they had exercised extreme caution for the greater staff, they did not even give me the benefit of the doubt. [...] Bank's standing rules did NOT include specific policies on potential misconduct particularly terrorism nor on duration of administrative leave or reinstatement to work.

The IFC's Response

The IFC acted with reasonable precaution

31. The IFC notes that "security is a fundamental duty of the Bank to its staff" and that the Bank Group's security unit, along with the Human Resources department, acted to place the Applicant on administrative leave because of her implied threat of a mass shooting. The IFC asserts that it did not violate any term of the Applicant's employment by taking this security measure. The IFC argues that restricting the Applicant from its premises, despite the Applicant's apology for her statement, is a reasonable precaution given the nature and seriousness of her implied threat.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

32. Pursuant to the Tribunal's judgment on the preliminary objection, the main issues that are before the Tribunal at the merits stage are as follows: (i) whether the Applicant's managers improperly implemented the Applicant's OTI and wrongfully terminated her employment; and (ii) whether the Applicant was wrongfully placed on administrative leave and restricted from entering Bank Group premises.

Implementation of the OTI and decision to terminate employment

33. The Applicant's main argument is that her managers at the IFC improperly implemented her OTI and terminated her employment without making a fair or true assessment of her

performance. The IFC responds that the Applicant's performance did not improve in any significant way during the OTI and the decision to terminate her employment was reasonable.

34. Staff Rule 5.03, paragraph 3, which governs management of unsatisfactory performance of staff members, states:

03. Management of Unsatisfactory Performance

[...]

Procedure

3.02 If a Manager or Designated Supervisor determines that a staff member's performance (which includes professional and work-place behavior) is not satisfactory, the Manager or Designated Supervisor may do the following:

[...]

b. Discuss and Document Opportunity to Improve Unsatisfactory Performance: Discuss and share with the staff member in writing:

- i. the aspects of performance that are not satisfactory,
- ii. guidance on what improvement is expected and by when, and
- iii. the possible consequences of failure to improve.

c. Health Assessment: Request a health assessment under Rule 6.07, paragraph 3.03 if performance problems are believed to be health-related.

Recommend Action

3.03 In the case of failure to achieve or sustain satisfactory performance following a documented opportunity to improve under sub-paragraph 3.02(b), a Manager or Designated Supervisor may recommend, with the concurrence of the HR Team Manager, further actions consistent with that documented discussion. The recommendation shall be in writing, to the next in line manager at Level GI or above, and may include [...] termination in accordance with Rule 7.01, Section 11, Unsatisfactory Performance. The staff member will be given a copy of the recommendation and at least 14 calendar days to comment prior to a decision on the recommendation.

35. A decision to terminate a staff member for poor performance is a discretionary decision of the IFC. With respect to review of such a decision, the Tribunal stated in *Lopez*, Decision No. 147 [1996], para. 36, that:

The question for decision by the Tribunal is whether the Applicant's service was properly terminated by the Respondent for unsatisfactory performance in accordance with both the substantive requirements and the procedural guarantees required by the internal law of the Bank. The Tribunal has repeatedly stated that it will not substitute its judgment for the discretionary decisions of the Bank's

management, particularly in terms of the evaluation of staff performance, and that the “Administration’s appraisal in this respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure” (*Saberi*, Decision No. 5 [1982], para. 24; *Suntharalingam*, Decision No. 6 [1982], para. 27; *Buranavanichkit*, Decision No. 7 [1982], para. 26; *Durrant-Bell*, Decision No. 24 [1985], para. 25).

36. Accordingly, the Tribunal will first address the substantive question of whether the IFC’s decision to terminate the Applicant’s employment for unsatisfactory performance was reasonable.

37. The Applicant’s performance problems are well-documented. Before the Applicant was placed on an OTI in December 2014, she was on notice of her performance issues. In her Fiscal Year 2013 (FY13) performance evaluation, covering the period 1 July 2012 through 30 June 2013, management noted problems with her performance and identified the areas in which she needed to make improvement in Fiscal Year 2014 (FY14):

(a) Flexibility. While [the Applicant] has delivered well within the boundaries of her new job description, her sense of boundaries creates rigidities which are noted above by some of her colleagues, supervisor and co-supervisor and which stand in contrast to the ‘can do’ approach of other ACS. I expect [the Applicant] to become more flexible and willing to assist colleagues.

(b) Improved tone of communication. As noted above [the Applicant] can appear aggressive or rude in communicating and this creates an uncomfortable environment for her colleagues and makes some unwilling to make requests of her. I have discussed improved communication with [her] on several occasions and I expect her to improve the tone of communication with colleagues and clients.

38. However, during FY14, the Applicant failed to improve her performance. In her FY14 performance evaluation, covering the period 1 July 2013 through 30 June 2014, management again noted issues relating to the Applicant’s performance, stating that

she habitually limits herself somewhat rigidly to the job description and declines work outside of the description as she sees it. Over time this has led to a situation where staff in the group ask other ACS for help rather than asking [the Applicant], putting more pressure on other ACS staff.

[The Applicant] is not particularly a team player. She prefers not to trade favors with other colleagues in order to get the group’s work done. Her communication,

while usually polite, can be brusque and on occasion bullying. This discourages colleagues asking her for help and increases the work load on other more congenial ACS colleagues.

39. The Applicant had a discussion with her manager about her FY14 performance evaluation on 7 October 2014. For FY14, she received a performance rating of 2, which means “below expectations.”

40. On 12 December 2014, the Applicant’s management informed her that she was being placed on an OTI, effective 14 December 2014. Under the OTI, the Applicant had six months to successfully address her performance deficiencies. During the OTI period, however, on 20 April 2015, the Applicant took emergency leave because of a family emergency. Her OTI was suspended until her return to work on 18 June 2015. Upon her return, management notified her that, considering the gap in time caused by the Applicant’s emergency and annual leave, the OTI would be continued for another six months as “further accommodation.”

41. During the OTI period, the Applicant’s manager scheduled bi-weekly OTI feedback meetings with the Applicant. The record suggests that on 28 August 2015, the Applicant met with her manager for her 2015 annual performance discussion. On 15 September 2015, the manager provided the Applicant with an interim assessment of the OTI and noted several persistent performance issues. The Director, as the Reviewing Official, signed the FY15 performance evaluation on 20 September 2015 and he noted that the Applicant “continues to be disruptive and fails to function as an effective team player despite repeated feedback on this issue.”

42. In December 2015, the extended six-month OTI period came to an end. On 23 December 2015, the manager provided the Applicant with a memorandum dated 18 December 2015 stating that the OTI plan had concluded on 18 December 2015. In that memorandum, the manager provided a detailed assessment of the Applicant’s performance during the OTI period and recommended the termination of the Applicant’s employment.

43. The 18 December 2015 memorandum, which was copied to the Applicant's Director, states as follows:

During the OTI period under review, which started on April 20th, 2015 and has now run its course, with the agreed extensions to December 18, 2015, we have collected extensive information from current and former supervisors, peers and staff assigned to you for support, both verbally and in writing.

Even though you have demonstrated ability to generally perform tasks assigned to you, feedback has consistently pointed out lack of adherence and improvements in the highlighted behaviors that were pointed out in the April 17th OTI letter. In particular, we collected documented evidence that you failed to perform collaboratively with colleagues, with staff who were too intimidated to ask you for support, and with supervisors who claimed you continued to engage in unproductive discussions about narrowly defined scope of work. In particular, one of your peers has repeatedly complained about the need to cover for you at short notice on a continuous basis due to several absences, even when not on Annual and Sick Leave. Management had followed the recommendation in the Fitness for Duty Assessment and made accommodations for your medical needs, however your absences from the office extended to several times the two hours per week as per the FFD. This behavior has continued to aggravate the stress on your co-worker and has created great disruption to the whole team. Further, the Manager of the Private Equity Funds' group, to which unit you are assigned, has also complained repeatedly about an unproductive and disruptive attitude, leading to further issues within the team. Finally, several of the staff assigned to you for support have repeatedly indicated that they felt threatened and intimidated by your refusal to perform tasks, and have decided to perform such tasks themselves rather than asking for your support. In addition, further examples of unwarranted behavior have emerged, such as disrespectful communications with respect to temporary workers using your workstation during your repeated absences.

Management has further followed up on your request to be assigned a mentor to help you address highlighted deficiencies, and has agreed to appoint [...] (as per your own recommendation) in such function. We understand that you failed to take advantage of such opportunity, and you have not engaged with the mentor in any meaningful way to help address the identified behaviors.

As a result, management's recommendation is to close the OTI cycle with an unsuccessful rating and to recommend termination of employment [...].

You have 14 days to comment on Management's recommendation.

44. In response to the memorandum, on 12 January 2016, the Applicant sent an email to the Director, expressing her belief that she had been "misabeled, mischaracterized, and mistreated"

for filing an earlier case with the Tribunal regarding her FY13 performance review. She added that it had been her intention to seek clarification and more specific information on her performance deficiencies, and asked that he consider reassigning her to another department for the next three years in order for her to reach mandatory retirement age or to grant her early retirement.

45. On 11 February 2016, the Director issued a memorandum providing the Applicant with official notice of termination, which states:

In the past several months, your [manager] has discussed with you and has notified you in writing, issues concerning your performance and ways in which your performance was expected to improve. [The manager] also advised you that if your performance did not improve, your employment might be terminated. In coming to my decision I have carefully considered your comments on the proposal to terminate your employment. I have also consulted with the Director [of] Human Resources and with the Vice President [...], who are in concurrence with my decision. Because your performance has not shown significant and sufficient improvement, please be informed that your employment with the World Bank will be terminated effective close of business April 12, 2016, in accordance with Staff Rule 7.01, Section 11 (Unsatisfactory performance).

46. The record before the Tribunal demonstrates that the Applicant had continuous performance problems and that her managers gave her guidance and the opportunity to improve. However, the Applicant did not improve. The Applicant's deficiencies were all documented and were brought to her attention. The Applicant was also provided accommodations as recommended in the FFD Assessments and was given the opportunity for coaching sessions. Nevertheless, her performance problems continued.

47. The Tribunal, on the basis of the record as a whole, finds that a reasonable basis exists for the termination of the Applicant's employment for unsatisfactory performance.

48. The Tribunal will now consider whether the IFC followed appropriate procedure.

49. Under Staff Rule 5.03, the Applicant's managers were obliged to provide her with notice of the aspects of performance that were not satisfactory, guidance on expected improvement by the end of the six-month OTI term, and notice of the consequences of her failure to improve.

50. The Applicant was provided notice of the unsatisfactory aspects of her performance in her FY13 and FY14 evaluations, in the OTI memorandum issued on 17 April 2015, and during oral counseling sessions and follow-ups. In addition to the outlined plan for improvement included in the OTI, the Applicant was given a list of specific actions she could take to improve and offered the opportunity for regular coaching sessions, although the Applicant did not make use of this opportunity for individual coaching. In the 17 April 2015 OTI memorandum, management noted that “failure to improve at a reasonable pace or to sustain satisfactory performance is a serious matter and could result in the termination of your employment from the World Bank Group.” Furthermore, the Applicant was informed by her managers at feedback sessions, mediation, and scheduled meetings about the issues relating to her performance, and was provided the opportunity to respond to criticism of her performance. The Applicant’s managers thus provided her with notice of deficiency, the opportunity and guidance to improve, notice of the consequences of failing to improve, and adequate opportunity to respond to her managers’ assessments.

51. Furthermore, while the Applicant was on the OTI, she informed her managers about a health issue. They therefore acted in accordance with Staff Rules by exercising their discretion to order an FFD Assessment and then accommodating medical conditions that might affect employee performance. On 20 March 2015, the Senior Occupational Health Specialist recommended, as a result of the FFD Assessment, that the Applicant should, for the time being, take some time off work during each workweek and receive regular coaching and mentoring sessions. The Senior Occupational Health Specialist noted that the Applicant would be fit for duty with these accommodations. Her managers accepted these recommendations and provided her with the suggested accommodations.

52. On the basis of the record, the Tribunal holds that the IFC followed the applicable procedure, and finds that the IFC did not implement the OTI in an unfair manner.

53. Finally, the Applicant claims that she is a victim of discrimination and retaliation. She provides no further explanation or elaboration. The Applicant’s statements that appear somewhat relevant to these allegations are as follows: “Management wrongfully terminated me for retaliatory reasons and magnanimously conspired to plot actions leading to my early collapse mentally,

physically and emotionally. They designed ways to topple my energy and dampen my spirit. They did not observe obligation for my health and safety as required by Bank policies.”

54. The Tribunal finds that her allegations of discrimination and retaliation have no basis and rejects these claims.

Whether management was justified in placing the Applicant on administrative leave and restricting her from Bank Group premises

55. On 20 October 2015, the Applicant and her managers agreed to mediate their disagreement about her performance issues but were not able to reach an amicable solution. On 3 December 2015, the Applicant emailed a Staff Association representative about a meeting with her managers scheduled to take place on 7 December 2015 and wrote that a threat to her employment “might result in negative actions – I don’t know what but idea of mass shootings is rampant nowadays.” In response to this comment, the Staff Association contacted the Applicant’s managers and Human Resources Corporate Case Management (HRDCO). The Lead Human Resources Specialist at HRDCO, consulted Bank Group security and, after this consultation, placed the Applicant on administrative leave and restricted her access to the Bank Group premises. While she was on administrative leave, the Applicant continued to receive salary and benefits. The Applicant was informed of these decisions in person at the scheduled 7 December 2015 meeting. The Applicant responded, “You are really making me violent this way.” Soon after this, Bank Group security escorted the Applicant from Bank Group premises.

56. The Applicant explains in her present filings that her implied threat of a mass shooting was an “empty threat” since she does not own a firearm and it was only a “talking point,” and she asks that the decision to restrict her from Bank Group premises be rescinded. In response, the IFC argues that it took reasonable precaution given the nature and seriousness of the Applicant’s implied threat and expression of violent emotion. The Tribunal’s precedents suggest that considerable deference should be given to the IFC in making its security decisions, including whether or not to impose access restrictions on staff members. In *Q*, Decision No. 370 [2007], para. 37, the Tribunal noted that

common sense dictates that the Bank may take reasonable efforts to control or condition access to its premises, particularly by persons who are not currently members of the staff, and even where a ground may exist for the person's entry. [...] Maintaining security is a fundamental duty of the Bank to its staff, and to the integrity of the institution, and access to Bank premises is necessarily influenced by security considerations.

57. In light of the foregoing, the Tribunal is satisfied that the IFC had a proper basis to place the Applicant on paid administrative leave and to impose restriction on her access to Bank Group premises.

DECISION

The Application is dismissed.

/S/ Andrew Burgess

Andrew Burgess

Vice-President

/S/Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 18 May 2018