



World Bank Administrative Tribunal

2013

Decision No. 470

**BX,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

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

**BX,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Francis M. Ssekandi and Ahmed El-Kosheri.

2. The Application was received on 5 January 2012. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 4 February 2013.

3. The Applicant challenges the Bank's decision to terminate his appointment on grounds of non-confirmation and its failure (i) to take his medical condition into account when deciding not to confirm his appointment and terminate his employment; (ii) to require him to undergo a fitness for duty assessment prior to terminating his employment; and (iii) to inform him of the possibility of taking medical leave and being placed on the Bank's Short Term Disability program.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in February 2010 on a Term appointment for a period of three years as Adviser, Level GH, in the Independent Evaluation Group ("IEG"). Among other terms, the letter of appointment provided that "in accordance with World Bank Group policy, your appointment will be subject to a probationary period of up to one year." The tasks assigned to the Applicant in his first year at the Bank included: (i) an "[i]n-depth review of IEG's existing project review and evaluation practice"; (ii) a "[b]roader review of the M & E 'architecture' and approaches in the World Bank Group in general, and in IEG in particular"; (iii) a literature review on "links between ICT [Information and Communication Technologies] and growth"; and (iv) "Evaluation of Africa Action Plan."

5. In his interim Overall Performance Evaluation (“OPE”), covering the four-month period from 22 February 2010 to 30 June 2010, the Applicant received “Fully Successful” ratings for the first two assignments and “Partially Successful” ratings for the other two. The Applicant’s supervisor, the Director of the Bank’s Independent Evaluation Group (“IEGWB”), (“the Director”), provided feedback on his performance for that period. She stated among other things:

Results in the first six months have been mixed. [The Applicant] is a hard worker, an eager learner, and a good team player. He has excelled in some of the methodology work, in particular his review of the treatment of efficiency in [Implementation Completion Report (“ICR”)] Reviews. However, some of his work has not met the standards for quality, timeliness, and innovation expected of technical staff at the GH level. Both the [Africa Regional Office (“AFR”)] infrastructure review and the literature review on ICT and economic growth were delayed and did not reach the level of depth and insight requested by the evaluation teams.

6. She then continued:

The mixed results in these first six months partly reflect the steep learning curve that is often encountered in entering the World Bank as an external hire, particularly at the GH level and particularly as [the Applicant] did not come in with strong familiarity with evaluation methodology or with World Bank operations. We are working closely with [the Applicant] to formulate a well-defined and focused work program for the next 4-6 months that can build on his skills, including in-depth evaluations of transport projects in Vietnam and Bhutan and several desk-based project reviews. We will review progress near the end of that period as we approach a decision on confirmation.

7. While transmitting his draft OPE by e-mail on 29 September 2010, the Director mentioned, “I understand it has been a difficult six months for you, and I am glad that you are tackling the issues proactively.” The Applicant’s OPE was finalized on 14 October 2010.

8. By the early fall of 2010, the Applicant went to the Bank’s Health Services Department (“HSD”) and asked for help relating to his health problems. On 7 September 2010, HSD referred him to a medical specialist (Dr. C) who met with the Applicant regularly several times a month.

9. The Applicant’s work program from fall 2010 through June 2011 was a reduced one including one main task, i.e. completing two project performance assessments (“PPARs”) of rural roads projects in Bhutan and Vietnam. In relation to his tasks, the Applicant undertook a

mission to Vietnam and Bhutan in November and December 2010. When the Applicant arrived in Hanoi on 30 November 2010, he suffered a panic attack and had great difficulty breathing. He was taken to Hanoi International Airport's clinic and his managers as well as the Regional Medical Advisor were notified of his situation.

10. On 1 December 2010, the Applicant sent an e-mail message to the Director and the Manager, Sector Evaluations ("Sector Manager"), and copied Dr. C, describing his diagnosis as a "panic attack with hyperventilation" and explaining that it may have been due to an increase in the dosage of the medication he was taking to treat his condition. He also discussed his medical condition. The Applicant also stated that "I would like to assure you that I am fine, and remain eager to complete my mission" and that "With your continuous patience and support, I have been recovering from [the medical condition]... With advice from [Dr. C and the Regional Medical Advisor], I would like to complete this mission and produce a good report ... But, I think I am in need of collective support from all of you." Thereafter the Applicant's supervisors allowed him to complete his mission.

11. Despite communications with the Director and the Sector Manager about the progress on his PPARs, the Applicant did not meet his deadlines. Consequently, the Director decided not to confirm his appointment on his one-year anniversary and, instead, extended his probation for another five months until 22 July 2011. In an e-mail message to him dated 16 February 2011 the Director stated:

We are coming up to your one-year anniversary, the normal date for decisions on confirmation of staff. As we discussed and I think we both agree, this has been a challenging year, and your performance has not been at the level expected of GH staff. We already discussed your performance during the first half of the year and I provided written feedback in this past year's OPE, which indicated areas to work on and noted that we would assess the prospects for confirmation as we got closer to the one-year anniversary. Because your performance has not risen to the level we expect from this position, IEG has decided not to confirm you at the present time. We will extend the probation period by five months to allow you to finish your current assignments, and during that period we will make a final decision on confirmation, allowing due notice for your future planning. We appreciate your dedication and effort, and we remain committed to supporting you to complete this work in a satisfactory manner. Please feel free to stop by at any time if you would like to discuss specific issues further.

12. A week later, on 23 February 2011, the Applicant broke his left leg while away on a ski vacation. The Applicant had to take sick leave and was later allowed by the Director to work

from home. The Applicant neither completed his assignments nor communicated when he anticipated completing them.

13. On 6 April 2011, the Director notified the Applicant by e-mail that his appointment would not be confirmed and that his employment would be terminated at the end of the current probation period on 22 July 2011. She explained:

Your 2010 OPE indicated that your performance was not meeting the expectations laid out in the job description, and the performance has not improved sufficiently over the contract period. I understand that there are many reasons for this, some of them involving unexpected personal and health issues. I look forward to working with you during the remainder of the contract period with the goal of completing the two PPARs assigned to you on Vietnam and Bhutan.

14. In June 2011, the Applicant sought again the assistance of HSD. The Applicant states that an HSD representative asked if he had taken a fitness for duty test and suggested that he talk to the Bank's Ombudsman. In an e-mail message to the HSD representative, dated 28 June 2011 the Applicant informed her that he had set up the appointment with the Ombudsman for the next day and stated, among other things that "[a]pparently, my medical situation since last summer is not taken into consideration." The Applicant was referring to an e-mail message dated 24 June 2011 by a Human Resources ("HR") Officer, who stated that the rationale for the decision not to extend the Applicant's probation period was that his performance as assessed by the Director was not "at the expected level for a GH staff."

15. On 28 June 2011, the Sector Manager sent an e-mail message to the Applicant confirming that his employment with IEG would be terminated on 22 July 2011 in accordance with earlier discussions between the Applicant and the Director, and her earlier communication to him of 6 April 2011, because

your performance has not met the expectations set out in your job description. Although your work program was substantially adjusted downward last fall, we have not yet received any outputs from the two PPARs which were assigned to you last fall.

16. The Applicant met the Ombudsman on 29 June 2011 and even though, according to the Applicant, the Ombudsman apparently asked if the Applicant had taken a fitness for duty test he did not explain its implications. Thereafter the HR Officer discussed the Applicant's case with the Ombudsman and HSD. In an e-mail message dated 6 July 2011 to the Sector Manager copied to the Acting Director, IEGWB (as the Director had left the Bank at that time), and the

Acting Director-General, IEG, both the options of terminating the Applicant's employment on grounds of non-confirmation as well as the option of requesting a fitness for duty assessment from HSD were discussed. Ultimately, the Applicant's managers decided not to seek a fitness for duty assessment.

17. The Applicant had been offered the option of resigning his position instead of having his employment terminated on the ground of non-confirmation, but he did not resign. On 29 July 2011, the Acting Director-General, IEG, issued a "Non-Confirmation, Notice of Termination" to the Applicant. This Notice informed the Applicant that his employment would be terminated on 29 September 2011 following two months of administrative leave. In the Notice, the reasons for the Applicant's non-confirmation were explained.

18. In an e-mail message dated 4 August 2011, a Senior Advisor in IEG sent to the Applicant Staff Rule 6.22 ("Disability Insurance Program"). The Applicant responded by saying that no one had mentioned this Staff Rule to him.

19. In a letter dated 30 November 2011, after the Applicant's employment had been terminated, Dr. C confirmed that the Applicant's difficulties with completing his work assignments while at the Bank were a result of his medical condition. The Applicant filed an Application with the Tribunal on 5 January 2012.

20. The Applicant requests the Tribunal to order: (i) the Bank to re-hire him as an Advisor in IEG at Grade Level GH or into a comparable position as soon as he is medically able to return to work, or the provision of a lump sum payment equivalent to the value of such a re-hire commitment; (ii) the removal from his personnel file of all records relating to his non-performance or poor performance, including all records relating to his OPEs; (iii) a lump sum equivalent to the value of two years' worth of Short Term Disability payments; (iv) the severance payments to which the Applicant was entitled under Staff Rule 7.01 ("Ending Employment"), paragraph 7.08 ("Severance Payment"); (v) such additional compensation as the Tribunal deems fair and appropriate for the pain and suffering caused the Applicant and for the damage to his reputation caused by the negative performance evaluations and the termination of his employment resulting from the Bank's failure to provide him with appropriate protections under the Bank's disability program; and (vi) attorneys' fees and costs in the amount of \$10,194.13.

THE CONTENTIONS OF THE PARTIES

The Applicant's main contentions

21. The Applicant alleges that the Bank did not treat him fairly and abused its discretion when it terminated his employment. He asserts that his supervisors were fully aware of the Applicant's medical condition as he had discussed it with them; however, they failed to take it into account when making the decision to terminate his employment.

22. The Applicant further states that his managers did not request a fitness for duty assessment pursuant to Staff Rule 6.07 ("Health Program and Services"), paragraph 3.03(a) ("Fitness for Duty Assessments.") He claims that had such an evaluation taken place, he would have been found unfit for duty and placed on the Short Term Disability program under Staff Rule 6.22, paragraphs 3.01-3.07. The Applicant also claims that the Staff Rules make it clear that a staff member whose ill-health results in poor performance may have his employment terminated only at the end of the period during which the staff member is on the Short Term Disability program and after the provision of a special severance payment (under Staff Rule 7.01, paragraphs 7.02 and 7.08). The Applicant states that he was not offered either of these benefits and was completely unaware of their existence.

23. The Applicant also states that his supervisors, Human Resources personnel, the Ombudsman and staff in HSD did not tell him about the Bank's disability program or arranged for a fitness for duty assessment. He points out that if they had ensured that he, who was vulnerable and unable to grasp the implications of his situation, had access to information about the options under the disability program or had taken steps to obtain a fitness for duty evaluation, his situation would have been quite different.

The Bank's main contentions

24. The Bank alleges that "[the Applicant's] performance never met the standards for quality, timeliness, and innovation expected of technical staff at the GH level" and that the decision not to confirm him based on poor performance was reasonable and fair.

25. The Bank asserts that the Applicant's supervisors reasonably believed that his performance issues were not health-related and that, accordingly, their decision not to request a fitness for duty assessment was not an abuse of managerial discretion. The Bank states that the Applicant's panic attack in November 2010 would have been an opportunity for him to share

with his supervisors his medical limitations and how they were affecting his performance and ask for help, instead of insisting that he was “fine.” It was according to the aforementioned assurances from the Applicant and Dr. C’s support that his supervisors allowed him to continue his mission.

26. The Bank claims that despite the Applicant’s underperformance on the first tasks he was assigned, his supervisors attempted to help him improve his performance by developing a reduced work program for him but the Applicant failed to produce any written drafts of either PPAR without ever indicating that his health adversely affected the completion of his tasks. The Bank states that even though the Applicant would like to impute to his supervisors any information HSD or the Ombudsman might have had on his condition, these communications are confidential pursuant to World Bank policy.

27. The Bank further states that in deciding not to confirm the Applicant’s appointment, the Applicant’s supervisors followed the Staff Rules as well as the due process requirements promulgated by the Tribunal.

28. The Bank also contends that it is under no obligation to inform each staff member individually of his rights and duties under the Staff Rules. It points out that information regarding the Bank’s disability program is readily available to all staff members, including the Applicant, through the Staff Rules, as well as on the Bank’s intranet.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

29. The Tribunal will not interfere with or review the merits of a non-confirmation decision unless there has been an abuse of discretion. (*Khan*, Decision No. 293 [2003], paras. 38 and 39; *McNeill*, Decision No. 157 [1997], paras. 30, 34, 36 and 44.) In the present case, the Tribunal will examine whether there was a reasonable basis for the Bank’s decision that the Applicant was not suitable for employment in the Bank and whether he was treated fairly.

30. In the Applicant’s first OPE covering the period from 22 February to 30 June 2010, he received “Partially Successful” ratings for his work on two reports the final versions of which were due in August 2010. His supervisor stated that the results of the Applicant’s work had been mixed reflecting “the steep learning curve that is often encountered in entering the World Bank as an external hire, particularly at the GH level and particularly as [the Applicant] did not come in with strong familiarity with evaluation methodology or with World Bank operations.” The

record therefore shows that problems with the Applicant's performance were identified during this interim OPE process. His performance never improved during the probationary period, even though opportunities were provided to him.

31. The record also shows that due process guarantees spelled out in Staff Rule 4.02 ("Probation") were provided to the Applicant. He had been given a work program from the beginning of his appointment as reflected in his OPE. This work program was later amended. As the Director stated in the OPE, his managers were working closely with him to create a well-defined and focused work program for the remaining months of the probationary period which could build on his skills. The Applicant was also given an interim OPE for the period 22 February to 30 June 2010, in which he was notified of the problems with his performance.

32. Furthermore, at that point, the Applicant's managers gave him a reasonable opportunity to improve his performance. The Applicant's work program was amended to contain one main task, namely completion of the two PPARs of rural roads projects in Bhutan and Vietnam, which was not due until February 2011. However, the Applicant did not complete these PPARs, and on 16 February 2011 the Director confirmed that she was not in a position to confirm the Applicant's appointment at that time. Furthermore, the record shows that the Applicant had around him managers and other staff who acted as mentors and who were interested in providing adequate guidance and supervision, both during his mission to Vietnam and Bhutan, and subsequently.

33. In addition, even on 16 February 2011, when the Director announced her decision not to confirm the Applicant's appointment, she also announced that his probationary period would be extended for an additional five months to allow him to finish his assignments and that a final decision on confirmation would be made thereafter. This could have served as another opportunity for the Applicant to complete his assignments and show that his performance had improved, but that did not happen. Consequently, on 6 April 2011, the Director informed the Applicant that his employment would be terminated. It would appear therefore that the Bank had exercised its discretion reasonably in deciding that the Applicant had not demonstrated his suitability for continued employment with the Bank, had provided him with adequate guidance and supervision, and had respected the due process guarantees of a probationer by giving him notice of his performance problems and an opportunity to defend himself and improve his performance. (*See Zwaga*, Decision No. 225 [2000], paras. 36, 37 and 38.)

34. The Applicant, however, contends that his medical condition was the reason for his deficient performance. He claims that he had disclosed this medical condition to his supervisors, who failed to take it into account when deciding not to confirm his appointment. The parties dispute the extent to which the supervisors knew of this medical condition and of its gravity. While the Applicant claims that his managers were fully informed of his medical condition, the Bank states that his managers had no reason to believe that the Applicant's failure to meet the required standards of performance were health-related.

35. On the one hand, the record shows that the Applicant had disclosed his medical condition to HSD from September 2010 through October 2011. He also had regular consultations with Dr. C, a Bank-recommended medical specialist, during the period September 2010 to November 2011. Dr. C acknowledges in a letter dated 30 November 2011 that the Applicant was suffering from the medical condition during the period under his care and took medication for it, which resulted in some improvement. But, according to Dr. C, the Applicant had difficulty engaging with his work, experienced problems focusing and found himself easily distracted. It is noteworthy that while Dr. C had initially diagnosed the Applicant with a less serious medical condition, he subsequently diagnosed the Applicant with a more serious condition.

36. On the other hand, however, the Tribunal notes that all the Applicant's medical records and communications with HSD and Dr. C were bound by confidentiality. The Applicant had not given permission to HSD or Dr. C to discuss his condition with anyone else. Furthermore, the Personal History Form filled out by the Applicant when he applied to the Bank did not show that he had requested any special accommodations for any kind of disability. There is also no evidence of sick leave requests during his probationary period on the grounds of his medical condition (except for the requests for sick leave and flexible work schedule when he broke his leg after a skiing accident). The Applicant claims that he had discussed his condition with the Director as early as September 2010 and several times thereafter with her and other colleagues, but there is no contemporaneous evidence of such discussions.

37. Notwithstanding the foregoing, the record does show that the Applicant's managers were aware that he was dealing with health problems during his probationary period. First, there is evidence that the Applicant had first related to his HSD Counselor on 9 September 2010 and then on 4 November 2010 that he had discussed his medical condition with the Director and had told her that he was receiving treatment. In this regard, in the e-mail message transmitting the draft OPE, dated 29 September 2010, the Director had told him: "Here is a draft OPE that I think reflects our discussion. I understand it has been a difficult six months for you, and I am glad that

you are tackling the issues proactively.” The Bank insists that the Director was not referring to the Applicant’s health problems, of which she was unaware. The Tribunal notes that it is not entirely clear that the Director was aware, at that point in time, of the gravity of the Applicant’s medical condition.

38. The record, however, also shows that there were at least two other instances supporting the conclusion that the Applicant’s managers were aware or should have been aware of his medical condition. First, it was clear that the Applicant was suffering from the medical condition by the end of November 2010 after the panic attack he had experienced at Hanoi airport. On 1 December 2010 the Applicant wrote to his managers to inform them as follows:

With your continuous patience and support, I have been recovering from [the medical condition]. With advice from [Dr. C and the Regional Medical Director], I would like to complete this mission and produce a good report. I am not quite sure whether it is appropriate to send this confidential message to my supervisors and doctors at the same time. But, I think I am in need of collective support from all of you.

39. The Tribunal notes that the Bank focuses in its pleadings on the Applicant’s panic attack while on mission in Vietnam in December 2010, and states that his managers “were not made aware of any significant medical condition that had adversely affected his performance.” As the Applicant has pointed out, however, it was not the panic attack that caused his subsequent inability to perform his work satisfactorily; rather, the problem was the underlying condition of which the panic attack was a manifestation. The Tribunal finds that the Applicant had revealed to his managers, through his 1 December 2010 communication, that he was dealing with a more chronic medical condition for which he requested “the collective support from all,” including supervisors and doctors at the same time.

40. Second, the Director’s communication of 6 April 2011 to the Applicant indicates awareness of the connection between his health issues and his deficient performance. She stated:

Your 2010 OPE indicated that your performance was not meeting the expectations laid out in the job description, and the performance has not improved sufficiently over the contract period. I understand that there are many reasons for this, some of them involving unexpected personal and health issues. I look forward to working with you during the remainder of the contract period with the goal of completing the two PPARs assigned to you on Vietnam and Bhutan.

41. The Bank argues that these “unexpected personal and health issues” relate to the injury from the Applicant’s skiing accident and the panic attack in Vietnam. It is true that, following the panic attack, the Applicant stated that he was “fine” and that he was looking forward to completing his mission and writing a good report, and that Dr. C appears to have concurred at the time. Therefore it would not have been reasonable to expect his managers at that point to have attributed his poor performance immediately thereafter to the underlying medical condition. However, as time progressed and the Applicant’s performance was not improving, it would have been reasonable for the Director to assume that his poor performance was to be attributed, at least to some extent, to health reasons of the Applicant’s underlying condition revealed in that incident and about which the Applicant had informed his managers and had sought their support.

42. The Applicant argues that, in the circumstances, his managers should have required him to undergo a fitness for duty evaluation. The version of Staff Rule 6.07 “Health Program and Services,” paragraph 3.03 “Fitness for Duty Assessments” in effect at the Applicant’s employment prescribed:

Fitness for duty assessments may be requested when performance problems are believed to be health-related or when a staff member has been on sick leave for an extended period. A fitness for duty assessment will determine the presence and extent of any health-related impairment to perform assigned duties. Fitness for duty assessments are conducted by HSD at the request of a staff member's manager or the Director, Health Services Department. ...The manager shall copy the staff member and the Manager, Human Resources Team.

43. It is evident from the wording of this paragraph that the decision to require a fitness for duty evaluation is discretionary rather than mandatory.

44. In the instant case, the record shows that the Director had left the Bank by the summer of 2011 and the Applicant’s supervisors were the Sector Manager and the Acting Director, IEGWB. The record shows that these managers actually considered conducting a fitness for duty evaluation for the Applicant towards the end of his probationary period but ultimately rejected that option. Following the Applicant’s meeting with the Ombudsman in June 2011, his HR Officer also met with the Ombudsman and HSD and discussed with them the Applicant’s medical condition and the possibility for a fitness for duty assessment. He then discussed these meetings with the Sector Manager, in an e-mail message dated 6 July 2011, copied to the Acting Director-General, IEG, and the Acting Director, IEGWB. He stated, among other things:

During his discussion with the Ombudsman, [the Applicant] has apparently put forward his health/medical issues much more vigorously than in the past, probably in an attempt to gain some time (which could ultimately lead to a formal Appeal).

45. The HR Officer also stated in his e-mail message:

In my discussion with the Ombuds office, and with our Medical Department that I went to visit as well, we have realized that there are 2 possible scenarios moving forward, respectively:

(i) doing nothing in addition to everything that has already been done (documentation of low performance, notification of non confirmation, etc) and let the contract expire on July 22. That would be the simple option, but that could also expose IEG to a possible Appeal if the Applicant decides to do so, or

(ii) requesting a formal “fitness for duty” assessment from our Medical team. In that case, 2 possible outcomes: a) he’s declared fit for duty, and his contract will still expire for non confirmation reasons, or b) he’s declared unfit for duty and he enters the long term disability program, with lots of uncertainty with regards to his possible return to IEG or not.

In our discussion, we all were under the impression that option (ii) would be appropriate in order to annihilate any likelihood of Appeal and to protect IEG and the Bank as well ... the downside is that the “fitness for duty” process is likely to take a few weeks before being completed, which would force us to extend his probation period beyond the July 22 mark.

46. This demonstrates that the advice of the HR Officer, Ombudsman and HSD to conduct a fitness for duty evaluation of the Applicant was not followed by the Applicant’s managers. It also demonstrates that the decision not to require a fitness for duty evaluation stemmed from the preference not to extend the Applicant’s probation.

47. The Tribunal finds that the documents produced by the Bank show that the Applicant’s managers were clearly aware of the Applicant’s health problems and that, in the circumstances of this case, it would have been reasonable for the Applicant’s managers to have requested a fitness for duty evaluation. Even though the Staff Rule affords management discretion in requesting fitness for duty assessments, the Applicant’s managers did not exercise this discretion in a reasonable manner.

48. The Applicant has also challenged the Bank’s failure to inform him of the possibility of taking medical leave and being placed on the Short Term Disability program under the relevant

Staff Rules in order to recover from his medical condition. In *Courtney (No. 3)*, Decision No. 154 [1996], para. 32, the Tribunal stated:

The Tribunal has repeatedly stated that “ignorance of the law is no excuse” (*Novak*, Decision No. 8 [1982], para. 19; *Bredero*, Decision No. 129 [1993], para. 23; *Setia*, Decision No. 134 [1993], para. 26). Further, the Respondent is not under an obligation to inform each staff member of his rights and duties under the Staff Rules which are published and disseminated precisely with the object of ensuring that all staff are kept informed.

49. The Applicant would have been expected to know the Staff Rules in effect at the time of his appointment and as amended from time to time as clearly stipulated in his letter of appointment dated 7 January 2010, particularly as these were readily available on the Bank’s intranet. The record does not show that the Applicant made any particular efforts to check the Staff Rules. He complains that neither his managers nor the Ombudsman or HSD alerted him to the possibility of applying for disability benefits. However, by the Applicant’s own admission, the Ombudsman as well as the representative of HSD alerted him to the possibility of a fitness for duty assessment in their discussions with him in June 2011. The Tribunal notes that even at that late stage in his probationary period, the Applicant could have inquired of HR regarding the possibility of a fitness for duty evaluation. Even though, under the Staff Rule, he could not have asked for a fitness for duty assessment for himself, he could have at least discussed the possibility of being placed on the Short Term Disability program and submitted a Disability Claims form on his own. The Applicant has not shown that the Bank had an obligation, in this respect, which it had failed to meet.

50. Finally, the Applicant has also suggested that Article 27 of the Convention on the Rights of Persons with Disabilities, adopted in New York, 13 December 2006, applies to him. The Tribunal finds that the Applicant has not elaborated on this claim, and concludes that it has not been established.

51. In conclusion, the Tribunal finds that the Bank, by failing to require a fitness for duty assessment and, thus, by failing to weigh and respond to the Applicant’s medical problems, did not accord him fair treatment. Nevertheless, given the circumstances of this case, in particular the consideration shown to the Application in extending his probation and the observations noted in paragraphs 48-49 above, the Tribunal finds it difficult to compensate him to the extent claimed.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of three months' salary, net of taxes.
- (2) The Bank shall pay the Applicant's attorneys' fees in the amount of \$10,194.13.
- (3) All other pleas are dismissed.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D. C., 13 February 2013