



**World Bank Administrative Tribunal**

**2013**

**Decision No. 471**

**BY,  
Applicant**

**v.**

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

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

**BY,  
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, PC. 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 is contesting his 2009 Overall Performance Evaluation ("OPE"); his 2009 salary review increase ("SRI") rating of 3.1 and salary increase of 1.5%; the Bank's decision to recall him from his duty station to Washington, DC; the various public messages circulated in August 2009 about his recall; the threat of termination allegedly made by his Sector Director; and the 26 October 2009 substitution of his 2009 OPE.

#### FACTUAL BACKGROUND

4. The Applicant joined the Bank in 1998 as a Consultant and in April 1999 his Open-Ended appointment was confirmed. In September 2007, he was appointed Senior Economist at Level GG. On 21 October 2007, he was relocated to a duty station as Senior Country Economist for a three-year field assignment. According to the original schedule, signed on 4 December 2007, the Applicant's tasks, as Senior Country Economist, included completion of a Country Economic Report and an Aide-Memoire for a Public Expenditure Review Rationalization ("PERR") joint donor mission.

5. In March 2008 the PERR joint donor mission was organized. The Applicant prepared and completed a draft Aide-Memoire in April 2008. However, due to a donor organization's objections to sharing the draft, the Aide-Memoire was not released. On 19 July 2008, the schedule for delivery of the Country Economic Report was revised by the Applicant's immediate

supervisor, the Sector Manager; the Concept Note for the Country Economic Report became due on 29 August 2008 and a first draft of the Report to be submitted on 20 February 2009. During this period, the Applicant also acted as Country Manager from 18 April to 20 May 2008 and 6 to 19 July 2008.

6. In August 2008 the Applicant received a positive OPE from his Sector Manager, for the 2008 OPE period (1 April 2007 until 31 March 2008). His supervisor praised the Applicant's work as an economist, which included work performed during the first half (April until August 2008) of the 2009 OPE period. There was no reference to any behavioral concerns or delivery issues. In his 2008 OPE the Applicant was rated "Fully Successful" for Client Orientation; "Superior" for "Drive for Results"; "Superior" for "Teamwork"; and "Fully Successful" for "Learning and Knowledge Sharing."

7. In the comments section of the 2008 OPE the Applicant's supervisor observed that:

[The Applicant] has provided excellent support to the Country Manager, and has been willing to take on a variety of tasks at short notice. He has effectively taken over leadership in the [PERR] work and has also initiated another major task, on the HIES. In the coming year, he should aim to complete a concise and digestible economic report, supplemented as needed by policy notes that can be used to deepen the dialogue with the government and donors, while strengthening his credentials as a sought after policy economist. We are also likely to call upon [the Applicant] to apply his talents to [a neighboring country] (where his inputs have already been very useful) as we deepen our engagement with that country.

8. In mid-September 2008 the Applicant was assigned the role of Acting Country Manager until a new Country Manager was appointed. On 18 September 2008, the schedule for delivery of the Country Economic Report was revised by the Sector Manager; the Concept Note became due on 6 October 2008 and a first draft of the Report was to be submitted on 5 March 2009. On 1 October 2008 the Applicant began performing his duties as Acting Country Manager, as well as continuing his tasks as Senior Country Economist. In his capacity as Acting Country Manager, the Applicant reported to the Country Director, Mr. Y.

9. On 6 October 2008, Mr. Y sent an e-mail message to the Director of the Sector in which the Applicant worked enquiring about delivery of the Concept Note for the Economic Report. The Sector Director sent an e-mail message to the Applicant requesting a status update, noting that the Concept Note "was scheduled for last fiscal year!" The Applicant responded that he was

still awaiting input from a few Economic Report team members, and that he hoped to get a draft done by next week. No draft was submitted by the Applicant the following week.

10. On 30 October 2008, the Applicant's immediate supervisor, the Sector Manager, was replaced by Ms. X. Between 31 October and early December 2008, both Ms. X and the Applicant discussed timetables for completion of the Economic Report and PERR Aide-Memoire (also referred to as the PERR Refocusing Note). On 15 December 2008, Ms. X sent the Applicant an e-mail message requesting an update on the outstanding PERR Aide-Memoire and the draft Concept Note. On 13 January 2009, they again discussed the timetables for delivery and the Applicant informed Ms. X that the work on the Economic Report would have to continue to be delayed until a new Country Manager arrived. The Applicant sent Ms. X the draft PERR Aide-Memoire, which she stated was "in good shape."

11. On 23 January 2009, Ms. X sent an e-mail message to the Applicant concerning the Economic Report. She informed the Applicant that:

As we've discussed, there is concern (both by [Sector Director and Country Director]) about the fact that we have yet to deliver even the concept note. These discussions have led to a wide range of options being put on the table (for example whether it would make sense to bring you back to DC to focus on the report or to name a new [Task Team Leader] for the [Country Economic Report]) In my view, neither of those options seem particularly good – either for you or for the program. I have confidence in your knowledge of the [country's] economy, and of your ability to produce a sound note. I also recognize that it has [been] pressures from acting [Country Manager] that makes it difficult to focus on the [Country Economic Report].

Ms. X offered, and the Applicant agreed, to hire a Consultant for a three-week mission to assist in preparing the Economic Report.

12. Between March and April 2009, the PERR Aide-Memoire was finalized. On 21 April 2009, the new Country Manager arrived, and the Applicant was largely relieved of his country management tasks. From 22 to 23 April 2009, the Applicant and Ms. X exchanged e-mail messages regarding the OPE process. Ms. X informed the Applicant that his OPE should include evaluation of his work on the Economic Report and PERR, as these were the main areas of his work program. The Applicant responded that he would be hesitant to include the Economic Report and PERR noting that

the PERR mission and preparation of the issues note while formally in this OPE cycle were covered in last year's OPE which was done late (July – August 2008). I am now just getting into economic note. It may be hard to explain later how things that were in the work program could progress more as those that were not had to be done.

The Economic Report and PERR were nevertheless included in the Applicant's OPE. On 4 May 2009, the Applicant transmitted to Ms. X the draft Concept Note for the Economic Report. She in turn informed the Sector Director noting that "significant background analysis has already taken place, so even though we are at the concept state review, the material is now coming in to produce a note quickly presuming there is agreement around the concept." The Sector Director responded that the Concept Note was "in good shape." A teleconference was held with various stakeholders on 2 June 2009 to discuss the Concept Note and the proposed Economic Report. The Applicant received praise from Ms. X for organizing the Concept Note review meeting, and on 5 June 2009, he issued the minutes of the meeting.

13. On 18 June 2009, Ms. X sent the Applicant an e-mail message inviting him to return to HQ for various work program discussions. She noted that it would also be convenient timing for the OPE discussion. The Applicant arrived in Washington, DC on 26 June 2009 and had a meeting with Ms. X during which he briefed her on delivery issues with one consultant for the Economic Report, discussions with donors on the new framework for enhancing fiscal management and the suggested post-PERR work.

14. On 29 June 2009, the Applicant met again with Ms. X, this time to discuss the 2009 OPE. According to the Applicant, he was unaware of the purpose of the second meeting until he arrived for it. A Human Resources Officer was present at the meeting. During the meeting, Ms. X verbally informed the Applicant that management believed he was unable to manage major tasks, was not performing up to GG Level, and had major behavioral issues, including not getting along with colleagues, mistreating local Country Office staff, and damaging Bank relations with the government. According to the Applicant, Ms. X announced that management had decided to recall him from his duty station back to Washington, DC. The following day, the Applicant met first with the Sector Director and again with Ms. X to discuss the OPE. During this meeting he was provided with a written draft OPE. The draft OPE included three "Partially Successful" ratings (for "Drive for Results", "Teamwork" and delivery of the Economic Note and PERR Review). Additionally, the Applicant's behavior characterized in the OPE as "intimidating," "confrontational," and "rough and even offensive."

15. The Applicant contested the ratings and the description of his behavior which he considered to be derogatory. On 1 July 2009, after meeting with the Ombudsman, the Applicant informed Ms. X that he would send her an e-mail message with more information contesting the OPE upon his return to his duty station. The Applicant sent this e-mail message on 13 July 2009 to both Ms. X and the Sector Director. He also returned the draft OPE to Ms. X through the Performance Management System with a request for revision, stating “sorry for coming back with this to you. I hope you will be able to have another look at my OPE and provide a fuller and more balanced view of the work I carried out during the last year and of the behavioral characteristics.” However, Ms. X informed the Applicant that the information contained in his e-mail had already been taken into account in the OPE. She added that “the staff comment section provides an opportunity for you to include your remarks, if you want to.” Ms. X re-signed and submitted the 30 June 2009 version of the OPE without any changes.

16. On 17 July 2009, the Applicant requested mediation in an attempt to resolve the OPE dispute. Later that month, the Applicant took medical leave. On 3 August 2009, Ms. X sent an e-mail message to staff members in the Applicant’s sector regarding staff changes and announced the Applicant’s return to Washington, DC. On 5 August 2009, the Bank internally and externally advertised a Senior Economist position whose responsibilities included the country in which the Applicant worked. On 6 September 2009, the Applicant returned to Washington, DC and on 25 September the mediation process commenced. On 22 October 2009, the Applicant took extended medical leave.

17. On 26 October 2009, Ms. X substituted the June 2009 OPE with one of the proposals she had made during the mediation process which the Applicant had rejected. The substituted OPE (“October 2009 OPE”) included some changes in the section for the Supervisor’s comments. It also noted a change in the rating for “Drive for Results” from “Partially Successful” to “Fully Successful.” According to the Bank the substitution was made because the OPE process was scheduled to close at the end of October 2009. Ms. X signed the revised 2009 OPE and sent it to the Applicant on 26 October 2009, “in order to ensure that there was an evaluation on record for Applicant and to afford him sufficient time to include comments.” The Applicant did not sign this revised October 2009 OPE.

18. In November 2009, the Applicant was placed in the Short-Term Disability program, and on 30 July 2010, the mediation process was closed. On 30 August 2010, the Applicant filed a request for review with Peer Review Services (“PRS”), challenging (i) his 2009 OPE; (ii) his 2009 SRI rating of 3.1 and corresponding salary increase of 1.5%; and (iii) certain decisions and

actions which the Applicant claims constituted mismanagement of his career. He further claimed that he was subjected to an “unfriendly work environment.”

19. On 12 July 2011, the PRS Panel found that Ms. X’s evaluation of the Applicant’s performance in the 2009 OPE and his 2009 SRI rating were reasonable, in accordance with Bank Group procedure, and were not retaliatory. The PRS Panel found that the Bank’s treatment of the Applicant did not constitute career “mismanagement” and the Bank had neither subjected the Applicant to an “unfriendly work environment” nor taken retaliatory decisions. The Panel unanimously recommended denial of his requests for relief. On 3 August 2011, the Vice President for the region accepted the recommendation of the PRS panel.

20. On 21 October 2011, the Applicant was placed in the Long-Term Disability program and his employment with the Bank was subsequently terminated. In February 2012, the Applicant was awarded worker’s compensation benefits as a result of his medical condition.

21. In this Application, the Applicant seeks the deletion of all records of his alleged poor performance and his 2009 OPE from his personnel files; payment of annual salary increases retroactive to 1 July 2009 equal to the average percentage awarded Bank-wide to Level GG staff; payment of the direct income lost as a result of the recall from his duty station; a written apology from Ms. X and the Sector Director; payment of just and adequate compensation for the damage to his health, career, reputation, and for his pain and suffering; and attorneys’ costs in the amount of \$22,262.75.

#### THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

22. The principal claims made by the Applicant are the following: 1) the 2009 OPE and SRI processes were procedurally flawed and unfairly unbalanced; 2) his abrupt recall to Washington, DC was an abuse of managerial discretion; and 3) his treatment by the Bank severely damaged his health and reputation entitling him to damages.

##### *The 2009 OPE and SRI processes*

23. The Applicant claims that the 2009 OPE and SRI processes were procedurally flawed, and the OPE itself unfair because it was not balanced, contained errors, and glossed over his country manager responsibilities. With respect to the procedural irregularities, the Applicant contends first that under correct procedures for an OPE the reviewing manager should not be

involved in the initial writing of the OPE or the establishment of ratings. Secondly, he argues that the OPE process violated his due process rights in that he was not provided with due notice of criticisms of his behavior, nor with the opportunity to defend himself. Thirdly, the Applicant contends that the 2009 SRI rating of 3.1 given to him was arbitrary.

24. The Applicant complains that the text of the June 2009 OPE contained derogatory comments, unsubstantiated claims and ratings which did not reflect his actual achievements. He dismisses the October 2009 OPE as a rejected mediated offer, asserting that its use outside the mediation process violated the confidentiality of mediation. He also contends that the October 2009 OPE was unfair in that it (a) continues to blame him for delays in the issuance of the PERR Aide-Memoire and Economic Report Concept Note while he was Acting Manager; (b) falsely claims that he was incapable of managing tasks that are “longer and more complex in nature”; and (c) claims, without any basis, that his “communication style” was not “collegial.” According to the Applicant, the October 2009 OPE placed him in the bottom 0.1 percentile Bank-wide on performance in the 2009 OPE period and did not reflect his considerable actual contributions during that period.

25. The Bank contends that Ms. X followed proper process in evaluating the Applicant, strictly abiding by the provisions of Staff Rule 5.03, paragraph 2.02 in effect at the time. Additionally, the Bank argues that the Sector Director was not formally involved in preparing the Applicant’s OPE, and that the 2009 OPE embodied a fair and balanced appraisal by management of the Applicant’s performance. Referring to the text of the October 2009 OPE, the Bank cites the positive comments included by Ms. X as evidence that the Applicant’s concerns were taken into consideration. The Bank contends that her comments regarding the Applicant’s struggle to complete the two key deliverables were reasonable and proper. The Bank stresses that the fact that the Applicant spent 65% of his time fulfilling country management tasks in no way excuses his late delivery of the Economic Report and the PERR Aide-Memoire, which remained the core deliverables of his work program. According to the Bank, the Applicant was only expected to handle administrative country management tasks on a part-time basis and was not asked to take on the more demanding task of developing the Bank’s relationship with a difficult client nor with the development and implementation of country strategy. Finally, the Bank states that the SRI rating was balanced, objective and in line with the departmental and regional distributions.

26. Staff Rule 5.03, paragraph 2.02 requires that “[a]t least once in a twelve month period, the Manager or Designated Supervisor and the staff member shall meet and discuss the staff member’s performance, achievements, strengths, areas for improvement, and future development



needs.” The Manager is required to provide the staff member with a written summary assessment of his or her performance during the review period, and establish in writing, in consultation with the staff member, the development priorities and the results to be achieved during the upcoming review period. The Tribunal has held that the requirement for a formal performance discussion

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’;

and that

there is an established order of things in the Bank’s procedures and requirements concerning a staff member’s career development, beginning with a proper performance evaluation embodied in an OPE ... followed by performance ratings and an SRI assignment which, although not identical to the OPE evaluation, must not be inconsistent with it unless there is a very satisfactory explanation for such a departure. *Prasad*, Decision No. 338 [2005], paras. 25, 57.

27. Furthermore, in *BG*, Decision No. 434 [2010], para. 57, as in the present case, the Applicant’s manager explained that the SRI rating assigned to the Applicant was based, *inter alia*, on the evaluation of the Applicant’s performance during the OPE period. However, the Bank had not satisfactorily explained how it had developed an SRI without having carried out a proper performance evaluation. The Tribunal held that “[t]here is obviously a link between [the OPE] and an SRI,” and that the OPE on which the SRI is based must be founded on proper procedures. In *Mpoy-Kamulayi (No. 4)* Decision No. 462 [2012], where the Applicant’s SRI rating and salary increase were set three days before the Applicant’s OPE meeting, the Tribunal found that the OPE meeting appeared “perfunctory” as it was not clear what the Applicant could have done to change the decision already taken.

28. The record in the present case reveals a number of procedural irregularities. First, the process was reversed and the Applicant’s OPE and SRI ratings were set as early as 20 May 2009 during a departmental meeting, more than a month before the Applicant held his OPE discussion with Ms. X. At that meeting, the Applicant was awarded in his OPE one “Superior” rating, five “Fully Successful” ratings, and three “Partially Successful” ratings. Additionally, the proposed SRI of 3.1 was confirmed. As a result, the Applicant’s subsequent formal OPE discussion with Ms. X was perfunctory, and he was effectively denied any opportunity to address management’s concerns about his performance before the adverse ratings were set. Though the Bank claims that Ms. X held “not one but several discussions with [the] Applicant during the 2009 OPE period regarding his strengths, areas for improvement and future development needs,” upon the

Tribunal's order for the production of supporting documentation, the Bank failed to produce any evidence that those discussions had in fact taken place.

29. The Tribunal has emphasized the importance of conducting a formal OPE discussion in accordance with the Staff Rules and correct procedures. (*See Prasad*, paras. 25-27; *Yoon* (No. 5), Decision No. 332 [2005], para. 65; and *Mpoy-Kamulayi* (No. 4), para. 46). In *Prasad*, the Tribunal held that "discussions of a general nature, or those held before the actual OPE process do not satisfy" the requirements of the Staff Rules. Similarly, in *Yoon* (No. 5), para. 67, the Tribunal drew a clear distinction between "informal feedback sessions" during the year and "the year-end formal discussion." Thus, informal discussions or e-mail correspondence between the Applicant and his Managers are no substitute for a formal OPE discussion held prior to establishing OPE and SRI ratings. Though Ms. X and the Applicant discussed his ratings during the June 2009 OPE discussion, these ratings had already been set prior to that discussion. The Tribunal finds that the 2009 OPE process did not comply with the requirements for a fair procedure.

30. Secondly, the Tribunal observes that the Bank also breached the rules addressing the involvement of the Reviewing Manager during the OPE process. Staff Rule 5.03, paragraph 2.02(g), in effect during the relevant time, provides that "[t]he Reviewing Manager shall review and sign the performance evaluation and any supplemental evaluations." As the Tribunal stated in *Yoon* (No. 5), para. 65, "under both the Staff Rule and the OPE Guidelines the role of the Reviewing Manager is simply to review the performance evaluation of a staff member and not to establish ratings or to participate in the formal OPE discussion." In the present case, the record demonstrates that the Sector Director, who was the Reviewing Manager on the Applicant's OPE, was directly involved in setting the Applicant's OPE ratings. The Tribunal finds that such direct participation does not conform with the Staff Rules and extends beyond the mere provision of guidance to Ms. X as claimed by the Bank.

31. Finally, in light of the above, it is clear that the Applicant's 2009 SRI rating must also be viewed as based on a flawed process. The Tribunal recognizes that "[g]iven the various decisional elements that are properly taken into account in making such a comparative assessment, it is difficult to support a claim of abuse of discretion" with respect to SRI ratings. (*Marshall*, Decision No. 226 [2000], para. 24.) However, the Applicant's SRI rating of 3.1 was clearly based on his OPE. The Applicant's Manager, Ms. X and the Sector Director had considered further reducing the Applicant's SRI rating to 2.1 indicating how poorly they considered the Applicant had performed, well before discussing the OPE with the Applicant.

Thus, the SRI rating was not detached from the flawed OPE, and was materially and adversely affected by the procedural irregularities described above.

32. In addressing whether, despite the procedural irregularities, the Applicant's OPE could be regarded as fair and balanced, the Tribunal recalls its ruling in *Desthuis-Francis*, Decision No. 315 [2004], para. 23, that the Bank 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 [OPE] is whether or not there was adequate or reasonable basis for those comments.

33. The Tribunal has on many occasions recognized the discretionary nature of performance evaluations by supervisors, and limits its review of such evaluations to determining whether the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (*Prudencio*, Decision No. 377 [2007], para. 73). The Applicant's June 2009 OPE contained one "Superior", five "Fully Successful" and three "Partially Successful" ratings. Following unsuccessful mediation attempts, the OPE was revised in October to include one "Superior", six "Fully Successful" and two "Partially Successful" ratings. The two "Partially Successful" ratings related to the "PERR Review and Economic Note" and "Teamwork" categories.

34. *PERR Review and Economic Note*. The Applicant's main contention in this respect is that though he fell behind on the Economic Report Concept Note and the PERR Aide-Memoire, his discharging of the role of Acting Country Manager was not adequately taken into consideration to offset the negative assessment of his performance on these two deliverables. He also asserts that he had completed the PERR Aide-Memoire in April 2008 and argues that distribution was originally delayed by one of the donor organizations.

35. The record shows that the Applicant's delivery of the Economic Report Concept Note and PERR Aide-Memoire was not timely. According to the original task milestones, the Applicant was scheduled to deliver the Concept Note on 29 August 2008. This deadline was subsequently revised to 6 October 2008. The record also shows that the Applicant was repeatedly reminded and requested to produce the Concept Note. However, it is evident that the Applicant

was actively engaged in country management responsibilities given to him by the Bank. The question that arises is whether these additional tasks were significant enough to justify rating the Applicant's performance on the PERR and Economic Note as "Fully Successful" instead of "Partially Successful." In other words, should the Bank have adjusted its expectations of the Applicant?

36. On the one hand, the Applicant had promised several times to deliver the two requested documents but failed to do so. It is possible to take the view that the Applicant had not clearly communicated the difficulties he faced in juggling his activities as economist and his country management responsibilities. Furthermore, he did not seek guidance as to which activities he should have prioritized, leading the Country Director to express surprise in the Applicant's OPE regarding the difficulties the Applicant had faced in delivering the two important documents he had committed to submit. On the other hand, there is no indication that the Bank made clear to the Applicant which task or set of tasks he should prioritize. The Bank continued to allow the Applicant to carry out substantial country management duties which he fulfilled (earning in the process, the rating "Superior" in his 2009 OPE for country management duties).

37. The e-mail correspondence between the Applicant and Ms. X shows that she was aware that the Applicant was facing difficulties in delivering the Country Economic Report in a timely manner. The Tribunal called upon the Bank to clarify its assertion that the Acting Country Manager position was merely part-time, and that the Applicant should therefore not have devoted 65% of his total time to such duties. The Bank did not provide such supporting evidence. While the Tribunal considers that management owed the Applicant an obligation of clarity, the Applicant, for his part, should have sought guidance from his supervisors as to which of his two major competing tasks should be prioritized. The Tribunal is unable to find that the 2009 OPE rating in this category was arbitrary, considering that the Applicant's two deliverables had in fact been delivered late and the issue of satisfactory performance is a matter of managerial discretion.

38. *Teamwork.* In determining whether the Applicant's primary supervisor, Ms. X, had a reasonable and objective basis to rate the Applicant "Partially Successful" for "Teamwork," the assessment of feedback providers who had worked with the Applicant was important. It was on the basis of such feedback that the Bank contends that Ms. X was justified in commenting in the Applicant's October 2009 OPE that his "communication style [had] been viewed by some of his peers and supervisors as less collegial than would be helpful," and in the June 2009 OPE that the Applicant's "current behavior [was] perceived by many as rough and even offensive," and that his communication style "even if unintended was intimidating and confrontational ... and not

conducive to building a good team environment.” The Applicant vehemently contests these comments.

39. The record shows that of the eleven feedback providers, three made negative comments about the Applicant’s communication style and behavior vis-à-vis local staff during his tenure as Acting Country Manager. One of the feedback providers based a negative impression on a single incident, i.e. a mission the Applicant had undertaken to a neighboring country. In contrast, other comments were more positive. A feedback provider noted that “[i]n recent months, [the Applicant] has made an incredible improvement in his inter-personal engagement with others, he has become more open and engaged.” Another provider praised the Applicant for providing “support to project teams and maintaining dialogue within donor coordination.” Still another provider commented that the Applicant was

responsive to requests for support from our task teams on design matters and has been willing to play a role in liaising between the task team (most of whom are out of country) and government. He has been incredibly supportive in this area. [Applicant] has also served as a spokesperson for the project among the donor community.

40. Another feedback provider noted that despite the difficulty in balancing his two competing principal tasks, the Applicant’s “personal commitment and professionalism [had] helped him to effectively steer a good course through such challenges,” and that the Applicant was responsive to client’s needs and was willing “to do whatever [needed] to be done in the Country Office to facilitate the success of the Unit’s work program.”

41. Communication style is not the only relevant aspect of teamwork. As noted by the Tribunal in *Lysy*, Decision No. 211 [1999], para. 68, a “[p]erformance 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.” In view of the conflicting feedback, the Applicant’s manager had a particular obligation to carefully balance the positive and the negative assessments in the OPE in determining what rating to give the Applicant.

42. Additionally, as the Tribunal stated in *Samuel-Thambiah*, Decision No. 133 [1993], para. 32, a staff member must be given “adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached.” This is essential to ensure that the staff member’s due process right to defend himself is respected. The record contains no evidence that concerns about the Applicant’s behavior with local staff

members were brought to his attention prior to the OPE discussion on 29 June 2009 or that he was afforded an opportunity to improve his behavior. Responding to the Tribunal's order for the production of documentation of its assertions, the Bank referred only to an unsworn statement by Ms. X that she had been told by the Applicant's former managers that they had held appropriate discussions with him.

43. In the light of the foregoing, the Tribunal finds that the 2009 OPE and SRI processes were flawed and the Applicant's due process rights had been disregarded. The 2009 OPE and SRI ratings should be set aside.

*The abrupt recall of the Applicant*

44. The Applicant contends that the recall decision was taken without prior notification to him and did not conform to the requirements of due process as the decision was made prior to the OPE discussion on 29 June 2009. Additionally, he asserts that the manner in which the decision was made did not satisfy the requirement of transparency.

45. According to the Bank, the Applicant's recall was motivated by the needs of the Bank's work program, consistent with Staff Rule 5.01, and at the same time was intended to address the Applicant's professional development needs. The Bank contends that a chance to improve upon performance is not required under Staff Rule 5.01, paragraph 2.04, which permits management to reassign a staff member "at any time" in order to meet the work program needs of the vice presidential unit.

46. A recall or reassignment decision is a management decision subject to limited review by the Tribunal. In *Eindhoven*, Decision No. 23 [1985], para. 47, the Tribunal held that when "Bank interests dictate reassignment elsewhere, those interests will prevail." However, such decisions must be set aside if they constitute an abuse of discretion, were arbitrary, capricious, and discriminatory or were influenced by a lack of due process. (*See, e.g., Mpooy-Kamulayi (No. 2)*, Decision No. 457 [2011], para. 44; *Sengamalay*, Decision 254 [2001], para. 29; *Sweeney*, Decision No. 239 [2001], para. 49.)

47. The record of this case demonstrates that the decision to recall the Applicant from his duty station was based principally on the evaluation of his performance. The Bank acknowledges that the recall decision was also made to address the Applicant's perceived development needs. This decision, made in May 2009 by Ms. X and the Sector Director, and approved by the Vice

President prior to any discussion about reassignment with the Applicant, was in fact decided upon as an alternative to placing the Applicant on a performance improvement plan (“PIP”). Although the Bank publicly announced that its recall decision was a response to the reassignment of the work program in that region, it is clear from the Applicant’s discussion with Ms. X that his recall was based on management’s dissatisfaction with his performance.

48. The Tribunal must express its discontent with the Bank’s reliance on the one hand on Staff Rule 5.01, paragraph 2.04, and on the other repeatedly referring to the Applicant’s poor performance. In *Prasad*, Decision No. 338 [2005], para. 50, the Tribunal stated that “while the decision to reassign the Applicant was within the Respondent’s discretion, the transparency and openness that should always characterize such a step were lacking.” Similarly, in *Mpoy-Kamulayi (No. 2)*, the Tribunal considered whether the Bank informed the Applicant of performance concerns and provided him with a meaningful opportunity to defend himself. There the Tribunal held that the Applicant had been given opportunities to defend himself. However, in the present case, unlike in *Mpoy-Kamulayi (No. 2)*, the complaints about the Applicant’s performance had faded away by the time the recall decision was made in May 2009. The Applicant had even been requested to participate in planning for the next financial year. The Tribunal considers that the Bank did not accord sufficient weight to the limitation placed on the Applicant as a result of his country management tasks. The record shows that once the Applicant was relieved of those tasks, his performance of his duties as Senior Country Economist improved materially.

49. The Tribunal considers that the Bank is correct in its contention that notice and a chance to improve are not required when a staff member is being reassigned in order to meet the work program needs of a vice presidential unit. However, where the real issue is management’s dissatisfaction with the Applicant’s performance, notice and the opportunity to improve are required prior to an adverse decision. The record does not show that such notice and opportunity were present in this case. The Tribunal considers that the Applicant is entitled to some compensation for the Bank’s failure in this regard.

*Injury to the Applicant’s career, reputation and health*

50. The Applicant’s last contention is that ill-treatment by his managers at the Bank not only destroyed his professional career but also damaged his health. He notes that the manner in which his recall was announced, the subsequent advertisement of his position and the length of time it took the Bank to fill his position confirmed that his recall from his duty station to Washington,

DC was punitive in nature and gave rise to the impression on the part of the public that he was regarded as inadequate for the said position.

51. The Bank, on the other hand, contends that the Tribunal is not the appropriate forum to examine the merits of the Applicant's claim regarding his health and ability to work. According to the Bank, the Workers' Compensation Program established under Staff Rule 6.11, paragraph 11.01 constitutes "an exclusive remedy against the Bank Group for any illness, injury or death arising out of and in the course of the staff member's employment." The Applicant filed a claim under Staff Rule 6.11 and was successful. Hence he was not, according to the Bank, entitled to additional damages for this claim.

52. The Tribunal has previously awarded damages for injuries to career prospects, reputation and professional life. (*See Lysy*, Decision No. 211 [1999], para. 78). In the present case, however, the Applicant has not demonstrated any nexus between his recall and the alleged severe damage to his professional reputation and career prospects. The recall decision did not result in a reduction of his grade level, nor was he reassigned from a managerial to a non-managerial position. Additionally, with respect to his claim that ill-treatment by his managers at the Bank damaged his health, the Tribunal recalls that it upheld the exclusivity of the Workers' Compensation Program as a remedy for injury attributable to the Bank in *Skandera*, Decision No. 2 [1981], para. 32. The Applicant has not adduced any reason why the ruling in *Skandera* should not apply to this case.

#### DECISION

- 1) The Applicant's 2009 OPE and 2009 SRI rating shall be deleted from the Applicant's personnel record with the Bank.
- 2) The Bank shall pay the Applicant compensation in the amount of 6 months' salary net of taxes.
- 3) The Bank shall pay the Applicant's costs in the amount of \$22,262.75
- 4) All other claims are dismissed.



/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Olufemi Elias

Olufemi Elias

Executive Secretary

At Washington, D. C., 13 February 2013