



**World Bank Administrative Tribunal**

**2013**

**Decision No. 483**

**CD,  
Applicant**

**v.**

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

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

**CD,  
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, Ahmed El-Kosheri, Andrew Burgess and Abdul G. Koroma.

2. The Application was received on 1 November 2012. The Applicant was represented by Marie Chopra of James & Hoffman, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant requested anonymity pursuant to Rule 28 of the Tribunal's Rules. The Bank opposed that request. Having regard to the circumstances of the case, the Applicant's request for anonymity is hereby granted.

4. The Applicant contests the ratings assigned in her 2011 Overall Performance Evaluation ("OPE") and Salary Review Increase ("SRI"), and the alleged threat made by her supervisor to place her on a Performance Improvement Plan ("PIP").

**FACTUAL BACKGROUND**

5. The Applicant joined the Bank in April 1986 and has been employed in many capacities for over 25 years. She joined her Unit in 2001 and was promoted to Resource Management ("RM") Analyst in July 2004. On 1 September 2009, Mr. R, joined the Unit as Chief Administrative Officer and became the Applicant's supervisor.

6. Until 2011, the Applicant received high OPE and SRI ratings. She was awarded seven "Superior" ratings and one "Outstanding/Best Practice" rating in her 2008 OPE,

seven “Superior” and two “Outstanding/Best Practice” ratings in her 2009 OPE, and four “Superior” ratings and one “Outstanding/Best Practice” rating in her 2010 OPE. During the same time period, she received SRIs of 3.3, 4, and 3.3 for 2008, 2009, and 2010, respectively. Following surgery and resulting complications, the Applicant sought and received approval to work from home for five months (September 2010 to January 2011) instead of taking extended sick leave or being placed on Short Term Disability status. During that time, the Applicant received praise for her work from her supervisor, Mr. R, and her clients. In November 2010 the Managed Rotation Program was launched. Although it was a voluntary program, staff members who were employed in their Vice Presidential Unit (“VPU”) for seven years or more were expected to move to work in a different VPU. Mr. R and a Human Resources (“HR”) Officer contacted the Applicant to discuss her possible rotation; however, the Applicant decided not to move to another VPU given the limited pool of rotation vacancies and her then health situation.

7. The Applicant was granted annual leave for the month of February 2011, and as a result of an injury while on leave she was required to take additional time off for recuperation. She worked from home and was on leave for a total of seven months (September 2010 to March 2011).

8. On 16 May 2011, the Acting Vice-President of the Applicant’s VPU sent an e-mail message to staff with instructions on the 2011 OPE process for the unit. Since Mr. R had been the Chief Administrative Officer (“CAO”) for the Applicant’s Unit for ten out of the twelve months under review, he was asked by the Acting CAO, to lead the 2011 OPE process for all staff in the Unit. On 30 August 2011, the Applicant submitted her draft OPE and listed fifteen feedback providers. An OPE discussion between the Applicant and Mr. R took place by telephone on 13 September 2011. Prior to this conversation, Mr. R received written responses from five feedback providers, and verbal comments from two feedback providers. In total, comments were received from nine feedback providers.

9. The Applicant and the Bank provide conflicting records of what transpired during the 13 September 2011 telephone conversation. According to the Bank, Mr. R stated that:

(i) the Applicant continued to demonstrate strong expertise in country office administration and strong leadership skills; (ii) there was a dip in the Applicant's performance during the 2011 OPE period, specifically on "issues with inadequate budget and work program reporting, infrequent monitoring and inability to provide the requested data and explanations to satisfy her client managers' need"; (iii) three of the Applicant's country management unit ("CMU") clients had complained about her lack of client orientation and indicated that they had lost confidence in her; and (iv) based on the written and verbal feedback from her CMU client teams, management was considering awarding her a less than "Fully Satisfactory" OPE and place her on a PIP to ensure that client service teams in the VPU received appropriate service.

10. According to the Applicant, Mr. R provided an unexpectedly negative assessment of her performance. He allegedly spoke in a very aggressive and threatening manner and stated that "all her clients said that she had not performed at a satisfactory level." She asserts that when she requested specific examples, he became evasive and said that he had only received general feedback which had been given to him verbally. The Applicant further asserts that Mr. R told her that she had two options: (1) to be placed on a PIP; or (2) to leave the VPU immediately in return for improved OPE ratings. He allegedly stated that the Applicant's position was no longer required and her duties would be transferred to the country offices. According to the Applicant, Mr. R concluded the discussion by telling the Applicant to call him within a day or two and inform him which of the two options she had chosen.

11. On 14 September 2011, the Applicant sent Mr. R an e-mail message thanking him for the "preliminary performance conversation." She noted that she had provided him with "a few factual indications correcting the context of the assessment," and acknowledged that "receiving negative feedback is acceptable and part of the performance evaluation." The Applicant concluded the e-mail, thanking Mr. R for the "alternatives" he suggested for her career and his "offer to help." She added "I know I can count on your help to ensure that the negative opinion are [...] checked, brought to context, and balanced with the overall assessment of my performance. On 14 September 2011, Mr. R discussed the

proposed 2011 OPE ratings and the overall performance assessment of each staff in the Unit with the Acting CAO and an HR officer, and on the following day discussed the SRI ratings with them. On 4 October 2011, the management of the VPU agreed to award the Applicant an SRI rating of 3.1. On 5 October 2011, Mr. R sent the Applicant an e-mail message offering to meet in person to discuss her OPE ratings. He sent a further invitation to meet with the Applicant, but the Applicant declined both invitations. In declining, the Applicant expressed her lack of confidence in Mr. R's ability to evaluate her fairly. She stated "you have provided conflicting feedbacks (ie. See FY10 OPE Assessment) within the last 12 months and I do not believe that the current evaluation is objective and based on actual performance and delivery. I cannot allow this to continue." On 14 October 2011, Mr. R sent an e-mail message to the Applicant refuting her claims, but nevertheless proposing an "open and transparent conversation with HR, and others as necessary." On 26 October 2011, Mr. R sent the Applicant a draft OPE. Mr. R assigned two "Partially Successful" ratings for "Client Orientation" and "Drive for Results." All other ratings were "Fully Successful." On 31 October 2011, the Applicant's 2011 OPE was signed by all parties and the Applicant appended a written objection to the performance assessment.

12. On 24 February 2012, the Applicant filed a request for review with Peer Review Services ("PRS") challenging her 2011 OPE and SRI ratings. In a letter dated 30 August 2012, the Vice President accepted the PRS Panel's recommendation that the Applicant's request for relief be denied.

13. In this Application, the Applicant seeks a change in her 2011 OPE ratings for "Client Orientation" and "Drive for Results" from "Partially Successful" to at least "Fully Successful;" removal of all records of the 2011 OPE and/or any references to a possible PIP from her personnel records; and a change in her SRI rating to at least 3.2, with the appropriate adjustment to her salary. The Applicant further seeks such amount as the Tribunal deems fair and just for the pain and suffering caused by Mr. R's mistreatment of her, and for the serious damage to her reputation and career. The Applicant also seeks legal costs in the amount of \$8,186.69.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

14. The principal issue in this case is whether the Applicant's 2011 OPE was conducted unfairly, arbitrarily, or involved an abuse of managerial discretion. The Tribunal has continuously upheld the discretionary nature of performance evaluations by supervisors. Accordingly, the Tribunal's assessment of such evaluations is limited to determining whether the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure. *See BY*, Decision No. 471 [2013], para. 33 and *Prudencio*, Decision No. 377 [2007], para. 73.

*Alleged non-compliance with Staff Rule 5.03, paragraph 2.01*

15. Staff Rule 5.03, paragraph 2.01 on the Performance Management Process provides that

At 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 or Designated Supervisor shall provide the staff member with a written summary assessment of the staff member's performance during the review period.

16. The importance of conducting a formal OPE discussion in accordance with the Staff Rules and correct procedures has been emphasised in the Tribunal's jurisprudence. *See BY*, Decision No. 471 [2013], para. 29, *Prasad*, Decision No. 338 [2005], paras. 25-27; *Yoon (No. 5)*, Decision No. 332 [2005], para. 65; and *Mpoy-Kamulayi (No. 4)*, Decision No. 462 [2012], para. 46. 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," noting that informal discussions or e-mail correspondence between the Applicant and his or her supervisor are not substitutes for a formal OPE discussion held prior to establishing OPE and SRI ratings.

17. In the present case, Mr. R and the Applicant held a telephone conversation to discuss the Applicant's performance on 13 September 2011. The Applicant does not contest that this conversation took place, nor does she allege that she was not provided with comments on various aspects of her performance during the year. Neither the Staff Rules nor the Tribunal's jurisprudence indicate that this formal OPE discussion must be held in person. The Tribunal finds that, where circumstances prevent a face to face meeting of the respective parties, a telephone conversation can satisfy the requirement of a formal OPE discussion under Staff Rule 5.03, paragraph 2.01, and did so in this case.

*Whether the Applicant's 2011 OPE was arbitrary, unfair and unbalanced*

18. According to the Applicant the 2011 OPE was unbalanced as she was given insufficient credit for her positive achievements during a time of particularly difficult budgetary circumstances. In addition she contests the two "Partially Successful" ratings she received for "Drive for Results" and "Client Orientation," and argues that she had received only "Superior" or "Outstanding/Best Practice" ratings in these two areas over the last three years. The Bank contends that the Applicant's 2011 OPE was the result of careful consideration of all positive and negative feedback Mr. R received about the Applicant's performance.

19. The Tribunal has held that the performance assessment of a staff member must take into account all relevant and significant facts that existed for that period of review (*Romain* (No. 2), Decision No. 164 [1997], para. 19) in order to ensure a reasonable basis for the OPE ratings and comments (*Prasad*, para. 28). While the Applicant places emphasis on her prior excellent OPE ratings, the Tribunal has previously held that "a change in the assessment of a staff member by his supervisors cannot, in and of itself, be regarded as an abuse of discretion." See *Malekpour*, Decision No. 322 [2004], para. 21. Furthermore, "[a] staff member is entitled to a fair and proper performance evaluation every year, but there is no rational basis for supposing that a high performance rating in one year gives rise to a presumption that the same rating would carry over to the next or subsequent years." *Malekpour*, para. 21. Nevertheless, an abrupt change in a staff member's performance

evaluation after many years of high ratings “suggests a disturbing degree of inconsistency in the exercise of managerial responsibilities” if this change is “unaccompanied by any descriptive statement explaining the perceived slippage in the quality of the Applicant’s performance.” *Marshall*, Decision No. 226 [2000], para. 24.

20. The Tribunal will therefore consider whether the 2011 OPE: 1) included specific and adequate descriptive statements explaining the negative assessment of the Applicant’s performance; 2) took into account all relevant and significant facts existing during the period of review to ensure an observable and reasonable basis for the “Partially Successful” ratings; and 3) included feedback which supported the “Partially Successful” ratings.

21. In the first instance, the Tribunal observes that Mr. R’s comments on the challenges the Applicant faced were clear and specific. He noted that:

[The Applicant] fell short in her major responsibilities – that of providing quality RM support to her client CMU management teams. While acknowledging that end-year spending for her client units was within budget, her client management teams have uniformly noted her lack of drive for results and responsiveness this year, with issues relating to: infrequent monitoring of programs and resources; inability to explain the numbers in her budget reports, the reasons for changes in numbers from one review to another, and the links between the budget and cost accounting views in reports; and insufficient coordination of the budgets and spending plans within the country office.

22. The Tribunal finds these statements to be sufficiently specific and adequate in explaining the perceived slippage in the quality of the Applicant’s performance.

23. Secondly, the record shows that the feedback received on the Applicant’s performance was mixed. Comments were received from nine feedback providers. The comments from four of these were positive and five were negative. Three of the five negative feedback comments were provided by the Applicant’s CMU clients who are considered by the Bank to be the Applicant’s primary clients. The Tribunal finds that these



comments were adequately summarized in Mr. R's comments quoted in paragraph 21 above.

24. The four feedback providers who provided positive comments and ratings were not the Applicant's primary clients. One feedback provider who praised her drive for results noted that her key strength was "responsiveness," and her response time was "always within 24hrs of any request." Another feedback provider commended her for her promptness in responding to requests when needed. Yet another feedback provider commended the Applicant as an "experienced RM CMU staff with significant responsibilities handling multiple CMUs with four countries [...] dealing with a number of different directors and managers." The feedback provider noted the Applicant's strengths in "client orientation and knowledge sharing." The feedback provider acknowledged that due to the Applicant's medical condition she was not as active as in previous years, but that she still

actively provided guidance and advice to CMU RM issues as well as liaising with CO RM and admin staff with HQ (incl Corporate) staff on policies and procedures. In addition upon her return, she has actively utilized a new business planning tool (IPS) and rais[ed] issues in a timely manner to the project team for improvement.

25. According to another feedback provider the Applicant deserved a rating of "Outstanding" for "Teamwork," a rating of "Fully Successful" for Client Orientation and a rating of "Successful" for "Drive for Results." The Applicant was commended as "a very wonderful, helpful and experienced colleague who performs her work and interacts very professionally being focused on the overall objectives." The feedback provider found the Applicant "very positively responsive, rational and creative for alternative and feasible solutions in [a] timely manner." Another feedback provider further praised the Applicant for her sound advice and responsiveness to requests.

26. The Tribunal concludes that, notwithstanding the very positive feedback from some of the Applicant's feedback providers, the overall review of her performance during the 2011 OPE period was mixed. With such a mixed performance review, there was an

observable and reasonable basis for the “Partially Successful” ratings awarded to the Applicant for the behavioral components of “Client Orientation” and “Drive for Results.”

27. The Tribunal will now consider whether the OPE assessment took into account all relevant and significant facts which existed during the period of review. In *Lysy*, Decision No. 211 [1999], para. 68, the Tribunal emphasized that:

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

28. Two relevant facts existed during the period of review. The first is that the Applicant, following her recovery from surgery and subsequent accident, worked from home and was on leave for seven months (September 2010 to March 2011). The second is that, because of budgetary changes, RM teams were required to provide a different type of support to the CMUs compared to the support previously requested of them. According to the Applicant some of her CMU clients were also new to the VPU and to the budget processes in place. Mr. R explained these changes in his response to the PRS panel:

Following 5 years of high budget growth – 8% annualized and highest among the six regions – senior management asked [the VPU] management to deliver its target work program and also address rising security concerns ... within a flat budget in FY10, and particularly in FY11. Following exceedingly tough discussions and decisions over the first three months of FY11, the Regional Management Team (RMT), led by the VP, coordinated an extraordinary region-wide effort to implement short - and medium-term measures to contain spending while prioritizing program delivery. The Resource Management (RM) team was at the heart of facilitating this change – supporting managers with more precise, detailed, comprehensive and coordinated planning, regular monitoring, ad-hoc analysis, and early identification of issues and solutions relating to budgets, staff and work programs. This type of support from the HQ RM team was not called for in prior years of budget growth.

29. The Tribunal observes that the 2011 OPE places much focus on the second significant fact, namely the changes to the nature of the support required of RM staff due

to the budget restrictions. It is on this basis that Mr. R's comments are centred squarely on the fact that although the year-end spending for the Applicant's client units was "within budget," the CMUs noted her lack of drive for results and responsiveness on budgetary issues. Mr. R did not refer to the fact that the Applicant had been ill or had worked from home during the OPE cycle. Similarly, there is no reference to earlier commendation of the Applicant's support on the budget of the CMU of one her primary client countries in November 2010 or commendation of her achievements on the budget of another primary client in December 2010. There is also only a passing reference to the support she provided to other units or initiatives taken during the OPE cycle.

30. The Tribunal finds that the 2011 OPE did not take account of the Applicant's flexible working arrangement. Furthermore, it should have referred to the fact that, despite her illness and subsequent injury, the Applicant continued to work from home. To omit such a significant fact does not give the Applicant credit for her demonstrated dedication to her work and her Unit.

31. However, notwithstanding the failure of the OPE to take account of all the relevant facts, the Tribunal finds that on balance the OPE process was not arbitrary or unfair because there would still have been a basis for the "Partially Successful" ratings as explained in paragraph 26 above. While the OPE could have been more balanced by juxtaposing the negative and positive comments, as well as acknowledging the totality of the Applicant's achievements during the review period, the Tribunal is not convinced that inclusion of additional positive comments in the OPE would have altered the overall assessment of the Applicant's performance.

*Whether the Applicant's due process rights were violated*

32. A basic guarantee of due process is "that the staff member affected be adequately informed with all possible anticipation of any problems concerning his career prospects, skills or other relevant aspects of his work". *Garcia-Mujica*, Decision No. 192 [1998], para. 19. *See also Prasad*, para. 30. In the context of performance evaluations in particular,

the 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 [and] adequate opportunities to defend himself.” *Samuel-Thambiah*, Decision No. 133 [1993], para. 32. *See also B*, Decision No. 247 [2001], para. 21. Therefore, “lapses in performance should be identified when they occur and addressed expressly and promptly. They should not be held in reserve only to be disclosed at the end of the review period.” (*O*, Decision No. 337 [2005], para. 54). Performance evaluations must be conducted in a fair and reasonable manner providing the staff member an opportunity to correct any mistakes (*Prasad*, para. 30), and the staff member should receive ongoing feedback which would enable him or her to “anticipate the nature of [the] year-end discussion and resultant ratings on the OPE” (*Prasad*, para. 25).

33. The Tribunal will first consider whether the Applicant was provided adequate warning about criticism of her performance and whether lapses in her performance were identified and addressed promptly. Furthermore, the Tribunal will consider whether the Applicant was afforded adequate opportunity to defend herself. The Bank relies on Mr. R’s response to the PRS panel to argue in the affirmative. During his interview with the PRS panel, Mr. R referred to the following specific instances where oral feedback was given to the Applicant: (i) in October 2010, Mr. R advised the Applicant that she should not repeat the technical “shortcomings” of the previous year, e.g. “the over-allocation of the CMU Country Program budget”; (ii) in November 2010, Mr. R called a staff meeting to propose a format for a common report that each RM staff member would provide to their managers on a monthly basis; and (iii) in December 2010, Mr. R called the Applicant to explain how she could improve her reports and encouraged her to communicate daily with her client management teams.

34. According to the Applicant, Mr. R did not provide the alleged October 2010 feedback. Indeed, the record does not show any reference to technical shortcomings in the Applicant’s 2010 OPE. Furthermore, even if this were the case, Mr. R acknowledged in the Applicant’s 2011 OPE that the “end-year spending for her client units was within budget.” In any event, the Applicant improved her performance as required. Therefore, the October

2010 feedback is not evidence that the Applicant was provided with adequate notice of lapses in her performance which could result in an adverse performance evaluation.

35. The second occasion, namely the November 2010 staff meeting, cannot be relied upon by the Bank as evidence of adequate warning. Mr. R informed the PRS panel that during that meeting he was careful not to single out the Applicant. He stated that he called a resource management “meeting to agree on the common reports/formats that each RM staff would provide their managers on a monthly basis.” The Tribunal finds merit in the Applicant’s argument that she could not have known that the meeting was organized to communicate a complaint about her own performance. Regarding the third instance, Mr. R informed the PRS panel that, while on mission to one of the countries supported by the Applicant, the Country Director complained about the quality of the budget reports produced by the Applicant. Mr. R stated that he called the Applicant and informed her of the complaint, and “she took immediate action.” Since Mr. R acknowledges that the Applicant had remedied the situation, the Applicant would have understandably been surprised to find the same complaint used as a basis for a negative OPE without any reference to the fact that, as acknowledged by Mr. R, she took immediate action and rectified the situation. The Tribunal finds that this complaint cannot be relied upon by the Bank as notice to the Applicant of a negative OPE.

36. Finally, Mr. R noted that in December 2010 he received several complaints from the management teams the Applicant supported that she was rarely in contact with them and only informed them of her leave plans at the last minute. Mr. R asserted that he called the Applicant and “encouraged her gently to communicate daily with her client management teams.” However, according to Mr. R, “client feedback seem[ed] to indicate that she did not heed this guidance.” The Applicant challenges these assertions noting that the Bank has not produced any evidence of these complaints prior to the OPE, and states that she was not informed that failure to act in a particular way would lead to a negative OPE. The record contains no evidence to confirm that that the need for daily communication with her client management teams was brought to the Applicant’s attention. On the contrary, the record contains a number of positive comments on the

Applicant's work from Mr. R and her primary client management teams. For instance, on 16 December 2010, Mr. R commended the Applicant on the status of the budget of one client in an e-mail message stating: "Looks good. Your CMU is in really good condition." On 6 July 2010, at the end of the financial year, the CMU of another client expressed gratitude to the Applicant and the rest of the RM team for their support in ensuring the unit was "within budget." The evidence does show that on at least one occasion the Applicant informed her CMU teams of her leave plans in an untimely manner. However, there is no evidence that she was notified of complaints about this behavior.

37. The Tribunal now considers whether the Applicant received ongoing feedback which would have enabled her to anticipate the nature of the year-end discussion and the resultant OPE ratings. The Bank contends that, in addition to feedback provided by Mr. R, described above, the Applicant also received ongoing feedback from her primary clients regarding her performance. The record does not support this contention. The Bank refers to e-mail exchanges between the Applicant and the Country Program Coordinator for one of the Applicant's client countries. The record shows that the Country Program Coordinator posed several clarification questions which the Applicant answered professionally almost on a daily basis. While that Country Program Coordinator and other client management teams may have required something specific from the Applicant to satisfy the behavioral competencies of "Drive for Results" or "Client Orientation," there is no evidence in the record that this was communicated to the Applicant. In light of the above, the Tribunal finds that the Applicant was not provided with adequate warning of criticism which could result in an adverse decision.

*Whether there were procedural irregularities in setting the Applicant's SRI*

38. In *Prasad*, para. 57, the Tribunal discussed the "established order of things in the Bank's procedures and requirements concerning a staff member's career development." The Tribunal noted that the process begins 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*, para. 57.) The Tribunal has repeatedly set aside SRI ratings where the underlying OPE was found to be arbitrary, an abuse of managerial discretion or affected by procedural irregularities. See *BG*, Decision No. 434 [2010], para. 57.

39. The Applicant and Mr. R held the OPE discussion by telephone on 13 September 2011. On 14 September, Mr. R discussed proposed OPE ratings with the Acting CAO and an HR officer, and addressed the SRI ratings with them the following day. On 4 October, the Applicant’s SRI rating was finalized. On 5 October, Mr. R proposed meeting with the Applicant to discuss her OPE ratings in person. He repeated this invitation on 12 October, but the Applicant declined both invitations. On 14 October 2011, Mr. R once again sent an e-mail message to the Applicant suggesting an “open and transparent conversation with Human Resources and others as necessary.” On 26 October 2011, Mr. R sent the Applicant a draft OPE through the OPE electronic system.

40. The Tribunal finds the present case is markedly different from *BY*, Decision No. 471 [2013] on which the Applicant relies. Unlike the applicant in *BY*, the Applicant in the present case held an OPE discussion with her supervisor before any SRI ratings were discussed. Therefore the “established order of things” referred to in *Prasad* was maintained. Furthermore, the processes for setting OPE and SRI ratings adopted by Mr. R complied with the regional guidelines for the VPU. According to the regional guidelines from 15 September 2011 “VPU-wide OPE (and preliminary SRI, as available) ratings distributions [were to] be reviewed across all staff groups and Departments for consistency.” Mr. R discussed the proposed SRI ratings on 16 September 2011 after receiving feedback from the Applicant’s feedback providers and holding the initial OPE discussion with the Applicant. The record shows that pursuant to the Regional Guidelines, the management of the VPU submitted the proposed OPE and SRI ratings to the Human Resources Vice President for clearance before they could be shared with staff members. Finally, the Applicant was afforded several opportunities to discuss her OPE ratings with Mr. R, which she declined.

41. In *Yoon (No. 6 and No. 7)*, Decision No. 390 [2009], paras. 88-92, the Tribunal discussed the applicant's unwillingness to participate in the OPE process or meet to discuss the comments and ratings with her supervisor. The Tribunal was satisfied that the "principal reason for the lack of dialogue with respect to the OPEs was the Applicant's unwillingness to participate in the process." (*Yoon*, para. 92.) In the present case, the Applicant and Mr. R held the required OPE discussion on 13 September 2011. The Applicant refused to meet with Mr. R to further discuss the OPE ratings, citing her lack of confidence in his ability to evaluate her fairly. Whatever the Applicant's reasons may have been, the fact remains that she declined the opportunity offered to discuss her OPE and SRI ratings in an "open and transparent conversation with Human Resources and others as necessary." The Tribunal considers that she must bear responsibility for declining the opportunity to further engage with Mr. R, management and HR on her SRI before it was finalized.

*Whether the Applicant's SRI rating involved an abuse of discretion*

42. The process of establishing SRI ratings is discretionary and based on a comparative assessment of staff members within the same unit. The Tribunal has recognized 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." *Marshall*, Decision No. 226 [2000], para. 24. However, the SRI decision must have an observable and reasonable basis and the Tribunal will set aside SRI ratings which are based on an arbitrary or procedurally flawed OPE process (*See BY*, Decision No. 471 [2013], para. 31).

43. As noted above, the OPE process and ratings were not arbitrary, but on the contrary had an observable and reasonable basis. Similarly, with respect to the Applicant's due process rights, while the Applicant was not afforded adequate notice of criticisms held by her primary clients and the OPE could have been more positively balanced, the Applicant was afforded an opportunity to defend herself during the 13 September 2011 OPE discussion and subsequently. However, she declined these subsequent opportunities.



44. Furthermore, the Tribunal finds that the SRI rating of 3.1 had an observable and reasonable basis. The Applicant's SRI rating was based on the mixed comments provided by her feedback providers. The Tribunal observes that the Applicant was originally awarded an SRI rating of 2.2 by HR; however, Mr. R exercised his managerial discretion to ensure she was awarded a higher rating. He concluded that since the Applicant had "received consistently good OPE ratings in the past, a drop to a 2.2 SRI rating would be unduly harsh." He also stated that "a 2.2 SRI rating will absolutely kill any possibility of a rotation for her to perhaps another VPU where her strong general administration and coordination skills could be mutually beneficial to that VPU and her career." The Tribunal finds nothing in the record to suggest that the 3.1 SRI rating awarded to the Applicant was an abuse of managerial discretion.

*Other allegations of abuse of managerial discretion*

45. The Applicant asserts that since Mr. R was no longer her supervisor at the time the 2011 OPE was conducted, he abused his managerial discretion by 1) informing her that she would be placed on a PIP and 2) offering her a better OPE rating if she agreed to leave her Unit. She contends that the offer of a better OPE in lieu of a PIP was a failure to observe generally applicable norms of prudent professional behavior (Staff Rule 3.00, paragraph 6.01(b)). The Bank denies that the Applicant was threatened with a PIP or offered a better OPE in exchange for leaving the Unit. According to the Bank, discussing a possible PIP in the context of unsatisfactory performance is fulfillment of management's obligation to provide a meaningful opportunity for the Applicant to improve, as required by Staff Rule 5.03.

46. While the Applicant and the Bank provide conflicting accounts of the 13 September 2011 conversation between the Applicant and Mr. R, both parties agree that the possibility of placing the Applicant on a PIP was raised. According to the Applicant, since Mr. R was no longer her supervisor, it was not within his authority to propose such an outcome. In her view any PIP would have to be implemented and overseen by the then Acting CAO or her permanent replacement. The Bank however asserts that since the

Applicant was not placed on a PIP as a result of the 2011 OPE, her requests to delete any PIP references from her records is moot.

47. The Tribunal observes that Mr. R was authorized to conduct the performance evaluation of the staff members by the Acting CAO. In the exercise of this authority, the record shows that Mr. R was in regular communication with the Acting CAO as well as senior management. However, the Tribunal feels constrained to record its concern that a measure as severe as placing the Applicant on a PIP was canvassed in view of the predominantly positive character of the Applicant's performance over the years.

#### CONCLUDING REMARKS

48. Notwithstanding the Tribunal's findings in paragraphs 34-37 above, the Tribunal concludes that the circumstances of the case, viewed as a whole, do not warrant an award of financial compensation to the Applicant. However, given that some of the Applicant's contentions have been found to be meritorious, the Tribunal will order the Bank to meet the Applicant's costs, and remove any references to a possible PIP, should they exist, from the Applicant's personnel records.

#### DECISION

- (1) The Bank shall remove from the Applicant's personnel records any and all references to discussion or consideration of placing the Applicant on a PIP.
- (2) The Bank shall meet the Applicant's costs in the amount of \$8,186.69.

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

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, D.C., 3 October 2013