



World Bank Administrative Tribunal

2016

Decision No. 531

**DH,
Applicant**

v.

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

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

**DH,
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), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.
2. The Application was received on 9 April 2015. The Applicant represented herself. The Bank was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 30 March 2016.
3. The Applicant is challenging her 2013 Overall Performance Evaluation (OPE); her 2013 Salary Review Increase (SRI); and the termination of her employment through her placement on Long-Term Disability (LTD). The Bank filed a Preliminary Objection on 14 May 2015 regarding some of the Applicant's claims.

FACTUAL BACKGROUND

4. This is the second Application that the Applicant has filed with the Tribunal.
5. The Applicant joined the Bank in 1982 as a secretary in a Bank country office where she worked for 10 years. In June 1993 she secured a position at the Bank's Headquarters in Washington, D.C., where she worked in various administrative functions, at Level GC, including Team Assistant, Co-financing Assistant, and Program Assistant. From October 2009 through June 2013 the Applicant served as a Financial Assistant at the Concessional Finance and Global Partnerships (CFP) Vice Presidency (CFPVP). From July 2013 until the end of her employment with the Bank on 7 February 2015 the Applicant was a Program Assistant at the Multilateral

Trusteeship and Innovative Financing Unit (CFPMI) and, following reorganization of CFP, at the Development Finance Trust Funds and Partnerships (DFPTF) unit.

6. In February 2010, having acquired two years of Resource Management (RM) experience, the Applicant applied for an RM Assistant position at Level GD which her supervisor had created. The position was subsequently cancelled by the Vice President (VP) of CFPVP because there was no “business need” or budget for the position.

7. In July 2010, the Applicant filed a Request for Review with Peer Review Services (PRS) challenging the Bank’s alleged failure to promote her to Level GD and assign her to the RM Network. The PRS recommended that her requests for relief be denied but also noted that the Applicant had been a good performer, fulfilling the responsibilities of a Level GD position, and noted that, in the future, she had the potential for such a position and to be assigned to the RM Network.

8. In December 2011, Mr. K became the new Director of Global Partnership and Trust Funds Operations (CFPTO). On 13 October 2011, CFPTO advertised a three-year Term appointment position for an RM Assistant at Level GD. One of the staff interested in the position was Ms. H, a Program Assistant hired by Mr. K in 2009 in his previous department. Following a shortlisting and interview process, Mr. K selected Ms. H to the position.

9. On 1 February 2012, the Applicant sent an e-mail message informing CFP staff that Ms. H had been selected for the RM Assistant position taking over her responsibilities and that Ms. H, rather than the Applicant, would henceforth be the point of contact for RM matters. The Applicant’s 2012 OPE included mostly “Fully Successful” ratings, one “Outstanding/Best Practice” and one “Partially Successful” rating regarding her support to the RM Officer and her RM duties. Mr. M, Adviser, CFPVP, and the Applicant’s supervisor at the time, stated in his Overall Comments for that OPE that she had been rated “Partially Successful” because she did not perform some of the components of her Terms of Reference (TOR) after so informing management on 1 February 2012, although she had been performing adequately in other RM-related tasks up until 1 February 2012. His other comments regarding the Applicant’s work were positive.

10. On 8 February 2013, following an unsuccessful Request for Review of her non-selection with PRS, the Applicant filed an Application with the Tribunal contesting the decision not to select her for the position of RM Assistant, Level GD, CFPTO, and raised allegations of career mismanagement and retaliation. In its judgment in the Applicant's first case, the Tribunal held that it was not satisfied that a fair assessment of the candidates had been conducted during the shortlisting, interview, and final selection processes, or that the principles ensuring a transparent, sound, and fair recruitment process established in its jurisprudence had been observed in this case. Therefore, given the deficiencies in the process as well as the other circumstances in this case, the Tribunal found that an award of compensation to the Applicant was warranted and awarded the Applicant compensation in the amount of seven months' salary net of taxes and attorney's fees. In addition, while finding that the Applicant had not proven her claims of retaliation and career mismanagement on the merits, the Tribunal noted that the Applicant had been deemed qualified to be included in a small number of candidates in a shortlist to be interviewed for an RM Assistant position at Level GD and that the interview panel had considered her knowledgeable and fungible in both the Administrative Client Support (ACS) and RM work. The Tribunal called upon the Bank to make efforts to support the Applicant's career advancement and promotion.

11. In FY13 (July 2012 to June 2013) the Applicant's health worsened, and she applied and was approved for Short-Term Disability (STD). Initially, she was away from the office on STD from 7 November 2012 until 15 January 2013. At that time she returned to work on an STD modified work schedule until 31 July 2013, when she was again away from the office on STD leave from 1 August 2013.

12. During FY13 and while the Applicant's case was pending before the Tribunal, the Applicant was a Financial Assistant in CFPVP. Her supervisor was Mr. R, Senior RM Officer in CFPVP. Mr. R had become the Acting Chief Administrative Officer (CAO) in CFPVP when the previous CAO left in March 2010. On 1 February 2013, Mr. JA became the new VP of CFPVP.

13. On 4 March 2013, after the Applicant's return to the office in January 2013, under an STD modified schedule, Mr. R agreed with the Applicant on the TOR for Financial Assistant. The

Applicant's work program included RM transaction processing but did not include the general RM work that she had carried out in prior years.

14. On 1 May 2013, the Applicant had a meeting with Mr. JA to inform him of what she considered to be the unfair treatment she was receiving from Mr. R. She informed him that Mr. R had given her TOR on 1 March 2013 which they had agreed on and included RM work but that he did not get her involved in the RM tasks mentioned in the TOR. In a follow-up e-mail to Mr. JA dated 24 May 2013, the Applicant stated that she would appreciate it if the VP got her involved in RM tasks.

15. On 3 June 2013, Mr. JA responded to the Applicant stating that he was "contemplating a different, full, and business driven work program for [her] in a different place to allow for a positive fresh start" and promised to get back to her shortly.

16. On 10 June 2013, the Applicant met with Mr. JA, Ms. SA, Director, CFPMI, and Ms. V, Senior Human Resources (HR) Business Partner. Mr. JA stated that, in response to the Applicant's request for assistance to build a full-time work program for her, he had reviewed the opportunities available within CFP. He proposed the Applicant's lateral transfer, at Level GC, to a new unit, CFPMI, in order to provide her with a fresh start. Although Mr. JA recognized that the Applicant would prefer an RM position, he emphasized that "the proposal to transfer to CFPMI is business needs driven and is therefore meaningful." The Applicant expressed appreciation for the work program offer, even though it was not in the RM area and agreed to accept it.

17. On 14 June 2013, the Applicant met with Mr. CA, the Senior Financial Officer who was acting for Ms. B, the Manager, CFPMI, the Applicant's new manager. During this meeting, Mr. CA and the Applicant discussed and agreed on the TOR and her new job title of Program Assistant.

18. On 17 June 2013, in response to a communication from Ms. V regarding the Applicant's transfer to a Program Assistant position in CFPMI located in an open area, the Applicant expressed her concern that the new TOR that she had been given were not conducive to her career

development in RM and requested, among other things, for assistance to secure a Developmental Assignment in RM.

19. On 19 June 2013, the Applicant met with Ms. V and asked whether the Vice President, CFP, Mr. JA, could review the possibility for her to have a full-time work program with an RM component in the Front Office and whether her transfer to CFPMI could be postponed until her request was reviewed.

20. Thereafter, Mr. JA instructed Ms. V to conduct a second evaluation of RM-related responsibilities in CFPVP to determine “whether there is a business need that may justify [an] additional full time position at the GC level.” On 28 June 2013, following Ms. V’s further appraisal, Mr. JA informed the Applicant that although he recognized “[her] career interest in the RM field, there is no business justification to create a new GC level position to work on RM tasks in the Front Office or in any other parts of CFP.” He added that there were several factors that had contributed to the erosion of her work program in the Front Office such as: (i) the outsourcing to Chennai of the transaction processing work; (ii) the transfer to the Finance Complex Information Management and Technology (FCIMT) IT team of the capital budget monitoring work; and (iii) the Applicant’s reluctance to undertake part of her RM-related Development Grant Facilities (DGF) duties as of February 2012.

21. Effective 1 July 2013, the Applicant was transferred from CFPVP to CFPMI.

The Applicant’s FY13 OPE

22. In June 2013, and as suggested to her by HR, the Applicant put as supervisors in her OPE both Mr. R and Mr. M because both had been her supervisors for FY13 for six months each. Mr. JA, Vice President, CFP, was her Reviewing Manager for that year. Mr. R suggested a feedback provider to her OPE; the Applicant suggested three additional feedback providers pointing out that there had been very little work.

23. On 15 July 2013, the Applicant submitted her draft FY13 OPE to her supervisors.

24. On 8 August 2013, Mr. R sent the Applicant an e-mail stating that neither he nor Mr. M had yet received any comments from the feedback providers identified in the Applicant's FY13 OPE, and that he would "follow up with [her] feedback providers and will get back to [her] on [her] OPE once [they] had heard from them."

25. In her 2013 OPE, evaluating her performance for the period from 1 July 2012 until 30 June 2013, the Applicant received four "Fully Successful" ratings in relation to four tasks and one "Partially Successful" rating regarding the task titled "Made sure time is recorded by [the Vice-Presidential unit (VPU)] staff by end each month." The Applicant received "Partially Successful" ratings regarding all four Core Competencies in her OPE: "Client Orientation"; "Drive for Results"; "Teamwork"; and "Learning and Knowledge Sharing."

26. Her supervisor, Mr. R, stated as follows in his Overall Comments in her OPE:

As evidenced in the Results agreement, [the Applicant] did not have a full time work program due to both business changes and her refusal to do any RM related work since February, 2012. [The Applicant's] prior work program had some components of RM work (as she had earlier expressed interest in learning and moving to the RM network). However, post February 1, 2012, she informed the management that she will not do any RM related work and therefore, her work program was modified as per her request. In addition to her refusal to help with RM related work, there were other factors (like outsourcing of the transaction processing work to [the General Services Department (GSD)], Chennai) that contributed to the deterioration of her work program. Thereby, eliminating the need for a finance assistant in the VP's Front office. Therefore, CFP management in consultation with [the Applicant] agreed to move her to another Department within CFP where she was offered a full time work program including mapping her to the ACS network (in line with her request to be mapped to a network in order to help her with her career and rotation). CFP also continued to support [the Applicant's] study in the RM sponsored SEC Program.

27. In an e-mail dated 2 June 2014 and sent from Mr. R to Ms. B, in her capacity as a Responding Manager to the Applicant's Request for Review of her 2013 OPE before PRS, Mr. R stated that in relation to the period under review, i.e., July 2012 to June 2013, the Applicant was on leave for about eight days in July and came into work in August, September, and October. He stated that, during the time between August and October, management and HR had a couple of meetings with the Applicant to address her issues but she did not agree upon her Results

Agreement. He also stated that when the Applicant returned to work on a part-time basis in March 2013, she agreed on the TOR provided and completed her Results Agreement.

28. Mr. R further stated that he gave the Applicant a “Partially Successful” rating for her Time Recording System (TRS) responsibilities as he felt that she did not perform her role as a TRS Coordinator successfully. To justify the Applicant’s rating of “Partially Successful” for all Core Competencies, Mr. R stated that the Applicant was both non-cooperative and also finding ways to avoid work.

29. He added regarding the Applicant’s feedback in her OPE that most of the feedback providers did not provide feedback and he had to follow up with them several times.

30. The Applicant disagreed with the rating for the Time Recording because she states that as long as she was in the office on the last day of the month even if she was expected to be out on the last day, she made sure that recording by the staff was 100% complete. She points to previous OPEs where she had received “Fully Successful” ratings for this task and to the evaluation of this task by her new manager, Ms. B, in her 2013-14 OPE who had appreciated her work on such task. Furthermore, the Applicant points out that Mr. R had prevented her from doing real work because he did it himself instead and assigned her to help the Front Office support staff/short term temporaries with trivial tasks. The Applicant also states that Mr. R’s Overall Comments in her OPE were a repetition of issues that appeared, and had been addressed, in the FY12 OPE and that she had never requested mapping to ACS.

31. On 6 September 2013, Mr. R inquired with HR to determine whether the Applicant was eligible for a regular SRI and salary increase process due to her prolonged absence as a result of her disability.

32. On 9 September 2013, a Compensation and Benefits Officer from HR confirmed that the Applicant was on the “disability list” and did not appear on the SRI roster. Therefore the Bank explained that according to its policy, the Applicant would not receive a competitive SRI rating

for the 2013 OPE period. Instead she would automatically receive a “disability rating” and a corresponding 1.2% salary increase.

33. The Applicant was away on STD from 1 August 2013 until 1 December 2013. When the Applicant returned to work, Mr. R contacted her on 17 December 2013, 13 January 2014 and 23 January 2014, in an effort to discuss the OPE with her.

34. The Applicant did not respond to these communications, and on 27 January 2014 the Bank sent the Applicant her final OPE for her signature. The Applicant states that seven months passed between the time she sent her OPE to Mr. R on 15 July 2013 and 27 January 2014 when Mr. R forwarded the OPE to her for her signature. She claims that Mr. R could have called her at home to discuss her SRI, as he had done in the past and as her new manager, Ms. B, had done to complete her mid-year review.

35. The Applicant states that around March 2014, she was told that CFP would be reorganized and as a result she was reassigned to DFPTF effective 1 July 2014, under Mr. D, Adviser.

36. On 2 April 2014, the Applicant filed a Request for Review with PRS requesting the review of her 2013 OPE and her 2013 SRI of 1.19%. The Applicant also claimed that management did not make sufficient efforts to support her career advancement and promotion as recommended in the Tribunal’s judgment in the Applicant’s first case and claimed that management discriminated against her “because she is a Pakistani woman/a Muslim/older/wears [a] head scarf,” and retaliated against her for her previous use of the Conflict Resolution System.

37. In reviewing these matters, the Panel found that management did not provide a reasonable and observable basis for two “Partially Successful” ratings on the Applicant’s 2013 OPE and did not follow the applicable procedures in completing it. The Panel also found, among other things, that there was a reasonable basis for the 1.19% SRI and that management followed the applicable procedures. The Panel recommended that the Bank (i) rescind two “Partially Successful” ratings on the Applicant’s 2013 OPE for “Client Orientation” and “Learning and Knowledge Sharing”; and (ii) compensate the Applicant in an amount equal to two months of her net salary.

38. On 6 November 2014, the Managing Director and World Bank Group Chief Financial Officer accepted the Panel's recommendation and offered the Applicant the relief that the PRS had recommended. The Applicant did not accept management's offer and did not sign the acceptance form.

The STD and LTD Process

39. As shown in letters dated 6 August and 10 October 2014 from the Clinical Case Manager, Registered Nurse, to the Applicant, the Applicant was enrolled in the Bank's STD program from 7 November 2012 until 6 November 2014, variably at work part-time on an STD modified work schedule or away from the office on STD. As part of the "Return to Work" program, pursuant to Staff Rule 6.22, "Disability Insurance Program," during certain months in 2013 and 2014, the Applicant worked only part-time on an STD modified work schedule, and received STD benefits to ensure that she received 100% of her net salary despite her reduced hours of work.

40. The Applicant states that the Clinical Case Manager called her in August 2014 and told her that she needed to go for an Independent Medical Evaluation (IME) on 2 October 2014 to Dr. I. The Applicant did so.

41. On 15 October 2014, the Clinical Case Manager forwarded the IME report to her. According to the report, the Applicant's medical condition was permanent and according to the medical doctor's opinion it was unlikely that the Applicant would be able to work full-time in any position. The Clinical Case Manager and the Applicant discussed the report and, according to the Applicant, the Clinical Case Manager told her that somebody would contact her from HR to go over it. The Applicant claims that she called the Clinical Case Manager a few times as well as HR, but did not get an answer from them. Furthermore and pursuant to the Applicant's consent, the IME report was shared with the Applicant's physician on 15 October 2014.

42. Meanwhile, on 7 November 2014, the Applicant met Mr. D, Adviser, DFPTF, to tell him that she had received the IME report and that somebody would contact her from HR to go over the procedures. She expressed her frustration that nobody was responding to her calls as she was going on home leave on 8 December 2014. According to the Applicant, Mr. D mentioned that the start

date of her Long-Term Disability status would be 8 January 2015. The Applicant states that she did not understand what he meant. She believed that Mr. D was new to the Bank and, according to her, he told her that he was also learning new things as they were going along.

43. On 7 November 2014, the Applicant sent another e-mail to the Clinical Case Manager to inquire when somebody would contact her to go over the arrangements of LTD and reminded the Clinical Case Manager that she would be on leave starting 8 December 2014.

44. Also on 7 November 2014, the Bank's Disability Administrator, Reed Group, determined that the Applicant was not medically well enough to work, based on the expert opinion of the latest IME that the Applicant had undergone. Consequently, the Applicant would automatically transition onto LTD effective 7 January 2015. The Reed Group thought that it had communicated to the Applicant on 7 November 2014 a letter of that same date informing her that she was "eligible for Long-Term Disability benefits" in accordance with Staff Rule 6.22 and that she was due to separate from the Bank on LTD on 7 January 2015. The 24-page document that the Reed Group had issued to the Applicant on 7 November 2014 included a copy of the relevant Staff Rules (Staff Rule 6.22, "Disability Insurance Program" and Staff Rule 7.01, "Ending Employment"). The Bank discovered recently that even though the letter had been issued on 7 November 2014, it was never sent to the Applicant.

45. The Applicant went on her scheduled home leave on 8 December 2014.

46. On 22 December 2014, HR sent the Applicant a memorandum setting out information on her separation from the Bank and her benefits ("Memorandum on Ending Employment"). The HR team, including Ms. T, an HR Business Partner, tried to call the Applicant several times at the up-to-date phone number that the Bank had on file, to discuss her separation from the Bank.

47. On 5 January 2015, Ms. V, Senior HR Business Partner, inquired if Ms. T had followed up with the Applicant. The next day, Ms. T stated that the Applicant had not returned any of her calls and that if they could not reach the Applicant, they would write to her. Ms. V, Senior HR Business Partner, responded on 7 January 2015 by saying that "we want to make sure she gets all the help

needed before her separation.” She also asked the Applicant’s manager, Mr. D, to ask the Applicant to contact Ms. T. At that time, Mr. D informed Ms. V that the Applicant was on home leave and gave her the Applicant’s personal e-mail address.

48. On 8 January 2015, the Applicant received an e-mail regarding confirmation of her “Home Leave” so that her final payment could be released. She responded that same day asking, “What is the final payment?”

49. Following communications to the Applicant by Ms. V and Mr. D of 9 January 2015, the Applicant responded to Mr. D on 10 January 2015 saying:

I got messages one saying separation from Bank and the other re LTD which made me really confused. I did not know that I will be literally separating from the Bank by receiving separation grant etc. I really need to discuss this in person before I make any decision as nobody has informed me of this process. You may have come to know that my G-4 visa was expired before I landed in Pakistan. I am trying to get it renewed. I would like to discuss this before we proceed further on my return.

50. The Applicant explains that all the e-mails were received by her when her access to the Bank’s intranet was already blocked because her contract had ended on 8 January 2015. The Applicant also states that she was shocked as she did not understand from the IME report that she would be prevented from working as nobody had discussed the IME report and Reed Group’s approval of LTD with her. The Applicant expected that as in the past when she was on STD, the Bank would have allowed her to work under a modified work schedule.

51. After an exchange of communications between Ms. T and the Applicant where the Applicant stated that she had not received the letter from the Reed Group regarding her placement on LTD and the ending of her employment as of 7 January 2014, Ms. T sent the Applicant a detailed e-mail on 12 January 2015, summarizing and explaining again the content and implications of the Reed Group’s 7 November 2014 communication and the Ending Employment Memorandum.

52. That same date the Applicant responded to Ms. T and stated that she had requested from Mr. D and Ms. V that her separation from the Bank be delayed until “February 1 when I will be able to discuss all the options and procedures when I am back in the office.” Thereafter, an updated Memorandum on Ending Employment was sent to the Applicant on 14 January 2015.

53. To enable the Applicant to return to Washington, D.C. to get her affairs in order prior to her separation from the Bank, as well as due to the Applicant’s visa expiration, the Bank was able to postpone the commencement of the Applicant’s LTD, and the end of her employment, to 7 February 2015. This was done, with the Applicant’s agreement, by placing her on administrative leave for one month. The Applicant returned to Washington, D.C. on 28 January 2015 and was able to gain access to the office and the Bank’s systems. The Applicant had one meeting with Ms. T on 29 January 2015 to discuss the implications of her LTD and resulting separation from the Bank, as well as one meeting with Ms. V on 3 February 2015, to “clarify some issues and review HR policy” and discuss further her LTD and the terms of her separation from the Bank.

54. The Applicant’s employment ended on 7 February 2015.

55. In her Application filed with the Tribunal on 9 April 2015, and in her Reply, the Applicant requests the Tribunal to order, *inter alia*: (i) her promotion to Resource Assistant position, Level GD, effective 1 February 2012 when another candidate was selected to that position instead of the Applicant and her promotion to RM Analyst position, Level GE, “when her required degree was conferred to her on 30 December 2013”; (ii) adjustment to her 2013 OPE ratings, comments, and her SRI for that year; (iii) review of her salary as of 1 January 2009; (iv) three years’ salary as compensation; (v) award of education benefits if her daughter is accepted to McGill University; and (vi) relief as the Tribunal deems fit. She also requests costs in the amount of \$8,655.

56. On 14 May 2015, the Bank filed a Preliminary Objection to the Applicant’s claims. An exchange of pleadings on the Preliminary Objection followed. On 12 August 2015, the President of the Tribunal decided that the Preliminary Objection shall be joined to the merits. An exchange of pleadings on the Preliminary Objection and the merits followed.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Preliminary Objection

57. In this case, the Bank initially raised a Preliminary Objection pursuant to Rule 8 of the Tribunal's Rules claiming that the Application is inadmissible *ratione temporis* because it did not meet the requirements of Article II, paragraph 2(ii)(b) of the Tribunal's Statute. In addition, the Bank stated that the Application included numerous claims that were inadmissible under Article XI, paragraph 1 and Article II, paragraph 2(i) of the Tribunal's Statute.

58. Following the exchange of pleadings on the Preliminary Objection and the decision of the President of the Tribunal to join the Preliminary Objection to the merits, the Bank stated that the following claims were admissible: (i) the Applicant's challenge to her 2013 OPE covering the period from 1 July 2012 to 30 June 2013; (ii) the Applicant's challenge of her 2013 SRI; (iii) the Applicant's claims of career mismanagement, following the filing of her prior Tribunal case in 2013, as they relate to the above principal two claims; and (iv) the Applicant's challenge to what she considered to be her wrongful separation from the Bank in February 2015, when she was automatically enrolled in the LTD program. These claims are reviewed by the Tribunal on the merits further below. In addition, any claims of discrimination and retaliation related to her principal claims are also admissible and will be addressed by the Tribunal on the merits.

59. In her Application, the Applicant also raises (i) claims of discrimination and retaliation in the selection process for an RM position at the International Finance Corporation in March 2012; and (ii) allegations that another Bank staff member, Mr. SR, was promoted to Information Officer following the advertisement of such position in 2010. Pursuant to the Applicant's clarification that these claims had been included in her previous PRS Requests for Review in 2010 and 2012, the Bank amended its Preliminary Objection with regard to these claims to state that even though the Applicant may have exhausted internal remedies with regard to these claims, they are still inadmissible *ratione temporis* as the Applicant has not observed the 120-day limit to file an Application raising these claims as required by Article II, paragraph 2(ii)(b) of the Tribunal's Statute.

60. The Tribunal's Statute Article II(2) prescribes in pertinent part:

2. No [...] application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:

(i) the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal; and

(ii) the application is filed within one hundred and twenty days after the latest of the following:

(a) the occurrence of the event giving rise to the application;

(b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted.

61. In its jurisprudence, the Tribunal has insisted on the importance of the statutory limitations “for a smooth functioning of both the Bank and the Tribunal.” (*Mitra*, Decision No. 230 [2000], para. 11; *Agerschou*, Decision No. 114 [1992], para. 42.) The Tribunal finds that as the record shows that the Applicant did not bring these claims within the 120-day limit after management issued its decision following the PRS recommendations on such claims in 2010 and 2012, these claims are inadmissible.

62. Additionally, the Applicant has raised claims of discrimination, retaliation and career mismanagement in relation to the cancellation of two positions, that of an RM Assistant position and an Information Officer position, advertised in February 2010 by her former supervisor.

63. With regard to the RM Assistant position, the Bank raised a Preliminary Objection stating that the Applicant challenged the decision to cancel this RM Assistant vacancy before PRS in a Request for Review filed in 2010 and included the facts related to the cancellation of such position in her claim of career mismanagement raised in her previous Application before the Tribunal. Therefore, it states, this claim has already been adjudicated by the Tribunal in its previous judgment in the Applicant’s case. It also adds that, to the extent that the Applicant’s claims of career mismanagement, discrimination, and retaliation relate to and are based on facts that have been addressed by the Tribunal in its previous judgment in the Applicant’s first case, these claims should now be deemed inadmissible under the principle of *res judicata*.

64. The Tribunal’s Statute prescribes at Article XI, paragraph 1: “Judgments shall be final and without appeal.” Furthermore, Article XIII of the Statute prescribes at paragraph 1:

A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

65. The Tribunal has repeatedly held in its jurisprudence that previously adjudicated claims that an applicant attempts to submit again in another application are “irreceivable under the principle of *res judicata*.” (*Madabushi*, Order No. 2002-10 [2002], para. 4; *Pal* (No. 2), Decision No. 406 [2009], para. 34.)

66. Furthermore, as the Tribunal held in *Kwakwa* (No. 2), Decision No. 350 [2006], para. 19:

To ensure that Article XIII does not wreak havoc with the rule of finality, enshrined in Article XI, the former must be recognized as available only in exceptional circumstances. The “new fact” must shake the very foundations of the tribunal’s persuasion; “if we had known that,” the judges must say, “we might have reached the opposite result.”

67. The Tribunal finds that the Applicant’s claims of career mismanagement, discrimination, and retaliation as they relate to and are based on facts that have been addressed by the Tribunal in its previous judgment in the Applicant’s case, including the cancellation of the RM Assistant position in 2010, as well as any other claim addressed by the Tribunal in this previous judgment, are irreceivable under the principle of *res judicata*. Notwithstanding the Applicant’s assertion to the contrary, she has not produced any new evidence that would justify a revision of its previous judgment under Article XIII of the Tribunal’s Statute and according to the standard described in *Kwakwa* (No. 2). The Tribunal will therefore not entertain any attempt by the Applicant to have these claims re-examined.

68. In addition, regarding the cancellation of the position of the Information Officer and the promotion to it of another staff member, the Tribunal has found above that this claim was inadmissible as it was not raised in a timely manner before the Tribunal. The claims of discrimination, retaliation, and career mismanagement relating to this principal claim of the cancellation of that position would also be inadmissible. (*See also Prasad*, Decision No. 334

[2005], para. 39 citing also *Barnes*, Decision No. 176 [1997], para. 29 and *Chhabra*, Decision No. 139 [1994], para. 57.)

69. Furthermore, and in response to the Applicant's allegation in this respect, in its jurisprudence, the Tribunal notes that it has also rejected the notion that incidents inadmissible as claims may be incorporated into present proceedings as "background evidence" (*Sekabaraga*, Decision No. 494 [2014], para. 36); or to prove a "pattern of injustice and unfair dealing" (*Jalali*, Decision No. 148 [1996], paras. 34-35). For this additional reason, the Applicant's claims of career mismanagement, discrimination, and retaliation as they relate to and are based on facts that have been addressed by the Tribunal in its previous judgment in the Applicant's case or have not been raised in a timely manner before the Tribunal will not be reviewed by the Tribunal.

70. In relation to the Applicant's claims regarding her placement on LTD and the termination of her employment on grounds of ill-health, the Tribunal notes that it was not initially clear from the Applicant's pleadings whether the Applicant was challenging the administration of the LTD benefits in relation to her placement on LTD and the resultant termination of her employment from the Bank or the actual event of her termination pursuant to her placement on LTD and the circumstances surrounding it. For this reason, the Bank initially raised a Preliminary Objection regarding the Applicant's disability claim stating that the Applicant had not exhausted internal remedies in relation to the administration of LTD benefits to her, by following the procedure prescribed in Staff Rule 6.22, "Disability Insurance Program," paragraph 9.01 "Appeals." The Tribunal notes that under this procedure the Applicant would have been expected to file an appeal in relation to the administration of an LTD claim to the Administrative Review Panel (ARP) within 90 days of receiving notice of the final decision of the Disability Administrator. The Applicant failed to follow this procedure, but this failure does not prejudice the admissibility of her claims in this respect because, as she has clarified, she is not challenging the policy of the Bank or the administration of LTD benefits. As is apparent from her claims, she is in fact challenging her placement on LTD and the resultant termination of her employment, the manner in which the termination of her employment was handled, and particularly the lack of proper notice of such termination. Consequently, and in accordance with Staff Rule 9.03, paragraph 6.03, because she is "seeking review of a decision to terminate [her] employment" she can elect to "file an application

concerning the matter directly with the World Bank Administrative Tribunal.” The record shows that the Applicant did so in a timely manner pursuant to Article II(2)(ii)(b), as she filed her Application and challenged the circumstances of her termination on 9 April 2015, i.e. within 120 days after her receipt of the notification of the termination of her employment on 12 January 2015.

Merits

Scope of Tribunal’s review of decisions on performance evaluation

71. As the Tribunal has stated in *Malekpour*, Decision No. 322 [2004], para. 15:

The evaluation of staff performance is an essentially discretionary act entailing the exercise of judgment by management, which is presumed to possess the requisite familiarity with the work of all departmental staff members and to have made many comparative qualitative judgments. As noted by the Tribunal in *Marshall*, Decision No. 226 [2000], para. 21, “[t]hese are prototypically discretionary decisions that are not to be readily overturned by the Tribunal.” [...]The proper task of the Tribunal is, rather, to determine whether or not management’s acts and decisions in connection therewith constituted, or were attended by, an abuse of discretion.

72. The Tribunal in *Desthuis-Francis*, Decision No. 315 [2004], para. 23, held that the Respondent

must be able to adduce [...] a reasonable and objective basis for [...] adverse judgment on a staff member’s performance. [...] The Tribunal considers that failure on the part of the Respondent to submit a reasonable basis for adverse evaluation and performance ratings is evidence of arbitrariness in the making of such an evaluation and rating. Lack of a demonstrable basis commonly means that the discretionary act was done capriciously and arbitrarily.
(*See also BG*, Decision No. 434 [2010], para. 25.)

73. Furthermore in *Lysy*, Decision No. 211 [1999], para. 68, citing *Romain (No. 2)*, Decision No. 164 [1997], paras. 19 and 20, the Tribunal held 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.

74. It is in view of the above principles established in the Tribunal's jurisprudence in relation to performance evaluation of staff members that the Tribunal will examine whether there was evidence of problems with the Applicant's performance, which justified the five "Partially Successful" ratings that she received in her 2013 OPE and any negative comments in the Overall Comments of the Applicant's supervisor.

75. With regard to the Results Assessment in her OPE, the Applicant received a "Partially Successful" rating in her role as TRS Coordinator which is described as follows in her OPE: "Made sure time is recorded by VPU staff by end each month."

76. As is shown by an e-mail dated 2 June 2014, from Mr. R to Ms. B while providing input to her Response before PRS, Mr. R had given the Applicant a "Partially Successful" rating with regard to her TRS responsibilities because he felt that "she did not perform her role of a TRS Coordinator successfully." He stated in that e-mail that "a comparison between FY12 and FY13 shows that there was much more missing time in FY13 (given that [the Applicant] had handled this function the prior year also)." The Applicant's supervisor has produced a chart which compares the Applicant's TRS reporting in FY12 to FY13.

77. The Applicant, however, states that the "Partially Successful" rating she received for coordinating time recording in TRS is baseless. The Applicant further states that she made good efforts to get TRS completed during the review period which also "included end-year completion which was done 3 months in advance." She points out that her performance ratings on these tasks seem to be lower when Mr. R was her supervisor. In response to the chart produced by Mr. R, the Applicant has produced a chart accompanied by documents which show that Mr. R's chart shows more time missing than the Applicant's chart and the documents that support it. She points out that the results show that less than 1 staff member's time was missing each month "out of more than 100 staff members (99% complete) in the VPU."

78. The Tribunal notes that while the chart that Mr. R produced shows that the total missing hours for FY12 were 593 vis-à-vis 1350 for FY13, the Applicant's chart shows that the total missing hours for FY12 were 730 vis-à-vis 614 for FY13. According to the documents that the

Applicant has produced, it appears that Mr. R may have mistakenly added missing hours in FY13 for staff members who at the time of recording did not belong in the VPU or were on a Developmental Assignment or offered cross-support to other units.

79. The Tribunal notes that while the evaluation of staff performance is an essentially discretionary act entailing the exercise of judgment by management, which is presumed to possess the requisite familiarity with the work of all departmental staff, the Applicant has offered a plausible explanation with supporting documentation to show that Mr. R's assessment regarding the missing hours may have been based on mistaken information or may have not taken into account all relevant factors. The Bank has not disputed the Applicant's explanation; therefore Mr. R's assessment and "Partially Successful" rating for this task raises questions.

80. Next, the Tribunal notes that the Applicant received "Partially Successful" ratings with respect to all four Core Competencies in her OPE: "Client Orientation"; "Drive for Results"; "Teamwork"; and "Learning and Knowledge Sharing."

81. In an effort to review the basis for the four "Partially Successful" ratings, the Tribunal notes first that the Applicant received four "Fully Successful" ratings in relation to the execution of the following tasks: "Coordinated processing RM transactions with GSD Chennai"; "Entered VPU personal telephone charges in SERS"; "E-mailed Board Schedule each week to CFP leadership team"; and "Got Finance Board Deliverables updated and conveyed to [the Office of the Managing Director and Chief Financial Officer]." However, the Tribunal notes that these "Fully Successful" ratings in relation to the Applicant's tasks are not reconcilable with the "Partially Successful" rating for Client Orientation. This competency is described in the OPE as "Understands clients' needs and concerns; Responds promptly and effectively to client needs; Customizes services and products as appropriate."

82. It is reasonable to assume that for the Applicant to have received a "Fully Successful" rating regarding all her tasks she must have understood and responded effectively to her clients' needs and that therefore she would be expected to receive a "Fully Successful" rating regarding this competency. It is to be noted that even if the "Partially Successful" rating was based on Mr.

R's perception that the Applicant had not fulfilled adequately her role as TRS Coordinator, the Tribunal has found above that such rating was questionable and therefore a "Partially Successful" rating for that competency would be questionable also.

83. A review of the feedback given by two of the feedback providers to the Applicant's OPE and produced before the Tribunal shows that such feedback was very positive. First, in the feedback given on 9 August 2013 by the Staff Assistant, Global Partnership and Trust Funds Operation (CFPTO) to the Applicant's supervisor, he stated:

[The Applicant] has helped me on many occasions while other colleagues in CFPTO were on leave. I can say that she listens attentively and asks questions in order to fully understand the information requested. She also kept me fully informed of the results or relevant information that may affect what is needed by utilizing organizational knowledge. In all I can say that she established purpose by presenting fresh ideas utilizing clear-communication. She pays special attention to detail, accuracy, and as I mention before appropriate follow-through. She is positive about the job.

84. The other feedback that the Applicant's supervisor received was from another colleague of the Applicant, on 14 August 2013. The colleague stated:

Like the previous year, I asked [the Applicant's] help to liaise with the GSD for processing a PO for procuring event service from an external vender. She did it flawlessly, including her following up with the vender until they have got paid from the Bank. I appreciated that she did it in a timely manner.

85. Both of these instances of feedback by the feedback providers showed that the Applicant could understand and respond promptly, and indeed effectively, to clients' needs, therefore showing that her rating on Client Orientation should have been higher than "Partially Successful." Furthermore, to paraphrase the language used by both feedback providers, but particularly that of the first, the Applicant "helped [...] while other colleagues were on leave"; "listen[ed] attentively"; "kept me fully informed of the results or relevant information that may affect what is needed"; "[utilized] organizational knowledge"; "[presented] fresh ideas"; "[utilized] clear communication"; "[paid] special attention to detail"; "was accurate, and appropriately followed-through"; "[was] positive about the job"; and "did [the task] flawlessly [...] [and] in a timely manner." The Tribunal notes that all of these remarks describe many of the requirements for the

competencies of “Teamwork”; “Learning and Knowledge Sharing”; and “Drive for Results.” The feedback given did not in any way support the rating of “Partially Successful” particularly for the competencies of “Teamwork” and “Learning and Knowledge Sharing.” On the contrary, the feedback was indeed very positive something which even the Applicant’s supervisor appears to admit in his statement before the Tribunal when he states that he “also received some positive feedback from two of the Applicant’s colleagues about her teamwork, organizational knowledge and attention to detail.”

86. At the same time, in that statement, Mr. R alleges that during the FY13 review period he received feedback from the Applicant’s colleagues regarding her lack of teamwork. He states that he was informed that she was often uncooperative and frequently found ways to avoid work. He insists that when he gave her the four “Partially Successful” ratings in relation to the Core Bank Competencies he took into account the negative feedback given by the Applicant’s colleagues, the positive feedback given by the two feedback providers as well as his own interactions with the Applicant. According to Mr. R, the Applicant’s lack of cooperation and avoidance of work was the common basis for all the “Partially Successful” ratings in her OPE in relation to the Core Bank Competencies. He stated in this respect:

First, Applicant’s Drive for Results and Teamwork were only partially successful, as her uncooperative posture and avoidance of work meant that she was often not proactive, she did not set high standards for herself, and she did not collaborate well with others in her unit. Second, Applicant was only “partially successful” in her Client Orientation. Due to Applicant’s lack of cooperation and avoidance of work, I felt that she was not promptly and effectively responding to our clients’ needs, I gave her a partially successful rating as a result. Third, Applicant’s un-cooperative attitude meant that she did not share her knowledge and was not always open to new ideas, and consequently she was only partially successful in “Learning and Knowledge Sharing”. I felt that it would have been unfair and inappropriate to give Applicant “fully successful” ratings when her performance in the Core Competencies was in fact only partially successful.

87. The Tribunal notes that since the Applicant’s supervisor had based all the “Partially Successful” ratings for the four competencies on the Applicant’s uncooperative attitude and avoidance of work, there should be considerable evidence in the record demonstrating the Applicant’s behavior in this respect.

88. The record shows that Ms. B was the Responding Manager in the Applicant's Request for Review before PRS, and that in her Manager's Response before PRS she had included an e-mail from Mr. R to her dated 2 June 2014. In this e-mail, Mr. R had responded to the claims raised by the Applicant in her Request for Review of her 2013 OPE. He had given as a reason for the "Partially Successful" rating for all Core Competencies the fact that the Applicant "was both non-cooperative and also finding ways to avoid work." He had added that he would need to "look into [his] e-mail archives for evidence and would forward them [to Ms. B] later." The Manager's Response before PRS referred to an Annex 4 apparently consisting of "e-mails between the Applicant and her supervisor" showing "[e]vidence of [the Applicant's] non-cooperation."

89. The Tribunal ordered the Bank to produce the "[e]-mails between the Applicant and her supervisor attached as Annex 4 to the Manager's Response before [PRS] under the heading '[e]vidence of [the Applicant's] non-cooperation.'" In response to the Tribunal's order, the Bank clarified that Annex 4 was in fact the e-mail from Mr. R to Ms. B dated 2 June 2014. It appears therefore that the e-mails between the Applicant and her supervisor showing "[e]vidence of [the Applicant's] non-cooperation" do not exist. Most importantly, they are not of record before the Tribunal to support Mr. R's claim of the Applicant's non-cooperation and avoidance of work.

90. In fact, the remaining record before the Tribunal shows that when the Bank refers to evidence of the Applicant's "non-cooperation" or "avoidance of work" it only refers to a few e-mail communications that took place between the Applicant and Mr. R during February, March, and May 2012.

91. The Tribunal notes, first, that these e-mails do not provide evidence of the Applicant's non-cooperation on the basis of which she was given four "Partially Successful" ratings with regard to the Core Competencies in her 2013 OPE. In most of these e-mails Mr. R sought confirmation from the Applicant that she would do the work he assigned to her and the Applicant responded by indicating her agreement to carry out the assignments. Second, and most important, these few e-mails all pertain to her performance during FY12 and not FY13 which is the performance year for which she was given the "Partially Successful" ratings with regard to all the Core Competencies. The Tribunal further notes that, even though Mr. R claims that some of the Applicant's colleagues

had given him feedback regarding her lack of cooperation and avoidance of work, there is no evidence in the record to support this allegation. Therefore as Mr. R based his assessment and ratings for the Applicant's performance on what he perceived as her lack of cooperation in relation to her performance during the previous year which was not under review, the Tribunal finds that his assessment was not founded on a demonstrable basis.

92. Furthermore, Mr. R's Overall Comments regarding the Applicant's performance during FY13 state:

As evidenced in the Results agreement, [the Applicant] did not have a full time work program due to both business changes and her refusal, to do any RM related work since February, 2012. [The Applicant's] prior work program had some components of RM work (as she had earlier expressed interest in learning and moving to the RM network). However, post February 1, 2012, she informed the management that she will not do any RM related work and therefore, her work program was modified as per her request. In addition to her refusal to help with RM related work, there were other factors (like outsourcing of the transaction processing work to GSD, Chennai) that contributed to the deterioration of her work program.

93. The Tribunal notes in this respect that there is no evidence in the record that the Applicant had refused to do RM-related work at all times since February 2012. The Applicant denies that she refused to perform such work. In fact, the first of her tasks in her OPE is described as "Coordinated processing RM transactions with GSD Chennai." The Applicant received a "Fully Successful" rating for this task. In addition, while there is evidence that the Applicant refused to execute RM-related duties in February 2012, Mr. R has not shown that the Applicant continued to refuse to undertake such duties during FY13 which was the year under review.

94. On the contrary, there is contemporaneous evidence in the record first through e-mails of May 2012 from the Applicant to another staff member and to Mr. M showing that her access to the "budget drive" was blocked at the request of Mr. R and thus she could not coordinate the processing of transactions properly. Another e-mail from Mr. R to the Applicant dated 14 January 2013 shows that the Applicant's roles in "[Systems, Applications and Products in Data Processing (SAP)]" had been removed because they were not used frequently. An e-mail from the Applicant to Ms. V, Senior HR Business Partner, of 26 June 2013 also shows that the monthly budget reports

had been taken away from her by Mr. R and given to another staff. In addition, it shows that although the Applicant had been given TOR to “create/close/modify IO’s and WBS,” charge codes related to these tasks had been created or changed by Mr. R himself instead of assigning such tasks to her. Therefore, the Tribunal notes that there is evidence supporting the Applicant’s claim that Mr. R prevented her from doing the limited duties under her TOR and particularly RM-related duties described in her TOR, and that he did such himself. This belies Mr. R’s statement in his Overall Comments that the reason that the Applicant did not have a full-time work program was partly because of her refusal to do any RM-related work since February 2012. The Tribunal finds that to the extent that this comment influenced the evaluation of the Applicant’s performance, such evaluation lacked an observable basis as it was based on comments that were not borne out by the record.

95. The Applicant has made a related claim that the performance ratings on her tasks for FY13 were lower when Mr. R was her supervisor vis-à-vis the ratings that she received under the previous OPEs or during FY14. She also claims that Mr. R influenced her other supervisor, Mr. M, Adviser, CFPVP. The Tribunal recalls its judgment in *Malekpour*, Decision No. 322 [2004], where it stated at para. 21, that “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.” At the same time, the Tribunal found in *Prasad*, Decision No. 338 [2005], para. 31 that

although a change in a staff member’s assessment by his supervisors, relative to prior evaluations, cannot in itself be regarded as an abuse of discretion, an abrupt change unaccompanied by adequate descriptive statements may suggest a “degree of inconsistency in the exercise of managerial responsibilities.” (*Marshall*, Decision No. 226 [2000], para. 24.)

It is true that the Applicant received “Superior” and “Fully Successful” ratings in her role as TRS Coordinator in her past OPEs and her work on this task was appreciated by her new supervisor, Ms. B, in her 2014 OPE. Notably, the ratings for the four competencies ranged from “Fully Successful” to “Superior” in OPEs of the previous years. The Applicant also received favorable remarks regarding these competencies in her OPE for the following year (2014 OPE). In the present case, the Tribunal notes that the Applicant’s earlier positive evaluations and her 2014 OPE

contrast considerably with the 2013 OPE, when the Applicant's supervisor was Mr. R. Mr. M was added as the Applicant's co-supervisor who had evaluated the Applicant for part of FY13, and generally agreed with Mr. R's Overall Comments in the Applicant's OPE, which addressed mostly the Applicant's reduced work program for the year and referred to her non-cooperation to perform certain RM tasks after February 2012. It is notable, however, that Mr. M had already included the Applicant's refusal to undertake RM tasks following February 2012 in his Overall Comments for her 2012 OPE, when he was her only supervisor, and for that reason as he had explained, he had given her a "Partially Successful" rating regarding her support to the RM Officer and her RM duties in her 2012 OPE. Remarkably, and in contrast to Mr. R, Mr. M did not allow that rating to affect the Applicant's other ratings in her 2012 OPE, which ranged from "Fully Successful" to "Outstanding" in relation to her tasks and were all "Fully Successful" in relation to her Core Competencies. The Tribunal notes that while there were adequate descriptive statements and communications to support the Applicant's "Partially Successful" rating and the Overall Comments in that 2012 OPE, there are no contemporaneous descriptive statements to support the change in the Applicant's ratings in her 2013 OPE to "Partially Successful" in her Core Competencies and the underlying reason for such ratings or the change in the rating regarding her TRS Coordinator role in her Results Assessment. Therefore, this rather abrupt and unsupported change in the Applicant's ratings in her 2013 OPE not only shows a degree of inconsistency in the exercise of managerial responsibilities but reinforces the conclusion that the Applicant's ratings and evaluation lacked an observable basis.

96. In sum, a review of the totality of the evidence shows that, in addition to the fact that the "Partially Successful" rating for the Applicant's role as TRS Coordinator was questionable, there was only positive feedback in relation to her performance by two feedback providers. Any evidence in the record of the underlying reason for the "Partially Successful" ratings in the Applicant's 2013 OPE, namely her lack of cooperation and avoidance of work, in her interactions whether with her supervisors or her colleagues relates to the previous year which is not under review in the current case. Therefore, the Tribunal concludes that the ratings and Overall Comments in her 2013 OPE were not supported by the evidence. In addition, positive views were either not taken into account or not given proper weight and any negative factors, if existent, were given disproportionate weight. Therefore the Tribunal finds that the Applicant's 2013 OPE was

substantively flawed and that the Applicant has suffered injury. As remedy, the Tribunal will order rescission of the 2013 OPE and compensation.

Retaliation or discrimination in relation to the Applicant's OPE

97. The Applicant argues, next, that comparing her OPEs, other attached references, and her salary increase history which had been declining since her previous manager and CAO had left the VPU in 2010 is a clear case of discrimination as well as a case of retaliation for her resorting to PRS and the Tribunal. She adds that the 2013 OPE ratings by Mr. R, who was now solely responsible for the Applicant's performance, as Mr. M had moved to another VPU, confirmed the hostility towards her.

98. In *BI*, Decision No. 439 [2010], the Tribunal held at paras. 47-48:

As previously held by the Tribunal in *de Raet*, Decision No. 85 [1989], para. 57, when considering allegations of discrimination or abuse of power,

it is not the obligation of the Bank to demonstrate that there has been no discrimination or abuse of power – not, that is, until an Applicant has made out a *prima facie* case or has pointed to facts that suggest that the Bank is in some relevant way at fault. Then, of course, the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner.

In that case, the Tribunal notes that the Applicant has not submitted evidence, beyond her own assertions, that the assessment of her performance [...] were retaliatory or discriminatory in nature [...] the Applicant has not discharged her burden of proof to sustain these allegations.

99. The Tribunal has also found in *Malekpour*, para. 29, that “an allegation is not a substitute for proof” and noted in *CA*, Decision No. 475 [2013], para. 58, that the Staff Rules prohibit retaliation against staff members who use the conflict resolution system and that under the Staff Rules such retaliation amounts to misconduct. Furthermore, in *AH*, Decision No. 401 [2009], para. 36, the Tribunal stated that:

It is not enough for a staff member to speculate or infer retaliation from unproven incidents of disagreement or bad feelings with another person. There must be a direct link between the alleged motive and the adverse action to amount to retaliation.

100. The Tribunal does not find that the Applicant has made a *prima facie* case that Mr. R discriminated against her particularly on the basis of race, religion, or gender which has been her claim or that there was a direct link between the Applicant's recourse to PRS and the Tribunal, on the one hand, and the supervisor's assessment of one of her tasks and her behavioral competencies as "Partially Successful," on the other. On the contrary, the Tribunal found above that Mr. R's ratings and comments that the Applicant failed to cooperate and avoided work during the year under review were unfounded.

The OPE process

101. The Applicant claims first that she did not have a full work program as Mr. R had prevented her from doing real work because he did it himself instead and assigned her to execute trivial everyday tasks. She adds that there were no discussions in January 2013 regarding the Applicant's work program and that Mr. R e-mailed her TOR on 1 March 2013 to which the Applicant agreed without any discussion.

102. Mr. R has explained that the Applicant did not have a full-time work program mainly due to the reasons presented in his Overall Comments of her OPE described above. He states that during the time between August and October 2012, when the Applicant was at work, and before she went on STD, management and HR had a couple of meetings with the Applicant but she did not agree upon her Results Agreement. Mr. R further states that when the Applicant returned to work on a part-time basis from March 2013, she agreed on the TOR provided and completed her Results Agreement which showed that there was hardly a work program.

103. Regarding the creation of a work program and a Results Agreement, Staff Rule 5.03, "Performance Management Process" provides at paragraph 2.01(c):

The Manager or Designated Supervisor, in consultation with the staff member, shall establish in writing the development priorities for and the results to be achieved by the staff member during the upcoming review period.

The Tribunal has often noted the Bank's discretion to decide upon a staff member's work program and its obligation to actively guide staff members in the design of a clear work program. As the Tribunal noted in *BT*, Decision No 464 [2012], paras. 19 and 22:

While it is within the discretion of the Bank to decide upon a staff member's work program, this does not mean a series of haphazard *ad hoc* tasks. [...] Failure to provide a work program promptly can leave staff without a clear understanding of their opportunities and responsibilities in the Bank. Therefore staff must be given appropriate guidance, commensurate with their seniority and experience.

The duty of the Bank is to assist staff members in identifying and pursuing plausible opportunities.

104. In the current case, however, it is clear that the Applicant and her supervisor did not establish in writing, at the beginning of the review period, the development priorities for and the results to be achieved by the staff member during the upcoming review period. The parties agree that it was almost after mid-year that the Applicant established her work program for the year under review. The Tribunal notes that the Applicant's supervisor claims that this was due in large part to the Applicant's failure to cooperate with her managers and HR officers and to accept the performance of some RM work which she used to do in the past. As noted above, following the Applicant's objection to do RM work on 1 February 2012 during the previous year under review, there is no evidence that such objection continued during the 2013 OPE period. In fact, the Results Agreement that was produced belatedly included some RM work. In any event, it is not clear why at least some TOR had not been developed earlier.

105. It is to be noted that the Applicant entering Short-Term Disability and being absent from the office for a number of months during the 2013 OPE period may have contributed to the delay in the finalization of a Results Agreement for her. Nonetheless, as the Tribunal found in *BT*, Decision No. 464 [2012], para. 33, the Bank had an obligation to assist the Applicant to establish a work program in a clear and prompt manner and in accordance with the Staff Rules much earlier in the year. The Bank's justification for the delay is not supported by the record.

106. In addition to the Applicant's Results Agreement, there were a number of steps in the OPE process for FY13 that appear not to have been followed in the Applicant's case.

107. The Applicant claims that there were procedural irregularities in her OPE because, among other things, (i) a mid-year performance review was not performed; and (ii) her performance deficiencies were never discussed during the period under review.

108. The Bank for its part states that the OPE adhered to all relevant procedures and that the Applicant was treated fairly. Throughout FY13, it states, issues with the Applicant's performance, both technical and behavioral, were identified and addressed expressly and promptly. The Bank points out that the Applicant was away from the office during the regular time period for the formal OPE process (August through November 2013) and states that on her return to the office, Mr. R attempted on multiple occasions to set up a meeting to discuss the Applicant's OPE with her but the Applicant did not respond to his attempts. Finally, the Bank points out that in deciding the Applicant's FY13 OPE, Mr. R consulted with HR and followed all the relevant guidelines.

109. Staff Rule 5.03, paragraph 2.01(a) states in pertinent part:

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.

110. The Tribunal has stressed in many cases the importance of respecting the requirements of due process in relation to evaluation of performance.

111. In *Garcia-Mujica*, Decision No. 192 [1998], para. 19, the Tribunal stated that with regard to discretionary decisions

a basic guarantee of due process requires 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.

112. And in *K. Singh*, Decision No. 188 [1998] it held in para. 21:

Two basic guarantees are essential to the observance of due process in this connection. First, 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. Second the staff member must be given adequate opportunities to defend himself.

113. In *BG*, Decision No. 434 [2010], para. 40, the Tribunal reiterated all the principles established in its long jurisprudence regarding due process in the context of performance evaluation. It held:

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

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

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

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

114. The Tribunal notes that there were a number of procedural violations in relation to the Applicant’s 2013 OPE.

115. The Applicant received five “Partially Successful” ratings in her OPEs, one of which was based on her alleged failure to ensure that all staff recorded their time, and the other four relating to an assessment of her behavior. According to Mr. R, the Applicant’s performance problems regarding the Core Competencies stemmed from her lack of cooperation and her avoidance of work. Yet the record before the Tribunal includes no evidence that the Applicant was ever warned of such problems during the year under review, much less of the fact that they would lead to her performance being rated “Partially Successful.”

116. In support of its argument that throughout FY13 issues with the Applicant’s performance, both technical and behavioral, were identified and addressed expressly and promptly and that Mr. R often met with the Applicant to follow-up on instances where she was not performing adequately, the Bank points to an e-mail from Mr. R to the Applicant dated 17 January 2012 which the Bank attaches to its pleadings. It is not exactly clear what the Applicant’s performance problem was in that case, but it is obvious that the incident took place during FY12. However, the year

under review in the Applicant's 2013 OPE was FY13 and not FY12. In his statement before the Tribunal, Mr. R also refers to the Applicant's one instance of non-cooperation from FY12 when she refused to perform RM tasks once another candidate was selected for the RM position to which she had applied. He does not, however, point to any specific instances where the Applicant continued not to cooperate or refused to perform tasks in FY13 and to discussions, meetings, or e-mails during FY13 warning her that such behavior was problematic and, if not remedied, would result in negative ratings and comments in her OPE. Nor does he point to any discussions throughout the period under review where he informed her of problems in her performance as TRS Coordinator in order to give her an opportunity to correct them. There is also no evidence that the Applicant's other supervisor, Mr. M, discussed such issues and warned her during FY13 of adverse consequences if her behavior did not change during the year under review.

117. The Tribunal further notes that, although the Applicant had been given a "Partially Successful" rating because of her refusal to carry out RM tasks in her 2012 OPE, this did not substitute the requirement for such notice if a similar behavior continued during FY13. This is so that the Applicant be given clear warning of how her behavior would affect the ratings in her 2013 OPE and an opportunity to correct such behavior.

118. In addition, none of her managers met with the Applicant for a mid-year review and discussion as required under the HR Guidelines for performance evaluations. This discussion would have afforded an opportunity to the Applicant and her manager(s) to identify her performance problems as well as an opportunity to correct them.

119. Most importantly, the record does not show that the annual performance discussion between the Applicant and her supervisor to discuss the staff member's performance, achievements, strengths, areas for improvement, and future development needs took place. It does show that the Applicant initiated her OPE promptly right after the end of FY13 by sending her OPE to Mr. R. Thereafter the Applicant was on Short-Term Disability until December 2013. Mr. R explains that the day he saw an e-mail from her in December 2013 he tried to reach her and sent her three e-mails on 17 December 2013, 13 January 2014, and 23 January 2014, during which he offered her an opportunity to have a discussion and bring the OPE to closure.

120. The Tribunal notes, however, that all these e-mails and reminders were at a time well after the period when the final discussions for OPEs were completed and the deadline for the completion of OPEs according to the HR Guidelines had passed. Apart from the fact that the Applicant was on Short-Term Disability, the Bank has not offered a clear explanation of why Mr. R could not have completed his part of the OPE and have sought to have the annual discussion earlier in the year. As the Applicant points out, Mr. R took seven months after she sent him her OPE to contact her. Notwithstanding the fact that the Applicant was on STD at the time, he could have tried to reach her much earlier than December 2013 by calling her at home, at some point in this time period between July and mid-December and not only offer her that opportunity in January 2014. As the Tribunal has found in *CD*, Decision No. 483 [2013], para. 17:

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.

121. As the Applicant points out, her supervisor for the 2014 OPE, Ms. B, did not hesitate to call the Applicant for her mid-year discussion for 2014. While it is understandable that Mr. R might have hesitated to call the Applicant while at home on STD, it was, at the same time, imperative that he inform her at least through an annual discussion of what he perceived to be the deficiencies in her performance which would result in such a great number of "Partially Successful" ratings in the OPE and allow her to defend herself in a timely manner.

122. The Tribunal notes that the Applicant also did not take the opportunity to have that discussion conducted and to defend herself when offered to her even if at that very late stage. It is unclear, however, how the discussion after the official OPE process had been closed would change the ratings and Overall Comments in the Applicant's OPE.

123. In sum, in the current case, the Tribunal notes that as a result of the lack of any prompt discussions during the year, the criticisms in the Applicant's performance appeared to have been held in reserve "only to be disclosed at the end of a review period." (*O*, Decision No. 337 [2005], para. 54.) It is additionally unfortunate that the Applicant was not offered the opportunity to have

the annual OPE discussion in a timely manner. As a result, the Applicant was unable not only to correct any perceived deficiencies in her performance during the year under review and before the annual discussion took place but also to defend herself before the ratings and the Overall Comments were finalized in her OPE and before any other decisions related to her performance were taken by her managers. In this respect, the Bank violated its obligation under the Staff Rule and did not afford the Applicant due process.

124. The Tribunal finds that the Bank (i) did not meet its obligation to establish in writing, in consultation with the Applicant, a Results Agreement for the year under review in a clear and prompt manner and (ii) did not respect the Applicant's other due process rights under the Staff Rules in relation to her performance evaluation for FY13. Consequently, the Applicant has suffered injury for which she must be compensated.

The Applicant's SRI

125. The Applicant's main claim in this respect is that during the period under review she had worked for more than six months and that therefore she should have been on the "SRI Roster"; she should have received an appropriate SRI rating; and that she should not have received only a disability rating of 1.19% (or 1.2%) for that year. The Applicant clarifies in this respect that she in fact worked either part-time or full-time after she entered Short-Term Disability status when she was on a modified work schedule and that therefore this time should be added to the four months that she was not on disability in the beginning of FY13, to account for more than six months of work during FY13.

126. In response to the Applicant's claim, the Bank has produced with its pleadings the 2013 SRI Process and Policy Guidelines. These state in pertinent part:

Staff who are on short-term disability as of July 1, 2013 and whose absence due to disability began on or after January 1, 2013 should be rated on their performance, and be given an increase according to the PBSI matrix.

Staff whose absence due to disability began before January 1, 2013 will not appear on the SRI roster, and will receive an increase equal to the most recent annual change in the consumer price index for the Baltimore-Washington metropolitan area, which this year is 1.2%.

127. The Bank invokes Staff Rule 6.22, “Disability Insurance Program,” which provides that staff on STD shall receive Disability Pay in two instances. First, as the Bank points out, under Staff Rule 6.22, Section 3.03, “Approval of STD Benefits,” and Section 5.01, “Disability Pay,” staff on STD leave “unable to perform the material duties of his/her regular job” shall receive Disability Pay at 70% of Net Salary. Second, under Staff Rule 6.22, Section 7.03, “Return to Work,” staff on an STD modified work program, working part-time, receive Disability Pay at 100% of Net Salary. It states that both such categories of staff on STD absent from the office, full-time or part-time, receive Disability Pay, and do not appear on the SRI roster as a result.

128. Furthermore, the Bank has explained its policy regarding the SRI rating while on disability. It states that the Bank’s STD program encourages staff recovering from health issues to return to work on an STD modified work schedule, so that even if they return to work for as little as one day per week, they receive 100% of their net salary pursuant to Staff Rule 6.22, paragraph 7.03, “Return to Work.” The Bank states that the above-cited provision from the SRI Process and Policy Guidelines removes the focus for such staff members on STD from a competitive SRI performance rating and instead places an emphasis on rehabilitation to the work place. It points out that although the OPE is an objective individual evaluation of staff members, taking into account their modified work schedule, the SRI rating is comparative, relative to the performance of other staff members in a unit. According to the Bank, the policy to give staff members on STD an automatic 1.2% salary increase protects them from receiving a low SRI rating relative to their non-STD peers, while still adjusting their salary. The Bank adds that the salary increase of 1.2% was in the middle range of the performance-based SRI for that financial year.

129. The Tribunal notes that in an e-mail to the Applicant, Ms. V, the Senior HR Business Partner, referred to the new 2014 Policy Guidance, which clarifies the application of the policy and expressly mentions the “Return to Work” provision of the Disability Program in the context of SRI ratings and states:

A staff member who has been on the disability program, including the return to work provision of the disability program, for longer than six months prior to the effective date of the annual pay increase is not eligible for a performance rating, and will receive an annual pay increase of the Total Merit Increase percentage.

130. Ms. V explained in her e-mail to the Applicant that the 2014 policy “is the same policy as that of last year.” The Bank claims that the policy has been consistently applied in this way.

131. The Tribunal notes that the 2013 SRI Process and Policy Guidelines do not distinguish among staff members that are on STD for more than six months in the OPE period whether they are absent from the office full-time or part-time under the STD “Return to Work” provision of the Disability Program. A reading of the Guidelines along Staff Rule 6.22 supports the interpretation offered by the Bank. It is also notable that the Bank has offered a legitimate rationale in support of its policy regarding the SRI rating.

132. The Tribunal finds that as the Applicant entered disability on 7 November 2012 and remained on STD status, whether absent from the office full-time or on an STD modified work schedule, until the end of FY13, she had been on disability status for more than the required six months under the guidelines and for that reason she was not included in the SRI Roster. The Tribunal finds that the Bank observed its obligation under the Staff Rules and the Disability Guidelines and properly awarded the Applicant the fixed salary increase for that year which was 1.2%. The Tribunal further finds that the Applicant has not proven her claim of discrimination and retaliation by her manager in relation to her SRI because, as the Bank has persuasively explained, her SRI for 2013 was not a matter of discretion.

Career mismanagement

133. The Tribunal will now consider the Applicant’s claims of career mismanagement as they relate to her 2013 OPE.

134. The Applicant states that she had been striving to advance her career in RM for a long time but the Bank made no efforts to assist her in this respect. The Applicant claims among other things that her “move to then CFPMI was forced on me where I had very little work program.”

135. The Bank claims that it has continuously made efforts to support the Applicant’s career development. The Bank maintains that the Applicant’s reassignment to CFPMI in July 2013 was

driven by business needs and management's objective to provide her with a meaningful position with scope for career progression.

136. The Tribunal has earlier referred in *Chhabra*, Decision No. 139 [1994], para. 57, as follows to the instances of career mismanagement:

In Durrant-Bell (Decision No. 24 [1985]), the Tribunal, while concluding that the decision by the Respondent to terminate the employment of the Applicant "shall stand", nevertheless granted the Applicant compensation because of "certain discrepancies and inconsistencies in the treatment of the Applicant's case by the Respondent". Likewise, in the present case, the Tribunal concludes that, although no particular decision of the Respondent is to be quashed, the Respondent's behavior towards the Applicant from the Reorganization onwards, taken as a whole, constitutes mismanagement of the Applicant's career. It reveals errors of judgment which taken together amount to unreasonableness and arbitrariness. Such behavior falls short of the standards of treatment required of the Bank under the Principles of Staff Employment.

137. In its judgment in the Applicant's first case, where the Applicant contested her non-selection to an RM Assistant position, the Tribunal addressed the Applicant's claim that her career had been mismanaged up to the point of the completion of her FY12 OPE and found that the Applicant had not substantiated her claim in this respect. Noting that irregularities affected the selection process for the position to which the Applicant was not selected, the Tribunal called upon the Bank to make efforts to support the Applicant's career advancement and promotion.

138. The record shows that the Applicant was alternatively on STD full-time or part-time under a modified work schedule for the time after 7 November 2012 and after she filed her previous Application with the Tribunal on 8 February 2013 up until the time she was placed on Long-Term Disability.

139. The Tribunal notes that on 1 February 2013, which was a few days before the Applicant filed her Application with the Tribunal, a new VP was appointed in CFP. The Applicant reached out to the new VP on 1 May 2013 in an effort to have him help her advance her career. At that time a series of steps followed regarding the Applicant's career.

140. First, the new VP, Mr. JA, had several meetings with the Applicant, heard her complaints regarding the fact that Mr. R did not get her involved in RM tasks even though the TOR provided for some RM tasks, and reviewed her requests for assigning such tasks to her. Second, on 10 June 2013, Mr. JA proposed the Applicant's lateral transfer, at Level GC, to a new unit, CFPMI, in order to provide her with a fresh start. She would report to new supervisors. Although Mr. JA recognized that the Applicant would prefer an RM position, he emphasized that "the proposal to transfer to CFPMI is business needs driven and is therefore meaningful." Third, in response to the Applicant's concern that the new TOR in CFPMI were not conducive to her career development in RM and her request of review of the possibility for her to have a full-time work program with an RM component in the Front Office, Mr. JA instructed Ms. V to "conduct a second evaluation of RM related responsibilities in the Front Office and to determine whether there is a business need that may justify [an] additional full time position at the GC level." Finally, on 28 June 2013, following Ms. V's further appraisal, Mr. JA informed the Applicant that such business need did not exist. Notably, he pointed to the following factors which had contributed to the erosion of the Applicant's work program in the Front Office: (i) the outsourcing to Chennai of the transaction processing work; (ii) the transfer to FCIMT IT team of the capital budget monitoring work; and (iii) "[the Applicant's] reluctance to undertake part of [her] RM related DGF duties as of February 2012."

141. Even though on 2 July 2013 the Applicant clarified that she had never requested a full-time RM-related position in the Front Office nor an additional full-time position, she was transferred from CFPVP to CFPMI, effective 1 July 2013.

142. Thereafter, the Applicant's Results Agreement for FY14 did not mention anything under "Career Development Objectives"; however, the Applicant's interest in resource mobilization was noted. It was mentioned also, in this respect, that one option discussed was "to do some cross support as there is no RM work in CFPMI."

143. In her FY14 OPE the Applicant got positive reviews but it was noted that throughout the year she alternated between full-time disability and a modified work schedule under disability, and consequently, a very limited work program was developed for her which she was able to deliver

successfully. It was also mentioned that these circumstances had precluded the Applicant from pursuing potential career development opportunities including a cross support assignment in which she had expressed an interest in the beginning of the year.

144. The Applicant, however, claims that the efforts to advance her career by moving her from CFPVP Front Office to CFPMI were pre-textual and that in reality she was forced to move. She claims that the Director, CFPMI, Ms. SA, was told to create a work program for her and that as a result her move was not work driven.

145. The Director however explains that she had been asked by the VP to explore a work program for the Applicant and that, as CFPMI's work program had been consistently increasing, she was happy that the Applicant had joined CFPMI. According to the Director, the Applicant's TOR were based directly on business needs and the management of CFPMI sought to match the Applicant's skills and interests to CFPMI's work program.

146. The Bank has also explained that the Applicant's reassignment was in accordance with Staff Rule 5.01, "Reassignment," Section 2, "Reassignment at the Initiative of the Bank Group."

147. In this respect, the Tribunal finds that what seems to be reassignment in order to address the problems in the Applicant's career and give her the opportunity to advance may have been, in reality, reassignment following an evaluation of performance.

148. The Tribunal notes in this respect that Staff Rule 5.03, Section 3, "Management of Unsatisfactory Performance," prescribes at paragraph 3.02:

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

- a. Consider reassignment to another position under Rule 5.01 or assignment to a lower level position under Rule 5.06.

149. The Tribunal found in *Prasad*, Decision No. 338 [2005], paras. 57 and 59 that:

The Applicant has rightly explained 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 and eventually including a 360 Degree Feedback Report. This is 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. The third step is that the process can lead eventually to a reassignment of the staff member, just as it can lead to termination or other measures.

The Bank has every right to reassign an official whose performance is unsatisfactory, but this assumes that such performance will be properly evaluated. It also assumes that if the performance evaluation is bad, this will most probably be followed by bad performance ratings and SRI results. Only at the end of the appropriate chain of events will the decision to reassign be reasonably reached.

150. In this case, the Applicant's performance may have not been found to be unsatisfactory but rather "Partially Successful." But such "Partially Successful" rating was given regarding all behavioral competencies and one task in her OPE. This was indeed a very negative evaluation. As the Tribunal has found, "the Bank has every right to reassign a staff member whose performance is unsatisfactory but this assumes that such performance will be properly evaluated." In the current case, however, it has been found that the Applicant's performance was not properly evaluated.

151. The Tribunal is troubled, first, by the fact that the decision to reassign the Applicant, even though discretionary, followed an OPE that the Tribunal has found to be substantively flawed particularly as it was based on the alleged non-cooperation of the Applicant and her refusal to undertake RM tasks during FY13. The Tribunal has found however that it has not been proven that this assessment of the Applicant's performance for FY13 had a proper basis. The Tribunal has further found that her OPE was procedurally flawed, and the Applicant was never informed in time that performance problems would result in "Partially Successful" ratings in her OPE and had no opportunity to improve her performance or defend herself in a timely manner.

152. Second, her reassignment was based on the perception of the VP regarding "[the Applicant's] reluctance to undertake part of [her] RM related DGF duties as of February 2012." He admitted that this was one of the reasons for the erosion of her work program in the CFP Front Office. It was ultimately one of the reasons for which she was transferred to the new position.

Therefore one of the reasons for the Applicant's reassignment was based on the unfair assessment that she received during her FY13 OPE as there is no evidence of such "reluctance" or "lack of cooperation" on her part during FY13.

153. Lastly, the Tribunal notes that the Applicant had never requested, as the VP suggested, a full-time RM-related position in the Front Office nor an additional full-time position but a position that had an RM component.

154. The Tribunal notes that, while the lack of business needs for an RM position in CFPVP and the intention to give the Applicant a fresh start may justify the reassignment, to the extent that the decision was also based on her flawed performance evaluation, her reassignment is tainted by irregularity. In this respect, the Tribunal finds that the Applicant was unfairly treated. The basis for this unfair treatment is the same that led to a flawed OPE; therefore the Tribunal will not award additional compensation on this ground.

Discrimination and retaliation with regard to career mismanagement

155. In addition to the Applicant's claim that her performance evaluation and SRI were a product of discrimination and retaliation, the Applicant states that her treatment by the Bank over the years and the mismanagement of her career as well as a gradual decrease in her salary were a product of discrimination and retaliation. Regarding the Applicant's claim that the basis for the mismanagement of her career during and following her 2013 OPE was retaliation and discrimination, the Tribunal recalls its jurisprudence above. The Tribunal does not find that the Applicant has made a *prima facie* case that her reassignment or any actions taken in relation to her career were a product of discrimination against her, particularly on the basis of race, religion, or gender, or that there was a direct link between the Applicant's recourse to PRS and the Tribunal, on the one hand, and the actions that the Bank took in relation to her career during and following her 2013 OPE, on the other hand.

The Applicant's claims regarding the LTD

156. The chronology of the events that took place in relation to the placement of the Applicant on LTD have been described in detail above. The Applicant has made a number of arguments regarding her placement on LTD.

157. In her Reply, the Applicant clarifies that she is not contesting her actual separation on LTD, but rather “the way [she] was let go for LTD.” According to the Applicant, because of the manner she was placed on LTD she was not given “enough time to prepare for retirement/LTD with all the administrative procedures involved” and she had to leave the Bank “in the most disgraceful manner [she] can imagine.” The Applicant also states that staff that prepare for retirement or LTD prepare to leave the Bank years in advance. In her view, briefings and meetings should have started at least three to six months in advance. By contrast, she alleges, she was bombarded with e-mails, papers, and a few meetings during the last few days after having returned from a long/unpleasant travel delay and while being sick. The Applicant points out that it was very hard for her to deal with all these matters, absorb the information, and decide sensibly.

158. Furthermore, in her latest filing with the Tribunal, the Applicant asserts that even a year after her placement on LTD she continues to have difficulties with her benefits and the calculation/filing of her taxes due to “last minute haphazard LTD actions taken for [her].”

159. The Tribunal notes that Staff Rule 6.22 prescribes at paragraphs 3.09 and 3.10 “End of STD Benefits”:

If a staff member remains on Short-Term Disability for 20 months from the Start of Disability, the Disability Administrator will assess the staff member’s eligibility for Long-Term Disability (LTD) benefits.

Staff who are approved for LTD benefits following 24 months of STD benefits are separated from the Bank Group’s employment in accordance with Staff Rule 7.01, Section 7 and provided LTD benefits in accordance with Section 4 of this Rule.

160. Staff Rule 7.01, Section 7, provides at paragraph 7.03:

A staff member who is approved for Long Term Disability benefits following 24 months of Short Term Disability benefits in accordance to Staff Rule 6.22 will be

separated from the Bank Group's employment as of the start of the Long Term Disability benefits.

161. In this case, it is obvious that the Bank observed the Staff Rules regarding the placement of the Applicant on LTD and her resultant termination on reasons of ill-health. Indeed the Applicant had remained on Short-Term Disability starting 7 November 2012. Consistently with paragraph 3.09 of Staff Rule 6.22, the Disability Administrator (Reed Group) assessed the Applicant's eligibility for LTD benefits after the Applicant had remained on STD for 20 months, in fact on 2 October 2014, the 23rd month after the Applicant had been placed on STD. The IME report was forwarded to the Applicant on 15 October 2014. According to the report, the Applicant's condition was permanent and it was unlikely that the Applicant would be able to return to work full-time in the future. It was on the basis of this IME report that the Reed Group decided to approve the Applicant for LTD benefits. Thereafter, the Bank had to observe Staff Rule 7.01, "Ending Employment," paragraph 7.03 "Ending Employment as a Consequence of Ill Health" and separate the Applicant from the employment of the Bank on grounds of ill-health as of the start of the LTD benefits.

162. The Tribunal notes in this respect, that the Applicant does appear to think that more time should have been given to her and the opportunity to discuss whether she could have continued in the employ of the Bank by continuing to receive STD benefits. However, the Staff Rules are clear on this point: following 24 months of STD benefits and approval for LTD benefits, the Bank has no discretion but an obligation to terminate the staff member's employment on grounds of ill-health.

163. The question is how much notice the Bank is expected to give to the staff member regarding her placement on LTD and the termination of her employment. The Staff Rule does not provide for a specific notice period regarding this particular ground for the termination of employment of an employee on grounds of ill-health, following approval of LTD benefits. The Staff Rule, however, specifies that the examination of a staff member's eligibility for LTD benefits while on STD should take place as early as after 20 months of the 24 months of the maximum duration of the STD period. It is reasonable to assume that the need to make these assessments as early as four months in advance of the end of the STD and the possibility of an upcoming termination of

employment is precisely in order to allow sufficient time for the assessment to take place, the decision to be made, and the proper procedures related to termination of employment to take place.

164. Of record is a detailed e-mail from Ms. T, HR Business Partner, to the Applicant dated 12 January 2015 which sheds some light regarding the Bank's practice on the notice of placement on LTD. She stated, among other things that:

[The Clinical Case Manager] of the Reed Group would have been discussing the transition of STD to LTD approval with you up to six months prior to the end of the 24 month STD period. At that point, Reed has to decide to move forward with approval based on medical records [...] OR if the records are not adequate to make a decision.

They send the staff member for an Independent Medical Exam (IME) and the member and treating physician receive a copy of that report.

The approval letter issued by Reed Group is formal notice of their decision and is issued 60 days prior to the end of employment and copied to staff manager and HR Business Partner. A copy is mailed to the home as well as by e-mail as not all staff continue to have Bank e-mail access. I have attached both letters again.

165. Therefore, it is clear that according to the Bank's practice the formal notice of placement of staff members on LTD and the termination of their employment is 60 days prior to the end of their employment. In the current case, the Bank obviously intended to give the Applicant a notice of 60 calendar days as the memorandum that was issued from the Reed Group on 7 November 2014 informed the Applicant that it had been determined that she was eligible for Long-Term Disability benefits effective 7 January 2015.

166. However a series of unfortunate events happened which resulted in the Applicant not receiving this 60-day notice. First, even though the IME report was communicated to the Applicant on 15 October 2014, no one from HR contacted her as promised by the Disability Administrator to explain to her its findings and the resulting consequences. It was not until 7 November 2014 that the Applicant met with her supervisor Mr. D, Adviser, DFPTF, and informed him that she had received the IME report and that somebody would contact her from HR to go over the procedures, as well as that she would be going on home leave on 8 December 2014. At that time, Mr. D mentioned that the start date of LTD would be 8 January 2015 but the Applicant states that she did

not understand what that meant. As a result, the Applicant traveled on home leave from 8 December 2014 without having discussed the ramifications of the report and the placement on LTD. Thereafter, HR representatives tried to communicate with her without realizing she was away and could not see the communications sent to her home by mail or to her Bank e-mail address. Consequently, she was apparently not able to review the memorandum setting out information on her separation from the Bank and her benefits (“Memorandum on Ending Employment”) which was sent on 22 December 2014. The most unfortunate incident however was that the Bank inadvertently failed to send her the 7 November 2014 memorandum which notified her of the start of her LTD benefits. It was not until after her supervisor informed HR of the absence of the Applicant on home leave on 7 January 2015 that effective communications on the matter started between the Applicant who was still in her home country. The Applicant’s termination date was thereafter extended by one month and the Applicant was placed on administrative leave. As the Applicant was dealing with visa issues in her home country, she was able to return to Headquarters only on 28 January 2015 and had 10 days until the official date of her separation on 7 February 2015 to access her e-mails and deal with follow-up matters related to the termination of her employment.

167. The Tribunal notes that even though the delay by the Bank in sending the notice of the start of her LTD benefits was due to an inadvertent error it resulted in the Applicant not being notified in a timely manner of a matter as serious as the termination of her employment. In this respect, the Tribunal recalls its above-mentioned jurisprudence in *Garcia-Mujica*, at para. 19.

168. The fact that the Applicant was offered an additional month after the original effective date of termination shows that the Bank made good-faith efforts to remedy the situation. Under the circumstances, however, this amount of time was not enough. This is so not only because it was one month less than the two-month notice that the Bank had originally offered her but also because the Applicant was away from Headquarters and unable to deal effectively with all the important matters relating to termination; in the end, the 10 days she had after her return were not adequate to deal with the many administrative procedures involved. As the Applicant states, she did not have the opportunity to discuss at length the advantages and disadvantages of her being placed on LTD as opposed to her electing to retire. In addition, as the Applicant’s recent filings with the

Tribunal show, she had no opportunity to discuss adequately tax-related questions which led to misunderstandings on these matters. Although the Bank seems to have remedied the situation in that respect through its recent actions, it is doubtless that many of the administrative procedures would have been addressed more efficiently if there was more time to do so before the effective date of the Applicant's termination or, at a minimum, if the Applicant had been given the 60-day notice according to the Bank's practice in these matters.

169. At the same time, the Tribunal notes that the Applicant was on STD for a period of 24 months and she would have been reasonably expected to familiarize herself with the Staff Rules that were applicable to her situation and in particular Staff Rule 6.22 which also provides for the end of STD and the placement on LTD. As the Tribunal has found in its jurisprudence, "ignorance of the law is no excuse." (*See e.g. Vick*, Decision No. 295 [2003], para. 28; *Malik*, Decision No. 333 [2005], para. 35.) Furthermore, the record shows that the Bank's Disability Administrator, the Reed Group, informed the Applicant on 20 March 2014 that she could "remain on approved sick leave for a maximum of two years." This letter attached the relevant Staff Rule 6.22, "Disability Insurance Program," Section 3, "Short Term Disability," paragraph 3.10, according to which "[s]taff who are approved for LTD Benefits following 24 months of STD benefits, are separated from the Bank Group's employment in accordance with Staff Rule 7.01, Section 7 and provided LTD benefits." The Applicant also received similar letters four times between 10 April 2014 and 1 October 2014.

170. In fact, Ms. T's e-mail of 12 January 2015 states that "[the Clinical Case Manager] of the Reed Group would have been discussing the transition of STD to LTD approval with you up to six months prior to the end of the 24 month STD period." Even if the Applicant did not understand the meaning of the provisions of the Staff Rules, she could have taken the initiative to discuss the application of such provisions to her with the representatives of the Disability Administrator at a much earlier time.

171. The Tribunal finds that the delay in the notification of the Applicant's receipt of LTD benefits and the resultant termination of her employment as well as the handling by HR of her situation in the days after she was found eligible for LTD violated her due process rights and has

resulted in some prejudice to her for which she must be compensated. However, the Applicant failed to familiarize herself with the long-term possibilities and consequences in relation to her placement on STD. This fact will be taken into account in the award of compensation to her on that ground.

Overall Conclusion

172. The Tribunal has found that (i) the Applicant's OPE was substantively and procedurally flawed; and (ii) the Bank violated the Applicant's due process rights by giving her a delayed notice of termination of employment. The Applicant's FY13 OPE will be rescinded and removed from the Applicant's files. The Applicant will receive compensation for injury suffered.

DECISION

- (1) The Applicant's 2013 OPE is hereby rescinded and any reference to it will be removed from the Applicant's personnel file;
- (2) The Bank shall pay the Applicant an amount of six months' salary net of taxes for the irregularities in her OPE;
- (3) The Bank shall pay the Applicant an amount of two months' salary net of taxes for the lack of proper notice in relation to the termination of her employment;
- (4) The Bank shall pay the Applicant's costs in the amount of \$8,000; and
- (5) All other pleas are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 8 April 2016