



World Bank Administrative Tribunal

2015

Decision No. 518

**BI (No. 3),
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**BI (No. 3),
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, and Mahnoush H. Arsanjani.

2. The Application was received on 31 October 2014. The Applicant represented herself. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 3 November 2015.

3. The Applicant challenges her 2013 performance evaluation, covering the period 1 July 2012 through 30 June 2013, and the subsequent salary increase she was granted by the IFC. She also alleges that IFC management discriminated and retaliated against her in assessing her performance because she has a medical condition which prevented her from processing certain transactions.

FACTUAL BACKGROUND

4. The Applicant began working with the World Bank Group in July 1999, as a Program Assistant in the Human Resources Vice Presidency.

5. In January 2010, the Applicant filed an application with the Tribunal, challenging the ratings in her Overall Performance Evaluations (OPEs) for 2007 and 2008 and the corresponding salary increases she received. She argued that these were arbitrary, contrary to the applicable procedures, and discriminatory or retaliatory. The Tribunal rejected these claims but awarded the Applicant compensation in the amount of \$45,000 for the failure of her supervisor to make

himself available to explain the basis for the OPEs in question (*BI*, Decision No. 439 [2010], paras. 45-50).

6. In April 2010, the Applicant filed a second application with the Tribunal, challenging a decision of the Workers' Compensation Review Panel denying her claim for compensation for an illness which, she claimed, was caused by work-related stress. The Tribunal rejected her claim on the merits. In view of delays on the part of the Claims Administrator and the Review Panel's failure to seek additional information regarding the Applicant's illness, however, the Tribunal awarded the Applicant \$5,000 as "a modest contribution towards her expenses" (*BI (No. 2)*, Decision No. 445 [2010], paras. 33-37).

7. In October 2010, the Applicant began working as a Program Assistant, Level GC, with the IFC.

ISSUES WITH PROCESSING SAP TRANSACTIONS

8. In mid-November 2012, as a result of the reorganization of work within her unit, management assigned certain responsibilities for Systems, Applications and Products in Data Processing (SAP) transactions to the Applicant.

9. Between December 2012 and January 2013, while Mr. X (the manager of the unit) was on leave, the Applicant refused to process the unit's SAP transactions and asked management to remove her SAP profile. She believed that managers in the group were abusing their authority by approving transactions that did not comply with Bank Group policy, and she did not want to be held responsible for the transactions. The Applicant also communicated with staff outside the unit regarding the allegedly unethical SAP transactions.

10. On 22 January 2013, after Mr. X had returned to the office, he and the Applicant met, together with Ms. Y (Executive Assistant) and Ms. K (Senior Human Resources Officer). At this meeting, the Applicant stated that she would continue to process the SAP transactions of Mr. Z, former Chief Investment Officer of the IFC, but that she would not process other SAP transactions.

11. At the same meeting, the Applicant was informed that the transactions concerned were within managerial discretion and that Mr. X took full responsibility for them. In addition, Mr. X informed the Applicant that her actions in approaching staff members claiming inappropriate managerial conduct without communicating her concerns to her managers were inappropriate. He also pointed out that the Applicant had been hired because of her SAP profile, and that processing these transactions was a core part of her job description. Mr. X expressed concern for the Applicant's health but stated that he was not prepared to remove her SAP profile and that he expected her to continue to process these transactions as part of her duties.

12. Mr. X subsequently asked the Office of Ethics and Business Conduct (EBC) to investigate the Applicant's claims regarding the allegedly inappropriate SAP transactions. The Applicant refused to process any SAP transactions until EBC had concluded its investigation.

13. On 29 January 2013, the Applicant met again with Mr. X and Ms. K to discuss her SAP profile. During this meeting, Mr. X informed the Applicant that EBC would contact her to evaluate her SAP transactions. He requested that she continue to process the SAP transactions until EBC completed its investigation. However, the Applicant stated that due to health issues she did not want to process SAP transactions. Mr. X reiterated that this task was integral to the department's operation, was part of her job responsibilities, and that she could not unilaterally decide to stop performing this task without disrupting the department. The Applicant again refused.

14. On 21 February, EBC informed the Applicant that it had concluded its investigation and found no misconduct, and closed the case.

15. A third meeting took place on 4 March, between the Applicant, Mr. X, Ms. K and Ms. Y. The outcome of the EBC investigation was discussed. Mr. X stated that he expected the Applicant to continue to process SAP transactions as there was no legitimate ground for her to refuse to do so. The Applicant refused. Mr. X informed her that he had requested a Fitness for Duty assessment under Staff Rule 6.07, paragraph 3.03.

16. On 11 April, a Senior Occupational Health Specialist within the Health Services Department informed Mr. X of the results of the Fitness for Duty assessment. That assessment concluded that the Applicant was fit for duty, but with the recommendation that she be excluded from SAP processing tasks and that she should continue to see her treating doctor for her medical condition. Management accepted the recommended accommodation.

17. On 23 April, the Applicant met with the same three colleagues to discuss the outcome of the Fitness for Duty assessment and the Applicant's new work program. Mr. X informed the Applicant that her work program would be the same as that of other Administrative and Client Support Network (ACS) staff in the unit, excluding SAP transactions processing; he commented that management had rearranged the work program of the entire ACS group within the department and that this was a significant undertaking.

18. The Applicant started her new work program on 20 May 2013.

2013 PEP AND 2013 SRI

19. On 19 June 2013, the Applicant sent a list of her multi-raters to Mr. Z, who had been her Supervisor from July 2012 to May 2013 (Mr. X had been her Supervisor from June 2013).

20. On 22 July 2013, Mr. Z provided the Applicant with her interim 2013 evaluation report (known as Performance Evaluation and Planning – PEP). This included feedback from four out of five multi-raters and her Supervisor's comments. The Applicant was surprised to read the negative feedback in her PEP.

21. In late July/early August 2013, the Applicant had an informal discussion with Mr. Z, Ms. V (Senior Investment Officer in the Applicant's unit), and Mr. X regarding her multi-raters' feedback, particularly comments to the effect that she was not a team player. Mr. X told the Applicant that such comments would affect her Salary Review Increase (SRI) rating.

22. On 5 September, Mr. X and Ms. Y (the Applicant's Co-Supervisor for the relevant period) met with the Applicant for her 2013 PEP discussion. Mr. X provided the Applicant with a copy of the PEP comments and informed her that her SRI rating would be 3.1.

23. On 29 September, Mr. X, as the Reviewing Official, signed the Applicant's PEP for 2013.

24. In the section of the assessment relating to "Client Focus," Mr. Z (as Supervisor) commented that the Applicant "knows her material and does an excellent job when the work fits within her terms of reference," and that "some conflicts over work priorities weren't handled as well as she would like, but a new work plan was agreed and FY14 should see few issues." In her comments in this section, Ms. Y (as Co-Supervisor) noted that the Applicant was "responsive to client needs," but that she would like the Applicant "to provide assistance until the needs or problems of her client have been resolved."

25. With respect to "Teamwork and Communications," though Mr. Z stated that the Applicant "helps others and explains things clearly," Ms. Y remarked that she "would like to see a willing attitude to assist her supervisors, like the go-to person, instead of the supervisors asking another staff member or doing the tasks themselves."

26. Mr. Z identified the Applicant's strengths as "dedication, detail oriented, easy to work with, commendable attention to deadlines." Under "Areas of Improvement," he stated that "although friction over her work priorities was resolved, the process and the resulting medical issues suggest that [the Applicant] could use training to help her deal with difficult situations." Ms. Y identified "attitude, cooperation" as areas for the Applicant to improve.

27. In his remarks as Reviewing Official, Mr. X noted that:

[The Applicant] had issues with SAP processing which lead [sic] her to unilaterally stop handling SAP transactions, although it was part of her job description at the time. After discussions we agreed to accommodate [the Applicant's] needs through a significant rearrangement of work between the ACS

staff in FM HQ. Should further accommodation be requested in future, it will be much more difficult to achieve.

28. He continued by identifying the areas in which he expected the Applicant to make improvements in FY14:

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

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

29. Mr. X concluded by observing that "if [the Applicant] can become more flexible and better manage the tone of communication, it will allow her strengths to shine through and be fully appreciated."

30. The Applicant disagreed with the comments and refused to sign the PEP.

31. On 24 October 2013, the Applicant accessed the HR Kiosk on the World Bank Group's intranet, which confirmed that her SRI rating for 2013 was 3.1.

PRS REVIEW AND APPLICATION TO THE TRIBUNAL

32. The Applicant filed a Request for Review with Peer Review Services (PRS) on 24 January 2014, challenging the evaluation of her performance in the 2013 PEP, as well as her 2013 SRI rating of 3.1 and corresponding salary increase.

33. From 3 February to 27 March 2014, the parties attempted to resolve the issues through mediation, but were unsuccessful.

34. On 3 June 2014, Mr. X filed the Manager's Response before PRS.
35. On 30 June 2014, the PRS Panel finalized its Report in Request for Review No. 175. The Panel concluded that management had acted consistently with the Applicant's contract of employment and terms of appointment in assessing her performance in the 2013 PEP and SRI. The Panel found that management made these decisions on a reasonable and observable basis, and followed the applicable procedures. The Panel also concluded that there was no evidence of improper motivation, discrimination or retaliation. The Panel recommended that the Applicant be denied relief. This recommendation was accepted by the Executive Vice President and CEO of the IFC on 21 July 2014.
36. The Applicant filed her Application with the Tribunal on 31 October 2014.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

THE APPLICANT'S MAIN CONTENTIONS

37. The Applicant alleges that management became biased against her because she had refused to perform SAP transactions due to her health condition. She "strongly felt retaliated against" after management considered "only a fraction" of her accomplishments in the 2013 PEP, and relied on some staff's negative feedback. The Applicant contends that she was coerced and reprimanded for refusing to perform a function – the processing of SAP transactions – which was not even part of her Terms of Reference. She characterizes the IFC's processes as "discriminatory."
38. The Applicant states that Human Resources (HR) changed the Reviewing Official for her 2013 PEP, and that this was done "with intention to provide a lengthy adverse narrative and retaliate" against her. On her account, this invalidates the PEP.
39. The Applicant requests "compensation commensurate to the salary differential and to the mental anguish, the physiological and physical damage caused by the relentless coercion and

evident hostility” she claims to have endured from management. The Applicant also requests other forms of relief, including that all managers undertake the Living Our Values courses and other online ethics training. She further requests reimbursement for the cost of her medical visits, tests, and related prescriptions “to alleviate the medical disorders and manifestations experienced due to coercion and hostile environment,” as well as “recoupment of all times lost to undertake such visits, tests, etc.”

THE IFC’S MAIN CONTENTIONS

40. The IFC maintains that the Applicant’s 2013 PEP and SRI rating had a reasonable and observable basis and were fair and compliant with the relevant rules and guidelines.

41. The IFC contends that the Applicant’s allegation that she was treated unfairly as a result of her health concerns are baseless, as she was provided with all the assistance and protection she was entitled to.

42. The IFC further argues that the types of relief requested by the Applicant are inapposite and/or unrelated to the decisions being challenged.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

43. The Tribunal has consistently held that the assessment of a staff member’s performance is a matter that falls within the Respondent’s discretion. In *Desthuis-Francis*, Decision No. 315 [2004], para. 19, the Tribunal held that what constitutes satisfactory performance “is to be determined by management ... and management’s appraisal in this respect is final absent an abuse of discretion.”

44. In *Marshall*, Decision No. 226 [2000], para. 21, the Tribunal provided some elaboration of this standard with respect to performance evaluation and salary review:

Even if the merit rating and SRI were not a product of intentional ill-will, they might still be overturned by the Tribunal if they were arbitrary or capricious. As

the Tribunal has often stated, it may review such decisions of the Respondent to determine whether there has been an abuse of discretion, in that the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

45. The Tribunal will accordingly review whether the IFC properly exercised its discretion and observed the applicable rules and procedures in arriving at the Applicant's PEP and SRI ratings in 2013.

2013 PEP

46. The IFC's PEP system comprises an annual assessment of each staff member's individual performance compared to the objectives identified before the beginning of each year by the staff member and his or her supervisor. The PEP begins with the staff member's self-assessment of his or her performance during the period under review. The next step is the collection of feedback provided by colleagues and clients. The supervisor then completes the evaluation taking into account the feedback provided, as well as his or her own observations and the views of the staff member. The supervisor provides the staff member with an opportunity to comment on the performance under review. Thereafter the evaluation is submitted for review and approval by the management team and the reviewing manager.

47. The Tribunal will first ascertain whether the assessments in the Applicant's 2013 PEP had a reasonable and observable basis, before turning to the procedure followed.

The basis for the assessments in the 2013 PEP

48. As it explained in *Prudencio*, Decision No. 377 [2007], paras. 73-74:

[T]he Tribunal does not interfere or substitute its own judgment for the Bank's absent an abuse of discretion.... The Tribunal cannot and should not conduct a microscopic inquiry into each facet of the Applicant's work program and behavior during the assessed period. ... It would be difficult and probably fruitless to assess each individual task and change to the work program, given the number of internal and external clients, managers and team members involved, and also given the Unit's broader work needs and responsibilities with respect to which the

Tribunal is ill-equipped to evaluate each decision. The only effective approach is to assess whether the evidence ... satisfies the abuse of discretion test.

49. Furthermore, in *Yoon (No. 5)*, Decision No. 332 [2005], para. 48, the Tribunal noted the difficulties in reviewing positive evaluations. The Tribunal considered the situation where a staff member's performance is determined to be "satisfactory but nuanced," and observed that:

Of course, staff members who are convinced that their performance has been undilutedly superlative may be legitimately irritated if their evaluation contains inexplicable and unsubstantiated reservation, or even suggestions for improvement. Managers have a duty to carry out meaningful evaluations, and staff members have a corresponding entitlement. The problem is rather that with respect to *satisfactory* performance: (a) the prejudice arising from below-superlative assessment is incomparably less manifest than in cases of termination; and (b) the feedback underlying such assessments is likely to be more subjective than instances of objective non-fulfillment of precise tasks.

50. In its Report in the present case, the PRS Panel considered the evidence of three Supervisors (Mr. X, Mr. Z and Ms. Y), as well as that of other staff members in the unit, including Ms. V. The Panel noted that the confidential written feedback provided by the multi-raters for the Applicant's 2013 PEP was "mixed." The Panel further noted the evidence of Mr. Z to the effect that conversations with staff who provided feedback during the review period had occurred before the Applicant raised issues regarding the processing of SAP transactions. The Panel concluded that management had provided a reasonable and observable basis for the comments in the 2013 PEP. Further, the Panel rejected the Applicant's contention that management had failed to consider all her accomplishments in the 2013 PEP, noting that the latter "does acknowledge favorable aspects of [the Applicant's] performance."

51. Before the Tribunal, the Applicant asserts that the assessment of her work in the PEP was "arbitrary" in the sense that "minimal or no value was given to [her] other accomplishments." She contends that management wrongfully focused on administrative support, including the processing of SAP transactions, which in fact only accounted for 10% of her workload. Moreover, on her account, management "profusely" commented in the PEP on her "inflexibility and no teamwork."

52. The IFC responds that, notwithstanding comments in her previous performance evaluations to the effect that her communication “had not been as professional as it could have been,” the Applicant’s “abrupt behavior” actually worsened during the 2013 PEP period. According to the IFC, the Applicant displayed an argumentative attitude, confronted colleagues and created a difficult working environment.

53. The contentions of the IFC are supported by the record. The Tribunal notes that, independently of issues relating to SAP processing (which will be considered below), statements provided by Ms. V and Ms. Y illustrate what the IFC has described as the Applicant’s “rigid interpretation of what constituted her work program.” Ms. V stated that while the Applicant “performed simple administrative tasks well,” nevertheless “if a task posed a problem or if [the Applicant] was presented with an issue of some complexity, she became difficult to work with and acted abruptly and argumentatively.” Ms. V related specific incidents to illustrate this assessment, relating to changes of travel arrangements and the organization of a conference. Ms. V stated that while the Applicant performed the technical aspects of her work in a satisfactory manner in FY2013, she “displayed limited communication and teamwork skills that negatively affected her interaction with colleagues.” Similarly, Ms. Y stated that her experience with the Applicant in 2013 was “difficult and problematic because [the Applicant] has difficulties working in teams and refused to perform specific ACS tasks which were assigned to her.” She added that the Applicant “showed no flexibility in working with peers and staff whom she was supposed to assist” with the result that staff “refused to go to her for assistance.” Again, Ms. Y provided illustrations of the Applicant’s behavior in this regard. She referred to “a behavioral pattern of a rigid attitude and abrupt communication style.” She stated that though she spoke with the Applicant about these issues “on several occasions” during FY2013, the Applicant’s behavior did not improve over the year.

54. These remarks were echoed in the feedback provided by some of the Applicant’s colleagues and reproduced in the interim PEP. Some commented positively on the Applicant’s “strong sense of urgency when it comes to responding to client needs,” and that the Applicant “delivers as promised and will notify where needed.” At the same time, her colleagues also stated that the Applicant: “is very focused on getting the task cleared from her list of things she

has agreed to do. If helping her client includes this, then she is client focused, if not then she is not client focused”; that she “is not a strong team player” and “expresses a clear idea of what she wants to do and what she doesn’t want to do whether it helps the team or not”; that she “sometimes shows signs of impatience when dealing with other staff, and this can affect the relationship going forward”; that “she is a planner and understands urgency though she does not respond well to pressure and is not inclined to be supportive”; and “at times, she seems reluctant if not resentful at requests received ... one must be prescriptive when delegating tasks given the effort required to work with her.”

55. The Tribunal notes the consistency between these assessments of the Applicant’s performance, and the comments made in the 2013 PEP by the Applicant’s Supervisor (Mr. Z), Co-Supervisor (Ms. Y) and Reviewing Official (Mr. X) in the 2013 PEP.

56. The Tribunal recalls its decision in *Lysy*, Decision No. 211 [1999], para. 68, in which it stated:

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.

57. In the present case, contrary to the Applicant’s submissions, the 2013 PEP did acknowledge her strengths and achievements. Her Supervisor, Mr. Z, noted that the Applicant “knows her material,” “helps others and explains things clearly,” and that her strengths include “dedication, detail oriented, easy to work with, commendable attention to deadlines.” Her Co-Supervisor, Ms. Y, stated that the Applicant was “responsive to client’s needs.” Similarly, in his concluding remarks the Reviewing Official, Mr. X, noted that the Applicant “has the strengths of great attention to detail and ability to work well and be a good colleague”; he commented that if she could become “more flexible and better manage the tone of communication,” this “will allow her strengths to shine through and be fully appreciated.”

58. Finally, the Applicant’s contentions that SAP transaction processing was “not inherent” in her objectives or tasks, and was given undue emphasis in the PEP, are not supported by the

record. On the first point, the Applicant's PEP for both 2013 and 2012 included as one of her objectives "perform ad-hoc duties like SAP transactions processing," while her 2011 PEP had included the performance of "ad-hoc duties as a back-up person for SAP transaction" as an objective. On the second point, the assessments of her performance in the 2013 PEP in fact made very few references to the issues around SAP transaction which had arisen from late December 2012: in the interim PEP none of her colleagues mentioned this issue; and in the finalized document it was mentioned once by her Co-Supervisor, and once in the comments of her Reviewing Official.

59. The Tribunal finds that the evaluation of the Applicant's performance in the 2013 PEP had a reasonable and observable basis. The Tribunal also finds that the Applicant's strengths were acknowledged in the PEP, in the comments of her Supervisor, Co-Supervisor, and the Reviewing Official. The PEP also noted the Applicant's deficiencies in a constructive way, and clearly identified areas for improvement.

The procedure followed

60. The procedural requirements for annual performance reviews are laid down in Staff Rule 5.03, paragraph 2.01. This requires, *inter alia*, that the staff member will meet with the Manager or Designated Supervisor to discuss performance, strengths/weaknesses and areas for improvement at least once in a twelve-month period; that the staff member will be provided with a written summary assessment of his or her performance during the review period; that the staff member will be given an opportunity to comment on the performance evaluation; and that if the staff member refuses to sign the evaluation, this shall be noted but the evaluation process shall continue.

61. The Tribunal has frequently highlighted the importance of a performance evaluation process which provides the necessary protections for the staff member. In *O*, Decision No. 337 [2005], para. 54, the Tribunal held that "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."

62. In its Report in the present case, the PRS Panel noted witness testimony to the effect that the Applicant had been provided with “sufficient and timely feedback regarding her deficiencies,” and concluded that management had followed the applicable procedures.

63. Before the Tribunal, the Applicant alleges that the HR Office tampered with her PEP, as the Reviewing Official listed in her 2013 PEP was changed from Mr. J, an IFC Director, to Mr. X. According to the Applicant, HR manipulated the system in order to harm her. She states that she only learned of this change when the PEP was ready for signature in October 2013. According to the Applicant, this “invalidates the previously approved PEP.”

64. The IFC contends that Mr. X was closer to the Applicant’s work and therefore was better positioned to provide the sign-off on her 2013 PEP as the Reviewing Official. The IFC stresses that Mr. X’s comments as Reviewing Official were balanced and fair “as he has not only identified areas for improvements but specifically recognized Applicant’s strengths.” According to the IFC, as Reviewing Official Mr. X essentially reiterated the feedback provided by the Applicant’s other managers and colleagues with respect to the Applicant’s performance during the 2013 PEP period.

65. The Tribunal recalls that the Applicant had two Supervisors during the 2013 PEP period: Mr. Z from July 2012 to May 2013, and Mr. X for the month of June 2013. For the entire period, her Co-Supervisor was Ms. Y.

66. Staff Rule 5.03, paragraph 2.01(d) provides that if during the review period the staff member has reported to more than one Supervisor for a period of three months or more, the staff member, the Manager or the Designated Supervisor may request that the other Supervisor(s) provide supplemental written performance evaluation(s). Compliance with this rule is not at issue in the present case: Mr. X had been the Applicant’s Supervisor for only one month of the twelve-month period under review and, in any event, contributed his comments on the Applicant’s performance in his role as the Reviewing Official.

67. The Tribunal finds that there is no provision in the Staff Rules granting the right to have the same person serve as Reviewing Official every year; beyond the situation envisaged in paragraph 2.01(d), above, and which is in any event not applicable here, the staff member does not have a choice in who serves as Supervisor or, still less, Reviewing Official for the purposes of the PEP. In any event, the Applicant has not pointed to any adverse consequence of Mr. X acting as the Reviewing Official; as noted by the IFC, the comments of Mr. X were consistent with those of other feedback providers and, indeed, acknowledged certain strengths of the Applicant.

68. The Applicant further alleges that she did not have a mid-year performance review for the 2013 PEP period. The Tribunal notes, however, that management – Mr. Z, Mr. X and/or Ms. Y – met with the Applicant on at least two occasions to discuss her PEP and the feedback which had been received regarding her performance.

69. Finally, contrary to the Applicant’s contentions, the fact that she may have had a better performance evaluation in previous years is not indicative of any unfairness or procedural shortcomings in the 2013 process. As the Tribunal observed in *Malekpour*, Decision No. 322 [2004], para. 21, “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 the next year or subsequent years.”

70. In the light of the above considerations, the Tribunal finds that, contrary to the Applicant’s submissions, her 2013 PEP had a reasonable and observable basis, and that the requisite procedures were followed.

2013 SRI

71. In order to determine the SRI for a staff member, the relevant Supervisor considers the results of the PEP and determines the rating taking into account the performance of peers during the period under review. The PEP and SRI processes are conducted under the guidance of a

representative of the HR Vice Presidency and require different levels of review by management to ensure a fair and appropriate outcome.

72. Under the rules applicable to the 2013 PEP process, there were four SRI ratings in the Salary Review Matrix: 2, 3, 4 and 5. In addition, managers were allowed to use three sub-categories within category 3 (3.1, 3.2, and 3.3) to facilitate distribution. All three of these subcategories were considered satisfactory, though a 3.1 rating was indicative of a performance which needed strengthening in certain areas.

73. The Tribunal stated the standard for assessing SRI practice in *CD*, Decision No. 483 [2013], para. 42, as follows:

The process of establishing SRI ratings is discretionary and based on a comparative assessment of staff members within the same unit. The Tribunal has recognized that “[g]iven the various decisional elements that are properly taken into account in making such a comparative assessment, it is difficult to support a claim of abuse of discretion.” *Marshall*, Decision No. 226 [2000], para. 24. However, the SRI decision must have an observable and reasonable basis and the Tribunal will set aside SRI ratings which are based on an arbitrary or procedurally flawed OPE process (*See BY*, Decision No. 471 [2013], para. 31).

74. According to the Applicant, management “magnified” the SAP transactions issue, characterizing it as “disruptive” so as to justify giving her an SRI rating of 3.1. She notes that this rating was lower than that she had received for the previous four years (when she was given two ratings of 3.2, and two of 3.3). She argues that her rating was not fair in comparison to that of her peers, as the department did not realize how complex and substantive her work was, and “hastily decided” on the 3.1 rating as a result of their “frustration and anger” at her refusal to process SAP transactions. She seeks “a change in the SRI rating to 4.0.”

75. The IFC responds that the SRI rating had an observable and reasonable basis. It states that when setting the Applicant’s SRI, Mr. X compared the Applicant’s performance to that of her peers; he acknowledged her strengths, but also accounted for the issues regarding her “soft skills,” her communication style and lack of flexibility. In terms of the procedure followed, the IFC states that Mr. X initially ranked all staff in the group relative to their peers, based on their

performance during the 2013 PEP period. Mr. X then discussed the ranking with the two Portfolio Managers in the unit. They allocated preliminary SRI ratings and provided these to HR for further review. The SRI ratings for all the staff in the unit were then discussed by the management team. The SRI ratings were aligned with the distribution curve used by the IFC. On this basis, according to the IFC, the Applicant was awarded an SRI rating of 3.1. While this was lower than what the Applicant had previously received, it nonetheless reflected the Applicant's 2013 PEP and her performance relative to her peers.

76. The Tribunal finds that the Applicant has not provided evidence of any deviation from the required procedure with respect to her 2013 SRI rating. Her arguments regarding the SRI relate primarily to the manner in which her performance had been evaluated for the purpose of her 2013 PEP. Certainly, in line with standard practice, that evaluation influenced the SRI rating which she subsequently received. As outlined above, however, the Tribunal has concluded that the PEP evaluation was balanced, with a reasonable and observable basis. The Applicant's challenge to her 2013 SRI rating is therefore rejected.

CLAIM OF RETALIATION AND DISCRIMINATION

77. The Tribunal recalls, as it did in a previous case brought by the Applicant (*BI*, para. 47), that 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.

78. The Tribunal has taken a similar approach regarding allegations of retaliation, noting that “the burden lies with an applicant to establish facts which bring his or her claim within the definition of retaliation under the Staff Rules” and that:

An applicant bears the onus of establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse action. A staff member's subjective feelings of unfair treatment must be matched with

sufficient relevant facts to substantiate a claim of retaliation, which in essence is that the [alleged reason for the adverse action] is a pretext to mask the improper motive. *O*, Decision No. 337 [2005], para. 47.

79. The Tribunal has made clear that “[i]t 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” (*AH*, Decision No. 401 [2009], para. 36). The Tribunal has also recognized that “[a]lthough staff members are entitled to protection against reprisal and retaliation, managers must nevertheless have the authority to manage their staff and to take decisions that the affected staff member may find unpalatable or adverse to his or her best wishes” (*O*, para. 49).

80. The Applicant contends that a health concern she had raised in connection with the processing of SAP transactions, and the accommodation which was necessary as a result of this health condition, were the true reasons for the mixed PEP and the relatively low SRI. She asserts that the SRI rating she received reflected “disparity, discrimination and retaliation.”

81. The IFC denies these allegations, and submits that management provided the Applicant with “all the assistance and protection she was entitled to with respect to her health concern.”

82. The Tribunal notes that while in the present Application the Applicant seeks compensation for, *inter alia*, medical expenses and related costs, the question of whether she was entitled to coverage under the Workers’ Compensation Program for the health issues she has referred to here, is not before the Tribunal. In January 2015, the Applicant filed an appeal with the Administrative Review Panel against the earlier rejection of her claim by the Workers’ Compensation Administrator. This claim is not part of the present Application, however.

83. For present purposes, the Tribunal must only determine whether, as the Applicant claims, her 2013 PEP and SRI ratings were in any way skewed or negatively affected by the discussions around her health issues and the processing of SAP transactions. The Tribunal finds that these claims are without merit.

84. First, the manner in which management handled the Applicant's health issues regarding SAP transaction processing was fair and reasonable. Management first met with the Applicant regarding this issue on 22 January 2013, shortly after she first refused to process the SAP transactions. At this meeting management sought to assuage the Applicant's concerns regarding the propriety of certain transactions. Management subsequently asked EBC to investigate the Applicant's claims of unethical conduct. EBC did so; the Applicant's complaint that management "subjected" her to being interviewed by EBC is difficult to understand given that the investigation was undertaken in response to allegations she herself had made. Management met with the Applicant again on 29 January 2013, at which point the Applicant stated that health issues precluded her from performing the function at issue. Management explained the impact which the Applicant's position was having on the unit. Following a third meeting, at which the outcome of the EBC investigation was discussed but the Applicant maintained her stance, management requested a Fitness for Duty assessment, under Staff Rule 6.07, paragraph 3.03. When this assessment recommended that the Applicant be excluded from SAP processing tasks, management complied with the recommendation. While this necessitated a significant reorganization of the department, management acted promptly to accommodate the Applicant's needs. The Applicant was informed of the new arrangement on 23 April 2013 and started her new work program a month later.

85. In light of the foregoing, the Tribunal finds that the IFC reacted to the Applicant's health issues in a reasonable and fair manner which complied with the necessary procedures.

86. Second, the Applicant's claim that some of the behavioral shortcomings which were reflected in the 2013 PEP and SRI ratings were attributable to a health condition which management failed to consider, is not supported by the record. Here the Applicant relies on two medical reports, one from March 2013 and one from February 2015, both prepared by the same doctor. The focus of the first report is the relation between the Applicant's health condition and her ability to process SAP transactions, rather than any broader behavioral issues in the workplace, and so this does not support the Applicant's contention here. This report was, in any event, not shared with management until April 2014, long after the 2013 PEP and SRI processes were complete. The second report plainly post-dates the relevant evaluation period. Moreover, at

certain points the second report directly contradicts the Applicant's assertion that her health condition prevented her from observing standard behavioral norms at work. The Tribunal finds that, first, during the 2013 review period management had no reason to suspect that the Applicant's health condition was a factor to consider when assessing her general behavior in the workplace. Second, the Tribunal notes that even the medical reports which were unavailable to management at the material time but have since been produced by the Applicant do not support her claims in this respect.

87. Third, as the IFC observes, the Applicant has not shown any causal link between her health condition, or the accommodations made regarding the SAP transaction processing, and her 2013 PEP evaluation and SRI rating. As outlined above, the Tribunal has found that the 2013 PEP and SRI had a reasonable and observable basis. There was consistency in many of the comments made by the Applicant's colleagues and supervisors regarding her deficiencies. The evaluation of her performance was balanced, and acknowledged her strengths as well as her weaknesses. The IFC has subsequently produced written statements by both a colleague and the Co-Supervisor of the Applicant which include illustrations – unrelated to the issues around SAP transaction processing – of how those deficiencies were manifested during the review period. There is nothing in the record to suggest that the 2013 PEP or SRI rating were skewed by any ill animus towards the Applicant arising from the issues around the processing of SAP transactions.

88. In light of the foregoing, the Tribunal concludes that the Applicant's allegations of retaliation and discrimination are without merit. These claims are rejected.

DECISION

The Application is dismissed.

/S/ Mónica Pinto

Mónica Pinto

Vice-President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 13 November 2015