



World Bank Administrative Tribunal

2015

Decision No. 521

**CZ,
Applicant**

v.

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

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

**CZ,
Applicant**

v.

**International Bank for Reconstruction and Development,
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 Stephen M. Schwebel (President), Abdul G. Koroma, and Marielle Cohen-Branche.

2. The Application was received on 9 February 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 3 November 2015.

3. The Applicant has raised three principal claims: her 2012-13 Overall Performance Evaluation (2013 OPE) lacked an observable and reasonable basis and was unfair, unbalanced, and conducted with procedural irregularities so as to constitute an abuse of discretion; her 2013 Salary Review Increase (2013 SRI) rating was improper and inconsistent with her OPE; and the Bank mismanaged her career.

FACTUAL BACKGROUND

The Applicant's position and work responsibilities

4. The Applicant has worked in the Bank's Washington, D.C. office since 1992. In 2002, she was appointed as a Procurement Analyst in the Operations Policy and Country Services Vice Presidency (OPCS). She was transferred within OPCS to the Investment Lending Unit (OPCIL) as an Operations Analyst in 2009.

5. OPCS provides support to Bank leadership and staff on the Bank's lending and non-lending operations and relationships, procurement and financial management, and other operational policies and strategies. OPCIL, as a part of OPCS, focused specifically on investment

lending operations, policies, and good practices, as well as supporting the Governance and Anticorruption Strategy in order “to reduce the risks associated with potential exposure to corruption.” In 2012, OPCS created the Operations Risk Management Unit (OPSOR), which is where the Applicant was assigned.

6. One of the Applicant’s duties in her position as an Operations Analyst was to assist in the follow-up to the Volcker Report. The Volcker Report, issued in 2007, recommended the creation of an Independent Advisory Board (IAB) in relation to the Integrity Vice Presidency’s (INT) work on fraud and corruption. The Applicant’s responsibilities in her original work program included: receiving Final Investigative Reports (FIRs) that consisted of Management Responses to INT’s Findings of Fraud and Corruption in Bank Financed Projects; recording the recommendations contained in the FIRs; obtaining responses from Regional focal points to the FIR recommendations; managing an Action Plan Database in which Regional responses were recorded; and providing Secretariat support to the IAB. However, in discussions surrounding the Applicant’s 2013 Results Agreement, she was told by her management to collapse her list of tasks into two tasks, rather than five, because the management considered that four of her tasks in reality represented only one discrete task. Thus, while the work the Applicant performed remained the same after her 2013 Results Agreement, her four responsibilities relating to the FIRs and the Action Plan Database were combined to represent one task. The Applicant claims that Mr. A, who was then the Director of OPSOR, and Ms. B, who was the Manager of Operations for OPSOR, told the Applicant that grouping the number of tasks from five to two would not be an issue.

7. After the Applicant’s work responsibilities were combined to represent two tasks, rather than five, she asked Ms. B in meetings in January, February, and April 2013 to help her find other tasks to do so that her work program would not appear limited. Ms. B tried but could not find other responsibilities for the Applicant in the department. The Applicant claims that in a meeting with Mr. A in April 2013 to discuss her work program, he asked her to consider an Early Out option or a Mutually Agreed Separation option, but also told her that if she decided to stay at the Bank, the management would design a work program for her. The Applicant also talked to a Human Resources officer and was told she had the options of looking for other jobs, applying to

opening positions at the Bank, or taking an Early Out or Mutually Agreed Separation option. In May 2013, the Applicant told Mr. A and Ms. B that she had decided to continue working at the Bank until her retirement age.

8. The Applicant approached the Coordinator of the Conflict Resolution System in May 2013 and was told to wait for Ms. B and Mr. A's responses, as the staffing program was uncertain for the following year. On 1 June 2013, the Applicant sent the Ombudsman an email asking how she could get the management to assign her new tasks in her work program and make her reporting relationship clearer. The Ombudsman also recommended that the Applicant wait for the management to respond in order to allow Mr. A to consider issues with the work program.

The Applicant's 2013 OPE and SRI

9. On 19 September 2013, Ms. B sent the Applicant a draft of her assessment for the Applicant's 2013 OPE. The OPE covered the time period from 1 July 2012 to 30 June 2013. The Applicant was rated Fully Successful for both of the tasks in her work program under the section Results Assessment. Under the section Core Bank Competencies, the Applicant was rated Superior for "Client Orientation" and Fully Successful for the following three categories: "Drive for Results," "Teamwork," and "Learning and Knowledge Sharing." While there was positive feedback in the OPE regarding the Applicant's performance, the OPE also included the following comments: "[The Applicant] has demonstrated the desire to take on [a] more sophisticated work program . . . staff interaction and experience on this has been that the delivery of these tasks has required a great deal of supervision by more experienced staff which has rendered the process quite cumbersome." After receiving the 2013 OPE, the Applicant met with Ms. B at least twice in September 2013, and during these meetings, the Applicant expressed dissatisfaction with the OPE ratings and the feedback. In addition to receiving her 2013 OPE, the Applicant was also informed of her SRI rating of 3.1 with a corresponding salary increase of 1.12%.

10. During one of the 2013 OPE discussions between the Applicant and Ms. B, the Applicant was told that her position as an Operations Analyst was being abolished. In November 2013, she initiated mediation with Ms. B to discuss her 2013 OPE and SRI rating. There was no agreement reached as a result of the mediation.

11. After mediation ended, without success, the Applicant filed a Request for Review with Peer Review Services (PRS) on 27 February 2014. PRS released the Report of the Panel on 4 August 2014. In the Report, the Peer Review Panel found that

management acted consistently with [the Applicant's] contract of employment and terms of appointment in assessing her performance as set forth in the 2013 OPE and 2013 SRI. Specifically, the Panel determined that the Bank made its decisions on a reasonable and observable basis and that management followed the appropriate procedures. The Panel also concluded that there was no ill animus in making the assessments.

12. Accordingly, the Panel recommended that the Applicant's request for relief be denied. The Bank accepted the Panel's recommendation on 5 August 2014.

13. In the meantime, on 22 May 2014, the Applicant received a Notice of Redundancy declaring her position as an Operations Analyst redundant effective 15 June 2014, on which date the Applicant was put on Administrative Leave. However, on 16 September 2014, she began working in the INT under the Institutional Staff Resources Program (ISRP). The ISRP contract will continue until 31 December 2015. According to the Applicant, she will reach her retirement age in November 2016.

The present Application

14. The Applicant filed her Application with the Tribunal on 9 February 2015. In the Application, she has made the following contentions: (i) her 2013 OPE lacked an observable and reasonable basis and was unfair, unbalanced, and conducted with procedural irregularities so as to constitute an abuse of discretion; (ii) her SRI rating of 3.1 was inconsistent with her 2013 OPE ratings; and (iii) the management mismanaged her career. The Applicant has requested the

Tribunal to order the Bank to institute the following remedies: (i) eliminate the Applicant's 2013 OPE or remove negative comments in the OPE which were "not supported by relevant and sufficient evidence"; (ii) change the Applicant's SRI rating to 3.2 or above with a corresponding salary increase that applies retroactively; (iii) adjust the Applicant's salary to the 2013 Market Reference Point of Grade E; (iv) write a farewell message from the OPSOR management to the Applicant; and (v) pay her compensation, in an amount equivalent to two years of the Applicant's net salary, and legal costs.

The Bank's preliminary objection

15. The Bank filed its Preliminary Objection on 12 March 2015 stating that the Applicant's claim of mismanagement of career is inadmissible. The Bank argued that the Applicant failed to exhaust all available remedies before filing her Application with the Tribunal because she did not claim mismanagement of her career in the PRS proceeding. The Bank also argued that the Applicant's claim of mismanagement of her career was untimely because she did not raise the claim within 120 days of the events giving rise to the claim. The Bank requested that the Tribunal hold the Application partially inadmissible for lack of jurisdiction and adjudicate only the Applicant's claims relating to the 2013 OPE and the SRI rating.

The Applicant's response to the preliminary objection

16. The Applicant's Answer to the Bank's Preliminary Objection was filed on 8 April 2015. The Applicant argued the following: (i) she had raised the claim of mismanagement of her career in the PRS proceeding, and it was not a new claim; (ii) her allegations relating to her claim of mismanagement of her career occurred in the 2013 OPE period, thus making the claim timely for review by the Tribunal; (iii) she exhausted all other remedies within the Bank Group; and (iv) certain aspects relating to her claim of mismanagement of her career were unknown to her until the PRS proceeding. The Applicant requested that the Tribunal review her mismanagement of career claim.

17. By a letter of 30 April 2015, the President of the Tribunal decided to join the Bank's preliminary objection to the merits.

Merits

The Applicant's Main Contentions

18. The Applicant argued that: (i) her 2013 OPE lacked an observable and reasonable basis and was unfair, unbalanced, and conducted with procedural irregularities so as to constitute an abuse of discretion; (ii) her SRI rating of 3.1 was inconsistent with her 2013 OPE ratings; and (iii) the management mismanaged her career.

The Bank's Main Contentions

19. The Bank argued the following: (i) there was an observable and reasonable basis for the Applicant's 2013 OPE ratings; (ii) all relevant procedures were followed throughout the OPE process; (iii) there was an observable and reasonable basis for the Applicant's SRI rating; and (iv) there was no mismanagement of the Applicant's career.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

2013 OPE

20. The Applicant's complaints with regard to her 2013 OPE can be broken down into two sub-issues: whether the OPE had an observable and reasonable basis and whether there were procedural irregularities during the 2013 OPE process.

21. The Applicant argues that the 2013 OPE did not appropriately evaluate her work. She contends that her "Teamwork" rating should have been Superior or Outstanding, rather than Fully Successful, because multiple people had testified in the PRS hearing that the Applicant provided valuable support. She also argues that her "Drive for Results" rating should have been Superior, rather than Fully Successful, because she "worked diligently and independently with initiatives" and "drove for results under limitation and constriction from OPSOR Management."

The Applicant claims that the Overall Comments of her supervisor in the OPE did not adequately take into account the positive feedback which the Regional focal points provided for the Applicant. She also contends that it was unfair for the management to say that she did not have analytical skills because they had told her previously that it was not necessary for her to conduct analytical work.

22. The Bank argues that the “2013 OPE had an observable and reasonable basis.” Ms. B’s comments gave the Applicant both positive and negative feedback. While she recognized the Applicant’s “good work ethic” and “focus on getting things done,” she also commented on the “great deal of supervision” the Applicant seemed to need when taking on more sophisticated tasks. Ms. B’s comments were corroborated by those of Ms. C, the Applicant’s colleague and a feedback provider on the Applicant’s 2013 OPE, who “also believed that Applicant did not meet a consistent level of analytical content and deliberation unless she was closely guided and extensively monitored.” The Bank contends that the Applicant received “a fair and balanced assessment,” and her 2013 OPE had a reasonable and observable basis.

23. The Tribunal has stated in *Desthuis-Francis*, Decision No. 315 [2004], para. 19, that:

The evaluation of a staff member’s performance is in principle a matter within the Respondent’s discretion. What constitutes satisfactory performance is to be determined by management (e.g., *Buranavanichkit*, Decision No. 7 [1982], para. 26; and *Buyten*, Decision No. 72 [1988], para. 44) and management’s appraisal in this respect is final absent an abuse of discretion.

24. In *Desthuis-Francis*, the Tribunal also stated that a staff member’s performance evaluation or ratings would be considered arbitrary if the Bank fails to provide an adequate or reasonable basis for its decision. The Tribunal held at para. 23 that:

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.

Additionally, the Tribunal has stated that a performance evaluation must “take into account all relevant and significant facts that existed for that period of review.” *Romain (No. 2)*, Decision No. 164 [1997], para. 19.

25. The Tribunal recalls that the Applicant’s 2013 OPE ratings were as follows: she received a Fully Successful rating on both of the tasks in her Results Assessment. She also received Fully Successful ratings for “Drive for Results,” “Teamwork,” and “Learning and Knowledge Sharing.” She received a Superior rating for “Client Orientation.”

26. Therefore, the Applicant’s OPE ratings were positive, ranging from Fully Successful to Superior. In this regard, in *Mpoy-Kamulayi (No. 8)*, Decision No. 480 [2013], para. 21, the Tribunal stated that:

There is no basis for considering a “Fully Successful” rating as adverse or negative. The Bank’s guidelines state that it is expected “that most staff members on many items would be rated fully successful or fully accomplished” and “that a few staff members on a few items would be rated superior.”

Moreover, the Tribunal stated in para. 22 that:

“It is not the Tribunal’s role to undertake a microscopic review of the Applicant’s performance, and to substitute its own judgment about the Applicant’s performance for the Bank’s.” Rendering judgment on the appropriateness of a Fully Successful versus a Superior rating comes close to a microscopic review. Ordinarily, to allow petitions to the Tribunal regarding disagreements as to the correctness of “Fully Successful” versus “Superior” ratings would involve unwarranted intrusion on managerial discretion.

27. In any event, the main inquiry is whether the Applicant’s 2013 OPE had a reasonable basis. Based on the record before it, the Tribunal is convinced that the OPE had such a basis. The Applicant’s supervisor, Ms. B, had direct knowledge of the Applicant’s performance. In a statement submitted before the Tribunal, Ms. B provided detailed explanation for her evaluation of the Applicant’s performance. She noted that she was satisfied with the Applicant’s performance, stating that the Applicant “performed the assigned tasks adequately and she was in my view otherwise a collegial, pleasant and hardworking colleague. I commend her keen interest

to learn and her tireless work ethic.” However, she also noted that the Applicant had some performance issues that shed light on why a Superior rating was not warranted in all categories. For example, she explained that:

My teams who had worked or interacted with [the Applicant] felt that overall it would take an inordinate and unwarranted amount of time to bring her up to speed or to supervise her. It was felt that she would be unable to conduct technical work or analysis at the level expected from similar GE level staff members.

28. Ms. B’s statement was similar to the feedback she provided the Applicant in her Overall Comments on the Applicant’s 2013 OPE. For example, she noted in the Overall Comments:

[The Applicant] has demonstrated the desire to take on more sophisticated work program, but when given the opportunity to do so, staff interaction and experience on this has been that the delivery of these tasks has required a great deal of supervision by more experienced staff which has rendered the process quite cumbersome.

29. The Tribunal recalls that Ms. B, being the Applicant’s supervisor, was well placed to make the above observations. Her statements before the Tribunal are consistent with those in the OPE. The Tribunal finds them credible, and observes that Ms. B’s evaluation of the Applicant’s performance on her OPE was consistent with comments made by other feedback providers. In a statement provided to the Tribunal, Ms. C, who worked directly with the Applicant and was also a feedback provider on the Applicant’s 2013 OPE, said: “In performing the work [the Applicant] required supervision and assistance from me that was much more extensive than what normally would be expected from a staff member at her level.” The Tribunal notes that the PRS Panel Report discussed the confidential feedback in the Applicant’s 2013 OPE, including the comment made by a feedback provider that the Applicant “requires a good deal of manager and colleague[s]’ time considering this [limited] work program.” Therefore, Ms. B’s feedback in the Overall Comments is corroborated not only by her own signed statement before the Tribunal but also by the comments of other feedback providers. The Tribunal finds that the Applicant’s OPE had a reasonable and observable basis.

30. Moreover, the feedback that Ms. B provided in the OPE’s Overall Comments section was both positive and negative. In terms of positive feedback, Ms. B said in the Overall Comments:

“[The Applicant] is appreciated for her quiet and diligent follow up and tracking of the regional FIRs Action Plans. She tries to find ways to improve and symmetrically record the reports.” Additionally, Ms. B said that the Applicant “was very helpful during the audit of the Bank’s operational framework for using investigation results in Bank funded projects.” The Overall Comments also provided:

[The Applicant] has [a] very good work ethic and her focus on getting things done is admirable. She is an excellent colleague who is always willing to help and always quite responsive in a timely manner to requests/questions from the Region. [The Applicant] is very pleasant and is appreciated by all for her great interpersonal skills, her friendly manners and genuine eagerness to take on more work.

31. The Overall Comments also contained the following negative feedback and comments on the Applicant’s work program:

Management’s efforts to find [the Applicant] work within her reach and skill set have not been successful... [The Applicant] has demonstrated the desire to take on more sophisticated work program, but when given the opportunity to do so, staff interaction and experience on this has been that the delivery of these tasks has required a great deal of supervision by more experienced staff which has rendered the process quite cumbersome.

We are mindful of the fact that [the Applicant] does not have a full work program and that she has made several requests to take on a larger work program. At the same time we are expecting other changes to affect [the Applicant’s] present work program... [The Applicant’s] work program will be decided in light of the realities that the implementation of the change proposals will entail.

32. The Tribunal finds that the feedback the Applicant received in the Overall Comments is balanced and is not overly negative. The feedback takes into account relevant facts, such as feedback from the Regional focal points on the Applicant’s work, as well as the multi-faceted nature of the tasks that the Applicant performed during the 2013 OPE period. In conclusion, the Tribunal finds that the 2013 OPE had a reasonable basis, and it was balanced and fair.

33. The Applicant also argues that her 2013 OPE was conducted with procedural irregularities. Specifically, she contends that the management excluded her from discussions about her work program and the possibility of her receiving other assignments. She also argues

that her first scheduled OPE meeting was delayed, and that the management did not conduct a complete, formal OPE discussion with her, as required by the Staff Rules. In addition, the Applicant argues that she was not provided notice or an opportunity to improve for any of the negative feedback contained in the Overall Comments in the OPE or discussed by Ms. B.

34. The Bank argues that the OPE was not procedurally flawed. The Applicant had at least three OPE meetings with the management. Thus, she had a formal OPE discussion, as required. Furthermore, Ms. B followed the relevant guidelines when preparing the Applicant's OPE. The Bank also argues that the Applicant had notice of negative feedback because her 2011-12 OPE and 2010-11 OPE indicated that she required a lot of supervision.

35. The Tribunal notes that Staff Rule 5.03 (Performance Management Process), paragraph 2.01, states that: "At least once in a twelve month period, the Manager or Designated Supervisor and the staff member shall meet and discuss the staff member's performance, achievements, strengths, areas for improvement, and future development needs." The Tribunal has addressed the procedural requirements for the OPE process in *Prasad*, Decision No. 338 [2005], paras. 25-29. According to the Tribunal, there must be a discussion of the staff member's performance. This discussion should be supplemented by "ongoing feedback throughout the year in question." Additionally, the Tribunal indicated that the applicant in *Prasad* should have been given "an opportunity to discuss the criticisms against him in a timely manner," as well as an opportunity to defend himself.

36. The Tribunal is satisfied that the procedural requirements have been met in the Applicant's case. The Applicant and Ms. B had at least three separate OPE meetings. Ms. B had a mid-year check-in discussion with the Applicant in January 2013. On 11 July 2013, Ms. B met with the Applicant for the first OPE discussion in which Ms. B shared feedback with the Applicant and noted that her performance was generally good. The Applicant acknowledges that this discussion took place but complains that Ms. B told her about the positive feedback she had received but not the negative feedback. The Applicant also met with Ms. B on 25 September 2013 and 30 September 2013. In both of these meetings, Ms. B discussed the OPE with the Applicant. In the September 25 meeting, according to the Applicant, Ms. B "quickly responded

to [her] questions why [her] OPE ratings were low.” In an email the Applicant sent to Ms. B on 3 October 2013, she thanked Ms. B for the September 30 OPE discussion.

37. In sum, the Tribunal finds that the Applicant had opportunities to discuss her OPE with Ms. B in three OPE meetings, and she had an opportunity to defend herself in the discussions. The Tribunal concludes that there were no procedural irregularities in the 2013 OPE process.

2013 SRI

38. The Applicant argues that her 2013 SRI rating of 3.1 was incompatible with her OPE ratings and feedback. She says that because the Bank defines a rating of 3.1 to mean that the staff member underperforms in comparison with their peers, she should have received a higher rating than 3.1 because Ms. B considered her performance adequate. The Applicant claims that she was told that a 3.1 rating is usually given in cases where the staff member has at least one Partially Successful rating. Because all of the Applicant’s ratings were either Superior or Fully Successful, the Applicant does not believe her SRI rating corresponds with her OPE. The Applicant also says that the management said that she received a 3.1 rating because she “did not have a full work program.” The Applicant contends that the lack of a work program was the management’s responsibility to solve, and that she should not have received a low SRI rating on that basis.

39. The Bank responds that the “SRI rating had an observable and reasonable basis.” The Bank argues that SRI ratings rely on comparative assessments between peers, and the Applicant’s management, using such a comparative assessment, concluded that the Applicant underperformed in comparison to her peers. Therefore, she received a lower SRI rating. The Bank also argues that her SRI rating was consistent with her OPE. While it may be true that a rating of 3.1 may usually correspond to at least one Partially Successful rating on the OPE, this does not always have to be the case, and SRI ratings can be different for different circumstances. The Bank also contends that the lack of a work program was not the cause of the Applicant’s comparatively lower SRI rating. Moreover, “in awarding the SRI rating, management followed

all relevant rules, consulted with HR, and reviewed the SRI first at the department level and then at the VPU level.”

40. In *CD*, Decision No. 483 [2013], para. 42, the Tribunal stated:

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 arbitrarily or procedurally flawed OPE process (*See BY*, Decision No. 471 [2013], para. 31).

41. Moreover, in *Mpoy-Kamulayi (No. 8)*, paras. 38-39, the Tribunal observed that:

In considering whether there is a reasonable basis for the SRI rating, it is instructive to take into account the Bank’s guidelines in this matter. The 2010 SRI Guidelines and Process states that:

The SRI performance categories do not directly correspond to the ratings generated by the Overall Performance Evaluation (OPE) process. When assigning staff to a given performance category, managers should take into account the individual’s performance compared to that of peers at the same level of responsibility and at the same grade. In contrast, OPE ratings reflect achievement of results and behaviors in comparison to criteria commensurate to the level of responsibility expected at the staff member’s grade. Also, the SRI produces a single overall performance rating, whereas the OPE provides a series of ratings on different objectives and behaviors. Thus, while the two evaluations should be broadly consistent, they are not equivalent.

Therefore, under the Bank’s guidelines, an SRI rating is reasonable if it is “broadly consistent” with the OPE and management took “into account the individual’s performance compared to that of peers at the same level of responsibility and at the same grade.”

42. The Tribunal finds that the SRI rating of 3.1 had a reasonable basis because it is “broadly consistent” with the Applicant’s OPE. The rating of 3.1 is considered a satisfactory rating and given the fact that the Applicant had some performance issues, in the discretion of the

management it was determined that a higher SRI was not warranted. More importantly, the SRI rating was based on a comparative assessment, rather than a purely individual assessment. The management considered that the Applicant's performance fell below that of her peers. According to a statement provided to the Tribunal by Ms. B, "[The Applicant] was awarded an SRI of 3.1, which is a satisfactory rating but reflects her shortcomings with respect to her analytical skills... and positions her, as a result, less favorably when compared to her peers." The Applicant received a 3.1 rating as a result of a comparative assessment between her and her peers. Considering all these factors, the Tribunal is satisfied that the Applicant's SRI rating was reasonable.

Mismanagement of career
Exhaustion of internal remedies

43. The Bank contends that the Applicant did not raise her mismanagement of career claim in her Request for Review to PRS. Since her mismanagement of career claim is a new claim before the Tribunal, the Applicant has failed to exhaust all available internal remedies. The Bank also argues that the Applicant has not claimed any exceptional circumstances that would excuse the requirement for her to have raised the claim before PRS.

44. The Applicant responds that she did raise her mismanagement of career claim in the PRS proceeding and in multiple sections of her PRS Request for Review. She points to certain statements she made during the PRS hearing that alleged the Bank's mismanagement of her career. For example, during the PRS hearing, she said: "My management did not diligently follow the Bank's procedures in managing my performance and career development." She also said: "[The behavior of the management] made [a] highly negative impact on my professional reputation, credit and development opportunity within the unit and the Bank. It also create[d] difficulties for me to find other work opportunities inside and outside the Bank in future." The Applicant says that she alleged mismanagement of career in a section of her PRS Request for Review when she said that: "The exclusion substantially... limited my opportunities to obtain more in-depth knowledge and hands-on experience to advance in my career."

45. Under Article II, paragraph 2(i) of the Statute of the Administrative Tribunal, an application before the Tribunal is not admissible, unless “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.” However, a finding by the Tribunal of exceptional circumstances may render an application admissible, even if the applicant did not exhaust internal remedies.

46. The Applicant and the Bank have not agreed to submit the application to the Tribunal. The Applicant has also not alleged any exceptional circumstances. Therefore, the Tribunal must determine whether the Applicant exhausted “all other remedies available within the Bank Group.”

47. In *Rittner*, Decision No. 335 [2005], para. 39, the Tribunal discussed the standard for how specifically or clearly an applicant needs to allege particular claims before the Appeals Committee (replaced by PRS) in order to exhaust internal remedies:

The Tribunal does not consider that the allegations in a Statement of Appeal need to be read in a strict and technical manner. The appropriate standard is not what may be demanded from a lawyer. It is, rather, what a person of average learning and understanding may be expected to comprehend. In *Hristodoulakis*, Decision No. 296 [2003], para. 18, the Tribunal observed that all an applicant is “required to do to file her application [is] a simple expression of grievances (see *Mahmoudi* (No. 3), Decision No. 236 [2000], para. 27).”

48. The Applicant did not specifically allege a mismanagement of career claim in her Request for Review before PRS. The two disputed employment matters that the Applicant listed in her Request for Review were her 2013 OPE and SRI rating. The Tribunal has reviewed the Applicant’s Request for Review and has determined that she did not allege a mismanagement of career claim even under the standard established by *Rittner*. Additionally, the PRS Panel Report did not consider that a mismanagement of career claim was presented before PRS. The Report said that the Applicant sought review of her 2013 OPE and her SRI and corresponding salary increase for that year. The PRS Panel Report did not mention that the Applicant alleged a claim of mismanagement of career, nor did it otherwise discuss that claim. While the Applicant says she attempted to allege a mismanagement claim indirectly, the claim was not alleged specifically

enough even to be recognized as a potential claim by PRS or analyzed in the PRS Panel Report. The Tribunal notes that *Rittner* has allowed more flexibility in the manner in which applicants may allege their claims. However, the Applicant here did not allege her claim even with the specificity that it would take for PRS to recognize it as a distinct claim. Thus, it is difficult to accept the Applicant's claim that she has exhausted internal remedies for her mismanagement of career claim.

Timeliness

49. The Bank also contends that the Applicant's mismanagement of career claim was untimely. Specifically, the Bank says that the Applicant referred to "troubled time" that started in 2009. The Applicant also claimed that she lost "hope for an advanced career... in the last 7 years before my normal retirement age." The Bank argues that because the Applicant has admitted that the claimed mismanagement of her career has been going on for multiple years, she should have filed a complaint about those events in the time limit of 120 days from when they occurred, rather than waiting years to do so.

50. The Applicant responds that all of the examples she gave for her claim of mismanagement of career occurred in the 2013 OPE period, and the claim is timely. The Applicant also argues that she discovered certain examples of mismanagement of career for the first time during the PRS proceeding and could not have used those examples as evidence of her claim in her PRS Request for Review. For example, the Applicant refers to the following comments made during the PRS hearing by the Senior Human Resources Business Partner: "She was not able to do some complex analytical work at E level...That was the key fact into the rating that she got." According to the Applicant, this was not something that she knew before and was in fact inconsistent with what her supervisor had told her.

51. Under Article II, paragraph 2 of the Statute of the Administrative Tribunal, an application before the Tribunal is not admissible unless the applicant has exhausted internal remedies, 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; or
- (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

However, a finding by the Tribunal of exceptional circumstances may render admissible an application that is otherwise filed outside of the time limits.

52. Moreover, under paragraph 7.01 of Staff Rule 9.03 (Peer Review Services), “A staff member who wishes to request peer review must submit a Request for Review with the Peer Review Secretariat within 120 calendar days of receiving notice of the disputed employment matter.” Under paragraph 7.02 of Staff Rule 9.03, “A staff member receives ‘notice’ of a disputed employment matter when he or she receives written notice or ought reasonably to have been aware that the disputed employment matter occurred.”

53. In her Application, the Applicant lists multiple management actions under her mismanagement of career claim that did not take place within the time limit for her to have filed a Request for Review with PRS. For example, she alleges that the management stopped three of her initiatives in her 2013 Results Agreement during her mid-year check-in, which took place on 14 January 2013, which was over a year before the Applicant filed a Request for Review with PRS on 27 February 2014. The Applicant also mentions in her Answer to Respondent’s Preliminary Objection that she had disagreed with the ratings on her OPE “[e]very year since the 2010 OPE.” Her disagreement with previous OPEs before the 2013 OPE cannot be considered by the Tribunal as part of her mismanagement of career claim because her complaints with previous OPEs are years old. Because the Applicant has alleged incidents that took place before the relevant time period for her Request for Review with PRS as part of her mismanagement of career claim, the Tribunal cannot consider those incidents when evaluating this claim. Therefore, it is difficult to accept that the Applicant’s mismanagement of career claim is timely.

54. Given the nature of a mismanagement of career claim, the Tribunal will nevertheless look into the events that took place during the 2013 review period to examine whether any actions of the management amounted to mismanagement of career. For this claim of the Applicant, the Tribunal notes that her contentions are as follows. She argues that the “management did not effectively adjust [her] assignments to adapt to the unit and Bank’s business changes, despite constant expression of [her] aspiration and relevant expertise.” She also alleges that the management never provided guidance and feedback on the work that she did with the Action Plan Database. Furthermore, the Applicant’s tasks were reduced from five to two in the 2013 Results Agreement, and she did not have a full work program, despite repeatedly requesting additional assignments from her management. When the Applicant sought out other assignments on her own, she alleges she was blocked from doing so by the management.

55. The Bank responds that the Applicant’s management made “diligent attempts” to find other assignments for her. The management was unable to find additional work for the Applicant, especially because of the view of the Applicant’s co-workers that it took time to supervise her. Additionally, the management assisted her in continuing to work for the Bank by exposing her to other opportunities in the Bank, such as a Development Assignment position with INT and an ISRP position. Thus, the Bank maintains that the management managed her career “in a fair and reasonable manner.”

56. In *Chhabra*, Decision No. 139 [1994], para. 57, the Tribunal stated:

[A]lthough 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.

The Tribunal recognized in *Chhabra*, para. 55, that the discrepancy between the Applicant’s assignment to a position with which her skills did not match (“mismatch”) and the Bank’s subsequent performance evaluations of the Applicant, in which her management said she

did not perform the work expected at the level to which she was assigned, were part of the mismanagement of her career.

57. In *Taderera-Marimbe*, Decision No. 454 [2011], paras. 39-42, the Tribunal held that there was no mismanagement but cited to the excerpt in *Chhabra* where the Tribunal recognized that there was mismanagement of career in that case. In *Taderera-Marimbe*, para. 41, the Tribunal did not find mismanagement of career because “[t]he Bank has provided the Applicant with many opportunities to broaden her experience and develop her qualifications in order to put her in better stead to secure a more senior position.”

58. Based on the record, there does not appear to be a mismatch between the Applicant’s skills and her position as an Operations Analyst at the GE Level. While her supervisors did not always consider her work to meet the level of analytical content they expected, the Applicant herself contends that she was capable of performing work at the GE Level, and that she did not conduct analytical work because she was told by her management not to. In addition, the feedback she received on her 2013 OPE indicated that her work was largely considered adequate and satisfactory. Thus, the Applicant performed her tasks at a level that did not indicate a mismatch.

59. Similar to the situation in *Taderera-Marimbe*, above, in the present case, the management tried to find other opportunities for the Applicant and succeeded when allowing her to take the Development Assignment and her ISRP position, thus prolonging the Applicant’s career at the Bank. In situations where the management was not able to provide her with opportunities, this was influenced by the Applicant’s own performance or external factors that the management could not control. Ms. B attempted to find other assignments or placements for the Applicant but was unable to do so, at least partly because of the opinion among other teams that the Applicant required a great deal of supervision. Furthermore, external factors, such as restructuring within the Bank, hindered the ability of the management to find more work for the Applicant. However, despite these difficulties, the management allowed her to take a Development Assignment, as well as an ISRP position. Therefore, the Bank provided the Applicant with the types of opportunities she desired for her career development.

60. The record before the Tribunal does not suggest that there was a mismatch between the Applicant's skills and her position at the GE Level. In addition, the Bank provided her with the opportunities and training she needed for her career advancement. In situations where the Bank did not succeed in providing her with the opportunities she wanted, this was due either to her performance or external factors, neither of which gave rise to the Bank's responsibility. Based on the Applicant's fair performance evaluation during the 2013 OPE period, as well as the fact that the Bank provided her with opportunities for career advancement, the Tribunal finds that the Bank acted appropriately. Her claim of mismanagement of career is rejected.

DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 13 November 2015