



World Bank Administrative Tribunal

2015

Decision No. 524

**DB,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**DB,
Applicant**

v.

**International Finance Corporation,
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 10 April 2015. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. 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 the 25 October 2013 decision by his Director to reassign him to a non-managerial position. In addition, the Applicant challenges the subsequent decision by the Vice President and General Counsel of the IFC to make payment of compensation for procedural flaws associated with the reassignment decision contingent upon the Applicant signing a waiver of all claims in this matter.

FACTUAL BACKGROUND

4. The Applicant joined the IFC on 6 October 1998. In November 2002, the Applicant was promoted to a managerial position as Manager, Controllers and Budgeting Department, in the Internal Controls and Special Project Division. In 2008, he became Manager of Business Risk, Operational Risk Division (CPMOR).

5. On 1 June 2011, Ms. X became the Applicant's Director in what was later renamed as Portfolio and Operational Risk (CPM – in the present judgment, "CPM" and "CPMOR" will be used interchangeably). According to the Applicant, their relationship was sometimes difficult, as,

again according to the Applicant, Ms. X “had a tendency to make decisions concerning staff and assignments in his division without consultation.”

6. In September 2011, the Applicant and Ms. X attended a meeting with his previous supervisor, Mr. Z, in which the latter told the Applicant that his team “needs technical/operational horsepower added to it.”

7. On 24 June 2013, a meeting took place between Ms. X, the Applicant, and the Business Continuity (BCM or CPMBC) team. The parties dispute the substance of this meeting. According to Ms. X, at this meeting the Applicant and the BCM team specifically asked for more support. The Applicant maintains that the meeting did not include any discussion at all about BCM needing additional resources.

8. On 9 July 2013, the Applicant held a day-long strategy meeting for CPMOR. In preparation for this meeting, a survey was conducted in each IFC department. However, with the end of the fiscal year on 30 June, it had not been possible to launch the survey earlier than a couple of days before 9 July. The results were collated on 8 July. According to the Applicant, Ms. X was critical of the division’s work when she spoke at the meeting on 9 July. When she spoke to the Applicant afterwards, she demanded to know when he had received the survey results and why they had not been shared with her. The Applicant forwarded the detailed results of the survey to Ms. X three days later. She did not respond.

9. In June 2013, Ms. X had approached the Applicant to inform him that she was planning to use one of the staff members in his division on a new portfolio initiative that she would lead herself. In July, the plan expanded and now included another of the Applicant’s staff. The Applicant expressed “grave concerns” with these developments, and worried about how to convey these changes to his team. He drafted a possible announcement for his team, which he shared with Ms. X on 15 July. The same day, Ms. X called a meeting with the Applicant and two other CPM leadership colleagues. At the meeting, according to the Applicant, Ms. X derided his draft, told him he needed more coaching on his management skills, and asserted that “all your

team members are trying to leave anyway.” The Applicant was subsequently excluded from the new portfolio initiative, and felt “completely undermined – and humiliated.”

10. On 20 July 2013, the Applicant received his annual Managerial 360° Assessment Report for Fiscal Year (FY) 2013. This combined the assessment of his supervisor, Ms. X, with ratings and feedback on the Applicant’s managerial competencies from nine of his direct reports, nine of his clients, nine of his peers, and seven others. The Applicant notes that none of the direct reports gave any indication that they were dissatisfied with his management and that, “on the contrary, their comments were – without exception – very positive indeed.” Ms. X gave the Applicant 3/5 rankings for each managerial competency. When asked to identify the areas for development where the Applicant could further enhance his effectiveness, she stated:

Further development of leadership skills, further development of the understanding of the needs of investment business in IFC.

11. Given what he perceived as “extremely negative interactions” with Ms. X regarding what had happened with the survey and with the portfolio initiative (above), the Applicant requested a meeting with her. This took place on 1 August 2013. The Applicant told Ms. X that he did not consider her conduct in the meetings of 9 and 15 July to be acceptable. For her part, she stated that she had some concerns about his management skills: based on “complaints” she claimed to have heard from “all of your team” about the Applicant having favorites, being slow to make decisions, and not being open to their ideas. When the Applicant pointed out that his recent 360° feedback was to the contrary, Ms. X stated that this was an unreliable source of feedback. However, according to the Applicant, Ms. X “appeared to apologize” for her behavior at the 9 July meeting, and during August and September 2013 their relationship “appeared to progress on a more even keel.”

12. In early September 2013, work programs and assignments for FY2014 were developed for all the units within CPM.

13. On 9 September 2013, Ms. X signed the Applicant’s Evaluation Report (also referred to as “PEP”), covering the period from 1 July 2012 to 30 June 2013. In her assessment, Ms. X

stated that there had been “good delivery of the base ORM program,” that this program “has now got a fair bit of traction across IFC, and the difficult part is to figure out what can be done next, in an environment of an unregulated financial institution. [The Applicant] and his team will focus more on it in the coming fiscal year.” Under “Areas of Improvement,” Ms. X listed “further development of leadership and managerial skills,” while in terms of the Applicant’s professional development she called for “further networking across investment operations for more impact within the ORM program.” The Reviewing Official, Ms. L, stated as follows:

[The Applicant] has done a solid job this year in a function which, in my view, is under valued by IFC. He has been in this role for many years now and is ready to take on a new challenge when the opportunity comes up. May want to consider switching back to the technical stream.

14. On 12 September 2013, Ms. X met with the Applicant to discuss this performance evaluation.

15. On 7 October 2013, the Applicant participated in the presentation of results of a survey on career development to Vice Presidential Unit (VPU) leadership. The Applicant had volunteered to participate in this activity at a leadership retreat in April that year. The Vice President had requested that Directors should send reminders to staff to respond to the survey. According to the Applicant, Ms. X had decided not to do so. As a result, the response rate from Ms. X’s department was extremely low compared to the others.

THE APPLICANT’S REASSIGNMENT

16. On 11 October 2013, at a regularly scheduled meeting, Ms. X informed the Applicant that she was considering reassigning him from his managerial position. She did not mention any Staff Rules in this respect. She also informed him that if she had to make any redundancy decisions, his division would be chosen first for cuts. She mentioned the Applicant’s presentation to the VPU leadership four days earlier and, according to the Applicant, seemed “extremely displeased” with his involvement in conducting the staff survey. Ms. X also told the Applicant that he had not been selected for a position to which he had applied (the Applicant states that at the time he was unaware of his non-selection), that he was “clearly unhappy,” and that although

he was strong technically, he was a poor manager. Further, Ms. X told the Applicant that his team members had informed her that they did not trust him.

17. The Applicant states that Ms. X made no mention at this meeting of any change in the department's needs, or the need for a different skill set. According to the Applicant, he had not been given any prior warning that anything unusual would be discussed at this meeting; he had received "no indication of this development," which had not been mentioned in either his 2013 PEP or the PEP discussion one month earlier.

18. At the end of the meeting on 11 October 2013, Ms. X told the Applicant to reflect on what she had said. The Applicant states that he therefore "assumed he would have the opportunity to discuss the matter further at a later date."

19. The following Monday, 14 October, was a holiday, and Ms. X was travelling between 17 and 24 October. The Applicant and Ms. X had no further communication regarding a potential reassignment until the next regularly scheduled Friday meeting on 25 October.

20. On 16 October, the Applicant met Ms. C, the Ombudsman, to discuss the proposed reassignment. He states that he explained to the Ombudsman that the reasons for the proposal were unclear to him, and concluded from this conversation with the Ombudsman "that before considering what action I might take, I needed to seek from [Ms. X] a proper understanding of the reasons."

21. The Applicant and Ms. X met again on 25 October, the day Ms. X returned to the office. A Human Resources Officer, Ms. M, was also present at the meeting, a fact which surprised the Applicant, who had not been informed that she would be attending.

22. At the meeting, Ms. X informed the Applicant that she was reassigning him, effective immediately, to a non-management position in the Business Continuity (BCM) division. She said that she would announce this to the Applicant's team at a special meeting at 9:00am the following Monday. Ms. X stated – according to the Applicant, for the first time – that the

department's needs had changed, and that she intended to hire a new manager with investment operations experience. The Applicant replied that the putative business rationale for the decision was not supported by any apparent business-related change that he had been made aware of, and had not been presented to him at their PEP meeting. He complained that he was being moved to a "non job," that he had been a manager for 12 years and was being given no courtesy of a discussion on the matter, and that Ms. X had previously given him the impression that there were options. He described the decision as "a punishment for [an] unknown crime." He asked for more time so that the rationale for the decision could be clarified and he could explain the decision to his colleagues, but Ms. X refused. On the Applicant's account, he requested further information on his new position but none was forthcoming, while neither Ms. X nor Ms. M explained which Staff Rule was being applied.

23. According to Ms. X's note of the meeting, the Applicant complained that he was being moved to a "non job," that there had been no signal of this in his PEP, that the reassignment was incompatible with his record, and expressed concern for the impact this would have on his team. Ms. X's note also records that Ms. M explained to the Applicant that this was "not a demotion" but rather a "stream change."

24. Immediately after this meeting, the Applicant met with the HR Director, Ms. O. He "expressed amazement" at the way the decision was being implemented, requested a delay so that he could discuss options for moving forward and how to handle the changes with his staff, and expressed concern that no new role had been defined for him. They discussed various possibilities, including the creation of a role for him in business continuity at the World Bank Group (WBG) level. They also "discussed one solution that would allow [his] reassignment to be presented in the context of the wider change in the World Bank Group," but agreed that "finding such a solution would require time and discussion with other parties." Ms. O agreed to discuss the situation with Ms. X and ask for more time for discussion.

25. Later that afternoon, Ms. O called the Applicant and informed him that she had spoken with Ms. X, and that the latter refused to delay announcing the reassignment but "agreed to

adjust the rationale for [the Applicant's] reassignment so that it could be presented in the broader institutional context.”

26. The following day, 26 October, the Applicant emailed the Ombudsman, copying Ms. O and the Human Resources Vice President. He relayed his version of events and his concerns regarding the reassignment decision, including his view “that the true rationale is being concealed behind a fabricated business-related explanation.” He stated his opinion that Ms. X’s “apparent intention to modify her rationale” for the reassignment “amply demonstrates, even on its own, that her decision is not based on any genuine business rationale,” and that the “hasty implementation” of the decision was not consistent with the rationale given.

27. The same day, the Applicant spoke to and sent an email to his Vice President, Ms. L, asking her to speak to Ms. X and seek to defer the meeting with his unit so that he could better understand how the change would be presented.

28. Following a conversation with Ms. L, Ms. X sent the Applicant an email on Sunday 27 October, in which she proposed meeting early the following morning at 8:15am, ahead of the unit meeting scheduled for 9:00am. In two emails sent to Ms. X the same evening, the Applicant agreed to meet but then sought clarification as to the purpose and expected outcome of the meeting.

29. The Applicant sent another email to Ms. X at 6:30am the following morning (28 October), expressing his disappointment that she had not replied, and inquiring as to whether their meeting was therefore cancelled. He sent a further email one hour later, again expressing disappointment that she had not replied, and listing a number of questions which, he said, “were left unanswered in our previous conversations.” His questions included: (i) whether his replacement as manager was caused by the need to place him in a new role, or whether the latter necessitated the former; (ii) whether the change in his role indicated a change in the department’s objectives; (iii) if so, what these changes were and what had happened in the previous two weeks to precipitate these changes; (iv) if there were no such changes, how had it been determined that additional resources were required for BCM (the unit to which he was to be reassigned); (v) what

his new job title, objectives and reporting lines would be; and (vi) why he was given no indication of this change during the PEP discussion. He also asked why, if any of these questions could not be answered at present, the change was being announced at that time. Twenty minutes later, Ms. X emailed to say that she had received the Applicant's emails, and confirmed that their meeting was still on.

30. According to the Applicant, by the time they met on Monday morning "there was no time to receive any answers at all to his numerous, legitimate, questions." The 9:00am meeting with the Applicant's unit went ahead, and Ms. X informed the unit of the reassignment decision, and also that Ms. Q, a GG level staff member who until then had reported to the Applicant, would become the Acting Manager. Ms. X's explanation to the group was that the Applicant's reassignment to BCM was necessary because of the need for greater collaboration at the WBG level.

31. The Applicant was officially reassigned the following day, 29 October 2013. He was given the title of Principal Risk Officer, Level GH, in the CPMBC unit. He states that Ms. X gave him no information on his new duties, beyond telling him that he would continue to work on business continuity issues. He was also told that the Level GG Program Manager in the new unit, Mr. B, would maintain his position.

32. At a BCM unit meeting on 20 November 2013, it was noted that reporting lines had yet to be clarified. On 9 December, in response to a query by the Applicant, Ms. Q confirmed that each member of the business continuity team would be reporting to her until a new manager had been appointed to replace the Applicant.

33. On 6 December 2013, the Applicant's former position - Manager, Operational Risk, CPM - was advertised. According to Ms. X, management later cancelled the vacancy announcement because they had not received a "solid pool of short-listed candidates." The position was never filled. Ms. Q continued in her acting position until December 2014, when she left the Bank Group.

34. On 16 December 2013, Mr. B left his position in the BCM unit. The Applicant assumed some of his responsibilities, though his title was not changed to Program Manager and nor was he given Mr. B's supervisory or budget management responsibilities. The Applicant states that until he ended his service with the WBG on 30 March 2015, he continued to perform some of the Level GG duties which were formerly assigned to Mr. B.

360° ASSESSMENT REPORT FOR 2014

35. In preparation of this Assessment Report, the Applicant was asked by Ms. Q to provide names of feedback providers. He put forward 14 names. Ms. Q accepted these without change. Subsequently, the Applicant learned that new names had been added to this list, without his knowledge. He accessed the system and changed the names back to the original list. However, according to the Applicant, Ms. X then went back into the system to add a further 11 names, "including individuals who had very limited or negligible interaction" with the Applicant. The Assessment Report was finalized on 15 June 2014.

MEDIATION, PEER REVIEW SERVICES AND APPLICATION TO THE TRIBUNAL

36. The parties entered mediation on 28 January 2014. Mediation was closed on 1 August 2014.

37. On 6 August 2014, the Applicant filed his Request for Review with Peer Review Services (PRS). Before PRS, he contended, first, that the reassignment decision and related actions were arbitrary, impulsive, unplanned and triggered by Ms. X's perception that he was "disloyal." Second, he argued that management had failed to follow Staff Rule 5.01, paragraph 2.05 on reassignment within the same department, and acted very quickly to execute the decision when there was no urgency to do so. Third, he argued that the reassignment decision was not made in good faith.

38. In her response of 19 September 2014, Ms. X contended that the reassignment decision was made on an observable and reasonable basis, that she followed the relevant Staff Rule and applicable procedures as she consulted with management, HR, and the Applicant himself, and that she had acted in good faith.

39. On 3 December 2014, PRS issued its Report. It found, first, that Ms. X had exercised her discretion appropriately and provided a reasonable and observable basis for the reassignment decision. Second, it determined that there was no evidence that she had acted in bad faith. Third, it found, however, that Ms. X had already made the reassignment decision before providing the Applicant with the consultation required under Staff Rule 5.01, paragraph 2.05, and had acted with excessive haste and urgency. It recommended that for this failure to follow applicable procedures the IFC should compensate the Applicant in the amount of two months' salary.

40. On 19 December 2014, the Vice President and General Counsel (VPGC) of the IFC transmitted the PRS Report to the Applicant, informing the latter that he had accepted the Panel's recommendation and that the compensation would be paid if the Applicant signed an attached acceptance form, under which the Applicant would "agree that this is a full and final settlement of my claims and that I hereby waive any further claim in any forum, including the Peer Review Services and the Administrative Tribunal, relating to this matter arising on or before the date of this acceptance." The Applicant declined to accept this condition.

41. On 30 March 2015, the Applicant's employment with the WBG ended and he began a new job at the International Monetary Fund (IMF).

42. On 10 April 2015, the Applicant filed his Application with the Tribunal. He contests six decisions of the IFC. First, the October 2013 decision to reassign him and remove him from management. Second, the downgrading of his job responsibilities from Level GH to Level GG or below. Third, his reassignment to a non-existent position. Fourth, obliging him (a level GH staff member) to report to a level GG staff member who had previously been supervised by him. Fifth, the manipulation by Ms. X of feedback providers for his FY2014 Corporate 360° Assessment Report. Sixth, the refusal to provide the award recommended by PRS unless the Applicant waived his right of appeal to the Tribunal.

43. The Applicant requests removal from his personnel file of all records of his reassignment, all reference to the gap in his service as a manager, and any documents which discuss these matters. He also requests removal of all records of his FY2014 Corporate 360° Assessment

Report. In addition, he requests compensation for the “substantial and lasting” negative impact on his career and reputation, in an amount to be determined by the Tribunal but not less than two years’ salary, as well as such additional amount as the Tribunal deems just for the stress and effect which his treatment by the IFC had on the Applicant’s health. He also requests attorney’s fees in the amount of \$17,741.05.

44. On 28 August 2015, the World Bank Staff Association requested permission to act as *amicus curiae* and submitted a brief to the Tribunal. This request was approved on 2 September 2015.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

THE APPLICANT’S MAIN CONTENTIONS

Reassignment decision and downgrading of responsibilities

45. The Applicant contends that at the time Ms. X “did not even attempt” to provide a justification for the reassignment decision, and that any justifications which the IFC now puts forward “were developed after the fact.” He claims that there were no significant changes in direction or work program (as might justify the reassignment decision) flagged in any of the various departmental documents that had been finalized in the weeks and months preceding the reassignment decision.

46. The Applicant submits that the *ad hoc*, unplanned nature of the reassignment decision is further illustrated by the budgetary issues which that decision created. The BCM budget only allowed for two staff members: according to the Applicant, therefore, “not only did BCM not have an open position for [him], it did not have the budget either.”

47. Regarding Ms. X’s claim to have had “multiple consultations” with HR and the responsible VP ahead of the reassignment decision, the Applicant submits that “if this were actually true, then it was unconscionable – and frankly incredible – that she did not discuss the matter with [the Applicant] during the PEP discussion just one month earlier.”

48. Regarding his subsequent role, the Applicant states that by December 2013 he was performing part of the work of a Level GG staff member, had no management responsibilities, and reported to a Level GG acting manager. He argues that, though he maintained his grade level and salary, “in the eyes of his colleagues he had obviously been demoted” as he now reported to a staff member at a lower grade, and had been in effect “transferred to a non-position without a proper work program.” He no longer had any of the responsibilities of a Level GH staff member; “and his humiliating fall came without any warning, was rushed through, and was very, very public.” He submits that Ms. X’s treatment of him was “extraordinary, vindictive and capricious.”

Manipulation of performance assessment

49. The Applicant contends that because of Ms. X’s interference in the process for selecting feedback providers, the whole process was “abusive, unfair, and non-transparent.” He states that he had “either very limited or negligible” interaction with the 11 additional feedback providers selected by Ms. X, and that Ms. X was “attempting to obtain *post hoc* justification for her precipitous decision to reassign him.”

Waiver

50. The Applicant submits that the approach adopted by the VPGC severely interferes with a basic staff right by denying remedies for wrongdoing if staff members decide to appeal to the Tribunal.

51. On the Applicant’s account, the relief recommended by PRS and accepted by the VPGC did not constitute complete compensation for the wrongs suffered. The Applicant therefore decided to proceed to the Tribunal, and as a consequence he has been penalized in that the IFC has not awarded him the relief which PRS recommended and the VPGC accepted.

THE IFC’S MAIN CONTENTIONS

Reassignment decision and downgrading of responsibilities

52. The IFC contends that its business needs changed significantly since the Applicant became a manager in 2002, and that these corporate changes affected the Applicant’s position in

2013. When the IFC's business needs changed, and business units were reshuffled, the Applicant's unit was reorganized by his Director in order to better meet the IFC's priorities.

53. According to the IFC, by summer 2013 Ms. X felt that the Applicant's division still lacked sufficient understanding and leadership with investment operations experience, but the Applicant was very reluctant to accept the need to change direction. Ms. X therefore decided that the Applicant would not be able to implement the new direction of his division, "due in part because of his own lack of direct investment experience."

54. The IFC submits that the reassignment decision was made in a reasonable manner. The Applicant's Director "provided him notice that she was considering the reassignment, and explained the business drivers behind the decision," and also allowed the Applicant "a reasonable opportunity to comment on the decision." On the IFC's account, the Applicant did not take advantage of this opportunity, but nonetheless he was consulted before the decision was made.

55. The IFC argues that the Applicant has suffered no tangible harm: "he was not terminated, and his salary, grade, and benefits were not changed as a result of the reassignment." While the Applicant claims that his career was damaged beyond repair by the reassignment, "he appears to have repaired his career by accepting a position at the International Monetary Fund with a higher salary than that which he enjoyed at IFC."

Waiver

56. According to the IFC, the Applicant mischaracterizes the PRS system when he claims that he was "awarded" and "granted" relief by the VPGC, and that this relief was then "taken away" when he decided to seek more compensation before the Tribunal. The IFC submits that the PRS process is not an "adjudication," but an attempt to resolve a conflict without an adjudication; "PRS is without authority to impose any relief at all." PRS makes a recommendation to the decision-maker, who may still accept or reject it. Even if the decision-maker makes a proposal to resolve the case, the Applicant must accept that proposal before

anything is “awarded” to him: according to the IFC, “there is either an agreement, or the matter is simply not resolved.”

57. The IFC further contends that the Applicant seeks to “recover twice for the same alleged harm – once before the PRS, and once more, for higher amounts, at the Tribunal level.”

THE STAFF ASSOCIATION’S MAIN CONTENTIONS

Reassignment decision

58. The Staff Association (SA) supports the Applicant’s contention that he was reassigned away from his managerial role in a manner that was unreasonable, arbitrary, and an abuse of managerial discretion.

59. The SA notes the IFC’s position that the Applicant was to be reassigned “to a position that was more in line with the Bank’s business needs, while his previous position would be filled by someone whose skills more closely met the needs of the position.” According to the SA, neither of these elements was present when the decision was made, the change contained none of the basic predicates of a true reassignment, while the decision was made with “a sense of urgency and lack of consultation” which was “at best perplexing” in the circumstances.

60. The SA argues that while business needs can change, it is “incumbent upon management to demonstrate how a specific employment decision serves those changed needs,” and that in this case the IFC has “utterly failed” to do so.

Waiver

61. The SA supports the Applicant’s contention that his right to unimpeded access to the Tribunal was violated. The SA expresses the view that nothing in the Staff Rules requires a staff member to forgo his or her rights to go before the Tribunal in order to accept a PRS award. The SA also argues that, contrary to the IFC’s contention regarding possible double recovery, the Tribunal is fully capable of taking a PRS award into account in setting its own remedy.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

CLAIM 1: THE REASSIGNMENT DECISION

Statutory framework and jurisprudence

62. Principle 5.1 of the Principles of Staff Employment recognizes that “the changing demands on the Organizations require that they adapt to meet evolving needs and circumstances,” and that “to enable the Organizations to respond effectively in such circumstances, and at the same time in a manner considerate of the needs and aspirations of their staff,” the Organizations “shall organize, assign and transfer staff to meet the needs of The World Bank or the IFC with due consideration for the qualifications and wishes of the staff members concerned...”

63. Staff Rule 5.01, paragraph 1.03(a) defines reassignment as “any transfer of a staff member from one position to another at the same grade...”

64. Staff Rule 5.01, paragraph 2.05, on Reassignment within the Same Department, provides as follows:

A department director, or the senior manager responsible for the position, may reassign a staff member to a non-managerial position within the department or unit to which the staff member is currently assigned after consultation with the staff member and the Manager, Human Resources Team, or a Designated Official.

65. A reassignment decision is a management decision subject to limited review by the Tribunal (*BY*, Decision No. 471 [2013], para. 46). In *Eindhoven*, Decision No. 23 [1985], para. 47, the Tribunal held that when “Bank interests dictate reassignment elsewhere, those interests will prevail.” In *Sweeney*, Decision No. 239 [2001], para. 61, the Tribunal observed that staff members “may occasionally be required to accept reassignments which they do not find congenial.” However, reassignment decisions “must be set aside if they constitute an abuse of discretion, were arbitrary, capricious, and discriminatory or were influenced by a lack of due process” (*BY*, para. 46, citing *Mpoy-Kamulayi (No. 2)*, Decision No. 457 [2011], para. 44; *Sengamalay*, Decision No. 254 [2001], para. 29; *Sweeney*, para. 49). In *Sengamalay*, the Tribunal

affirmed that the power to reassign “must be exercised through appropriate procedures and with proper motive” (para. 32).

The substantive basis for the decision

66. The IFC submits two business rationales for the reassignment decision. First and foremost, the need to bring investment operations experience and knowledge into the Applicant’s old unit. Second, the need to answer the request for greater support in his new unit.

67. In her response to the Applicant’s PRS Request for Review, Ms. X stated that the reassignment decision was based on the evolving business needs of the IFC. She explained that:

The Operational Risk division did not have a single staff member directly familiar with investment operations when I started managing it, in June 2011. For a couple of years, [the Applicant] and I have discussed this concern and worked together to try to design alternative solutions to develop direct investment experience in the team – by sending staff on development assignments, by bringing staff to the division from investment operations, by bringing in consultants, to rectify the lack of investment operations experience by division staff and division manager.

68. On Ms. X’s account, the first such conversation occurred on 31 March 2011, during her first meeting with the Applicant, at which the Applicant stated that “we do not have a clear support for our work from above or from peers.” The second such meeting, according to Ms. X, took place on 1 September 2011, during the performance review of the Applicant, carried out by his then supervisor, Mr. Z, and observed by Ms. X. Here, according to Ms. X, Mr. Z emphasized that “the team needs technical/operational horsepower added to it, through consultants and development assignments.” The Tribunal notes that on Ms. X’s account of these conversations, the prospect of reassignments within the department, of the Applicant or indeed other staff members, was not raised.

69. Ms. X continues that “all developmental assignments, staff assignments and others were amply discussed with [the Applicant] during our weekly meetings over the period of preceding years,” and that the Applicant “was therefore well aware of the change in IFC’s focus and the importance that the investment operations experience had in the new corporate environment.” Be that as it may, there is nothing in the record to suggest that the possibility of reassigning the

Applicant himself so as to address these business needs was discussed with the Applicant prior to October 2013. Further, as will be discussed below, there is minimal evidence that the Applicant's prospective reassignment was discussed by Ms. X with anyone before the summer of that year.

70. Ms. X submitted before PRS that "the events leading to [the reassignment decision] were discussed in great detail over the period of the preceding two years." She states that she and the Applicant had "many conversations on the topic" of strengthening the investment operations capacity and knowledge within the department, but that the Applicant's "lack of understanding" of investment operations and "inability to understand where the Corporation was heading," "made [her] understand that he cannot deliver what is expected of the Operational Risk division in the new corporate environment." Again, and despite the fact (also noted by Ms. L before PRS) that Ms. X regularly takes notes of her many meetings in chronological files, as Aide-Memoires, the IFC has produced no evidence other than the statements of Ms. X before PRS that the prospect of the Applicant being reassigned was discussed at any of the "many conversations" prior to 11 October 2013.

71. The IFC notes that the Applicant's PEP for FY2013 included the following comment from the Applicant's Vice President at the time, Ms. L:

[The Applicant] has done a solid job this year in a function which, in my view, is under valued by IFC. He has been in this role for many years now and is ready to take on a new challenge when the opportunity comes up. May want to consider switching back to the technical stream.

72. This comment was made on 10 September 2013. According to the IFC, this comment was "representative of the discussions [the] Applicant and his Director were consistently having concerning the direction of his unit." While this comment might be interpreted as an implied criticism of the Applicant's managerial competencies, it provides no support to the IFC's submission that the reassignment decision was planned and responded to a long-identified business need.

73. A number of considerations put the IFC's submission in this respect into question. The first is the lack of documentary support the IFC provides for the putative business rationale. No

significant changes in direction or work program (as might justify a sudden reassignment decision) were flagged in any of the various departmental documents that had been finalized in the weeks and months preceding the reassignment decision. According to the Applicant, the FY2014 objectives and work program for his division were aligned with Ms. X's own objectives for that period, and constituted "an incremental progression from prior years' work programs." He emphasizes that there was no reference to any significant change in work program – or, still less, to the prospect of his own reassignment resulting from such change – flagged in his own PEP (finalized 9 September 2013) or his 360° Assessment Report (finalized 20 July 2013). The IFC has not disputed these assertions. Nor has the IFC given a plausible explanation as to why the putative business rationale said to justify the reassignment decision – that the (previously identified) need for additional investment operation experience could only be brought to the unit by reassigning the Applicant out of it – would not have been alluded to in any of these documents. Before PRS, Ms. X stated that the need to reassign the Applicant became "very evident" to her "sometime in early summer" 2013, yet it was not flagged in any of the staff-specific or departmental documents, or indeed in any email communications or written notes of oral discussions, until the meeting with the Applicant on 11 October 2013.

74. While management has broad discretion when making reassignment decisions, the paucity of documentary support for the IFC's contentions in this case contrasts sharply with the situation in *Mpoy-Kamulayi (No. 2)* where the Tribunal had before it eighteen months of communications (involving the applicant, his Country Director, the Bank's Chief Counsel and the responsible Vice-President) regarding the issues which finally provoked the reassignment decision (paras. 49-61). In light of that record, the Tribunal held the reassignment decision to have been a reasonable exercise of discretion (para. 63).

75. In *Prasad*, Decision No. 338 [2005], one of the applicant's claims related to the decision to recall him early from the Country Manager position which he had held in Lebanon. The Tribunal noted that "neither was the [recall] decision documented or explained in a memorandum, nor were any of [the applicant's] managers' negative perceptions conveyed to him in a detailed manner" (para. 40). The Tribunal concluded that while the decision to reassign the applicant had been within the Bank's discretion, "the transparency and openness that should

always characterize such a step were lacking,” and this led “inevitably” to the finding of an abuse of discretion in respect of the recall decision (para. 50).

76. A second consideration which bears on the IFC’s contention is the inconsistency in the justifications given for the reassignment decision. At the 11 October 2013 meeting, Ms. X informed the Applicant that she was considering reassigning him from his manager position. She mentioned the Applicant’s presentation to the VPU leadership four days earlier and, according to the Applicant, seemed “extremely displeased” with his involvement in conducting the staff survey. Ms. X also told the Applicant that he was “clearly unhappy,” and that although he was strong technically, he was a poor manager. Further, Ms. X told the Applicant that his team members had informed her that they did not trust him. The Applicant states (and the IFC does not dispute) that Ms. X made no mention at this 11 October meeting of any change in the department’s needs, or of the need for a different skill set. At the meeting on 25 October, on the other hand, Ms. X explained that the rationale for the reassignment was that the department’s needs had changed, and that she intended to hire a new manager with investment operations experience. When announcing the decision to the unit on 28 October, Ms. X stated that the reassignment was necessary because of the need for greater collaboration at the WBG level. In her submissions before PRS, Ms. X focused solely on the business needs of the IFC, did not rely on any of the factors she had cited on 11 October, and indeed stated repeatedly that the Applicant’s “performance was not a factor in the decision making process of his reassignment.”

77. This inconsistency is further illustrated by exchanges between the Applicant and Ms. O, the HR Director. On 25 October 2013, Ms. O called the Applicant to inform him of her conversation with Ms. X, specifically, that the latter had refused to delay the announcement of the reassignment, but had “agreed to adjust the rationale for [the Applicant’s] reassignment so that it could be presented in the broader institutional context.”

78. These two assertions - that in the 11 October meeting there had been no mention of changing business needs, and that in her subsequent discussion with Ms. O, Ms. X had agreed to “adjust the rationale” for the reassignment – had been made by the Applicant in his Request for

Review before PRS. Neither assertion was disputed by Ms. X in her response before PRS, or by the IFC in its submissions before the Tribunal.

79. A third consideration is the rushed nature of the decision-making process and the rapidity with which the reassignment decision was implemented: on 25 October the Applicant was told that the decision was final; on 28 October his unit was informed of the change; and on 29 October his reassignment was effective. A comparison can be made here with the reassignment of Ms. X herself the following year: her reassignment to a new department was confirmed on 1 July 2014, to be effective three months later on 1 October of that year.

80. The issue of swift reassignment decisions was considered by the Tribunal in *Prasad*, para. 60, as follows:

There may be cases in which a reassignment has to be effected promptly in the best interests of the institution, but even then the matter has to be handled with respect for due process rights, and in the open and transparent manner that has to govern professional relations [...].

81. In the present case, as discussed further below, there was minimal transparency in the way the reassignment decision was reached and then implemented. Moreover, the hasty manner in which the decision was taken and implemented is all the more notable given that by October 2013 the Applicant had been a manager responsible for the IFC's business continuity program for 11 years (under five different directors and three different VPs), and had for five years occupied the specific managerial position from which he was now reassigned.

82. A fourth consideration which bears on the IFC's contention that the reassignment was motivated by business needs, relates to the position in BCM to which the Applicant was reassigned. As noted above, in addition to the business needs of the unit from which the Applicant was moved, the IFC also cites the business needs of the unit to which he moved.

83. The Applicant and Ms. X are in disagreement regarding a meeting which took place on 24 June 2013. According to Ms. X in her submissions before PRS, at this meeting the Applicant and the BCM team specifically asked for more support, in the context of a new Risk Vice-

President being appointed and consolidating business continuity under her direct control. The Applicant denies this, pointing out that the appointment of the new Risk Vice-President did not take place until February 2014. The Applicant states that the 24 June 2013 meeting did not include any discussion at all about BCM needing additional resources, and was not even attended by the BCM Program Manager, Mr. B. The Applicant submits that Ms. X has mischaracterized the substance of this meeting in order to “defend herself against the obvious charge that [the Applicant’s] reassignment to BCM was ad hoc, arbitrary, and unplanned.” The Applicant notes that though Ms. X referred to an “Aide-Memoire” in her comments on this meeting before PRS, no such document has ever been produced. The Tribunal observes that the Applicant has produced the minutes of the 24 June 2013 meeting, which appear to support his account. Moreover, his account of the content of the meeting, and who attended, was corroborated by the oral evidence of Ms. E (the other BCM staff member apart from Mr. B) before PRS. Before the Tribunal, the IFC has not disputed the Applicant’s contentions regarding the substance of that meeting, or who was present, and has failed to substantiate its assertion that the reassignment responded to the need of the new unit.

84. In addition, there was a lack of clarity regarding the Applicant’s responsibilities in his new role, and regarding the reporting arrangements. For six weeks following his reassignment the Applicant received no instructions from management regarding his new work program. Ms. E stated before PRS that the addition of a GH Level staff member to the BCM team was unexpected, that the reporting lines and responsibilities were unclear following the Applicant’s reassignment, that she approached Mr. B for clarification on this after the reassignment decision was made (the latter informed her that it was not yet clear), and that these issues only became clear in December 2013, just before Mr. B left the department. Before PRS, Ms. X acknowledged that she had been unable to answer all the questions put to her in the Applicant’s email of 28 October 2013 because “a lot of things were still being discussed,” and that “it took a little bit of time.” The Applicant further notes, and the IFC does not dispute, that at the time of the reassignment decision, BCM (the unit to which he was to be reassigned) had just two staff members (a GG Level Program Manager and a GF Risk Officer), and indeed the budget for this unit would only permit two staff members. That is, at the time of the reassignment decision there was no budget in the new unit for the Applicant’s position.

85. In view of the foregoing, the Tribunal concludes that the record does not support the IFC's assertion that the reassignment decision responded to identified business needs. No other rationale having been adduced to justify that decision, it may be considered to have been arbitrary and an abuse of discretion.

The procedure followed: lack of consultation

86. PRS found that Ms. X had already made the final decision to reassign the Applicant before providing him with the consultation required under the relevant Staff Rule, that her efforts to consult were "inadequate," and that consequently the Applicant "was denied the opportunity to properly respond to [Ms. X's] intentions to reassign him and to seek clarity regarding his new assignment and provide input." In this respect, PRS found that Ms. X had failed to comply with Staff Rule 5.01, paragraph 2.05. Moreover, in failing to adequately consider the Applicant's questions, and acting with "excessive haste and urgency," Ms. X had not acted in conformity with Principle 5.1(a) of the Principles of Staff Employment. PRS recommended that the Applicant be compensated in the amount of two months of his net salary. This recommendation was accepted by the VPGC of IFC (subject to the condition discussed below).

87. The IFC contends that the Applicant "was adequately consulted about the reassignment," that Ms. X "was open about the shift in strategy for his unit over a long period of time" and that the Applicant "actively participated in the new strategy for many months." However these contentions, which are contrary to the findings of PRS, are not supported by the record.

88. First, as PRS concluded, the Applicant was not "consulted" about the reassignment in any meaningful way. The possibility of his reassignment was not brought to his attention until 11 October 2013. Ms. X then left on mission. When she returned, she informed the Applicant that the decision had been made and he was being reassigned. She did not wait to hear his response – his concerns regarding the decision itself, its rationale, or how it would be presented to the team – before making the decision. When he did raise those concerns – at the meeting on 25 October and then in writing on the morning of 28 October – Ms. X neither answered his questions nor delayed implementing the decision so as to allow for further discussion. This contrasts sharply with the situation in *BG*, Decision No. 434 [2010], para. 60, where email exchanges confirmed

that the manager had discussed the potential reassignment, and its consequences, with the applicant before making the decision.

89. The IFC states that the Applicant “made no effort to discuss the proposed reassignment with his Director after October 11, 2013.” Similarly, Ms. X stated before PRS that between 11 and 25 October, the Applicant “did not initiate a single conversation with me; neither did he request to meet me.” These statements ignore the fact that Ms. X was away on mission (in South Africa) for the two weeks following that meeting, only returning on the morning of 25 October. Given that there had been no written communications on the proposed reassignment thus far – a matter considered further below – it was entirely reasonable for the Applicant to expect to have a further opportunity to discuss the proposal (for that is what had been presented to him on 11 October) with Ms. X in person, when she returned to Washington, D.C.

90. The IFC further asserts that at the meeting on 25 October, Ms. X told the Applicant that “since he had not objected, or presented any alternatives, to the proposed reassignment in the foregoing two weeks, she intended to move forward with the reassignment.” If this is accurate (the Applicant strenuously denies it, and from the record it is not at all clear that Ms. X framed her 25 October discussion with the Applicant in these terms) this was not an appropriate or reasonable manner of making a decision on reassignment. The IFC acknowledges that the Applicant was “upset” when informed of the proposed reassignment on 11 October, yet two weeks later Ms. X simply “assumed that Applicant had no comments concerning [the] proposed reassignment” and “as a result” informed him that the reassignment was going ahead. There is no suggestion that the Applicant had been told, at the meeting of 11 October, that he had two weeks in which to object or present alternatives to the proposed reassignment and that, failing such action on his part, the reassignment would automatically be implemented.

91. Ms. X’s own submissions before PRS suggest that the reassignment decision may in fact have been made even before the meeting on 11 October. Her account was as follows:

Over the summer of 2013, I discussed the matter with [Ms. L] ... and [Ms. O]... With their concurrence, and fully adhering to Staff Rule 5.01, section 2.05 on staff reassignment, the Corporation reassigned [the Applicant] to a non-

managerial position within the department, as of October 2013. ... After the decision to move [the Applicant] to non-managerial track in business continuity where his services were needed, and after the discussions of the matter with Mmes. [L and O], I had a discussion with [the Applicant] about the move to a non-managerial job. The discussion was held in my office, during our regular weekly meeting, on 10/11/2013.

92. This account strongly supports the finding by PRS that Ms. X had already made the final decision to reassign the Applicant before providing the required consultation with the Applicant under the applicable Staff Rule. Moreover, this account of Ms. X is contrary to the IFC's assertion before the Tribunal that the decision was finalized on 25 October as a result of the Applicant failing to respond to or follow up with Ms. X.

93. In support of its argument that relevant procedures were observed, the IFC points to the remark made in the Applicant's Performance Evaluation in September 2013 by Ms. L, to the effect that the Applicant (apparently for his own benefit) "may want to consider switching back to the technical stream." However this comment, by the Reviewing Official, does not constitute consultation between a Manager and a staff member regarding an actual, defined reassignment to an identified position at an identified time. It is common ground that the Applicant and Ms. X held weekly meetings, and had also held recent discussions as part of the PEP process. There was ample opportunity to carry out genuine consultation with the Applicant regarding the proposed reassignment. Ms. X did not do so. As was also concluded by PRS, this constituted a violation of Staff Rule 5.01, paragraph 2.05.

94. In light of these considerations, the Tribunal finds that Management also breached Principle 5.1 of the Principles of Staff Employment, in that the reassignment of the Applicant was plainly not carried out with "due consideration" for the wishes of the staff member concerned.

95. A further issue arises regarding the obligation that the Manager consult also with other relevant colleagues. Under Staff Rule 5.01, paragraph 2.05, in addition to consultation with the staff member affected, the decision-maker (here, Ms. X) is obliged to consult with "the Manager, Human Resources Team, or a Designated Official." On the record before the Tribunal, it is far

from clear that this consultation took place. In her written response to PRS, Ms. X stated that she had discussed the reassignment of the Applicant with Ms. L (Vice President, Risk and Portfolio) and Ms. O (Director, Human Resources). In her oral evidence before PRS, Ms. X stated that she had “several discussions” with Ms. O and Ms. L about reassigning the Applicant, “over the summer and towards the early Fall” 2013. She repeated that she had “multiple consultations with [Ms. O], multiple consultations with [Ms. L]” ahead of time regarding the reassignment. In the present proceedings, the IFC has stated that “during the summer of 2013, [Ms. X] discussed her staffing strategy with [Ms. L], and also with [Ms. O],” that here Ms. X “proposed the option of reassigning [the] Applicant to the Business Continuity team, where his business continuity experience could be useful,” and Ms. L “agreed ... that it would make sense to reassign [the] Applicant to a non-managerial position in the department as of October 2013, focusing on business continuity, in which he had skills.” However neither the IFC in its submissions before the Tribunal, nor Ms. X in her evidence before PRS, has provided any written records of any such consultation.

96. Before PRS, Ms. L stated that the regular discussions which had taken place with Ms. X in the months leading up to the reassignment decision related more to the general objective of making the department more responsive to operational risk; on the specific question of the Applicant’s reassignment, Ms. L acknowledged that her involvement with this decision was limited. She also stated that she was not aware of the specifics of the job which the Applicant would be reassigned to, and did not remember discussing this matter with Ms. X. In his submissions before PRS, the Applicant contended that Ms. X, Ms. O, and Ms. L were notably vague regarding when these consultations took place, and that no specific dates for any of these meetings have been provided.

97. The Tribunal is aware that consultation by managers on staff reassignment issues may occur in different phases. The first, less formal, may involve discussions on general personnel issues and possible ways of improving the productivity of their department. Subsequently, however, when that exchange of views takes shape and managers resolve that concrete action is needed, it can be expected that there will be written records so that all involved understand the actions to be taken, and so as to ensure transparency.

Failure to give adequate warning

98. A further question of procedure arises. In *BY*, Decision No. 471 [2013], para. 42, the Tribunal confirmed that a staff member must be given “adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached” (citing *Samuel-Thambiah*, Decision No. 133 [1993], para. 32; see also *Mpoy-Kamulayi (No. 2)*, para. 69). Similarly, the Tribunal has stated that “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” (*Garcia-Mujica*, Decision No. 192 [1998], para. 19). This is a general obligation on the Bank Group (see, recently, *CS*, Decision No. 513 [2015], para. 100), and exists independently of the requirements of Staff Rule 5.01, paragraph 2.05.

99. In the present case, the Applicant states that while Ms. X had previously suggested that he needed to improve his management skills (as reflected in his 2013 PEP), at no point prior to 25 October 2013 had she suggested to him that possessing investment operation experience was a prerequisite for his position, “nor had she ever suggested that I should seek training or other opportunities to develop this skill set.” In response, while Ms. X asserted that she and the Applicant had numerous discussions regarding the lack of investment operation experience in the department, she does not claim to have raised the issue of the Applicant’s own (lack of) skills in this regard, or to have indicated that there might be adverse consequences from his failure to address this.

100. While the Applicant’s reassignment did not, in fact, constitute “the ultimate punishment” as he characterized it in his Request for Review, it did nevertheless constitute an adverse decision, particularly in view of the fact that he was reassigned from a managerial to a non-managerial position (see *BY*, para. 52). On the record before the Tribunal, the Applicant was not given adequate warning that a perceived deficiency – namely, his lack of operational investment experience – would result in an adverse decision being taken against him. This constitutes an additional procedural breach, distinct from the failure to carry out timely consultation under Staff Rule 5.01, paragraph 2.05.

Issues of transparency

101. In its Report, PRS expressed surprise that there were no written communications among the involved parties regarding the reasons for the reassignment decision and the Applicant's new assignment. PRS commented that:

To avoid the lack of transparency and questions surrounding the rationale for the reassignment decision, the Panel notes that it would have been helpful if Ms. [X] had communicated her reassignment decision and the reasons for the decision to [the Applicant] in writing.

102. The Tribunal endorses this statement. The absence of written communications (between Ms. X, the Applicant, HR and/or Ms. L) on the reassignment in the weeks and months leading up to 11 October, does not support the IFC's contention that it was a planned measure which responded to an identified business rationale. As discussed above (see paragraph 97), this is particularly true of consultation in the phase when general discussions on improving productivity have evolved into the planning of concrete steps. There is a more fundamental point here, however.

103. It is true that the IFC must retain the flexibility to adapt so as to meet its "evolving needs and circumstances," as per the Principles of Staff Employment. It is also true, therefore, that managers retain a discretion on reassigning their staff, and that the requirement for consultation in Staff Rule 5.01, paragraph 2.05 is not a requirement that the affected staff member agree with the decision. Nevertheless, such decisions, like any exercise of discretion, are subject to review to ensure that they are not "arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or lack a reasonable and observable basis" (*AK*, Decision No. 408 [2009], para. 41; *De Raet*, Decision No. 85 [1989], para. 67). A written record of the decision-making process, the underlying rationale and the consultation which has taken place (be it written exchanges or notes of oral exchanges) will not only assist any subsequent review, but also facilitates transparency and assists all parties in ensuring that no abuse of discretion arises in the first place.

Remedy

104. The Applicant asserts that the reassignment damaged his reputation and career. The IFC responds that the Applicant has suffered no financial or tangible harm as a result of the reassignment.

105. As noted above (see paragraph 65), the Tribunal has repeatedly affirmed that reassignment decisions “must be set aside if they constitute an abuse of discretion, were arbitrary ... or were influenced by a lack of due process” (*BY*, para. 46). The Tribunal has frequently rescinded such decisions on the basis of procedural violations alone. In the present case, the Tribunal has concluded that the reassignment decision was flawed both procedurally and substantively. It should therefore be rescinded.

106. The Tribunal’s jurisprudence also indicates that the Applicant is entitled to compensation.

107. In *Niedzviecki*, Decision No. 189 [1998], the applicant had been reassigned from a position as Section Chief to a non-managerial position (at the same grade and salary level), effective November 1995. The Tribunal concluded that the Bank had made this decision solely on the basis of the applicant’s poor performance in one “very complex and comprehensive” project, three years earlier, without giving any weight to his otherwise strong performance. The Tribunal found that this constituted “an abuse of the Bank’s discretion, being unreasoned and arbitrary,” ordered that the reassignment decision be quashed, and that the applicant be reinstated effective November 1995 to the position of Section Chief. In the event that the Bank chose not to reinstate the applicant, he was to be paid two years’ net salary (paras. 17-22).

108. In *BY*, the Tribunal found a recall decision to be flawed for failure to provide the applicant with notice of the dissatisfaction with his performance that led to his recall (para. 49), but noted that the applicant had not demonstrated any nexus between his recall and the alleged severe damage to his professional reputation and career prospects. Further, the recall decision “did not result in a reduction of his grade level, nor was he reassigned from a managerial to a non-managerial position” (para. 52). The Tribunal awarded six months’ salary as compensation for the flawed recall decision.

109. In *Sengamalay*, the Tribunal concluded that the Bank had abused its discretion when it decided to reassign the applicant based upon a series of anonymous and/or unfounded complaints regarding his managerial style. The applicant having already left the Bank through early retirement and having no interest in returning to the Bank, the Tribunal awarded him compensation in the amount of 18 months' net salary (paras. 46-48).

110. In *Prasad*, the Tribunal concluded that while a reassignment decision had been within the Bank's discretion, "the transparency and openness that should always characterize such a step were lacking"; this led "inevitably" to the finding of an abuse of discretion (para. 50). The Tribunal also found two other procedural breaches unrelated to reassignment, relating to an OPE process and a Salary Review Increase (SRI) assessment (paras. 31, 39), but decided that no remedy was necessary for the former (para. 61). It therefore ordered remedies for the flawed SRI assessment and the reassignment decision. The Tribunal noted that while the various incidents had not led to a deterioration in the applicant's grade level, they had affected his career prospects in the Bank (paras. 66-67). It ordered (i) that the flawed SRI assessment be purged from the applicant's record and the Bank assist him in finding a new position, should he wish, and (ii) compensation in the amount of two years' net salary, additional to the three months' net salary already paid by the Bank upon recommendation of the Appeals Committee (paras. 68-69).

111. In the present case, the Applicant states that the stress and humiliation he suffered led to him undergoing psychotherapy for the first time in his life. The IFC has queried the link between the reassignment decision and these consultations. However the Applicant has produced an email confirming that he first consulted with the Bank's Personal and Work Stress Counselling Unit on 22 October 2013 "regarding work-related stress," with further consultations in November 2013, and May-June 2014. The Applicant has also produced a letter from a (separate) counselling service confirming that they met four times between June and July 2014 and that "the presenting concern was increased anxiety and self-doubt related to events at work."

112. In terms of his career, the Applicant submits that, though his grade (GH) was unaffected by the reassignment decision, the position he was transferred to was, at most, a GG Level position. He also notes that while he obtained an equally well-remunerated position with the IMF

in April 2015, this is nevertheless a three-year term appointment with no guarantee of renewal. The result of the reassignment decision, he contends, was that he was forced to give up an open-ended position with the IFC. He requests compensation for the “substantial and lasting” negative impact on his career and reputation, in an amount to be determined by the Tribunal but not less than two years’ salary, as well as such additional amount as the Tribunal deems just for the stress and effect which the IFC’s treatment of him had on the Applicant’s health.

113. The Tribunal’s practice indicates that the procedural flaws in the present case, in and of themselves, require payment of compensation in an amount significantly higher than was recommended by PRS. Moreover, the Tribunal has concluded that the flaws in the reassignment decision were both procedural and substantive.

114. While neither his salary nor grade were affected, the Applicant having been a manager for some 11 years was reassigned to a non-managerial position; in this respect, the negative effects were more severe than in *BY*.

115. As a result of subsequent organizational changes within the IFC, the position from which the Applicant was reassigned no longer exists. Reinstatement is therefore not an option. It is noted that in previous cases in which this remedy was unavailable, the Tribunal has awarded financial compensation.

CLAIM 2: INTERFERENCE IN PERFORMANCE ASSESSMENT

116. The Applicant states that because of interference by Ms. X in the process of selecting feedback providers for his 2014 360° Performance Assessment, “the whole process was abusive, unfair, and non-transparent.” He states that he had “either very limited or negligible” interaction with the 11 additional feedback providers selected by Ms. X, and that the “artificiality” of their selection was demonstrated by the fact that not one of the 11 selected him to provide feedback to them. The Applicant submits that Ms. X was “attempting to obtain *post hoc* justification for her precipitous decision to reassign him.” He requests that all records of this Report be destroyed.

117. The IFC did not address this claim in its Answer or its Rejoinder. In her written response to PRS, Ms. X stated as follows:

The 360 assessment for FY14 described in [the Applicant's] submission are not relevant to the [disputed employment matter]. When [the Applicant] submitted his 360 feedback providers through the system, each and every category (Clients, Peers, Others) had very few names listed. In order to get a meaningful feedback, staff needs to have at least seven providers for each category. As [the Applicant] reported to me during the first three months of the fiscal year, I had a very good visibility as to whom he worked with, and I added names of those colleagues to the 360 roster of names. ... Furthermore, [the Applicant] has not been treated differently from any other staff, as I requested appropriate number of feedback providers for all my staff that went through 360 evaluation.

118. While Ms. X did not cite any relevant practice guidelines to support her contention that each staff member must have at least seven feedback providers for each category, the Applicant has not disputed this. It is noted that in the Applicant's previous 360° Assessment Report (for 2013) he received feedback from nine direct reports, nine peers, nine clients, and seven persons in the "other" category. For the 2014 report, on the other hand, the Applicant had proposed (only) 14 names. Available HR guidelines appear to support the IFC's contention that the ideal number of total respondents is certainly greater than 14: according to the Bank's *2014 360 Leadership Assessment - Results Summary*, issued in July 2014, "when responses are less than six for any of the four categories other than 'manager' and 'self', they are merged with responses from other categories and an 'aggregate' category is created."

119. It is also true that Ms. X had been the Applicant's supervisor for three months of the relevant period, and so can be assumed to have been in a position to identify at least some feedback providers.

120. Finally, though the Applicant characterizes Ms. X's actions here as attempts to construct an *ex post facto* justification for the reassignment decision, and claims that her action "raises doubts about the impartiality and reliability of the feedback," he has not pointed to any particular negative statements included in his 2014 Assessment Report which he perceives to have been skewed by Ms. X's involvement. Nor has he claimed that the content of the Report or the manner in which it was prepared had any longer-term adverse consequences.

121. The Tribunal notes that the feedback in the 2014 Report is, on the whole, positive: the 2014 assessment of his managerial competencies by Ms. Q (about whose involvement in the process the Applicant expressed “serious reservations”) is if anything more positive than that of his supervisor in the 2013 Report; and while other feedback providers in 2014 suggested that the Applicant could be more “vocal” and “bold” when expressing his opinions, this mirrored the comments of his feedback providers in 2013.

122. In view of the foregoing, the Tribunal concludes that there is insufficient evidence of wrongful conduct on the part of Ms. X such that would require the remedy requested by the Applicant.

CLAIM 3: WAIVER

123. On 19 December 2014, the VPGC of IFC transmitted the PRS Report to the Applicant, informing the latter that he had accepted the Panel’s recommendation. He informed the Applicant that “if you agree that this outcome is a resolution of the case, please sign the attached acceptance form and you will promptly be provided the recommended relief.” The cover letter continued: “if you do not agree that this matter is resolved, the next step in the Conflict Resolution System would be recourse to the Administrative Tribunal.” The form attached to this cover letter stipulated the compensation to be provided (two months’ net salary), and included the following statement:

By accepting this resolution, I acknowledge that I have reviewed, understand and accept this relief as a final settlement of the disputed matters in Request for Review No. 200. I also agree that this is a full and final settlement of my claims and that I hereby waive any further claim in any forum, including the Peer Review Services and the Administrative Tribunal, relating to this matter arising on or before the date of this acceptance.

124. The Applicant submits that the approach adopted by the VPGC severely interferes with a basic staff right by denying remedies for wrongdoing if staff members decide to appeal to the Tribunal. According to the IFC, the Applicant mischaracterizes the PRS system when he claims that he was “awarded” and “granted” relief by the VPGC and that this relief was then “taken

away” when he decided to seek more compensation before the Tribunal. The SA supports the Applicant’s contention that his right to unimpeded access to the Tribunal was violated.

Relevant principles and jurisprudence on similar clauses

125. Principle 2.1 of the Principles of Staff Employment provides in relevant part as follows:

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. ... They shall respect the essential rights of staff members that have been and may be identified by the World Bank Administrative Tribunal.

126. In its first decision (*de Merode*, Decision No. 1 [1981], para. 21), the Tribunal ruled that the availability to staff members of an impartial adjudicator of claims of non-observance of contracts of employment and terms of appointment constitutes an essential condition of employment for all Bank staff, and that the right of recourse to the Tribunal “forms an integral part of the relationship between the Bank and its staff members.” (*see also AK*, para. 31).

127. The Tribunal has previously commented on waivers of the type included in the VPGC’s letter to the Applicant. In the case of *Cissé*, Decision No. 242 [2001], the applicant had challenged a finding of misconduct before the Appeals Committee, which found in his favor and recommended a number of remedies. The Bank subsequently informed the applicant that its (partial) acceptance of those recommendations would be conditioned on the applicant’s “acceptance of a full and complete settlement of all claims against the Bank, including the waiver of the right to invoke the jurisdiction of the Tribunal.” The Tribunal described this as an “unusual requirement,” and stated that “such an approach by the Bank could be abusive in situations where the complainant is in a position of particular vulnerability” (para. 39).

128. In the next case in which the issue arose, the Tribunal took a firmer stance. In *Koudogbo*, Decision No. 246 [2001], the applicant had appealed against a finding of misconduct. The Appeals Committee found for the applicant, and recommended reinstatement with retroactive effect, that the Bank publicly retract an earlier statement it had made in the press regarding the applicant, and that the Bank pay legal costs. The responsible Vice President concurred with only part of the Appeals Committee’s report, and decided that the applicant should be awarded three

months' net salary as compensation and \$5000 towards legal fees, on the condition that she waive any further right to appeal (paras. 13-16). On the latter issue, the Tribunal stated as follows (para. 58):

In a recent case, the Tribunal cautioned in respect of this kind of conditional remedy (*Cissé*, Decision No. 242 [2001], para. 39). The Tribunal must now state that this conditioning was entirely inappropriate given the imbalance of power as between the Bank and the Applicant.

Effect of these clauses

129. The inclusion of such waiver clauses can have two consequences. Neither can be easily reconciled with the principles outlined above. On the one hand, where the staff member does sign the waiver, it will – if held to be valid - operate to preclude access to the Tribunal in respect of issues covered by the clause. Consistent with its statements in the cases outlined above, in *AK* the Tribunal stressed the serious nature of the “stifling of access to the Bank’s internal grievance mechanisms,” which it characterized as “a matter of fundamental principle” (para. 34).

130. If, on the other hand, the staff member refuses to sign the clause, the consequence is that the remedy to the staff member, which has been decided by the responsible Vice President upon the recommendation of PRS and on the basis of an established breach of the staff member’s contract of employment or terms of appointment, will not be awarded.

131. The Tribunal wishes to stress, as it has done previously, that making the Applicant’s receipt of compensation for an identified violation of his rights under the Staff Rules conditional upon such a waiver of fundamental appeal rights is inappropriate.

Double recovery

132. As part of its arguments regarding the waiver clause, the IFC contends that the Applicant seeks to “recover twice for the same alleged harm – once before the PRS, and once more, for higher amounts, at the Tribunal level.” This contention is without merit.

133. As the Applicant and the Staff Association have observed, the Tribunal is free to take into account any compensation already received by an applicant, and to adjust accordingly any award

the Tribunal itself chooses to make. The Tribunal has done so on many previous occasions. In *BO*, Decision No. 453 [2011], para. 73, the Tribunal found for the applicant on the merits, but noted that on the recommendation of PRS he had already been paid compensation in the order of three months' salary and attorney's fees, and concluded that no further compensation was necessary. In *Moses*, Decision No. 115 [1992], the Tribunal awarded compensation equivalent to 14 months' salary, less an *ex gratia* payment the applicant had already received upon the recommendation of the Appeals Committee. In *Prasad*, the Tribunal stated that its award of compensation in the order of two years' net salary was to be "additional to the three months already paid" by the Bank upon the recommendation of the Appeals Committee (para. 69; *see also Harrison*, Decision No. 53 [1987], para. 30). In *Moussavi (No. 2)*, Decision No. 372 [2007], para. 66, the Tribunal noted that the applicant had already received, on the recommendation of the Appeals Committee, "a generous award" to compensate for procedural deficiencies regarding his redundancy, and decided that additional compensation was not required.

DECISION

- (1) The reassignment decision of 25 October 2013 is rescinded, and all records of this decision shall be removed from the Applicant's personnel files.
- (2) The IFC shall pay to the Applicant compensation in the amount of one year's net salary.
- (3) The IFC shall pay the Applicant's attorney's fees in the amount of \$17,741.05.
- (4) All other claims are dismissed.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/ Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 13 November 2015