

Decision No. 315

Maurice John Desthuis-Francis,  
Applicant

v.

International Finance Corporation,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on October 10, 2003, by Maurice John Desthuis-Francis against the International Finance Corporation ("IFC"). The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Bola A. Ajibola (a Vice President of the Tribunal) as President, Robert A. Gorman and Florentino P. Feliciano, Judges. The usual exchange of pleadings took place and the case was listed on March 12, 2004.

2. The Applicant is challenging the correctness or appropriateness of certain adverse comments made in his FY02 performance evaluation ("PEP") by his reviewing Director. The Applicant asks for the deletion of the reviewing Director's comments from his PEP. He is also contesting the reasonableness of the comparative performance rating ("SRI rating") of 3.1 that he received, as well as its concomitant 1.3% salary review increase ("SRI"). The Applicant asks for the upward adjustment of his SRI from 1.3% to 6% and the recalculation of all benefits due on his separation from the IFC (he was declared redundant in the course of the reorganization of the IFC in 2002) and his pension. The Applicant estimates the additional non-pension benefits that should accrue to him upon such re-calculation to be US\$25,000. He also seeks damages for prejudice allegedly caused by his reviewing Director's comments consisting of failure to secure other employment within the Bank and loss of reputation, in the amount of US\$450,000, and costs amounting to US\$8,500.

### **The Relevant Facts**

3. The Applicant joined the IFC in April 1990 as an Engineer at level 23, and was promoted thereafter to Senior Engineer, level 24, in 1992, and then to Principal Engineer, Grade H, in 2000. Engineers later became known as Industry Specialists, so that the Applicant's official title became Principal Industry Specialist. The Applicant was a Principal Industry Specialist in the "tourism and travel sector and [in] commercial property." The Applicant states that he worked "in a very specialized area where his industry discipline has no counterpart" within the Bank except for the IFC.

4. The Applicant states that Industry Specialists "essentially provide industry knowledge and business advice to Investment Officers on new investments or on portfolio maintenance of existing investments," and also provide "industry advice to all regional departments, IFC management, and often operation evaluation functions." The relevant Grade H job profile notes that such persons must, among other things, play a "significant role within [the] sector in guiding/mentoring" staff members and mentions intellectual and project leadership as necessary qualities.

5. The Applicant's final salary fell within "Zone 1" of the 2002 Salary Structure for Grade H. On May 19, 2002, during the reorganization of his Department and prior to the issuance of his FY02 PEP and SRI, the Applicant was informed that he would be declared redundant. He was in fact so declared on July 1, 2002 and thereafter placed on administrative leave until his termination in December 2002.

6. On July 1, 2001, the Applicant's Department (Environment and Social Development Department (ESDD)) had been split into two separate departments (Environmental and Social Development Department and the

Engineering Department). In November 2001, however, it was decided to re-combine the two departments as of January 1, 2002, with the Applicant’s reviewing Director as the combined Department’s Director. In March 2002, after the Department was reunited, IFC management decided that a new unit (the Global Manufacturing and Services Department) would absorb some of the Department’s Engineering staff. The Applicant’s redundancy process noted above followed, from May through December 2002. The reorganization of the Applicant’s Department was described by various staff members as stressful and emotionally draining.

7. On June 18, 2002, the Bank announced its salary scale for FY02 which was to come into effect on July 1, 2002. For Grade H, this scale provided: Range Minimum – US\$115,780; Market Reference Point – US\$150,510; Range Maximum – US\$203,190. The Bank stated that individual salary increases would be determined through a merit review process (i.e., the SRI) and would be based on “individual staff performance relative to peers at the same grade and on position in the salary range.”
8. The SRI rating resulting from the merit review process was to be applied to the Salary Review Matrix. The Matrix provided, in the case of a performance rating of 3, a range of possible salary increases from a minimum of 1.3% to a maximum of 7.8% for those staff members (like the Applicant) in Salary Range Zone 1.

SALARY RANGE ZONE	PERFORMANCE CATEGORY						
	Low			High			
	.....						
	2	3		4		5	
		Min	Max	Min	Max	Min	Max
1	0.0%	1.3%	7.8%	7.9%	9.5%	9.6%	12.0%
2	0.0%	1.3%	5.1%	5.2%	6.7%	6.8%	9.0%
3	0.0%	1.3%	3.0%	3.1%	4.6%	4.7%	7.0%

The Salary Review Matrix was described in the Bank’s instructions as a tool designed to help managers distribute the salary increase budget. Managers were required to remain within their budgets and generally within the range of percentages given for each performance category. However, “under certain conditions,” not pertinent in the present case, managers could depart from the precise percentages specified in the Matrix. Upon the processing of the resulting Personnel Action Forms to reflect the individual salary increases of staff members, the Bank’s instructions provided that a staff member’s “manager will explain the basis for [the] salary increase [of the staff member] and notify [the latter] of [his/her] performance category.”

9. As part of the performance review process for Grade H Industry Specialists (like the Applicant), “multi-raters” are selected by a staff member’s supervisor from a list compiled by the staff member of colleagues, that is, IFC investment officers “who are ... team leaders on all IFC projects, whether ... new project work or portfolio [maintenance] related work.” The multi-raters are charged with the task of rating the performance of a staff member and providing feedback comments to management on the competence of such staff member. In the Applicant’s case, his immediate supervisor chose four from a list of ten to twelve persons compiled by the Applicant “with whom [he] had worked closely during the year [under review].”
10. On May 19, 2002, the Applicant was informed that he would be declared redundant. Nevertheless, he was provided with a PEP form and required to undergo performance evaluation for the FY02 period of April 1, 2001 through March 31, 2002. While the Applicant’s FY02 PEP was in the course of preparation, the salary review process was commenced and his SRI was finalized before his PEP could be completed. The sequence, in other words, was as follows: first, the decision to declare the Applicant redundant; second, initiation and

completion of the Applicant's SRI review and the issuance of his SRI rating of 3.1; and third, finalization of the Applicant's FY02 PEP.

11. The Applicant's PEP for FY02 contains an extensive review of his work and performance over the previous year and exhibits generally high grades (on a scale of 1-5, grades ranging from 3-5). It is pertinent to note that the rating legend of the PEP form translates the numerical scores in the following manner:

1 – Unsatisfactory (Does not meet grade level expectations)

2 – Needs Improvement

3 – Fully Satisfactory (Fully meets grade level expectations)

4 – Very Good

5 – Outstanding (Exceeds grade level expectations)

12. The final entry in the Applicant's FY02 PEP consists of the comments of the Applicant's reviewing Director:

I endorse this performance evaluation but note Maurice's frustrations that his opportunity to demonstrate a high level of performance was outside his control due to the decreasing interest in hotels and tourism generally within IFC. This appears to be a continuing trend which has been exacerbated by the poor business performance of IFC's large hotel portfolio. Maurice's major achievements for the year appear to be his collaborative Bank activities with the "Tourism and Development" paper being well received. Maurice is a highly experienced hotel specialist who relates well to clients and works hard to help [Investment Officers] evaluate the business models of prospective projects. *Maurice has been less successful in managing his relationships with his peers and colleagues in the technical services group. From IFC's business perspective, I consider that Maurice's performance was below expectations for someone in the role of a Principal Industry Specialist. To enhance his effectiveness, Maurice needs to develop his broader leadership competencies and particularly his ability to engage and relate to others at a non-technical level.* [Emphasis added.]

13. On August 5, 2002, the Applicant complained by e-mail to the IFC's Vice President for Human Resources about both the above comments of the reviewing Director and the Applicant's SRI rating of 3.1. On August 21, 2002, the reviewing Director responded by stating that he would be happy to discuss with the Applicant the PEP comments and the Applicant's SRI rating. A meeting between the Applicant and the reviewing Director, however, did not materialize.

14. On October 22, 2002, the Applicant filed his Statement of Appeal with the Appeals Committee, challenging the decision of the reviewing Director to award him a 3.1 SRI rating with an accompanying 1.3% SRI for the review period of April 1, 2001 through March 31, 2002. He also protested the reviewing Director's comments in his FY02 PEP as not faithfully reflecting his performance for the same review period. After an oral hearing on April 3, 2003, the Appeals Committee issued its Report on May 19, 2003.

15. In its Report, the Appeals Committee concluded that the comments of the reviewing Director in the Applicant's PEP were "arbitrary because they were not substantiated by the record," as the reviewing Director did not have "any direct knowledge" of the Applicant's work. The process which the reviewing Director had followed in awarding the Applicant a 3.1 comparative performance rating and assigning him a 1.3% SRI was found to be similarly arbitrary since the reviewing Director also "could not substantiate the basis for awarding the [Applicant] a 3.1 performance category." In respect of the Applicant's SRI, the Appeals Committee stated that the Respondent had failed to follow the guidelines set out in the Bank's instructions (i.e., the "2002 Overview of Salary Review for Washington-Appointed Staff"), because the Respondent "did not determine [the Applicant's] salary increase based on the combination of his performance category and on his position in the salary range." Thus, the Committee concluded that the Respondent had "failed to apply the established criteria

in determining the [Applicant's] resulting SRI.”

16. Accordingly, the Appeals Committee recommended that the adverse comments of the reviewing Director be removed from the Applicant's FY02 PEP. The Appeals Committee refrained, however, from overturning the Applicant's 3.1 performance rating, considering that the “record lack[ed] sufficient evidence as to the [Applicant's] performance compared to his peers.” At the same time, the Committee recommended that the Applicant be compensated for the arbitrary manner in which his SRI had been determined by having his “SRI rating ... [re-]determined in accordance to where [he] falls within his salary band based on the 2002 Salary Review Matrix.”

17. On June 11, 2003, the Bank's Acting Vice President for Human Resources declined to implement any of the recommendations of the Appeals Committee and wrote to the Applicant denying all of his requests. The Acting Vice President, agreeing with the Appeals Committee, noted that the record lacked sufficient evidence to sustain a change of the Applicant's 3.1 SRI rating, and disagreed with the recommendation that the 1.3% SRI be changed. The Acting Vice President also opined that the reviewing Director's adverse comments in the Applicant's FY02 PEP had been “made in good faith,” noting that the reviewing Director had been agreeable to meeting with the Applicant, which meeting did not take place. The letter of the Acting Vice President did not provide any other explanation for her rejection of the Appeals Committee's recommendations.

18. The Applicant filed his application with the Tribunal on October 10, 2003.

### **The Reviewing Director's Adverse Comments in the Applicant's FY02 PEP**

19. 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. In *Marshall*, Decision No. 226 [2000], para. 21, the Tribunal provided some elaboration of the abuse of discretion standard applicable in reviewing the decisions of a reviewing manager in conducting a performance evaluation and salary review:

Even if the merit rating and SRI were not a product of intentional ill-will, they might still be overturned by the Tribunal if they were arbitrary or capricious. As the Tribunal has often stated, it may review such decisions of the Respondent to determine whether there has been an abuse of discretion, in that the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

20. The Tribunal now considers how the above standard of review of discretionary managerial acts of performance evaluation applies to the Applicant's claims. The comments of the reviewing Director in the Applicant's FY02 PEP are examined first. The statements under the heading “Performance Dimension Comments” in the Applicant's FY02 PEP, made by the Applicant's immediate supervisor and colleagues, are complimentary to the Applicant. The Applicant does not, of course, complain about these comments. The first part of the reviewing Director's comments on the Applicant's performance is also quite complimentary. It is the latter portion of the reviewing Director's comments that the Applicant contends does not fairly reflect his actual performance in FY02. In the numerical performance scoring, one out of four colleagues of the Applicant gave him a score of 3 in respect of “team orientation” and “mentoring and developing people.” On the other hand, the same colleagues gave him many more ratings of 4 and 5 in respect of the various “performance dimensions.” The comments of his colleagues and his immediate supervisor on the Applicant's “performance dimensions” were consistently good and complimentary.

21. It seems pertinent to note that the comments of the Applicant's supervisor and colleagues were gathered and included in the Applicant's FY02 PEP before the reviewing Director's comments were added to that PEP. The reviewing Director's comments were added to the Applicant's FY02 PEP after issuance of his SRI performance rating of 3.1. The latter portion of the reviewing Director's comments is plainly adverse to the Applicant. Interpreting his first adverse comment, we note that he states that the Applicant does not get along well with peers and colleagues. The reviewing Director's second comment is somewhat more opaque. His

statement that the Applicant's performance was "below expectations for someone in the role of a Principal Industry Specialist," if it be read as referring to not getting along with "his peers and colleagues in the technical services group," would seem to be merely duplicative of his first adverse comment. If, upon the other hand, the description of the Applicant's performance as "below expectations" relates to the Applicant's interaction with Investment Officers, IFC clients and senior management, the description appears difficult to reconcile with the first part of the reviewing Director's own comments and, more strikingly, with the "Performance Dimension Comments" made earlier in the Applicant's PEP by the immediate supervisor and the colleagues of the Applicant.

22. The Tribunal has already noted that the low SRI rating of 3.1 was given to the Applicant around the time he was formally declared redundant. At the time of the distribution of SRI performance ratings, the staff already knew that some of them would be declared redundant. The Applicant has not complained about his having been declared redundant. Nevertheless, in appraising the process by which performance evaluation was carried out, both for the PEP and for the distribution of SRI increases, the context in which that process was carried out may be relevant. Briefly put, the process appears to have been conducted in the midst of tension, apprehension and confusion which evidently attended the reorganization in 2001 and 2002 of the IFC in general and of the Applicant's Department in particular. The impression created is that some officials and staff members were much pre-occupied with trying to maintain their own positions, or in trying to locate other positions within the World Bank to which they might be appointed. In this context, the performance evaluation process, at least in respect of the Applicant, appears to have attracted rather less attention than could have been expected.

23. The reviewing Director's negative comments on the Applicant's FY02 PEP are clearly judgmental and import certain conclusions about the Applicant and his performance. The comments themselves do not attempt to identify the basis on which such conclusions rest. This by itself is not necessarily a ground for complaint, so long as the reviewing Director is able to adduce outside the four corners of the PEP a reasonable and objective basis for his adverse judgment on a staff member's performance. This may be provided, for example, in contemporaneous oral or written communications, or even later, in testimony before the Appeals Committee. 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. Thus, the basic issue so far as concerns the reviewing Director's adverse comments in the Applicant's PEP is whether or not there was adequate or reasonable basis for those comments.

24. In the proceedings before the Appeals Committee, the reviewing Director readily conceded that he himself did not have any first-hand knowledge of the work done by the Applicant during the period under review. The Director did state that he had relied on statements or feedback about the Applicant's work given to him by some staff members in the Department, including the Applicant's peers and Directors of Regional Departments. The reviewing Director in fact identified before the Appeals Committee the persons whose feedback constituted the basis of his assessment – Mr. C, Mr. D, Mr. W and the Applicant's previous Director, Mr. R. However, during the hearing before the Appeals Committee, Mr. C, Mr. D and Mr. W all testified that they did not recall meeting with the reviewing Director to discuss with him the Applicant's performance. Both Mr. C and Mr. D also testified that they were not at any rate in a position to judge the Applicant's professional work and to provide substantive comments. Mr. W stated that he had not discussed with the reviewing Director the Applicant's PEP. According to the record, the only person with knowledge of the Applicant's performance and with whom the reviewing Director had discussed that performance was Mr. R. The Appeals Committee, however, noted that Mr. R's former role in the Department was that of Director and as such he was responsible for the "overall management" of the Technical Services Group and "was not involved in the day-to-day operations." Mr. R for his part testified that he had delegated to Mr. H, the Applicant's immediate supervisor, the task of overseeing the day-to-day operations of the Technical Services Group.

25. It was Mr. H who had completed the Applicant's FY02 PEP. Mr. H, however, testified that he had not had any discussion with the reviewing Director regarding the Applicant's performance. Mr. H had never informed the reviewing Director of the basis for assessing the Applicant's performance or for assigning him a 3.1 SRI



rating. Moreover, Mr. H stated that he had not discussed the Applicant's performance with the relevant representative from the Human Resources Department. For similar reasons, the Appeals Panel concluded that the reviewing Director's comments in the Applicant's FY02 PEP "were arbitrary because they were not substantiated by the record."

26. The Tribunal has examined with care the pleadings here and the record of the proceedings before the Appeals Committee and we reach the same conclusion as did the Committee. The Tribunal may well agree with the opinion of the Acting Vice President for Human Resources that the reviewing Director's comments were given in good faith, that is to say, were not improperly motivated. But lack of improper motivation does not by itself insulate a discretionary management act from being found arbitrary (see *Marshall*, Decision No. 226 [2000], para. 21) if done without an observable and reasonable basis.

27. The reviewing Director also testified before the Appeals Committee that his evaluations of staff members, including the Applicant, were reviewed by a Department management committee. But there is nothing to show that any basis for such evaluation (at least so far as concerns the Applicant) was in fact submitted to and considered by the management committee. Nor does it appear that the staff members generally got an effective opportunity to discuss their PEP and SRI ratings with either the reviewing Director or the Department management committee.

28. It remains only to note that without the adverse remarks made by the reviewing Director, there is a clear inconsistency between the favorable evaluations of the Applicant as a professional and his ability to relate to clients and colleagues, and the low SRI performance rating of 3.1 and the accompanying absolute minimum salary increase of 1.3% assigned to him.

### **The 3.1 SRI Rating Given to the Applicant**

29. The 3.1 SRI rating given to the Applicant in connection with the distribution of salary increases is the lowest rating that is still deemed to be a satisfactory rating. Thus, the description of the performance rating of 3.1 is: "marginally satisfactory ... below ... expectations."

30. The Applicant asserts that this 3.1 rating does not reflect his actual performance during FY02 and that the process that culminated in his performance rating of 3.1 was flawed.

31. It appears to the Tribunal that the record is bereft of basis for such a performance rating. The reviewing Director in fact conceded at the hearing before the Appeals Committee that the comments of Mr. H, the Applicant's immediate supervisor, written into the Applicant's FY02 PEP, did not support an SRI performance rating of 3.1. Nevertheless, when he received Mr. H's assignment of a 3.1 performance rating for the Applicant, the reviewing Director concurred with that assignment and, to all appearances, did not question Mr. H's judgment. The reviewing Director did not appear to have carried out any independent assessment of the Applicant's performance. There is no evidence in the record as to how the reviewing Director decided to disregard or discount the Applicant's evaluations in the PEP process in the course of reaching the SRI rating given to the Applicant, or on how comparisons were made with other staff members in the Department.

32. The reviewing Director sought to explain the evident inconsistency between the positive comments of Mr. H in the Applicant's PEP and the low 3.1 SRI performance rating Mr. H gave to the Applicant. The reviewing Director testified that there is no correlation between the performance evaluation embodied in the PEP of staff members and the performance rating assigned to the same staff members in the SRI process. These were, according to the reviewing Director, two separate processes. The PEP is said to measure *individual* performance while the SRI process is supposed to relate to the *comparative* performance of a staff member vis-à-vis his or her peers and colleagues in the same salary grade level within the same department. In the view of the Tribunal, if there is any appreciable difference between these two processes, it is in all probability a difference in emphasis, rather than a fundamental cleavage. As the Bank's instructions themselves pointed out, the two evaluative processes should culminate in results which are "broadly consistent" with each other. In the present case, the reviewing Director appears to have either disregarded or accorded very little weight to the

notably favorable evaluations of the Applicant's performance given by the multi-raters chosen by Mr. H.

33. The reviewing Director apparently believed that most multi-raters tend to give high marks to the staff members they evaluate and therefore the reviewing Director sought a "more honest" process. This explanation the Tribunal considers less than persuasive. In the first place, the reviewing Director presented no evidence that "multi-raters" generally and consistently give very favorable evaluations of individual staff members without regard to the staff member's objective performance. In the second place, there is nothing in the record to suggest that such favorable evaluations (assuming *arguendo* that they are generally and consistently given) are belied by other, more objective, modes of performance evaluation. In the third place, assuming without deciding that multi-raters' feedback constitutes a less than "honest" evaluation of staff members' performance, the record nevertheless shows that evaluation by feedback is in fact practiced in the IFC and in any case was applied in the evaluation of the Applicant. Accordingly, until and unless feedback evaluation is discarded by the IFC as an irrelevant factor in performance evaluation of its staff members, the reviewing Director was not entitled to disregard the feedback on the Applicant that had in fact been solicited and obtained in the process.

34. The Tribunal thus concludes that the performance rating of 3.1 originally given to the Applicant by Mr. H and simply adopted by the reviewing Director must be characterized as arbitrary and therefore should not have been taken into account in assigning a rate of salary increase for the Applicant. That performance rating should be deleted from the personnel files of the Applicant.

35. Because the record presents inadequate data for fixing an SRI performance rating for the Applicant, the Tribunal is not in a position to assign to the Applicant a new SRI rating. The Tribunal has no authority, even if it were in a position and minded to do so, to determine a new SRI performance rating for the Applicant. If the Applicant had not been declared redundant and were still in the service of the IFC, the Tribunal could well decide to return the file in this case to the Respondent with the request that a new FY02 SRI rating be made for purposes of an appropriate award of a salary increase and of re-calculation of separation benefits. But the Applicant has been separated from the Bank's service since December 2002, and in any case does not seek reinstatement.

36. Because the Tribunal is not in a position to provide a new FY02 SRI rating for the Applicant, it is also not in a position to determine another and more appropriate percentage of salary increase for him in replacement of his SRI of 1.3% which, however, should be deleted from his personnel file. The Tribunal, however, is bound to note that the setting of the Applicant's salary increase at only 1.3% was effected in disregard of the Respondent's own directives and of the rights of staff members to due process. At the time of the Applicant's FY02 salary determination, there were written guidelines that provided that the salary increase was to be set by taking into account not only the staff member's SRI rating but also that individual's salary zone. Such a calculation would presumably permit some measure of flexibility and discretion on the part of the manager in setting a staff member's new salary. However, these written directives were ignored by the Respondent, which substituted instead an unwritten mandate to give the lowest possible salary increase to all staff members having a 3.1 SRI rating without any regard to their present salary or salary zone. It also appears that no advance notice whatever was given to staff members regarding this change in the manner of calculating their salary increases, obviously an issue of great interest and potential impact for them. To make such a material change, substituting unwritten for written guidelines without proper notice is, in the view of the Tribunal, arbitrary behavior implemented through an unfair process.

37. Having regard to all the circumstances of this case, the Tribunal considers that the Applicant should be awarded damages, plus costs and legal expenses incurred in connection with the proceedings before the Tribunal.

## **Decision**

For the above reasons, the Tribunal decides that:

- (i) the Respondent shall remove the final three sentences of the reviewing Director's comments in the

Applicant's FY02 PEP and shall also delete the SRI rating of 3.1 and the salary increase of 1.3% from the Applicant's personnel files;

(ii) the Respondent shall pay the Applicant \$25,000 net of taxes for his claimed damages with respect to his salary and pension;

(iii) the Respondent shall pay the Applicant \$125,000 net of taxes as compensation for his other damages;

(iv) the Respondent shall pay the Applicant \$5,000 in reimbursement of his costs and expenses for the proceedings before the Tribunal; and

(v) all other claims shall be dismissed.

/S/ Bola A. Ajibola  
Bola A. Ajibola  
President

/S/ Nassib G. Ziadé  
Nassib G. Ziadé  
Executive Secretary

At London, England, June 18, 2004