

Decision No. 313

F,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on September 23, 2003, by F against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, and composed of Francisco Orrego Vicuña (President of the Tribunal) as President, Elizabeth Evatt (a Vice President of the Tribunal), Jan Paulsson and Sarah Christie, Judges. The Applicant's request for anonymity was granted on October 6, 2003. The Applicant's request for provisional relief was denied on February 18, 2004. The usual exchange of pleadings took place and the case was listed on March 12, 2004.

2. The Applicant submits that after he complained about alleged misrepresentations by his Division Chief in reports to higher management, the Bank retaliated against him by giving him poor evaluations, threatening him with termination, exposing him to a hostile work environment and denying him promotion. The Applicant contests his non-promotion and asks that his unfavorable Overall Performance Evaluations (OPEs) be removed from his file, that he be promoted to Grade G retroactive to July 2000, and that he be awarded the educational costs of pursuing a Master's degree, together with compensation and costs.

The facts of the case

3. The Applicant joined the Bank in January 1989 as a Financial and Accounting Analyst, at Grade 19. In October 1991, he moved to the Treasury Department as an Accounting Officer, at Grade 20. In 1993, he was promoted to Grade 21, which is the equivalent of today's Grade F. In 1995, the Applicant became part of the accounting staff of the new Treasury Accounting Division (TREAC). He remained there until 2000, when he transferred to the Treasury Asset and Liability Division of the Treasury Operations Department (TROAL). He has remained at Level F since 1993.

4. The Treasury Department used computer software, called the Liability Management System (LMS), to track its borrowing activities. The Applicant worked in the Borrowings Division of TREAC. He was responsible for analyzing and reporting on the Bank's borrowing activities, and for noting errors and accounting problems caused by the LMS software. His reports went to his immediate supervisor, and were mostly cleared by the Division Chief.

5. According to the Applicant, his reports noted numerous amortization adjustment errors in the LMS system. His team made many requests to rectify the system, but these could not all be met. Because of the problems and errors arising from the LMS software, management decided to replace LMS with a more up-to-date system called "Summit." The change-over was to happen in January 1999.

6. In September 1997, two large amortization adjustment errors were found, totalling, according to the Applicant, US\$69 million. This discovery delayed the financial statements for the first quarter of fiscal year 1998 and led to an investigation, initiated by the Division Chief, to identify the underlying reasons for the LMS errors.

7. The Division Chief reported to the Treasury Vice President (TREV) on October 22, 1997, stating, in part,

that the “negative amortizations for this particular issue had been accumulating for at least several years *and had not been detected.*” (Emphasis added.) On November 5, 1997, the TREVP and the Controller (CTRVP) reported to the President of the Bank about “Accounting Errors Pertaining to Borrowing and Swap Costs.” This memorandum was drafted by the Division Chief, and was along similar lines to those of her October memorandum.

8. The Applicant says that he and a colleague in the Borrowing Division pointed out to the Division Chief that her October report was misleading in suggesting that the amortization errors in the system had not been known previously. In fact, they had regularly informed the Division Chief and supervisors about the system’s errors. The Applicant says that he was concerned that he would be personally blamed for failing to discover the errors.

9. In November 1997, the President of the Bank asked the Internal Auditing Department (IAD) to audit TREAC’s accounting practices. This process continued until August 1998.

10. Meanwhile, after consulting the Ombudsman, the Applicant formally complained to the Ethics Office on February 13, 1998 about a possible ethical violation by TREAC management. He alleged that the Division Chief had been fully aware of the LMS system errors, but had misrepresented the problem and had unfairly made staff the scapegoat.

11. The Ethics Office asked the IAD to explore the Applicant’s complaints while carrying out the audit related to the LMS problems. The Auditor in Charge of the inquiry interviewed the Applicant (confidentially, the Applicant believed) about his responsibilities and about his concerns. In later discussions with the Division Chief in March 1998, the Auditor in Charge informed her that a member of her staff had specific concerns. The Auditor in Charge later stated that the person referred to was the Applicant and that the Division Chief was aware of this. However, the Auditor in Charge denied informing the Division Chief about the Applicant’s Ethics complaint.

12. The IAD report of August 7, 1998 concluded that a significant number of errors in LMS had been accumulating over the years, causing a net income overstatement of about US\$52 million. The report identified a number of causes of those errors, including system inadequacy, manual interventions to make adjustments, scarcity of staff to perform in-depth investigations, and lack of oversight. The report did not find misconduct on the part of any staff. It recommended that errors continue to be investigated and fixed. It also recommended that the Department report “prudently but clearly” to senior management on the implementation of change.

13. The investigation of the Applicant’s Ethics complaint was formally concluded on December 30, 1998. No evidence had been found by IAD of wrongdoing by the Division Chief.

14. The Applicant says that after he complained about the Division Chief’s report, relations between them deteriorated, and that she planned to remove him from the department because of his criticisms. In support of this allegation, he refers to her e-mail of January 23, 1998 to the CTRVP and copied to a number of Treasury and Human Resources managers, wherein she discussed her decision for the removal of certain staff from TREAC. In this e-mail, the Division Chief suggests that of nine staff members in the Unit only four would be retained. Among those not to be retained was “a performance case that I have been discussing with our HR officer”; it is not in dispute that this referred to the Applicant.

15. The Applicant says that he began to get poor OPEs, and that this resulted from an agreement between the Division Chief and the Applicant’s two supervisors, Mr. A, the Treasury Accounting Division Section Chief of TREAC, and Mr. B, the Supervisor of the Investment Accounting Section of TREAC, to remove him.

16. The Applicant’s OPE for the period January 1, 1997 to August 31, 1997 was signed by his supervisor, Mr. A, on March 19, 1998. The Applicant complained in the Staff Comments section that he had been denied information about the confidential feedback on his Behavioral Assessment and could not check it. The Applicant’s OPE for the period October 1, 1997 to December 31, 1997 was signed by his supervisor, Mr. B, in November 1998. The Applicant disagreed at length with this assessment in his Staff Comments. He complained that his supervisor lacked understanding, and asserted that there had been constant friction between them. He

complained that the Behavioral Assessment was not related to specific situations, and did not meet the fundamental requirement of fairness. The Applicant claimed once again that he had been denied information about the sources who had provided feedback for the Behavioral Assessment section of his OPE.

17. The Applicant approached the Division Chief in October 1998 to dispute his assessment. She proposed that the OPE should be completed, and that there be a 360 degree feedback review of his performance. This never occurred. The Applicant says that after he raised his concerns about his OPEs with the Division Chief, he was put under a lot of pressure. He was given new, complicated assignments to be completed in unrealistically short periods, with constant reminders that he was not meeting deadlines. His health deteriorated and, in mid-1998, on his doctor's advice, he took two weeks' sick leave.

18. The Applicant says that in the period 1998-99 he continued to be given a heavy workload, and was criticized for not doing enough. He alleges that he was excluded from staff meetings and non-routine work, and that new employees were told not to talk to him.

19. The Applicant's OPE for the period January 1, 1998 to March 31, 1999 was signed by his new supervisor, Mr. C, Accounting Officer, TRO, in June 1999. The Applicant expressed strong disagreement with this assessment in his Staff Comments, both as regards performance and behavior. He complained to his supervisor that it was unfair not to disclose to him the identity of individuals who had provided feedback on his behavior, so that he could check the information.

20. The Applicant's concerns about his OPEs led to a number of meetings and discussions with management. One such meeting was held on June 8, 1999 between the Applicant, the Division Chief, the Treasury Operations Director, the Treasury Human Resources Officer, and a Human Resources Staff Services counsellor. According to the counsellor, they discussed the Applicant's responses to his two most recent OPEs, issues of fairness, and new work expectations. The Operations Director queried "whether or not current work relationships are conducive to an ongoing productive environment." The counsellor offered to assist the Applicant in exploring options for his future.

21. The Applicant set out his concerns about his recent performance evaluations in a memorandum of June 23, 1999, addressed to the Treasury Operations Director. He strongly disagreed with the assessments, emphasizing his experience, skills, and achievements, and his concern that he had not been given a chance to demonstrate these since being transferred to TREAC in 1995. The Treasury Operations Director met with the Applicant several times to discuss the reviews and his concerns about non-promotion. These discussions did not resolve the Applicant's concerns. The Director later pointed out to the Applicant that he could file a formal request for administrative review.

22. On August 25, 1999, the Applicant requested an administrative review of his OPEs covering the period from 1997 up to March 1999. In this request, the Applicant stated his concern that his career goals had been adversely affected by the unfair evaluations. He claimed that after his protest to the Division Chief about her alleged misrepresentations, relationships in the team deteriorated, and that the poor assessments were in reaction to his criticisms.

23. The Applicant did not receive a response to his request for administrative review within 30 days, as then required by the Staff Rules. Instead, discussions between the Applicant and the Treasury Operations Director continued for some time. Various options were raised with the Applicant for his future, including opportunities outside the Bank, and reassignment within the Bank.

24. The Applicant continued to be unhappy about his situation in 2000, and in particular about his lack of promotion. There were discussions about a possible transfer to work with a new Director and new supervisor.

25. On June 30, 2000, the Applicant applied for a newly created position as a Senior Manager in the Treasury Finance Unit. He was not considered for the position.

26. Meanwhile, on June 9, 2000, the Applicant had sought help from the Special Advisor on Racial Equality, who contacted the TREAC Human Resources Officer by e-mail on June 9 pointing out that the Applicant's request for administrative review had been pending for nine months. He wrote: "I think this case should be resolved fast and justice restored. If this goes to appeal, we all will lose. How in the world would a request for administrative review take 9 months: Is this not a violation of the Staff Rule and due process? I would like to request that you bring the Vice President into the picture and facilitate resolution as soon as possible."

27. On the advice of the Special Advisor, the Applicant contacted the Managing Director for TRE on June 12 to seek a resolution of his request for administrative review. The matter was then referred to the Treasury Vice President on the same date.

28. The Treasury Operations Director responded to the Applicant's request for administrative review in a memorandum of July 10, 2000. In his response, he told the Applicant that in discussions with him and with his supervisors he had noted different perceptions of the Applicant's performance. He stated that he had been trying to resolve the Applicant's problem by helping him to have a fresh start. The Applicant had asked him to delay action in September/October 1999 so that the Applicant could have a chance with a new Treasury Operations Director who joined the Bank in November 1999. He asked if the Applicant was still interested in this proposal for a new start.

29. The Applicant contacted the Treasury Vice President on July 25, 2000, saying that he had not asked for the review of his OPEs to be delayed, and that the possibility of a new start was a separate issue. He informed her that he had been transferred to the Treasury Operations Department Asset and Liability Division (TRO-ALM) on July 1, but he had not been given the promotion which he wanted. According to the Applicant, she advised him that, rather than appeal further, he should try to make a new start under the new Director, and under a new supervisor, Mr. D, Senior Investment Officer, Assets and Liability Management.

30. In August 2000, there were further discussions involving the Applicant, the new Treasury Operations Director, Mr. D, and sometimes the TREAC Human Resources Officer, about the terms which would apply to the Applicant in the new assignment. The Applicant reported to the Treasury Vice President on August 18, 2000 that he had been told he would not receive any pay increases for FY00. He might get an increase after six months if his evaluation were good, but no promotion. He informed her that these terms were not acceptable; he later stated they were punitive.

31. The Applicant says that later in 2000, his new Director told him that he could not get a promotion to Grade G, as his manager, Mr. D, was at that level: the manager was due for promotion to Grade H, and the Applicant could then be promoted to Grade G if he did well on his Results Agreement. The Applicant says that he accepted this. He was assigned to work with the QRM project. The Applicant did in fact receive pay increases in 2000 and 2001 but was not promoted. The Director later denied any promise of promotion.

32. The Applicant says that on the suggestion of the Treasury Vice President he met with the Deputy Treasurer in September 2000. He says that the latter agreed to be his mentor, to oversee his progress and promotion, and to see that the agreement with his Director was respected. The Applicant says that he also told Human Resources about the agreement. The Bank denies any overseeing role on the part of the Deputy Treasurer.

33. In May 2001, the Applicant's new manager, Mr. D, conducted the Applicant's performance review for the period August 1, 2000 to March 31, 2001. He rated the Applicant's performance as "superior" or "fully successful" in each category. His behavioral assessment was similar. The Director signed the evaluation but did not promote the Applicant.

34. The Applicant showed his evaluation to the Deputy Treasurer who, the Applicant claims, said he was doing great work. The Applicant wanted the Deputy Treasurer to ensure that the Director's promise of promotion was fulfilled. However, the Applicant alleges that instead of doing so, the Deputy Treasurer told him in October 2001 that he would try to give him another position at Grade G during the reorganization of Treasury. But the Applicant was not offered any such position. He says that in February 2002, the Deputy Treasurer told him that

he had “fallen through the cracks.”

35. The Applicant says that he asked the Deputy Treasurer in approximately March 2002 if the Bank would support him in spending a year pursuing his Master’s degree as a way to settle his complaints and incidentally do developmental work for the Treasury Department. According to the Applicant, the Deputy Treasurer agreed. This is disputed.

36. At about this time, the Applicant says that the Deputy Treasurer told him that there would be another reorganization, and that the Applicant might be moved to another area with a new supervisor. This did not happen. According to the Applicant, the Deputy Treasurer seemed to lose interest in helping him and told him that he was “high maintenance.” In June 2002, the Applicant got his 2002 OPE with good ratings, but he was not recommended for promotion.

The Applicant’s appeal and his application to the Tribunal

37. On October 15, 2002, the Applicant filed an appeal with the Appeals Committee. He challenged his OPE for the period April 1, 2001 to March 31, 2002, and sought promotion to Grade H or compensation for retaliation. There was a hearing. On April 23, 2003, the Appeals Committee’s report recommended that all of the Applicant’s pleas be denied. These recommendations were accepted by the Vice President of Human Resources on April 28, 2003 and communicated to the Applicant.

38. On September 23, 2003, the Applicant filed an application with this Tribunal. The Applicant requests: (i) promotion to a Grade G position retroactive to at least July 2000; (ii) removal of all OPEs for fiscal years 1998 and 1999 from the Applicant’s file and destruction of all copies; (iii) restoration of two weeks’ sick leave; (iv) one year’s study leave with full Bank salary and benefits; (v) back pay at Grade G from at least July 2000; (vi) fees for pursuit of a Master’s degree from the University of Chicago; (vii) compensation for pain and emotional distress; and (viii) legal fees.

39. On December 17, 2003, the Applicant filed with the Tribunal a request for provisional relief seeking the suspension of a redundancy notice received on December 16, 2003. This request was denied on the ground that the Applicant had not contested the redundancy decision before the Appeals Committee.

Considerations

40. In brief, the Applicant complains that because he criticized his Division Chief’s October 1997 report (containing, he says, misrepresentations to higher management) and then took his concerns to the Ethics Office, there was retaliation against him. The retaliation included unjustifiably poor evaluations, a hostile working environment, attempts to terminate his employment, threats of redundancy, and failure to promote him. He complains that his request for administrative review of his OPEs was not dealt with and that he was denied due process in that regard. He also complains that the Bank failed to resolve his complaints by ensuring his promotion in a new working environment. He deferred his rights to appeal when he was promised fair treatment, but the Bank failed to deliver on its promises. He ascribes all his problems in the Bank to retaliation, improper motivation, and abuse of discretion because of his criticisms of the Division Chief. The Applicant claims that he has been labelled a troublemaker and complainer.

41. The Respondent answers that the Applicant’s allegations were investigated and found to be groundless, and that there had been no retaliation nor any improper motivation or abuse of discretion. His criticisms and his Ethics complaint were not known by his managers when they completed his OPEs for 1998 and 1999. Those evaluations were accurate and justified.

42. The Tribunal notes that some of the decisions and actions contested by the Applicant occurred outside the limitation period laid down for applications to the Tribunal. The Applicant contends that all the matters complained of are part of a continuous course of conduct on the part of the Bank which amounts to retaliation or is otherwise an abuse of discretion arising from his criticisms of the Division Chief. The Respondent has

addressed the merits on that basis, and so therefore does the Tribunal.

Was there retaliation?

43. According to Staff Rule 8.01, para. 3.02, as it existed at the relevant time:

Retaliation by a Bank staff member against any person who in good faith reports suspected misconduct is expressly prohibited.

Retaliation is a ground for disciplinary action.

44. The Applicant claims that retaliation followed his protest against the alleged misrepresentations made by his Division Chief in her reports to senior management about the problems in the LMS in October and November 1997, and his later complaint to the Ethics Office in February 1998 about such misrepresentations.

45. The Respondent does not dispute that management knew that errors had been accumulating over several years in the LMS system in respect of borrowings. The errors had been small and had had a relatively minor impact on the Bank's financial statements. However, the Respondent accepts that the errors which came to light in September 1997 in respect of particular borrowings were unusually large. The Division Chief's reports of October and November 1997 focused on these very large, unusual errors. She invited internal and external scrutiny of the issues, and the Respondent contends that no attempt was made to conceal the situation.

46. The Division Chief testified to the Appeals Committee that her October 1997 report had tried to describe a specific problem: an unexpectedly large error. She did not recall any objections to the report and said that the team had all worked hard to deal with the problems. There was never any talk of disciplining or blaming anyone. The Auditor in Charge of the IAD investigation testified that she did not see any evidence of an intent to misrepresent the situation to senior management.

47. The Applicant's two supervisors in 1997, Mr. A and Mr. B, did not remember any criticism by the Applicant of the Division Chief's memorandum, though the Applicant and others had complained about the difficulties with the LMS system. Mr. B testified that he did not think the Applicant had been more vocal than anyone else in drawing attention to the LMS problems, which were common knowledge. He thought, however, that the Division Chief's report, rather than claiming errors had first been detected in the first quarter of FY98, "would have been better phrased to say we first detected errors that significantly affected the P & L account. That would have been a better expression."

48. The Applicant continues to assert that the Division Chief's October 1997 report was deliberately misleading. The Tribunal notes, however, that all the relevant persons in the Applicant's management line were well aware of the underlying deficiencies of the LMS system. A new system was under way. The Auditor in Charge stated that she had not become aware of any attempt to blame staff for the failure to discover the LMS problems. Nor can any conclusion to that effect be drawn by the Tribunal.

49. A difficulty with the Applicant's retaliation claim is that the Division Chief testified that she did not learn of the Applicant's Ethics complaint until the summer or fall of 1999, when the Applicant asked for administrative review of his OPEs. The Applicant has submitted that an inference should be drawn that when the Auditor in Charge told the Division Chief about her discussions with him, the Division Chief must have readily concluded that he had made an Ethics complaint. The evidence of both is, however, clear to the effect that neither the Ethics complaint nor the details of the discussions was revealed. The three supervisors who did the Applicant's OPEs for 1997 and 1998 also testified that they did not know of the Ethics complaint at the time they did the reviews.

50. The burden lies with the Applicant to establish facts which would bring his claim within the Staff Rules' definition of retaliation. He alleges adverse treatment and improper motivation. However, in the absence of any evidence that the Division Chief and supervisors knew before 1999 that the Ethics complaint had been lodged, the Applicant cannot establish that any acts of retaliation up to that time were based on that complaint. In any

event, he had not yet lodged his Ethics complaint when the Division Chief sent the memorandum of January 23, 1998, upon which he relies as evidence that she wanted to remove him. The Tribunal therefore concludes that the Applicant's claims do not fall within the definition of retaliation under the Staff Rules.

Was there abuse of discretion or improper motivation?

51. The Applicant alleges a continuing pattern of unfair treatment, abuse of discretion or other improperly motivated action against the Applicant because of his protest about the Division Chief's report. If established, such action would violate Principle of Staff Employment 2.1, which provides that the "Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members."

52. The Applicant claims that the Division Chief planned to terminate his employment because of his criticism of her October 1997 report on the LMS errors. He contends that her e-mail of January 23, 1998 clearly indicates an intention to make him redundant or to remove him from TREAC on performance grounds.

53. The Division Chief denied in her testimony that she had plans to terminate the Applicant. She knew that he was not happy and had had discussions with him about other places where he might be able to work. These attempts were unsuccessful.

54. The Applicant's two supervisors in 1997, Mr. A and Mr. B, testified that although there was a need to upgrade skills in the Unit, the Applicant was the only qualified accountant on the borrowing side. Although there were some performance issues, he had the skills and credentials that were needed, and there was no plan to terminate his employment.

55. The Applicant contends that the Division Chief and his supervisors lied to the Appeals Committee about their intention to terminate his employment, and that the Division Chief's failure to recall his objection to her October 1997 report lacks credibility.

56. The Tribunal notes, however, that in his later memorandum of June 23, 1999, the Applicant stated that when he had asked for a transfer to another Unit of TRE in 1998 because of the allegedly hostile working environment, he had been informed by an HR Officer that the Division Chief considered him to be a valuable member of TREAC and an expert in LMS who had played a critical role in the transition to Summit. The Applicant records in the same memorandum that the Division Chief had given him an above-average pay raise for his hard work, though she had not organized the 360 degree feedback as promised. These circumstances do not appear to be consistent with any plan on the part of the Bank to terminate his services at that time.

57. An affidavit by a Senior Accounting Officer, who worked in TREAC from July 1999 to March 2001, states that he had observed that the Applicant was assigned routine tasks and excluded from opportunities, that he was told not to work with the Applicant, and that management was trying to get the Applicant out of TREAC. The Tribunal notes, however, that by July 1999 the Applicant's concerns about his OPEs for 1997 and 1998 had led to discussions about transferring him to a new team, or otherwise giving him a fresh start.

58. A central argument of the Applicant in support of his claim that there was an improperly motivated plan to remove him from TREAC is that his Division Chief encouraged his supervisors to give him unfairly poor evaluations so that he could be terminated on performance grounds. He claims that his three OPEs for 1997 through March 1999 were unfair. He has provided a table to show what he describes as a "startling decline" in his assessments compared with the period 1994-96. He says that his assessed performance fell from "exceptionally effective" to "fully" or "partially effective." In addition, his behavior was rated lower than before. The Applicant claims that the Division Chief was a party to this unfavorable treatment and refused to allow reconsideration of his OPEs.

59. The three supervisors who prepared the OPEs in question testified that the Division Chief had not tried to influence them to prepare negative OPEs, nor informed them of plans to terminate the Applicant's employment. They had no reason to seek the removal of the Applicant as he was qualified for his task.

60. The Tribunal notes that the Applicant's assessments from 1991 onwards were positive about his professional abilities and achievements, and that the assessments covering the period of about two years from January 1997 to March 1999 were somewhat less positive.

61. The Tribunal notes, however, that during the earlier period his supervisors consistently called for him to improve in particular areas, including analysis and follow-through, attention to detail, and the need to deliver results more promptly. Most of the Applicant's OPEs up to 1998 drew attention to the need for him to develop interpersonal skills and to work at resolving conflict with his colleagues. Among the matters mentioned by the supervisors were disagreements, a quick temper, arguments, friction, and unwillingness to accept negative comments. In-house training was proposed as a solution.

62. The Tribunal notes also that in the period at issue there were memoranda from his supervisors pointing to particular performance problems. Nevertheless, despite negative comments in the assessments and in other contexts, the Applicant's supervisors recognized that he had the qualifications and skills to improve and meet the required standards. It appears, however, that the Applicant was becoming dissatisfied with his lack of progress in the Bank. This may have begun in 1995 when he was passed over for promotion, and may have contributed to a deterioration in his relationships with his supervisors. The Auditor in Charge testified that she thought that the Applicant was unhappy because he felt unappreciated, and partly because of the changes that were going on in TREAC. The Division Chief stated she was aware that he was looking for something more challenging.

63. A particular complaint of the Applicant is that he was denied information about the identity of individuals who had provided feedback on his behavior in his OPEs. He had been told that the sources were confidential and could not be revealed to him. The Applicant complains that this was a denial of due process because he could not defend himself against anonymous feedback. He relies on *Sengamalay*, Decision No. 254 [2001], wherein the Tribunal found that the anonymity of evaluations, their lack of specificity, and the failure to afford the Applicant an opportunity to respond had been unfair.

64. The Respondent says that the feedback providers were colleagues of the Applicant and were known to the supervisor. Its explanation is that the names are not always revealed in order to encourage honest assessments. In any event, argues the Respondent, when the Applicant was given the names of commentators in 1998, he had angrily confronted one of them. Names were not revealed to him thereafter.

65. In contrast to the situation in *Sengamalay*, the Respondent did not take any action on the basis of the Applicant's OPE, such as redundancy or placing the Applicant on a Performance Improvement Plan (PIP). The assessments of his behavior were based not only on the feedback from colleagues but also, in part, on the direct observations of his supervisors. Even though the Applicant did not suffer adverse consequences from the assessment, the Tribunal considers that transparency is the desirable rule, and that it should be observed by all involved in the OPE process. The Applicant was denied an opportunity to respond to the assessment of his behavior. He contends that this hampered his progress in the Bank, and argues that failure to identify sources may be an abuse of discretion.

66. On the other hand, although the Applicant's OPEs for 1997 and 1998-99 were less successful than some earlier ones in regard to his performance, the Applicant has not established that they were improperly motivated or that they were part of any plan to get rid of him. No overt step was taken to remove the Applicant, or to make him redundant on the basis of those assessments. On the contrary, his expressed dissatisfaction with his OPEs and with his lack of promotion led to efforts on the part of the Bank over a long period to find him a more positive work environment and to improve his performance. Although the Treasury Operations Director later made it clear in his memorandum of July 10, 2000 that he had found no basis to disagree with the managers' assessments, his actions in seeking to help the Applicant appear to have been a recognition of the skills and potential of the Applicant, notwithstanding his OPEs.

Delay in response to the Applicant's administrative review request

67. The Applicant complains that he was denied due process, in that the Treasury Operations Director did not respond to his request for administrative review of his OPEs within the period of 30 calendar days then specified by the Staff Rules. The Applicant requested the review on August 25, 1999, but received no written response until almost a year later (on July 10, 2000). Because of the delay, he claims, the 1997 and 1998-99 assessments were not analyzed or reviewed, and he was deprived of an opportunity to appeal them. He contends that the lack of specificity and the use of anonymous sources also denied him an opportunity to respond to the OPEs. He complains also that the Bank has failed to explain why he was denied the 360 degree feedback review which had been promised to him.

68. The Bank says that although there was no formal written response, it did not ignore the Applicant's request for administrative review. The Director had long meetings with the Applicant to discuss his grievances, particularly those relating to his promotion prospects. The Director had tried to find solutions, and had suggested to the Applicant that he could try to meet the requirements of his managers or try for a fresh start in another position, with new managers, outside TREAC.

69. According to the Bank, the Applicant asked for action on his request for review to be delayed while these options were being considered. The Applicant denies asking for any delay on his request for review.

70. The Applicant is correct in asserting that there was no formal response to his request for administrative review in the required time. He believes that his prospects in the Bank are still adversely affected by the contested OPEs. The Tribunal notes in this regard that the Director stated clearly that after looking into the matter he had found no basis on which to disagree with the assessments in the OPEs. The Tribunal notes also that there were many discussions about the Applicant's situation, and that the purpose of those discussions appears to have been to help the Applicant to relocate and to enhance his skills rather than to affect him adversely. In fact, the Director's actions to help the Applicant resulted in his relocation, a fresh start, and a greatly improved set of OPEs.

71. The Tribunal considers, however, that the Bank failed to comply with the Rules by not responding earlier to the Applicant's request or by reaching an explicit agreement with him to suspend the response to his request pending discussions about his future. It also failed to undertake the 360 degree feedback review despite having offered this to him. The Bank should be ordered to pay compensation for this irregularity.

Other issues

72. The Applicant complains that he was unfairly denied the management position for which he had applied in June 2000, despite his qualifications and experience. He argues that this was because of the unfavorable and unfair comments in his 1997 and 1998-99 OPEs.

73. The Bank states that the position for which the Applicant applied was a Grade H position, whereas the Applicant was then at Grade F. In those circumstances, it was most unlikely that he would have been considered for the position. If his performance had been superior, he might have been considered for a Grade G position. But in his case there were performance issues.

74. The Tribunal cannot find any abuse of discretion in the management's not having considered the Applicant for the position.

75. The Applicant says that he did not pursue his grievances further in 2000 because he had been promised a promotion. He submits that he had been falsely led to believe he would be promoted by his Director, and that if he had not been promised a promotion, he would have asked to move elsewhere. He wanted a challenge at a higher level. The Applicant claims that it was an abuse not to promote him to Grade G when he had improved his performance and behavior, and had fully satisfactory performances in the 2001 and 2002 OPE cycles.

76. The Applicant testified before the Appeals Committee that he had relied on the Deputy Treasurer to see

that the Director's promise of promotion was kept. However, the latter failed to ensure that the Applicant got a promotion, despite his good results. The Applicant claims that the Deputy Treasurer also failed to fulfill the promise of providing him with funding to pursue a Master's degree in settlement of his claims.

77. The Applicant's Director and the Applicant's Manager, Mr. D, testified that they had never promised him promotion. The Director stated that he had agreed to give the Applicant a fair chance to demonstrate his abilities and would have considered him for promotion if he had showed he could perform at a higher level. Both the Director and the Manager testified that the Applicant had performed well at Grade F, but that his performance was not at Grade G. He still required guidance and supervision. A significant amount had been invested in his training. The Applicant's Project Manager also stated that the Applicant had done a good job, but that his work was not at Grade G; he did not operate autonomously. Furthermore, there were no Grade G positions in the technical area.

78. The Deputy Treasurer denied that he had made any promise of promotion. His role, the Bank says, was generally to see fair play by the Applicant's supervisors, to help him explore opportunities and to advise him on career development. The Treasury Human Resources Officer, who had been involved in the discussions about the Applicant's future, testified that although the Applicant spoke of having been promised promotion, he had not heard any reference to such a promise by management. In November 2000, the Treasury Human Resources Officer suggested to the Manager, Mr. D, that he talk with the Applicant about his expectations, but to make no promises.

79. In regard to the allegations about the university course, the Deputy Treasurer testified that he did not remember making any promise to provide funds to the Applicant for a Master's degree course. He had suggested that the Applicant's request go to the new Director, who was responsible for recommending funds for training, but the latter decided, after evaluation, that TROAL could not fund tuition, salary and other costs for a staff member to get a degree in a new field. The Bank says that the Applicant had received training worth \$22,000 between 2000 and 2002.

80. The Applicant was certainly pressing for promotion. It may well be that he believed that he was entitled to it, and that it had been promised to him. But the management had in fact consistently avoided giving such promises. In his evidence, the Deputy Treasurer summed up the situation in these terms: "[F] is hearing a firm commitment, when we are trying to brainstorm ideas for him to pursue."

81. The Tribunal is unable to find any abuse of discretion in regard to the alleged failure to promote the Applicant or in regard to his claim about university studies.

Conclusions

82. The Applicant's main grievance is that his qualifications and capabilities have not been properly recognized, and that his opportunities for promotion within the Bank have been frustrated by the unfair and abusive conduct of his managers and supervisors, who agreed to punish him because he opposed certain actions taken by his Division Chief. The Applicant claims that he has suffered ill health, pain and suffering, and that his career has been unfairly held back.

83. The Bank has argued that the Applicant has not shown that he has the attributes necessary to justify his promotion to Grade G. At times, there were performance and behavioral problems which were reflected in his assessments. The Bank has suggested that it was his confrontational style which was the cause of his difficulties in his relationships with his teams. The Tribunal notes, however, that the Bank may have contributed to the Applicant's problems by allowing his expectations to rise instead of presenting him with realistic and clearly defined options. The failure of the Bank to deal decisively with the Applicant's request for administrative review of his OPEs and to set out clearly the path proposed for him contributed to this uncertainty in expectations. This exacerbated his perception that his career was being frustrated by the Bank.

84. The Applicant has failed to establish most of his complaints. The allegation of retaliation is not proven. Nor

has he established that there was any abuse of discretion in the assessments of his work performance and behavior. He has not established that he was unfairly denied promotion.

85. The Bank did not, however, live up to its obligation to respond to his request for administrative review in the time then specified by the Staff Rules. For this irregularity, the Bank should be ordered to make a modest payment. Although the application was fundamentally misconceived, the Tribunal is mindful that the Bank's indecisiveness contributed to the Applicant's litigious attitude. On that basis, the Tribunal deems that the Bank should be ordered to pay a similarly modest amount as a contribution to costs.

Decision

For the above reasons, the Tribunal decides to dismiss the application, save in the following respects:

- (i) the Respondent shall pay to the Applicant the amount of \$5,000 net of taxes; and
- (ii) the Respondent shall pay to the Applicant costs in the amount of \$3,000.

/S/ Francisco Orrego Vicuña
Francisco Orrego Vicuña
President

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

At London, England, June 18, 2004